

[REDACTED]
Person with Management or Control
World of Learning Pty Limited
RE: 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 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 with management or control of the provider.
7. Detailed instructions of how to respond appear at the end of this Notice.
8. If substantiated, the allegation may constitute an offence under sections 165, 167 and s169 of the *Law* (or any combination). 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. Potential compliance actions 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. 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.
12. 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 A.
13. 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

14. 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, the Provider 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(1) of the *Law*, and engaging section 167(1) of the *Law*.

Allegation Two

It is alleged that between December 2022 and May 2023, the Provider failed to ensure that all children were adequately always supervised while in the care of the Service, in contravention of section 165(1) of the *Law*, and engaging section 167(1) of the *Law*.

Allegation Three

It is alleged that the Provider, by not ensuring compliance with sections 169 and 165 of the *Law* between December 2022 and May 2023, is not meeting the conditions of the Provider's service approval which is placing children at increased risk of harms and hazards likely to cause injury or illness, in contravention of sections 51(8) and 167(1) of the *Law*.

Legislation Relevant to Allegations

15. The following provision of the *Law* are relevant to the allegations:

Section 169(1) of the *Law* - Offence relating to staffing arrangements.

The approved provider 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(1) of the *Law* - Offence relating to protection of children from harm and hazards.

The approved provider 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(1) of the *Law* - Offence relating to inadequate supervision.

The approved provider 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.

Section 51 – Conditions on Service Approval

- (1) A service approval is granted subject to the condition that the education and care service is operated in a way that –
- (a) Ensures the safety, health and wellbeing of the children being educated and cared for by the service; and
 - (b) Meets the educational and developmental needs of the children being educated and cared for by the service.
- (5) A service approval is granted subject to any other conditions prescribed in the national regulations or imposed by –
- (a) this Law; or
 - (b) the Regulatory Authority.
- (8) An approved provider must comply with the conditions of a service approval held by the approved provider.

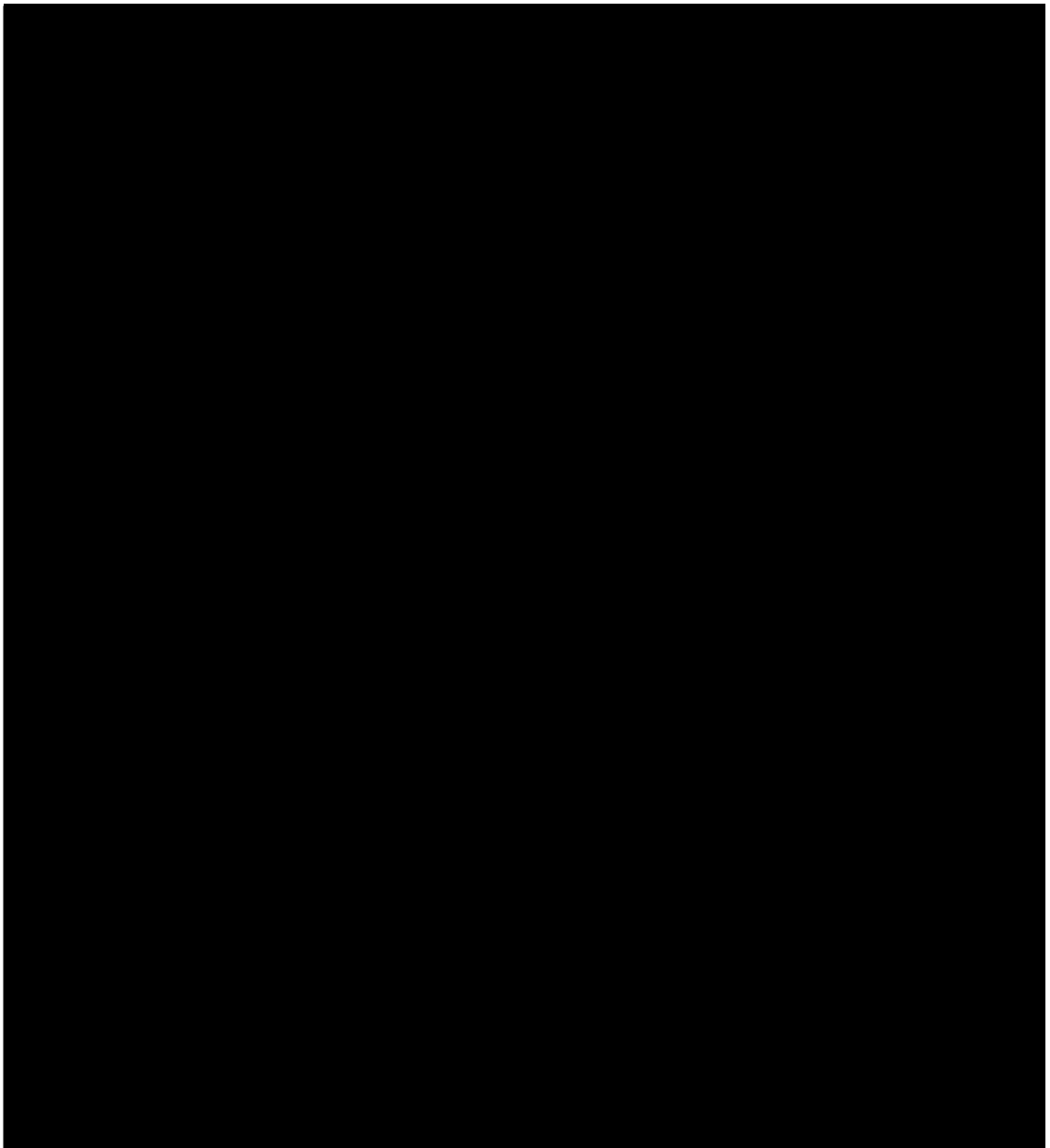
Penalty: \$10 000, in the case of an individual
\$50 000, in any other case

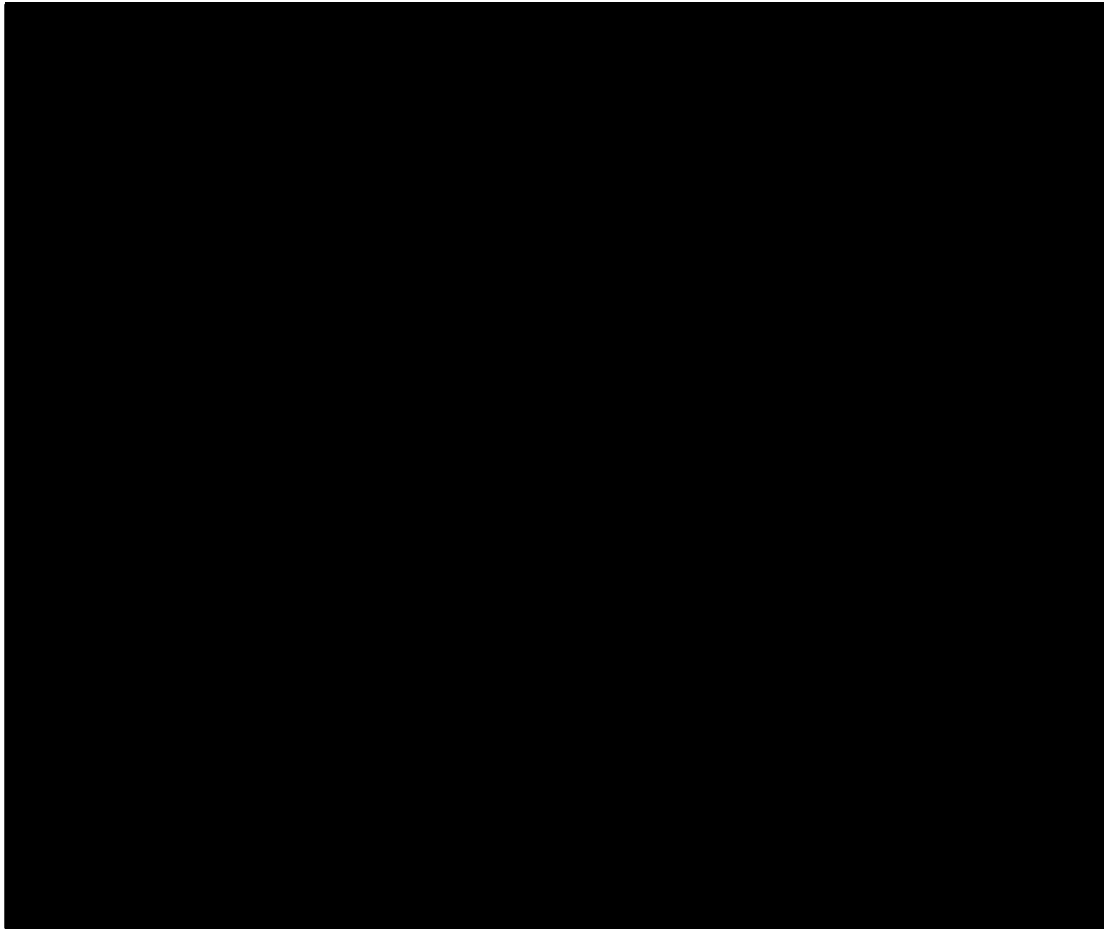
Evidence Relevant to Allegation One and Two

16. 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;

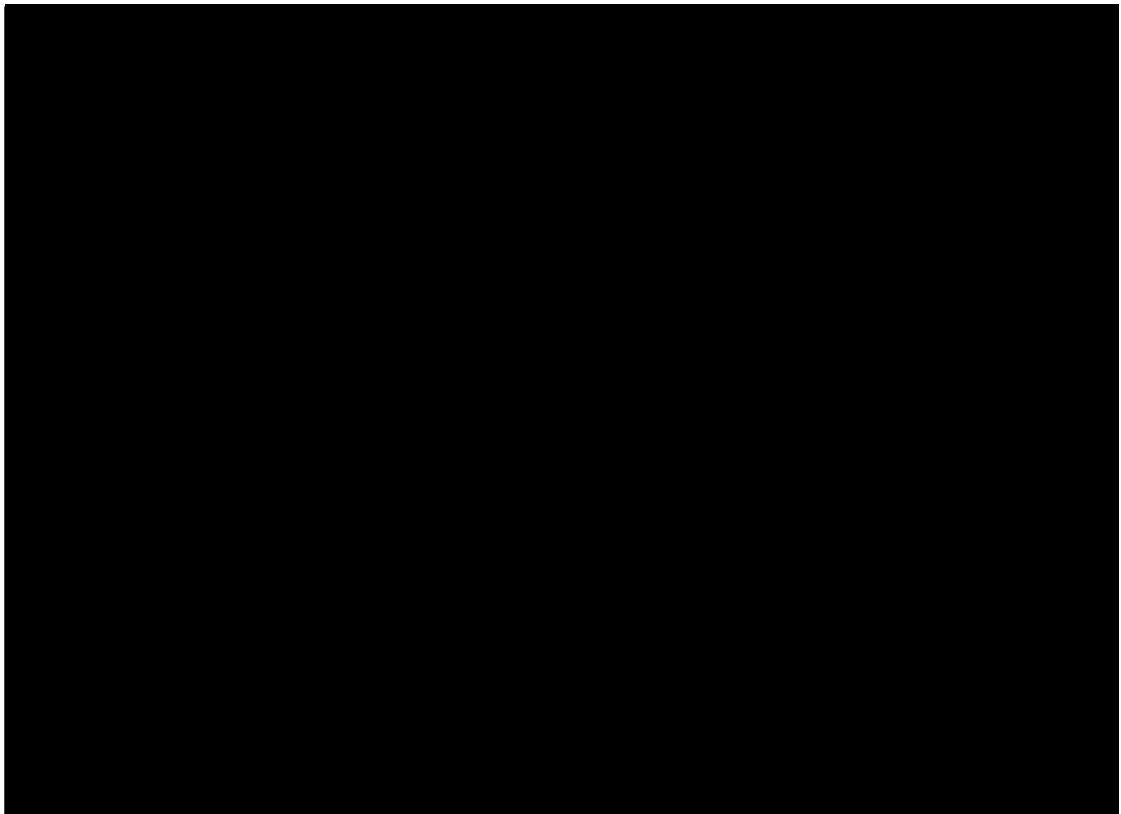
- b) Working Directly with Children (WDWC) records between 1 December 2022 and 14 December 2022 (inclusive), as required by Regulation 151; and
 - c) Record of responsible person/s at the Service between 1 December 2022 and 14 December 2022 (inclusive), as required by Regulation 150.
- Refer copy of correspondence at Attachment B.

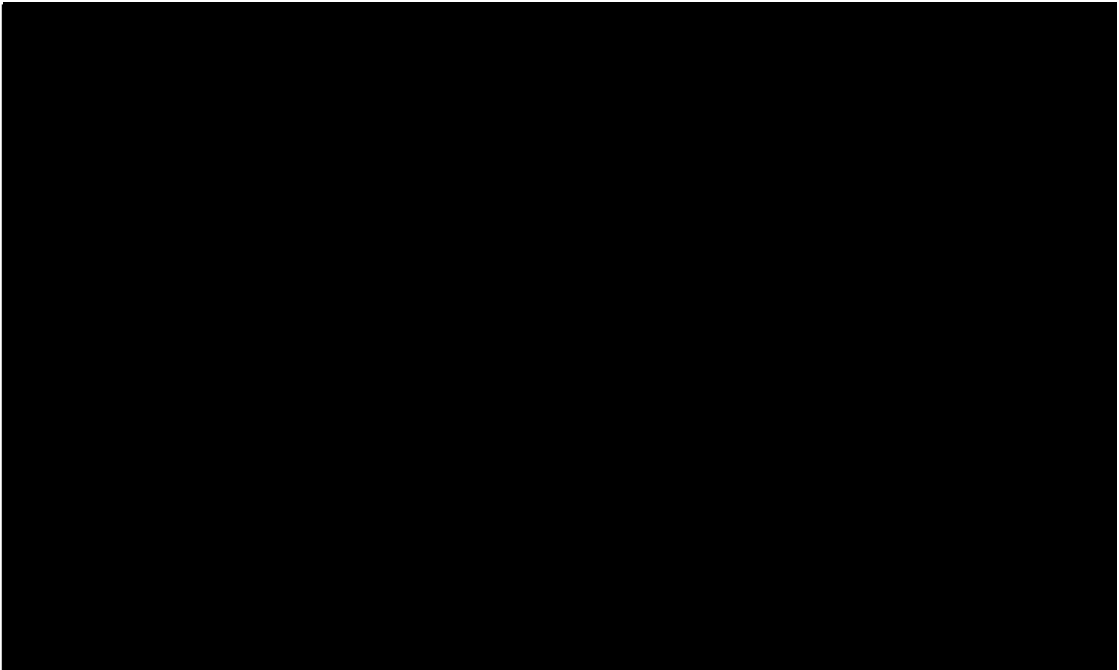
17. The above records were utilised by Authorised Officers to undertake an analysis of staffing arrangements on random days during the first two weeks of December. The analysis indicates that staffing arrangements were not always meeting minimum regulated staffing levels during those days. Refer analysis at Attachment C.
18. 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.
19. Relevant extracts from Witness A's statement include:



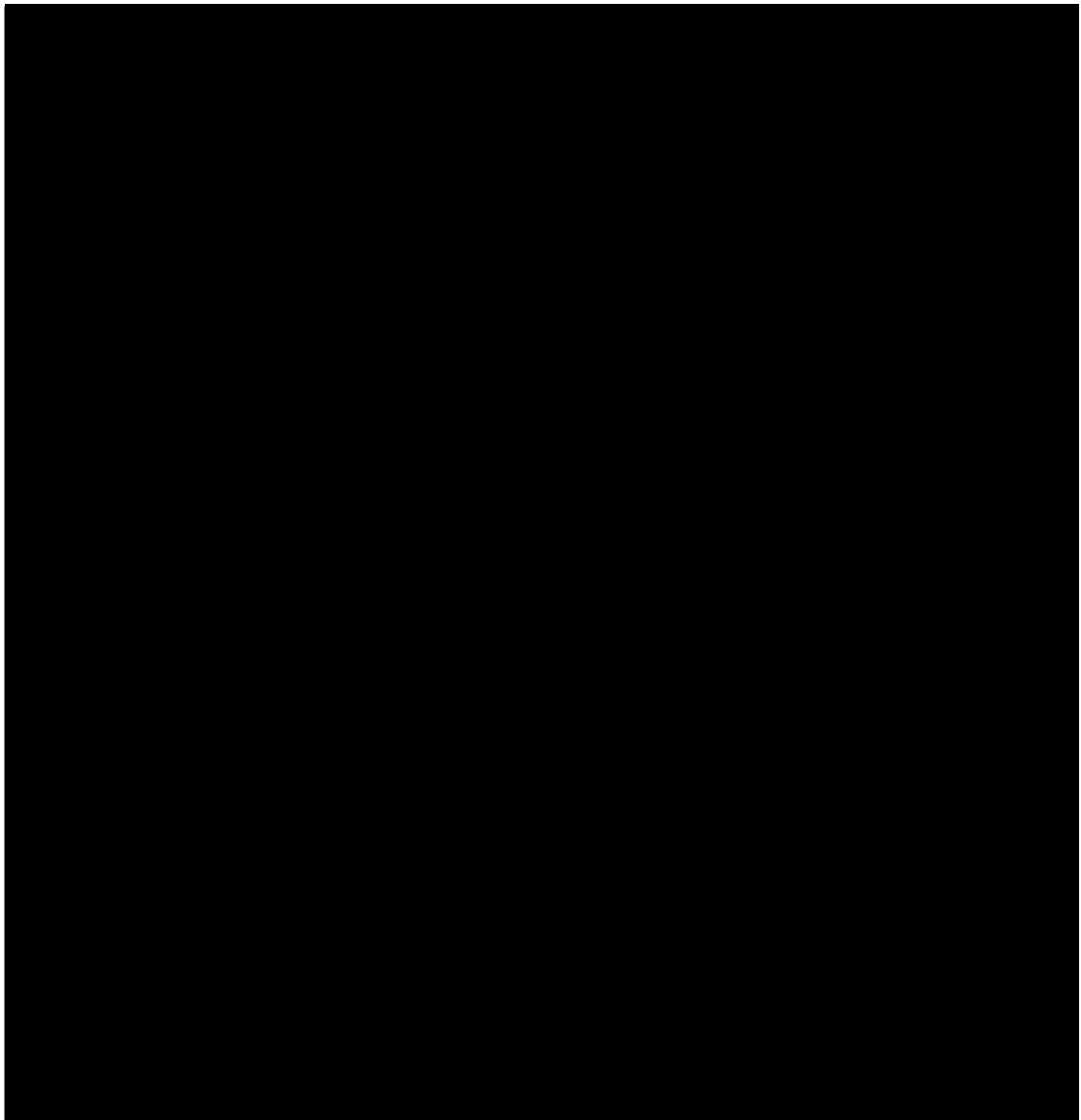


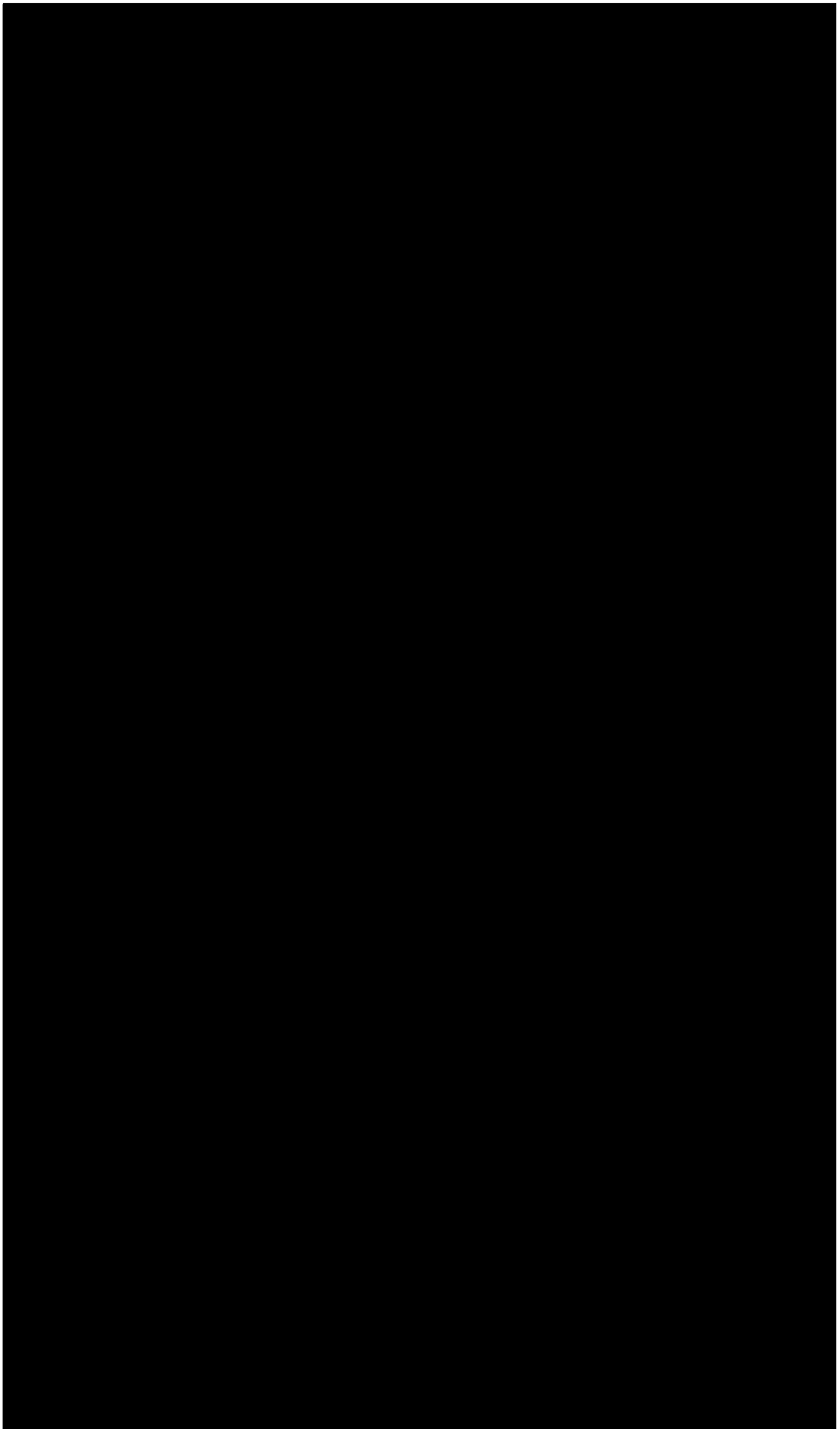
20. Relevant extracts from Witness B's statement are:

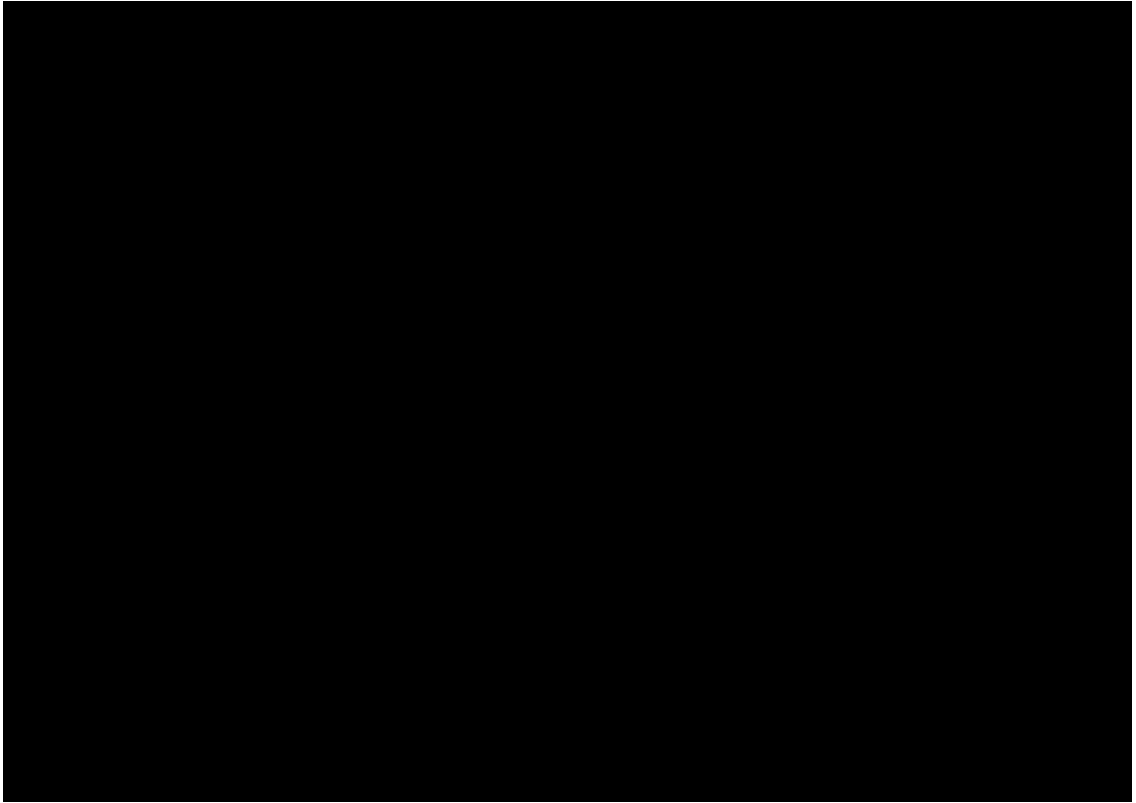




21. Relevant excerpts from Witness C's statement include:







22. 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 D.
23. 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 E.
24. 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.

25. 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] [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 which educator was in the space. The 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 recorded after they had 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) an 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) an 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 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.

26. 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 F](#).
27. 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 G](#).
28. 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 H](#).
 - 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 he wet himself which is not like him at all or when she collects him of an afternoon, and he is walking around wet because he wet himself. Refer Notification and relevant additional information at [Attachment I](#).
 - 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 J](#).
 - 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 K](#).
 - 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 L](#).

Contraventions Supported by the Evidence

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

Evidence relevant to Allegation Three

30. Temporary waivers were approved for the Service on 6 March 2023 and 12 May 2023. The service approval was amended on both dates to reflect the waiving of compliance requirements relating to *Regulation* 134(1)(a) and (b). Refer copy of waiver documents and attached correspondence at Attachment M.
31. The waiver approved on 19 January 2023 were granted based on the Provider's undertaking to do the following:
- (a) Maintain educator to child ratios at the service at all times.
 - (b) Ensure adequate supervision of all children at all times.
 - (c) Use effective strategies to recruit and retain educators with suitable qualifications to fill the ECT positions.
 - (d) Provide effective support to the Diploma qualified educators to lead the implementation of the educational program.
32. The waiver approved on 12 May 2023 were granted based on the Provider's undertaking to do the following:
- (a) Maintain educator to child ratios at the service at all times.
 - (b) Maintain qualified educator ratios at the service at all times to comply with regulation 126.
 - (c) Ensure adequate supervision of all children at all times.
 - (d) Use effective strategies to recruit and retain educators with suitable qualifications to fill the ECT positions.
 - (e) Provide effective support to the Diploma qualified educators to lead the implementation of the educational program.
33. Evidence advised of supporting Allegations 1 and 2 (Attachments A through L), indicate that the Provider is not:
- (a) Ensuring the safety, health and wellbeing of the children being educated and cared for by the service; and
 - (b) Meeting the educational and developmental needs of the children being educated and cared for by the service.
 - (c) Adhering to the undertakings of the waiver's being granted
34. Evidence advised of supporting Allegations 1 and 2, indicate that the Authority that the Provider is not ensuring reasonable precautions are taken to protect children from harms and hazards likely to cause injury or illness.
35. 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

36. Evidence gathered appears to support allegation Three as detailed, engaging contraventions of sections 51(8) and s167(1) of the *Law*.

Potential Compliance Action

37. 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 for the Authority to consider if the offence is substantiated. Potential compliance actions include:
- a. Non-statutory Administration Action (similar to a caution) with no further action;
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced;
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*;
 - d. Imposing of Conditions on the Service's approval under section 51 of the *Law*;
 - e. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the Provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.

Legislation Relevant to proposed compliance actions:

38. The following provision of the *Law* are relevant to the compliance actions available for consideration:

Section 55 – Amendment of Service Approval by Regulatory Authority

- (1) The Regulatory Authority may amend a service approval at any time without an application from the approved provider.
- (2) Without limiting subsection (1), an amendment may vary a condition of the service approval or impose a new condition on the service approval.

Section 70 – Grounds for suspension of service approval

A Regulatory Authority may suspend a service approval if-

- (a) The Regulatory Authority reasonably believes that it would not be in the best interests of children being educated and cared for by the service for the service to continue; or
- (b) A condition of the service approval has not been complied with; or
- (c) The service is not being managed in accordance with this Law.

Section 72 – Decision in relation to suspension

After considering any written response from the approved provider received within the time allowed by section 71(2)(d), the Regulatory Authority may—

- (a) if the suspension was proposed on the ground referred to in section 70(a), (c) or (d), accept an undertaking from the approved provider under section 179A; or
- (b) in any case—
 - i. suspend the service approval for a period not more than the prescribed period; or
 - ii. decide not to suspend the service approval.

Section 177 – Compliance notices

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this Law.
 - (2) The Regulatory Authority may give the approved provider a notice (a **compliance notice**) requiring the approved provider to take the steps specified in the notice to comply with that provision.
 - (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.
39. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.
40. In your response, you may wish to make suggestions as to how this can be demonstrated. The Authority is not bound by any suggestions but will consider them as part of the Authority’s case management process.

Right of response

41. As mentioned previously, this notice is your opportunity to respond to the allegations and evidence set out in this Notice. You may, within 30 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.
42. 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

43. 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*.
44. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.

45. 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.
46. The *Law* applies to you as an approved provider and to any service the approved provider operates. 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>.
47. 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>
48. 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