



Ms [REDACTED]
Nominated Supervisor
Guardian Childcare & Education Wanniasa

Email: [REDACTED] [@outlook.com](#)

Dear Ms [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. The allegations related to supervision, staffing arrangements, notification of incidents to the Authority and reasonable precautions not being taken to protect children between January and February 2023, at Guardian Childcare & Education Wanniasa SE-40004191 (the Service) operated by Guardian Community Early Learning Centres Pty Ltd PR-00000823 (the Provider).
3. The Authority's records indicate that you were the Service's nominated supervisor at the relevant time, having commenced in that role on 7 November 2022.
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 from other sources (unless further lines of enquiry emerge) and the Authority has determined that there is a case to answer for you, as the Nominated Supervisor, regarding suspected offences.
6. However, the Authority's investigation is not complete until you have had an opportunity to respond to the allegation/s and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
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(2), 167(2), and 169(3) and (4) of the *Law*. If, after considering all available evidence, the Authority finds any offences are 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. Further details regarding potential compliance actions appear at the end of this Notice.

Background

10. In March 2023, the Authority received a direct complaint relating to the operation of the Service. Allegations included matters regarding:
- a) inadequate staffing arrangements
 - b) inadequate supervision
 - c) a complaint received by the Service
 - d) an unwitnessed injury to a child being educated and cared for at the Service that was not reported to the Authority
 - e) educators and children not being able to exit the Service following the evacuation pathway as they were locked in without a key to the gate.
11. Due to the risk to children from the allegations, the Authority determined to investigate the allegation.

Allegation One – Section 169 of the Law

12. It is alleged on multiple occasions during January 2023 and February 2023 you, as Nominated Supervisor at the Service, did not ensure there were the required number of educators educating and caring for the children as prescribed for this purpose in contravention of s169(3) of the *Law*.
13. It is alleged during January 2023 and February 2023 you, as Nominated Supervisor at the Service, did not ensure that each educator educating and caring for children for the service met the qualification requirements relevant to the educators role as there was not a waiver in place for a second ECT resulting in the service not meeting the qualification requirements relevant to the educator's role as prescribed by the national regulations in contravention of s169(4) of the *Law*.

Allegation Two – Section 167 of the Law

14. It is alleged on 28 February 2023 you, as Nominated Supervisor at the Service, did not ensure that every reasonable precaution was taken to protect children as a fire alarm went off at the Service and on evacuation of the Service children and educators did not have a key to open the gate and were unable to leave the courtyard as per the evacuation plan in contravention of s167(2) of the *Law*.

Allegation Three – Section 165 and 167 of the Law

15. It is alleged on multiple occasions during January 2023 and February 2023 that you, as Nominated Supervisor at the Service, did not ensure that all children being educated and cared for were adequately supervised at all times, in that a child received a black eye that the Service unwitnessed by educators and, that there were inadequate supports for additional needs children in contravention of s165(2) of the *Law*, engaging s167(2) of the *Law*.

Legislation Relevant to Allegations

16. The following provisions of the *Law* and *Regulations* are 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

Section 169(4) of the Law - Offence relating to staffing arrangements

A nominated supervisor of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations.

Penalty: \$10 000

17. The following provisions of the *Law* and *Regulations* are relevant to Allegation Two:

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

18. The following provisions of the *Law* and *Regulations* are relevant to Allegation Three:

Section 165(2) of the Law - Offence to inadequately supervise children

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

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

Evidence Relevant to Allegations

19. Records from the National Quality Authority ITS database indicate that you were the nominated supervisor at the time, having commenced in that role on 7 November 2022. Refer Attachment A.
20. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*.
21. Records produced by the Provider supported the following:
- a) The Service was in operation between 17 January 2023 and 1 March 2023;

b) The fire alarm evacuation drill was carried out on 28 February 2023.

Refer evidence at Attachment B.

22. A ratio analysis was undertaken by Authorised Officers utilising the educator working directly with children records and child attendance records submitted via the Provider's response to the notice issued under section 215 of the *Law*.
23. The analysis was of ten days the Service operated between 16 January 2023 and 1 March 2023. The analysis indicates that the Service was not within ratio for all ten days. Refer analysis at Attachment C.
24. As part of the investigation, the Authority obtained statements from witnesses, relevant excerpts from which are included below. Please note that all witness statements were obtained exercising powers under section 215 of the *Law*. To clarify, all 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.

Evidence relevant to Allegation One

25. Relevant extracts from Witness A's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED]

27. Relevant extracts from Witness C's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

28. Relevant extracts from Witness D's statement are:

[REDACTED]

29. Relevant extracts from Witness E's statement are:

[REDACTED]

Evidence relevant to Allegation Two

30. Relevant extracts from Witness A's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

31. Relevant extracts from Witness C's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

32. Relevant extracts from Witness E's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Evidence relevant to Allegation Three

33. Relevant extracts from Witness A's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

35. Relevant extracts from Witness C's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

36. Relevant extracts from Witness D's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37. Relevant extracts from Witness E's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

█ [REDACTED]

Contraventions Supported by Allegations

38. Evidence gathered appears to support contraventions of section 165(2), 167(2) and 169(3), (4) of the *Law*.

Fitness and Propriety as Nominated Supervisor

39. 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.
40. 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.
41. At minimum, fitness and propriety includes honesty, knowledge and ability.
42. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection from harm and hazards, and educational programs. Specific obligations are 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), and also possess the ability to manage educators and any other staff, service premises and relationships with families.
43. During the course of the investigation, evidence gathered included documentation indicating that you as nominated supervisor, did not ensure that there were sufficient, qualified educators as per legislative requirements to educate and care for children, did not ensure that every reasonable precaution was taken to protect children being educated and cared for by the Service, and did not ensure that all children being educated and cared for by the service were adequately supervised at all times that the children are in the care of the service.
44. This evidence raises a concern about your ability to manage and supervise an education and care service.
45. 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

46. 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.
47. Relevant legislation for enforceable undertakings and partial prohibition appears below.
48. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
49. 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

50. 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 14 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.
51. At Attachment D 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 Vittorio.Colosimo@act.gov.au or by post to

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

Caution

52. 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*.
53. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
54. 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.
55. 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>.

56. 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>
57. Should you have any questions about this Show Cause Notice please contact Senior Investigator Vittorio Colosimo on email Vittorio.Colosimo@act.gov.au.

Yours sincerely



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

17 August 2023