



Mr [REDACTED]
Person with Management and Control
Kids Club Early Childhood Learning Centres Pty Ltd
RE: Kids Club Rivett Early Learning Centre

Email: [REDACTED]

Dear M [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated complaints alleging that the safety, health and wellbeing of children was compromised at Kids Club Rivett Early Learning Centre SE-40012143 (the Service), operated by Kids Club Early Childhood Learning Centres Pty Ltd PR-40001605 (the Provider).
2. Web addresses to the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.
3. I am considering compliance action based on various contraventions of the Law and Regulations indicated by evidence obtained during an investigation into a complaint regarding inadequate staffing. As a delegate of the Authority, I am considering compliance action under Parts 3 or 7 of the Law, excluding suspension or cancellation of service approval.

Grounds for issuing Show Cause for Compliance Action

4. On 27 August 2020, the Authority received a direct complaint regarding inadequate staffing at the Service on 11 and 27 August 2020, together with other matters such as the signing-in system not always working.
5. Due to the risk of harm to children when staffing is inadequate and children inadequately supervised, the Authority conducted an investigation.
6. The Authority is considering compliance action based on evidence gathered which indicates that there have been contraventions of the Law and Regulations. Specifically, the evidence obtained during the investigation suggests three sets of grounds that engage offences under the Law.
7. The first set of grounds relates to staffing and supervision, including qualifications of staff. The second set of grounds relates to failure to notify the Authority of complaints. The third set of grounds relates to record-keeping

First set of grounds –Staffing and Supervision

Allegation One – Inadequate Staffing

8. It is alleged that, between 3 August 2020 and 28 August 2020, the Provider failed to ensure adequate staffing at all times children were being educated and cared for, in contravention of section 169(1) of the *Law*, engaging further contraventions of sections 165(1) and 167(1) of the *Law*.

Legislative Provisions Relevant to Allegation One

Section 165(1) of the *Law* - Offence to inadequately supervise children

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 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 cared 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 169(1) of the *Law* – Offence relating to staffing arrangements

An 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.

Regulation 151 –Record of educators working directly with children

The approved provider of a centre-based service must keep a record of educators working directly with children that includes the following information -

- a) The name of each educator who works directly with children being educated and cared for by the service;
- b) The hours that each educator works directly with children being educated and cared for by the service.

Regulation 123(1) –Educator to child ratios – centre-based services

The minimum number of educators required to educate and care for children at a centre based service is to be calculated in accordance with the following ratios -

- a) For children from birth to 24 months of age – 1 educator to 4 children;
- b) For children over 24 months and less than 36 months of age – 1 educator to 5 children;

- c) For children aged 36 months of age or over (not including children over preschool age) – 1 educator to 11 children;
- d) For children over preschool age in a jurisdiction, the relevant ratio (if any) set out in Chapter 7 for that jurisdiction.

Regulation 122 –Educators must be working directly with children to be included in ratios

An educator cannot be included in calculating the educator to child ratio of a centre-based service unless the educator is working directly with children at the service.

Regulation 13 – Meaning of *working directly with children*

For the purpose of these Regulations a person is working directly with children at a given time if at that time the person –

- a) Is physically present with the children; and
- b) Is directly engaged in providing education and care to the children.

Evidence Relevant to Allegation One

9. On 31 August 2020, Authorised Officers attended the Service exercising powers under section 199 of the *Law*. Upon arrival at 7:50am, it was determined that the Service met prescribed minimum ratio at that time.
10. On 3 September 2020, a notice allowable under section 215 of the *Law* (*215 Notice*), was issued to the Provider requiring production of documents by close of business on 14 September 2020. The Provider produced the required documents within the specified time frame.
11. Evidence gathered indicated that, during August 2020, the Service was operating four rooms, with approximate age ranges indicated:
 - a) Rainforest 1 (6 weeks to 12 months) – 1:4 ratio;
 - b) Rainforest 2 (12-18 months)– 1:4 ratio;
 - c) Ocean (2 to 3 years) – 1:5 ratio;
 - d) Outback (3-5 years) – 1:11 ratio.
12. The Authority notes that there was confusion amongst witnesses about the names and age ranges in each room, and names of rooms.
13. Documents gathered included Working Directly with Children (WDWC) records and child attendance records, which were used to carry out ratio analysis for the following dates:
 - a) Monday 10 August 2020;
 - b) Tuesday 11 August 2020;
 - c) Friday 15 August 2020;
 - d) Wednesday 26 August 2020; and

e) Thursday 27 August 2020.

Refer Attachment A for a copy of ratio analysis, which also notes anomalies in child attendance records and working directly with children records (see Allegation Five).

13. The ratio analysis at Attachment A indicated as follows:

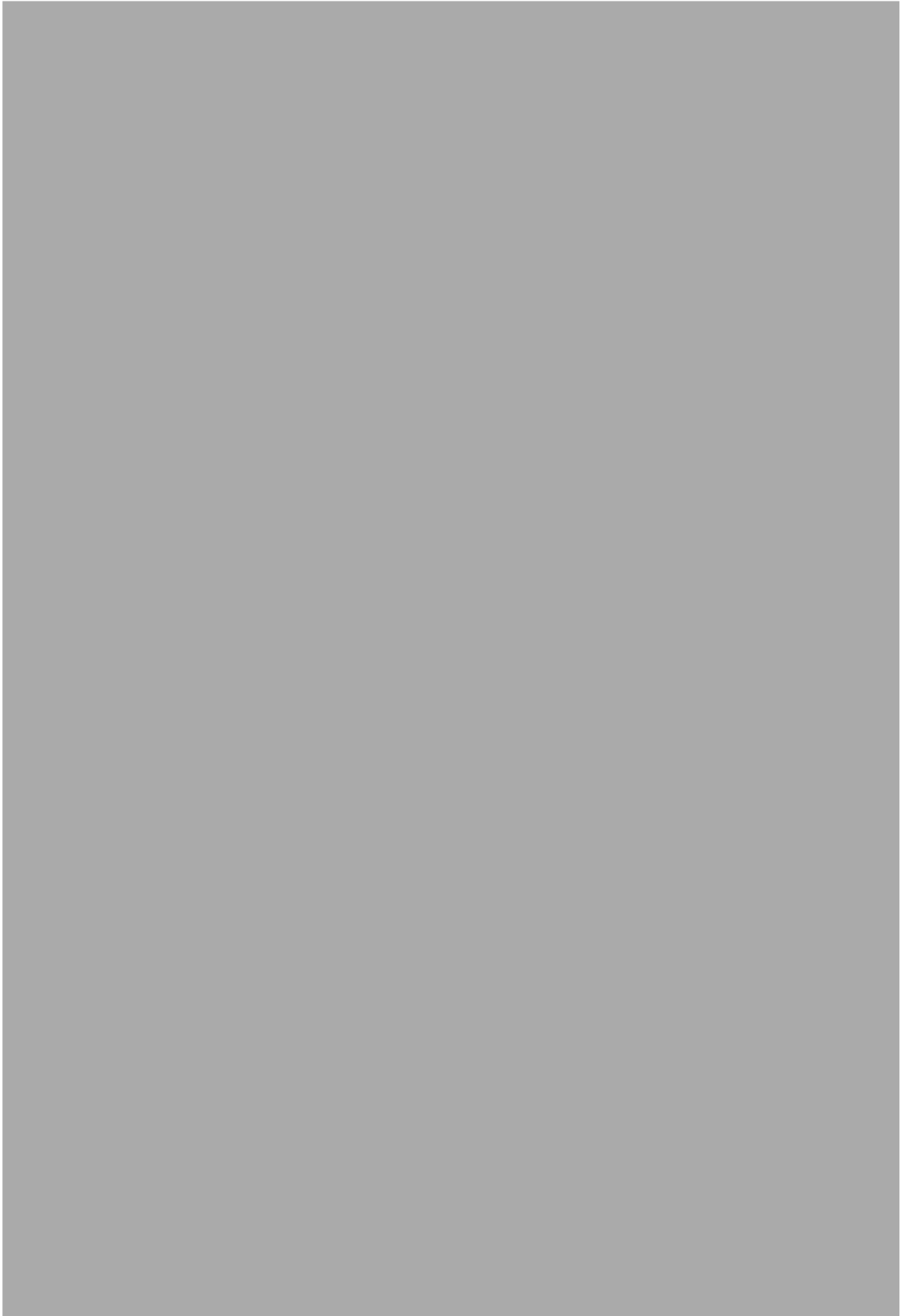
- a. Monday 10 August 2020 – Multiple periods totalling 3 hours, during which the Service had up to two educators fewer than the prescribed minimum;
- b. Tuesday 11 August 2020 – 15 minutes in morning and 2 hours in afternoon, during which the Service had one educator fewer than the prescribed minimum;
- c. Friday 14 August 2020 – 15 minutes in morning and intermittent periods in the afternoon totalling 1.25 hours, during which the Service had up to two educators fewer than the prescribed minimum;
- d. Wednesday 26 August 2020 – intermittent periods from lunch and through afternoon, totalling 3 hours, during which the Service had up to two educators fewer than the prescribed minimum;
- e. Thursday 27 August 2020 – during most of the day, the Service had up to four educators fewer than the prescribed minimum.

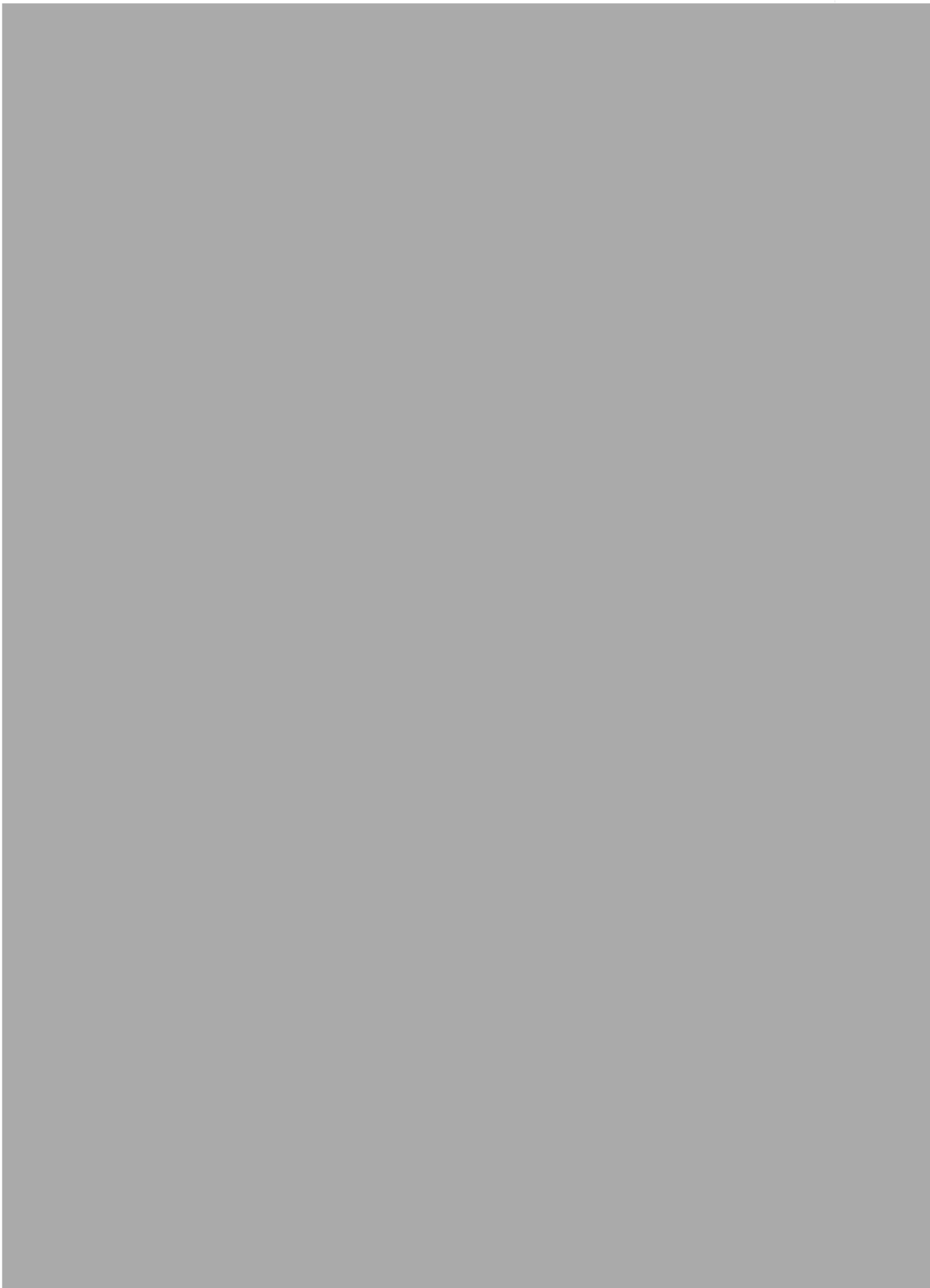
14. During the investigation the Authority obtained statements from various witnesses, relevant excerpts from which are included below.

15. Relevant excerpts of Witness A's statement are:

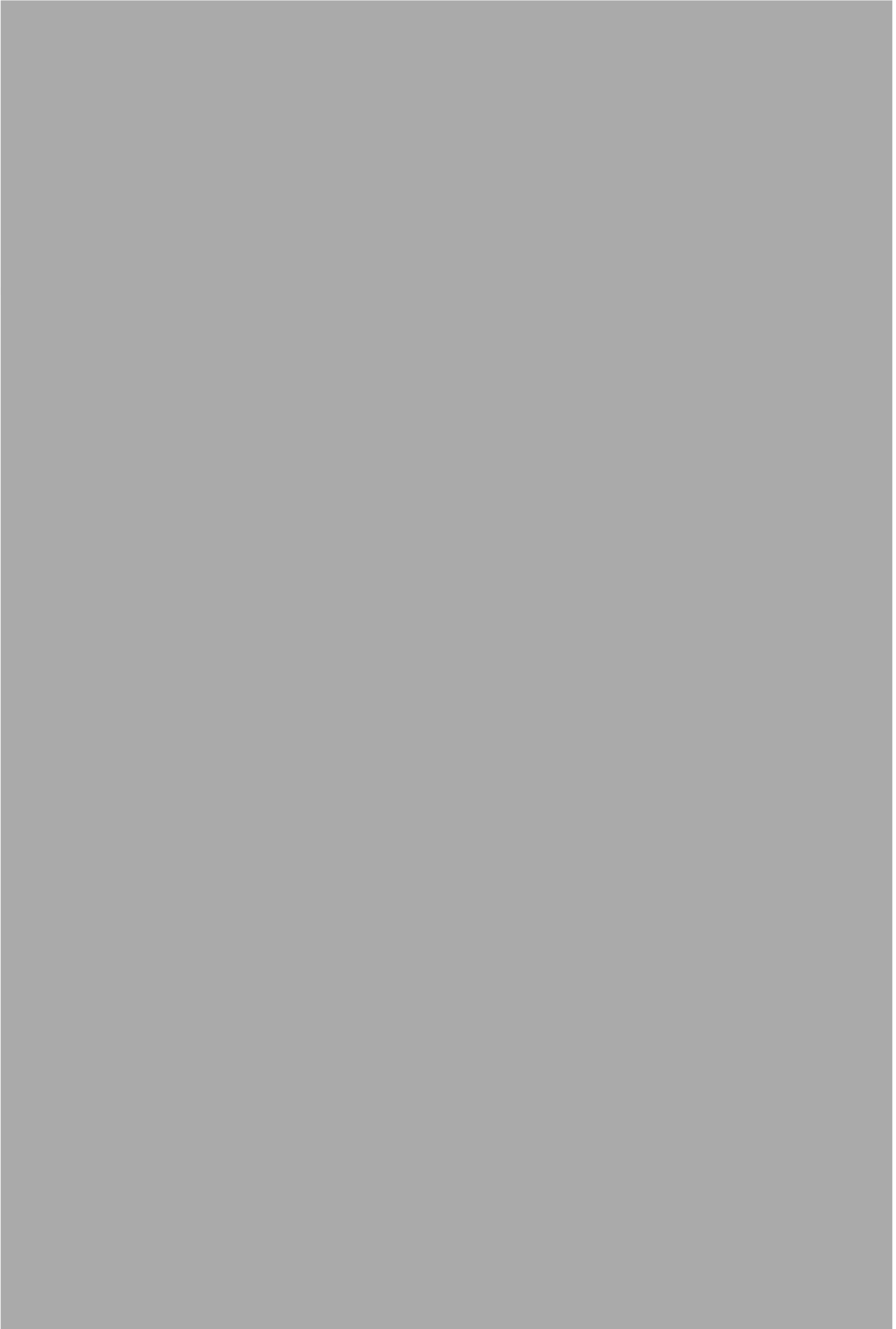


16. Relevant excerpts of Witness B's statement are:





17. Relevant excerpts of Witness C's statement are:





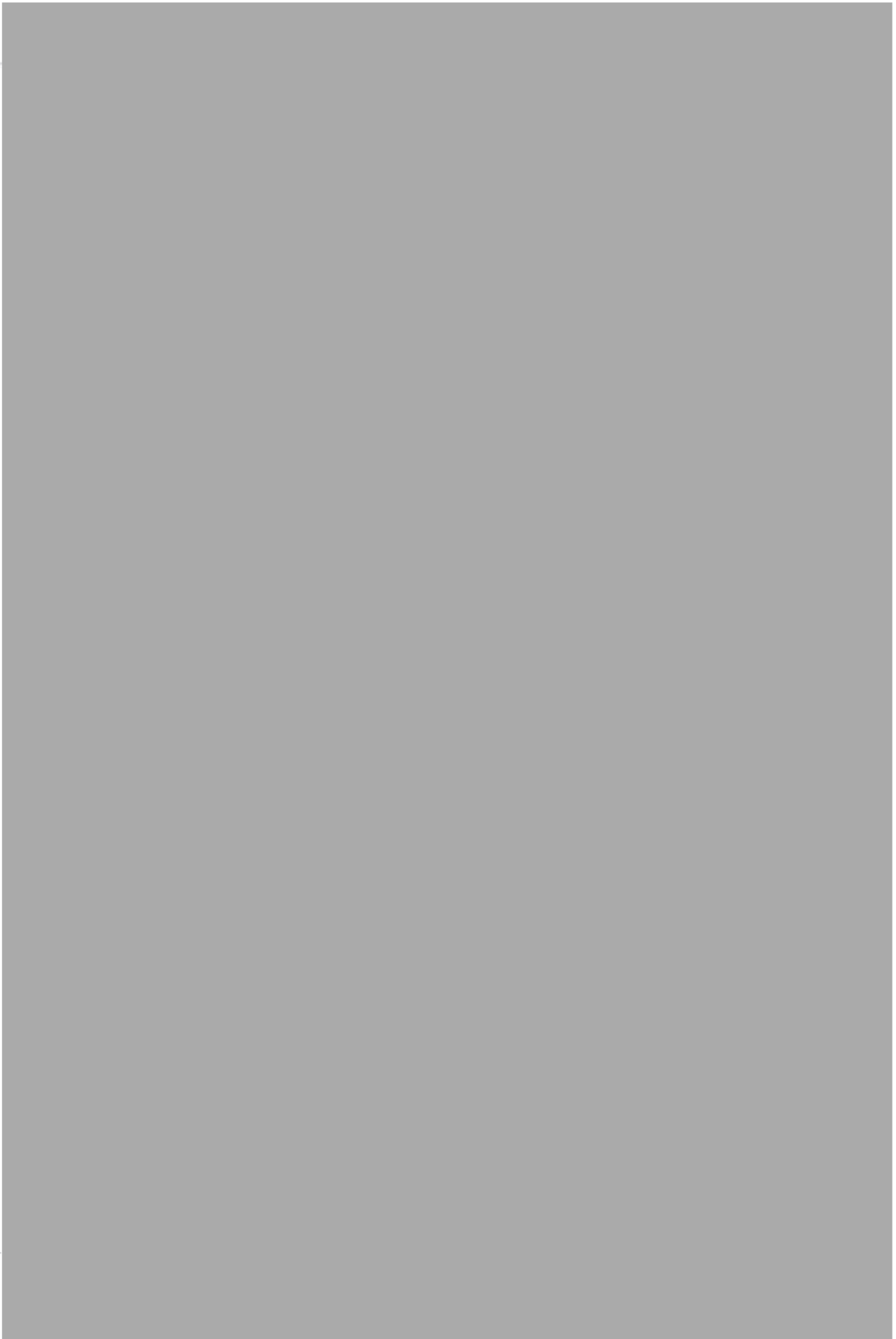
18. Relevant excerpts from Witness D's statement are:





19. Relevant excerpts from Witness E's statement are:







Contraventions Supported by Allegation One

20. Evidence gathered relevant to Allegation One includes documentation provided under 215 Notice together with witness statements.
21. Evidence gathered relevant to Allegation One appears to support the following contraventions of the *Law* by the Provider:
 - a. It is alleged that, between 3 August 2020 and 28 August 2020 (inclusive), the Provider failed to ensure adequate staffing at all times children were being educated and cared for, in contravention of section 169(1) of the *Law*;
 - b. Between 3 August 2020 and 28 August 2020 (inclusive), the Provider failed to ensure adequate supervision of all children being educated and cared for by the Service, in contravention of section 165(2) of the *Law*;
 - c. Between 3 August 2020 and 28 August 2020 (inclusive), the Provider failed to take reasonable precautions to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury, in contravention of section 167(1) of the *Law*.

Allegation Two – Failure to ensure qualification requirements were met

22. It is alleged that, between 28 September 2019 and 1 May 2020 (a period exceeding three months), the Provider failed to ensure that all educators working directly with children met prescribed qualification requirements in that [REDACTED] did not have an approved qualification and was not actively working towards an approved qualification .

Legislative Provisions Relevant to Allegation Two

Section 169(2) – Offence relating to Staffing Arrangements

An approved provider 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, in the case of an individual.

\$50 000, in any other case.

Regulation 126 – Centre-based services – general educator qualifications

- (1) The qualification requirements for educators a centre-based service educating and caring for children preschool age or under are as follows –

- (a) At least 50 per cent of the educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved diploma level education and care qualification; and
 - (b) All other educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved certificate III level education and care qualification.
- (1A) The qualification requirements in subregulation (1)(b) do not apply to an educator if the educator has been employed by an approved provider on a probationary basis for not more than 3 months, at one or more centre-based services operated by the approved provider.

Evidence Relevant to Allegation Two

- 23. Evidence gathered relevant to Allegation Two included a staff record obtained from the Provider under section 215 of the *Law*. Refer Attachment B for staff record of [REDACTED]
- 24. Extracts of witness statements relevant to Allegation Two are set out below.
- 25. Relevant extracts from [REDACTED] statement obtained under section 215 are:

[REDACTED]

- 26. Relevant extracts from Witness D's statement are:

[REDACTED]

Second Set of Grounds – Failure to Notify Certain Information

Allegation Three – Failure to Notify Complaints

- 27. It is alleged that the Provider failed to notify the Regulatory Authority of all complaints that the *Law* had been contravened between 3 August 2020 and 31 August 2020, in contravention of section 174 of the *Law*;

Legislative Provisions Relevant to Allegation Three

Section 174– Offence to fail to notify certain information to the Regulatory Authority

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider-
- (b) any complaints alleging –
- (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
 - (ii) that this Law has been contravened.
- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to –
- (a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

Regulation 176 – Time to notify certain information to Regulatory Authority

- (2) For the purposes of section 174(4) of the Law, a notice must be provided –
- (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident.

Evidence Relevant to Allegation Three

28. Relevant documents gathered during the investigation included email complaints to the Provider of 11 and 27 August 2020. Refer to Attachment C.
29. Pursuant to section 215 of the Law, the Provider was required to provide all complaints between 3 and 28 August 2020. Refer Attachment D for the Provider's response.
30. According to information gathered, the Provider, between 3 and 28 August 2020, the Provider received four to five complaints that the Law had been contravened, being three to four on 11 August 2020 and one on 27 August 2020.
31. The Authority's records indicate that no complaints were notified to the Authority by the Provider between 3 and 28 August 2020.

Contravention Supported by Allegation Three

32. Evidence gathered relevant to Allegation Two includes documentation provided under 215 Notice together with email complaints from alternative sources.
33. Evidence gathered relevant to Allegation Two appears to support a failure to notify certain information to the Authority, in contravention of section 174(2) of the Law.

Third Set of Grounds – Prescribed Records

Allegation Four – Failure to Maintain Staff Records

34. It is alleged that the Provider failed to maintain staff records for all educators who were working directly with children at the Service between 3 August 2020 and 28 August 2020 (inclusive), in contravention of section 175 of the Law.

Legislative Provisions Relevant to Allegation Four

Section 175(1) of the Law – Offence relating to requirement to keep enrolment and other documents

An approved provider of an education and care service must keep the prescribed documents available for inspection by an authorised officer in accordance with this section.

Penalty: \$4000, in the case of an individual.
\$20 000, in any other case.

Regulation 177(1) – Prescribed enrolment and other documents to be kept by approved provider

For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider –

- (e) in the case of a centre-based service, a staff record as set out in regulation 145.

Regulation 145 – Staff record

- (1) The approved provider of a centre-based services must ensure that a staff record is kept for that service in accordance with this Division.
- (2) The staff record must include –
 - (a) the information about nominated supervisors set out in regulation 146; and
 - (b) The information about staff members set out in regulation 147; and
 - (c) The information about the educational leader set out in regulation 148; and
 - (d) The information about volunteers set out in regulation 149(1).

Regulation 147 – Staff members

The staff record must include the following information in relation to staff members:

- (a) The full name, address and date of birth of the staff member;
- (b) Evidence –
 - (i) of any relevant qualifications held by the staff member; or
 - (ii) if applicable, that the staff member is actively working towards that qualification as provided under regulation 10;
- (c) evidence of any approved training (including first aid training) completed by the staff member;
- (d) if the education and care service is located in a jurisdiction with a working with children law or a working with vulnerable people law, a record of the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless paragraph (e) applies.

Evidence Relevant to Allegation Four

- 35. Evidence relevant to Allegation Four includes the staff record for all educators working directly with children between 3 and 28 August 2020, produced by the Provider under section 215 of the

Law. Due to size, the entire staff record produced has not been included with this Notice, but can be produced on request.

36. The staff record produced by the Provider was analysed by the Authority. Refer Attachment E for analysis.
37. Analysis revealed that no evidence was produced to support that the following educators were actively working towards a qualification:
- a. [REDACTED] Trainee Certificate III;
 - b. [REDACTED] Trainee Certificate III;
 - c. [REDACTED] Trainee Certificate III;
 - d. [REDACTED] working towards Diploma, no evidence of complete qualification.
38. No staff records (either partial or complete) were provided for the following educators from Randstad:

- a.
- b.
- c.
- d.
- e.

Contravention Supported by Allegation Four

39. Evidence gathered appears to support an allegation of failure to maintain a prescribed record, being a staff record for 3 August 2020 to 28 August 2020 (inclusive), in contravention of section 175(1) of the *Law*.

Allegation Five – Inaccurate Records

40. It is alleged that the Provider failed to take reasonable steps to maintain accurate working directly with children records and child attendance records between 3 August 2020 and 28 August 2020, in contravention of Regulation 177(2).

Legislative Provisions Relevant to Allegation Five

Regulation 177 – Prescribed enrolment and other documents to be kept by approved provider

- (1) For the purposes of section 175(1) of the *Law*, the following documents are prescribed in relation to each education and care service operated by the approved provider: ...
- (h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151...
 - (k) a children's attendance record as set out in regulation 158;

- (2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

Penalty: \$2000

Evidence Relevant to Allegation Five

41. Evidence relevant to Allegation Five includes documents produced by the Provider under section 215 of the *Law*, being child attendance records, working directly with children records and "Additional Staff Attendance Information". Due to volume, these documents have not been included with this Notice but can be provided on request.
42. Inaccuracies in child attendance records and working directly with children records are noted on Attachment A on the relevant days. Additionally, the Additional Staff Attendance Information states that *"during August 2020, some regular staff were signed out according to their roster, rather than in accordance with their actual attendance times. This has led to some of the times in the Working Directly With Children Records being slightly inaccurate."*
43. With regards to time sheets for [REDACTED], there is no indication of those staff members working directly with children at any time, only of signing into the Service on some occasions. Additionally, the notes regarding 27 and 28 August 2020 do not identify times during which those educators were working directly with children.
44. Extracts from witness statements relevant to Allegation Five appear below.
45. Relevant extracts from Witness A's statement are:

[REDACTED]

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

[REDACTED]



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



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



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





Contraventions Supported by Allegation Five

50. Evidence gathered appears to support a contravention of Regulation 177(2) in that the Provider failed to take reasonable steps to ensure prescribed records were accurate.

Previous Compliance History

29. The following Service compliance history is noted:
- a. 9 May 2019 – Administrative compliance action for offences under sections 165 and 167 of the *Law*;
 - b. 3 October 2019 – Emergency Action Notice for child attendance records;
 - c. 25 February 2020 – Administrative compliance action for offences under sections 174, Regulations 126, 158 and 150; and
 - d. 22 April 2020 – Administrative compliance action for offences under sections 165, 167, 173 and 174;
30. Please be aware that, when considering any appropriate compliance action, the Authority considers the previous compliance history of a Provider and Service.

Right of response

31. You have a right to respond to the allegations set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
32. At Attachment F 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 at tanya.masterman@act.gov.au or by post to Children's Education and Care Assurance, Attention Tanya Masterman, GPO Box 158, Canberra ACT 2601.

Caution

33. I am informing you that the excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.
34. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
35. 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.

36. The *Law* applies to you as a provider and any service you operate. 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>.
37. 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>
38. Should you have any questions about this Show Cause Notice please contact Tanya Masterman on telephone (02) 6205 2012 or email tanya.masterman@act.gov.au

Yours Sincerely



Clare Brookes
Senior Director
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate

10 November 2020