

[REDACTED]
Nominated Supervisor
Gold Creek World of Learning

Email: [REDACTED]

Dear [REDACTED],

Show Cause Notice – Potential Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance. As you are aware, the Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law* (the *Law*). One of the Authority’s roles is to investigate suspected offences under the *Law*.
2. As you may be aware, the Authority is currently investigating a suspected offences relating to staffing and supervision arrangements at Gold Creek World of Learning SE-00009779 (the Service) operated by World of Learning Pty Limited PR-00000937 (the Provider).
3. The suspected offences relate to a complaint, received by the Authority, alleging inadequate staffing arrangements and supervision at the Service whilst children were being educated and cared for.
4. Web addresses to the *Law* and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this notice.
5. Authorised Officers have now finished obtaining evidence (unless further lines of enquiry emerge) and the Authority has determined that there is sufficient evidence to support a case to answer regarding a suspected offence under the *Law*.
6. However, the Authority’s investigation is not complete until you have had an opportunity to respond to the allegation and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you as a person who is a Nominated Supervisor.
7. Detailed instructions of how to respond appear at the end of this Notice.
8. If substantiated, the allegations may constitute an offence under sections 165, 167 and s169 of the *Law*. If, after considering all available evidence, the Authority finds any offence is substantiated, it will need to consider whether compliance action is required.
9. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Details relating to potential compliance action appear at the end of this notice.

Grounds for issuing Show Cause Notice

10. The evidence obtained during the investigation to date supports an offence under the *Law* relating to:
 - a) Inadequate staffing arrangements;
 - b) Inadequate supervision;
 - c) Protection of children from harms and hazards likely to cause injury or illness.

Background

11. You are identified as the current Nominated Supervisor for the Service, consenting to this role on 9 July 2021. Refer Attachment A.
12. On 8 December 2022, the Authority received a complaint alleging that the Service was not meeting minimum regulated ratio levels most mornings of operation, specifically affecting the education and care of children in the infant's space.
13. On 14 December 2022, the Authority received a Notification of Complaint submitted by the Provider. The Notification advised of a complaint from a parent alleging inadequate supervision had resulted in her child sustaining injuries from unwitnessed incidents. Refer notification at Attachment B.
14. It was determined by the Authority that there were reasonable grounds to suspect that offences had, or may have, occurred at the Service and a decision was made to investigate a suspected offences under sections 169, 165 and 167 of the *Law*.

Allegations

15. The evidence obtained during the investigation raise the following allegation of an offence under the *Law* –

Allegation One

It is alleged that during December 2022 and February 2023, you, as the Nominated Supervisor of the Service, failed to ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose, in contravention of section 169(3) of the *Law*.

Allegation Two

It is alleged that between December 2022 and May 2023, you, as the Nominated Supervisor of the Service, failed to ensure that all children were adequately always supervised while in the care of the Service, in contravention of section 165(2) of the *Law*.

Allegation Three

It is alleged that, as the Nominated Supervisor of the Service, by not reasonable precautions to ensure compliance with sections 169 and 165 between December 2022 and May 2023, you

placed children at increased risk of harms and hazards likely to cause injury or illness, in contravention of section 167(2) of the *Law*.

Legislation Relevant to Allegation

16. The following provision of the *Law* is relevant to Allegation One:

Section 169(3) of the *Law* - Offence relating to staffing arrangements.

A nominated supervisor of an education and care service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards.

A nominated supervisor of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Section 165(2) of the *Law* - Offence relating to inadequate supervision.

A nominated supervisor of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Evidence Relevant to Allegations One, Two and Three

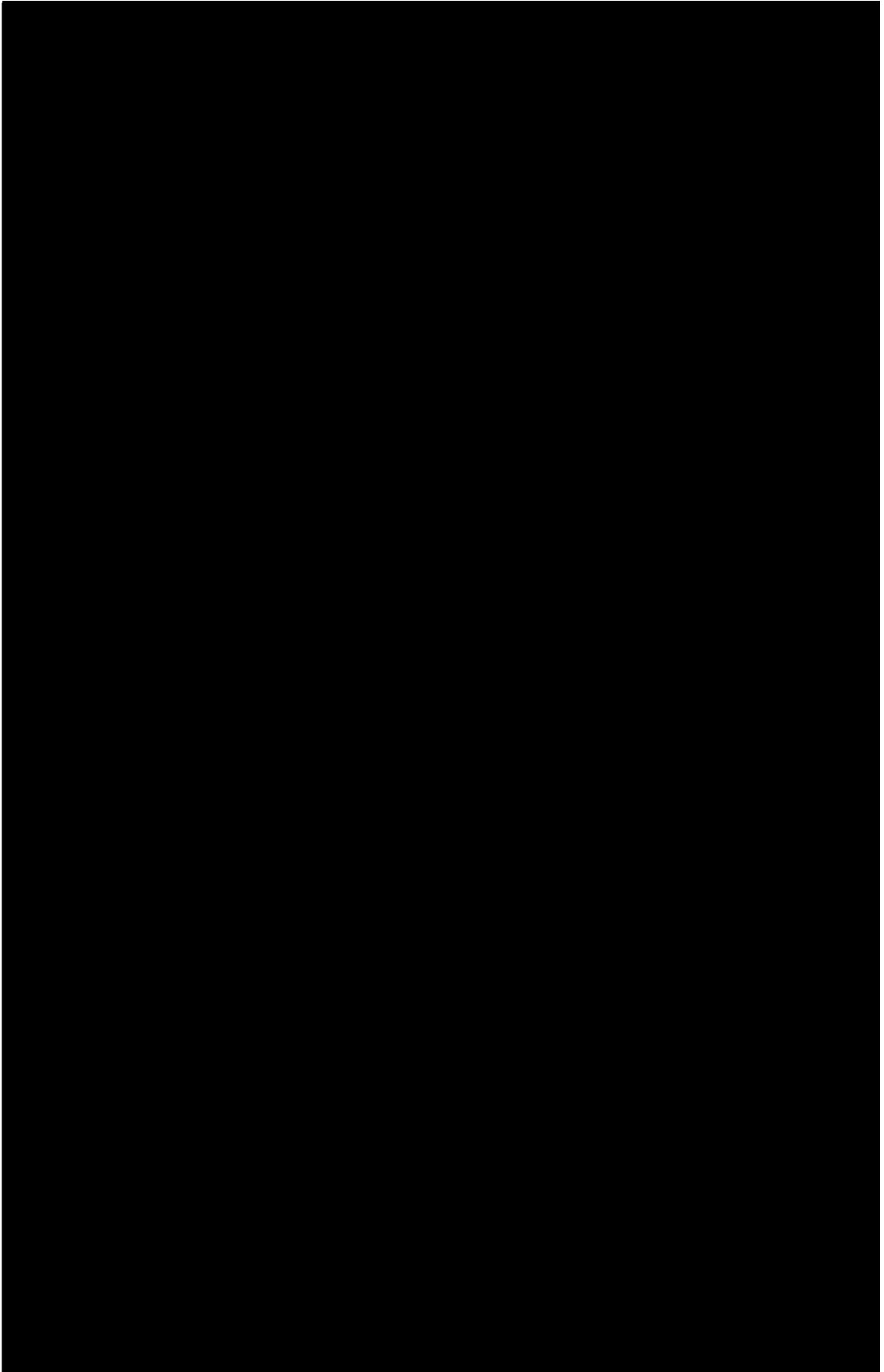
17. On 1 February 2023, a notice, allowable under section 215 of the *Law* (215 Notice), was sent to the Provider. Information submitted in the Provider's response to the notice included:

- a) Child attendance records for all children who attended the Service between 1 December 2022 and 14 December 2022 (inclusive), as required by Regulation 158;
 - b) Working Directly with Children (WDWC) records between 1 December 2022 and 14 December 2022 (inclusive), as required by Regulation 151; and
 - c) Record of responsible person/s at the Service between 1 December 2022 and 14 December 2022 (inclusive), as required by Regulation 150.
- Refer copy of correspondence at Attachment C.

18. The above records were utilised by Authorised Officers to undertake an analysis of staffing arrangements on random days during the first two weeks of December. The analysis indicates that staffing arrangements were not always meeting minimum regulated staffing levels during those days. Refer analysis at Attachment D.

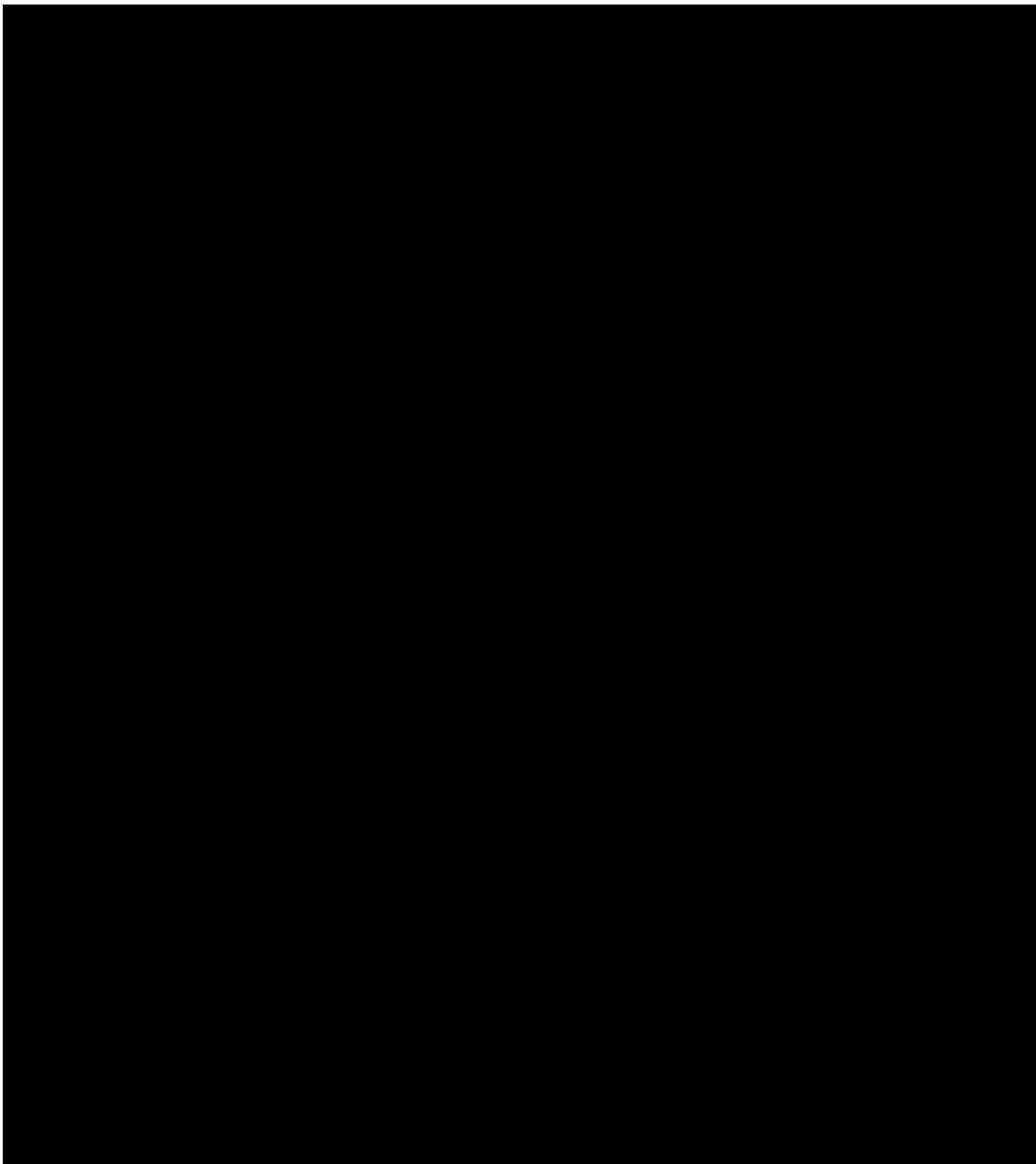
19. Educator statements were obtained exercising powers under section 215 of the *Law*. To clarify, educator witnesses were compelled by notice to attend before Authorised Officers and provide evidence. Failure to comply is an offence under the *Law*, as is obstructing or hindering the Authority's investigation.

20. Relevant extracts from Witness A's statement include:



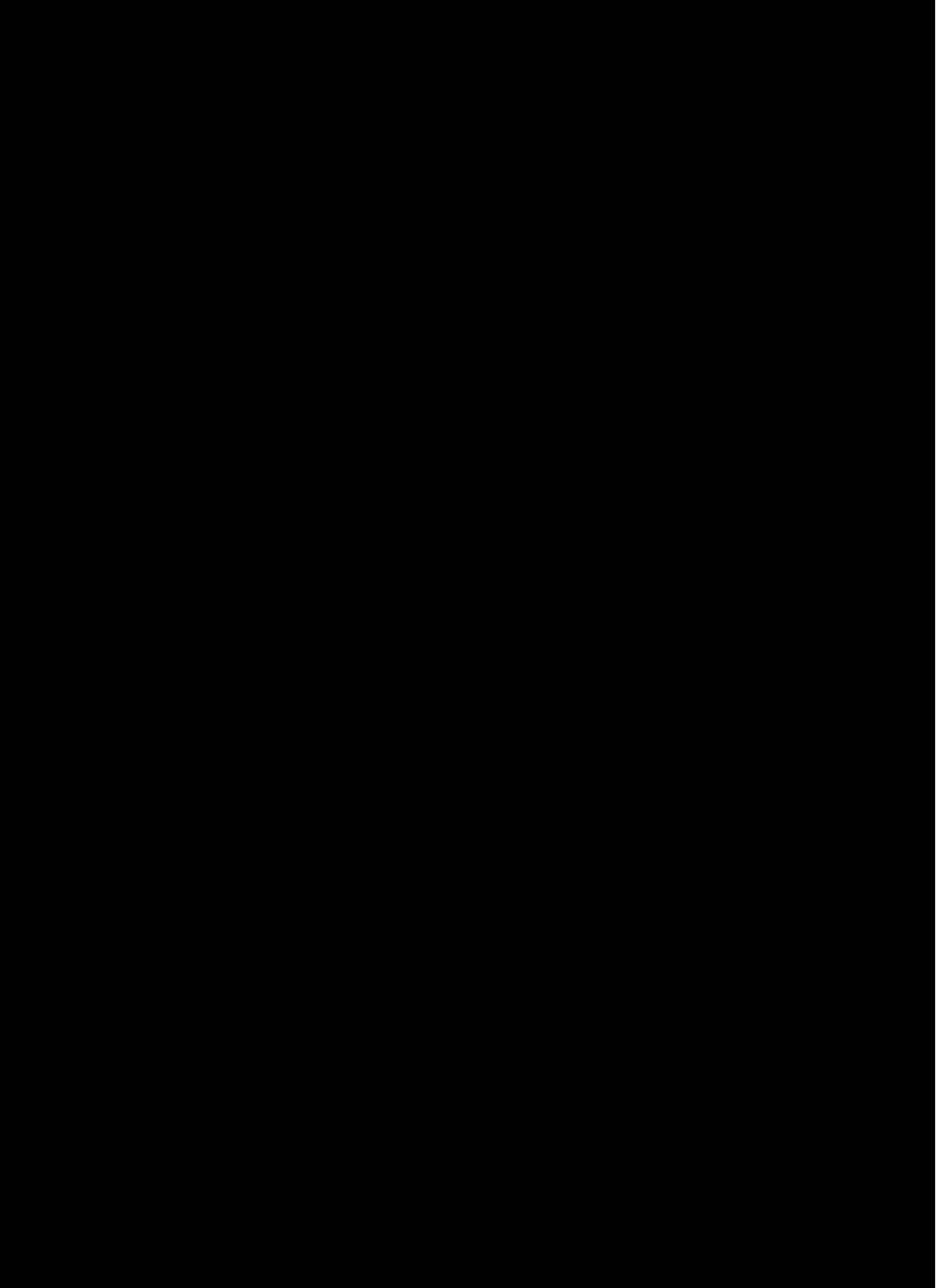


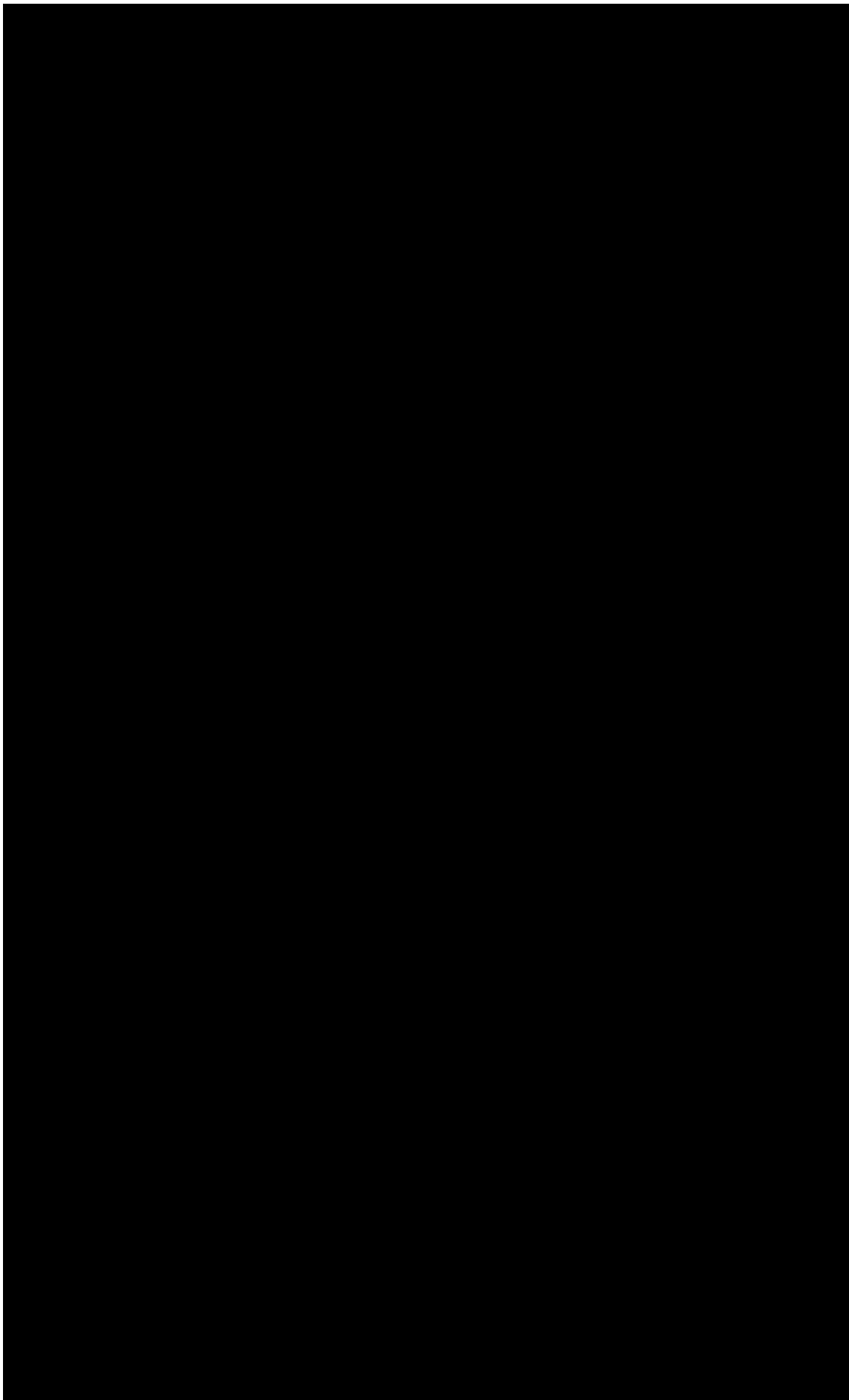
21. Relevant extracts from Witness B's statement are:





22. Relevant excerpts from Witness C's statement include:







23. On 7 March 2023, a secondary 215 Notice was sent to the Provider. Information submitted in the Provider's response to the notice included:
- a) Child attendance records for all children who attended the Service between 1 February 2023 and 1 March 2023 (inclusive), as required by Regulation 158;
 - b) Working Directly with Children (WDWC) records between 1 February 2023 and 1 March 2023 (inclusive), as required by Regulation 151; and
 - c) Record of responsible person/s at the Service between 1 February 2023 and 1 March 2023 (inclusive), as required by Regulation 150.
Refer copy of correspondence at Attachment E.
24. The above records were utilised by Authorised Officers to undertake an analysis of staffing arrangements on random days during February 2023. The analysis indicates that staffing arrangements were meeting minimum regulated staffing levels during those days. Refer analysis at Attachment F.
25. On 14 March 2023, an Authorised Officer attended the Service to assess ratio levels. The Authorised Officer observed the following:
- a) At the time of the visit there were two rooms operating with the preschool/ sea turtles (2-5 years combined) and the owls/dolphins combined (6 weeks- 2 years).
 - b) In the older age group, there was 15 children with 8 children under 3 years and there were three educators working with this group - therefore ratios were being met at the time of the visit.
 - c) In the younger age group, there were 15 children under two years and four staff in attendance. It was noted that there was potential for not meeting ratios if additional staff were late arriving at the service, however this was not observed at the time of the audit.
 - d) Staff advised that there were times when relief staff did not turn up, and there was a risk that adequate staffing would not be able to be met if this occurred.

26. On 4 April 2023, a secondary audit was undertaken at the Service, after receipt of further information alleging that staffing and supervision levels were inadequate. The Authorised Officer observed the following:

Infant Rooms – Dolphins and Owls

- a) 8:45 am – the Dolphins infant room already had eight children signed in. One educator was inside with five infants, while the other three infants were outside with the Owl children.
- b) The educator explained that another three of the Dolphin children were still outside with the Owl room, doing grouping. At this time the Owl room had eleven of their own children with three educators. This would equate to a ratio for Dolphins/Owls combined of 19 infants to four educators.
- c) The educator explained that their next educator comes in at 9am and an additional educator at 10am. She explained that it often happens that they have casual staff who late or don't show up.
- d) The working directly with children (WDWC) records show that the dolphin and owl rooms were combined until 8am.
- e) 8:49 am - The Nominated Supervisor, [REDACTED] (NS), came around and did a child/number check and signed into the Owls room to help with ratios as they were not meeting ratio and additional children were arriving. Another educator came in at 8:54 am – the NS stayed in the room until Authorised Officers left. It is noted that the NS was working in the office until Authorised Officers arrived the service.
- f) 8:57 am - there were combined 19 children outside (16x Owls and 3x Dolphins) with five educators. While Dolphins had five children inside with one educator. Authorised Officer observed two very unsettled and crying children – being comforted by educators.
- g) 9:00 am - The centre chef was sighted in the Dolphin room. Three children were observed to be in highchairs and the centre chef was standing up and feeding the infants a spoonful of food at a time. An educator was doing a nappy change at this time, and another child in the room was walking around.
- h) 9:10 am - the centre chef was observed to still be in the Dolphin room holding an infant. A check of the WDWC record shows that the centre chef did not sign into the Dolphin's room while where they were engaging and helping to feed the infant children.
- i) 9:14 am – one child still very upset and unsettled. Was sitting on an educators lap over at the sandpit. 9:15 am – seconded educator arrived for the Dolphin's room.
- j) 9:17 am – It was observed that the WDWC record for the Owl room has 6 educators listed but only 5 educators in the space. The Authorised Officer asked the NS as to

which educator was in the space. NS had a look and identified that [REDACTED] didn't sign-out when she went into the Dolphins room with 5 children at 8am. This was corrected on the WDWC after identified by the Authorised Officer.

- k) 9:30 am – An additional educator came into the Owl room – Believed to be a casual agency staff.
- l) 9:39 am – Owls Room - 16 children with four educators plus the NS is signed into the room. 3 educators and the NS inside, one child still outside with one educator.
Dolphins Room - 7 children inside with 2 educators.

Preschool and Toddler Rooms – Preschool and Sea Turtles

- a) Observed children combined in playground - Preschool (3-5 years) and Sea Turtles (2-3 years).
 - b) 8:33am - observed 11x Preschool children (3-5 years) and 11x Sea Turtles (2-3 years). There were four staff present at the time WDWC.
 - c) 8:40am – observed 12x Preschool children (3-5 years) and 14x Sea Turtles (2-3 years). There were four staff present at the time WDWC.
 - d) 8:50am - observed 12x Preschool children (3-5 years) and 15x Sea Turtles (2-3 years). There were four staff present at the time WDWC.
 - e) At 9:00am - transition to separate rooms commenced. Observed three staff for Sea Turtles with 17 children – out for a short period waiting for next staff member to arrive, who arrived just after 9:00am. Two staff for Preschool with 12 children.
 - f) Throughout the morning in the older playground, they appeared just on ratio. However, this did not consider that there were many children who were upset and crying and needed one to one support.
 - g) A couple of children were observed attempting to open the storage sheds on numerous occasions which took the additional supervision of one educator. Staff were required to take children to the bathroom which involved taking one educator away from the playground impacting on the overall supervision.
 - h) The Authorised Officer was advised by one preschool educator that the previous day she was left by herself all day with 11 children, a parent dropped a child off for orientation and she was then left with 12 children. It was also discussed with the Authorised Officer that that children are being moved around the rooms three to four times a week to meet the ratio numbers, allegedly mostly happening in the younger rooms.
27. On 6 April 2023, The Provider submitted Notification of Incident (NOT-40843754) to the Authority. The Notification advised that at approximately 12pm on 6 April 2023, a two-year-old child was located outside and unsupervised. The Notification advised that it was the Provider's

understanding that the child may have been unaccounted for in the yard for up to an hour - between 11:30am and 12pm. Refer copy of the notification at [Attachment G](#).

28. Additional information was obtained from the Provider in response to the incident engaging inadequate supervision. Additional information was submitted by the Provider on 11, 18 April 2023 and 9 May 2023. Refer relevant evidence at [Attachment H](#).
29. Between 5 May 2023 and 10 May 2023, the Provider notified of five complaints relating to allegations of inadequate staffing arrangements and supervision, placing children's health, safety, and wellbeing at risk. Notifications are as follows:
 - a) Notification of Complaint (NOT-40852341) was submitted to the Authority by the Provider advising that on 4 May 2023, a parent expressed some concerns regarding peer biting incidents. Refer Notification and relevant additional information at [Attachment I](#).
 - b) Notification of Complaint (NOT-40852644) was submitted to the Authority by the Provider advising that on 5 May 2023, a parent expressed supervision concerns. At pick up time on 28/04/2023 - a mum observed a child climb along the fence then up onto the water tank (child's head height) in the Toddler yard. The parent mentioned that child is constantly coming home with multiple changes in clothes because his wet himself which is not like him at all or when she collects him of an afternoon and he is walking around wet because his wet himself. Refer Notification and relevant additional information at [Attachment J](#).
 - c) Notification of Complaint (NOT-40853373) was submitted to the Authority by the Provider advising that on 8 May 2023, a parent expressed some concerns regarding inadequate transitions of children to a smaller environment, staffing arrangements (loss of educators and additions of new staff), and safety issues. Refer Notification at and relevant additional information at [Attachment K](#).
 - d) Notification of Complaint (NOT-40853379) was submitted to the Authority by the Provider advising that on 8 May 2023, a parent expressed some concerns regarding high turnover of staff and distressing drop offs for children. Refer Notification at and relevant additional information at [Attachment L](#).
 - e) Notification of Complaint (NOT-40853890) was submitted to the Authority by the Provider advising that on 9 May 2023, a parent expressed concerns regarding inadequate supervision now that the service is losing educators. He had a supervision concern that occurred 8 May 2023 in the preschool room. When arriving home and bathing his child, he noticed that a large chunk of hair had been cut from the left side of her head. He questioned the supervision in that room and why this had happened. Refer Notification at and relevant additional information at [Attachment M](#).

30. Evidence advised of via Attachments A through M, indicate that the Authority that reasonable precautions are not being taken to protect children from harms and hazards likely to cause injury or illness.
31. Ensuring adequate staffing arrangements and supervision, at all times that children are being educated and cared for are considered reasonable precautions to take to protect children.

Contraventions Supported by the Evidence

32. Evidence gathered appears to support allegations One, Two and Three as detailed, engaging contraventions of sections 169(1), s167(1) and s165(1) of the *Law*.

Fitness and Propriety as Nominated Supervisor

33. Regulation 117C provides some guidance on minimum requirements for a nominated supervisor, being that they must:
 - a. be over 18 years of age;
 - b. have adequate knowledge and understanding of the provision of education and care to children; and
 - c. have the ability to effectively supervise and manage an education and care service.
34. The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the particular position and may change over time to meet social and political expectations.
35. At minimum, fitness and propriety includes honesty, knowledge, and ability.
36. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection of children from harm and hazards, and educational programs, with specific obligations contained in both the *Law* and the *Regulations*. Accordingly, to be a fit and proper person to be appointed as nominated supervisor, the person must be honest, have a deep knowledge and understanding of the National Quality Framework (including compliance responsibilities). The nominated supervisor must also possess the ability to manage educators and any other staff, service premises, relationships with families and respond to children with medical and/or behavioural needs.
37. During the course of the investigation, there is no apparent evidence identifying that you had taken adequate steps to mitigate risk of non-compliance with sections 169, 167 and 165 of the *Law*. This evidence raises a concern about your ability to manage and supervise an education and care service.
38. The purpose of this Show Cause Notice is to provide you with an opportunity to respond to the evidence outlined above, and to specifically address the point of your fitness and propriety to be a nominated supervisor.

Potential Compliance Action

39. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions, if any offences are substantiated and/or the Authority finds that you do not meet the fitness and propriety requirements to be a nominated supervisor. Potential compliance actions are under Part 7 of the *Law*, and include:
- a. Non-statutory action such as a formal caution letter;
 - b. Enforceable undertaking under section 179A of the *Law*; or
 - c. Prohibition from acting in a role as Nominated Supervisor.
40. Relevant legislation for enforceable undertakings and partial prohibition appears below.
41. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
42. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector as a whole. It may prevent you from being in a role as nominated supervisor if the Authority finds that you are not fit and proper, or it may place conditions on you being in such a role if you are fit and proper but do not possess all the required skills and knowledge. It is not always permanent, and the partial prohibition must be cancelled by the Authority if it is satisfied that there is not a sufficient reason for the it to remain in force.

Section 179A - Enforceable undertakings

- (1) This section applies—
 - (a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this *Law*; or
 - (b) in the circumstances set out in section 27(a), 72(a) or 184(3).
- (2) If subsection (1)(a) applies, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this *Law*.
- (3) If subsection (1)(b) applies in relation to the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions or refrain from taking certain actions in relation to the education and care service.
- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to an education and care service.
- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.

- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

Section 182(3) - Grounds for issuing a prohibition notice

- (3) The Regulatory Authority may give a prohibition notice to a person to –
 - (a) Prohibit the person from being a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
 - (b) Impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

Right of response

43. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice, in addition to the question of fitness and propriety. You may, within 21 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
44. At Attachment N to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Please direct your written submission via email to janine.fairburn@act.gov.au or by post to:

Children's Education and Care Assurance
Attention Janine Fairburn
GPO Box 158, Canberra ACT 2601.

Caution

45. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation are protected disclosures under section 296 of the *Law*.
46. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
47. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
48. The *Law* applies to you as a nominated supervisor and to any service you are engaged at. The *Law* is applied in the ACT by the *Education and Care Services National Law (ACT) Act 2011* <http://www.legislation.act.gov.au/a/2011-42/default.asp>.

49. The *Law and Regulations* can be viewed at: <http://www.acecqa.gov.au/national-law>, and <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
50. Should you have any questions about this Show Cause Notice please contact Authorised Officer Janine Fairburn via email at janine.fairburn@act.gov.au.

Yours sincerely



Jo Williams
Director Regulatory Operations
Children's Education and Care Assurance
Education and Care Regulation and Support

8 June 2023