

[REDACTED]
Person with Management or Control
ACT Education Directorate
RE: Margaret Hendry School Preschool Unit

Email: [REDACTED]

Dear [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance (CECA). 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. Authorised Officers are currently investigating suspected offences at Margaret Hendry School Preschool Unit SE-40014271 (the *Service*) operated by ACT Education Directorate PR-00006465 (the *Provider*).
3. 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.
4. Authorised Officers have obtained evidence from other sources and the Authority has determined that the *Provider* has a case to answer regarding suspected offences. However, the Authority’s investigation is not complete until the *Provider* has had an opportunity to respond to the allegations and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
5. If substantiated, the allegations may constitute offences under sections 167 of the *Law* and regulation 174-177 of the *Regulations*. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities (or any combination of them) it will need to consider whether compliance action is required.
6. Where offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate 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.

Grounds for issuing Show Cause Notice

7. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas:
 - a. Protection from harms and hazards;
 - b. Notifying the Regulatory Authority; and
 - c. Maintaining accurate records.

Background to investigation

8. On 26 June 2023, the Authority received a notification of complaint (NOT-40872108) from the Provider alleging a child, [REDACTED] continued to experience trauma from being made to lay on his back during toileting in 2020 and a complaint (2020) was not addressed. Refer Attachment A.
9. Due to the risk of harms and hazards likely to cause injury if every reasonable precaution is not taken to support children with needs and failure to notify the authority of a complaint, the Authority determined to investigate suspected offences under section 167 of the *Law*.
10. Information received during the investigation provided reasonable grounds to suspect further additional offences under Section 174 of the *Law* and *Regulation* 177.

First Set of grounds – Protection from Harm

Allegation One – Sections 167 of the Law

11. It is alleged that during 2020, the Provider failed to ensure that every reasonable precaution was taken to protect children being educated and care for by the Service from harm and any form of hazard likely to cause injury, in that, [REDACTED] support needs were not adequately formalized into a plan in consultation with family, and communicated to staff, contravening s167(1) of the *Law*.

Legislation Relevant to Allegations One

12. The following provisions of the *Law* are relevant to Allegations One:

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: \$11 400, in the case of an individual
\$57 400, in any other case.

Regulation 90 Medical conditions policy

(1) The medical conditions policy of the education and care service must set out practices in relation to the following—

- (a) the management of medical conditions, including asthma, diabetes or a diagnosis that a child is at risk of anaphylaxis;
- (b) informing nominated supervisors and staff members of, and volunteers at, the service of practices in relation to managing those medical conditions;
- (c) the requirements arising if a child enrolled at the education and care service has a specific health care need, allergy or relevant medical condition, including—
 - (i) requiring a parent of the child to provide a medical management plan for the child; and
 - (ii) requiring the medical management plan to be followed in the event of an incident relating to the child’s specific health care need, allergy or relevant medical condition; and
 - (iii) requiring the development of a risk-minimisation plan in consultation with the parents of a child—

- (A) to ensure that the risks relating to the child’s specific health care need, allergy or relevant medical condition are assessed and minimised; and
- (B) if relevant, to ensure that practices and procedures in relation to the safe handling, preparation, consumption and service of food are developed and implemented; and
- (C) if relevant, to ensure that practices and procedures to ensure that the parents are notified of any known allergens that pose a risk to a child and strategies for minimising the risk are developed and implemented; and
- (D) to ensure that practices and procedures ensuring that all staff members and volunteers can identify the child, the child’s medical management plan and the location of the child’s medication are developed and implemented; and
- (E) if relevant, to ensure that practices and procedures ensuring that the child does not attend the service without medication prescribed by the child’s medical practitioner in relation to the child’s specific health care need, allergy or relevant medical condition are developed and implemented; and

- (iv) requiring the development of a communications plan to ensure that—
 - (A) relevant staff members and volunteers are informed about the medical conditions policy and the medical management plan and risk minimisation plan for the child; and
 - (B) a child’s parent can communicate any changes to the medical management plan and risk minimisation plan for the child, setting out how that communication can occur.

(2) The medical conditions policy of the education and care service must set out practices in relation to self-administration of medication by children over preschool age if the service permits that self-administration.

(3) In subregulation (2), the practices must include any practices relating to recording in the medication record for a child of notifications from the child that medication has been self-administered.

91 Medical conditions policy to be provided to parents.

The approved provider of an education and care service must ensure that a copy of the medical conditions policy document is provided to the parent of a child enrolled at an education and care service if the provider is aware that the child has a specific health care need, allergy or other relevant medical condition.

Evidence relevant to Allegation One

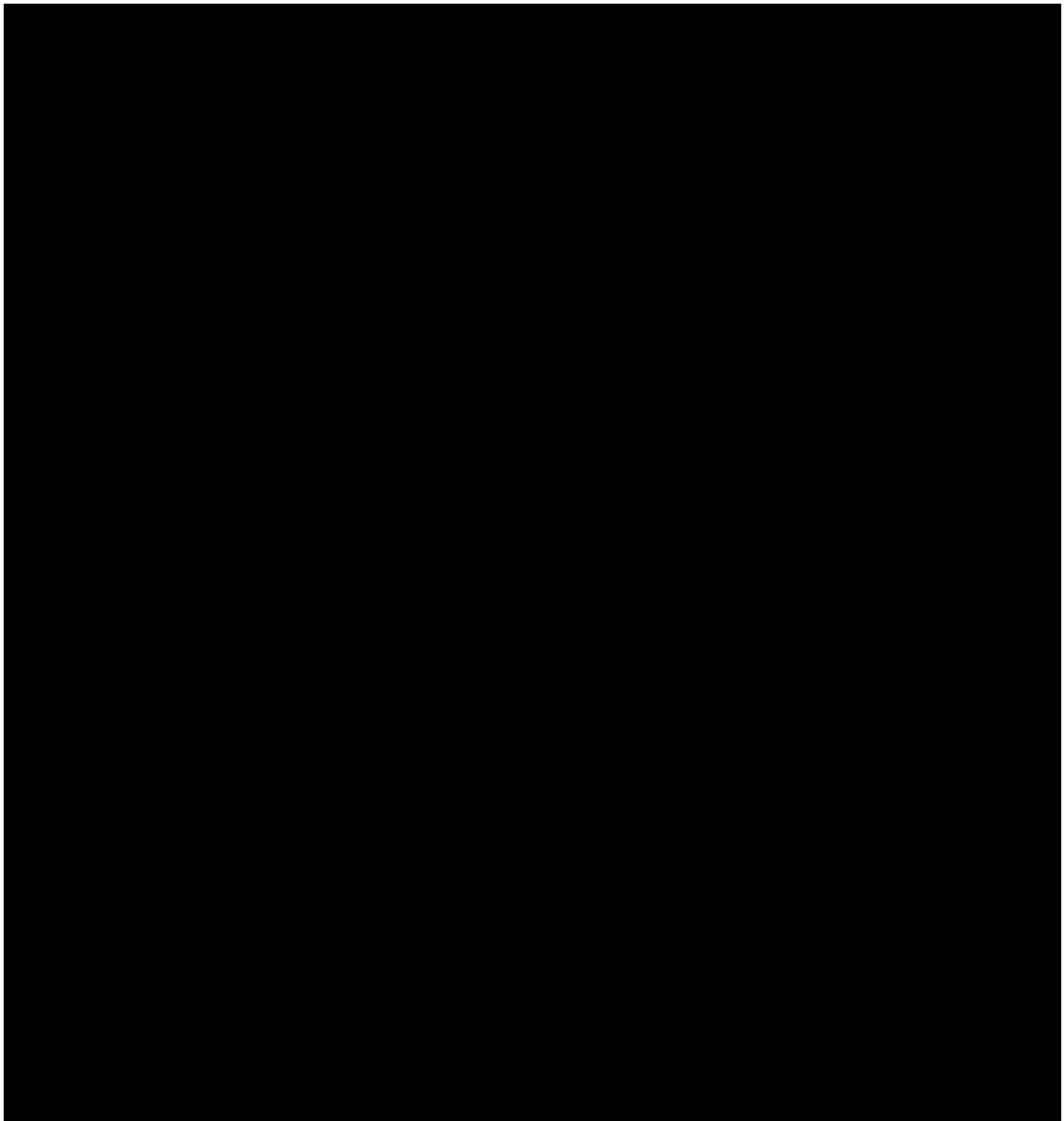
13. On 27 October 2023, Provider furnished information pursuant to a notice issued under section 215 of the *Law* on 12 October 2023. Documents relevant to the allegation include:
- Enrolment record
 - Communication emails
 - Health information
 - Support plans
 - Toileting records
 - Internal enquiries
 - Policy and Procedure
 - Working Directly with Children records August 2020
 - Incident reports – [redacted]

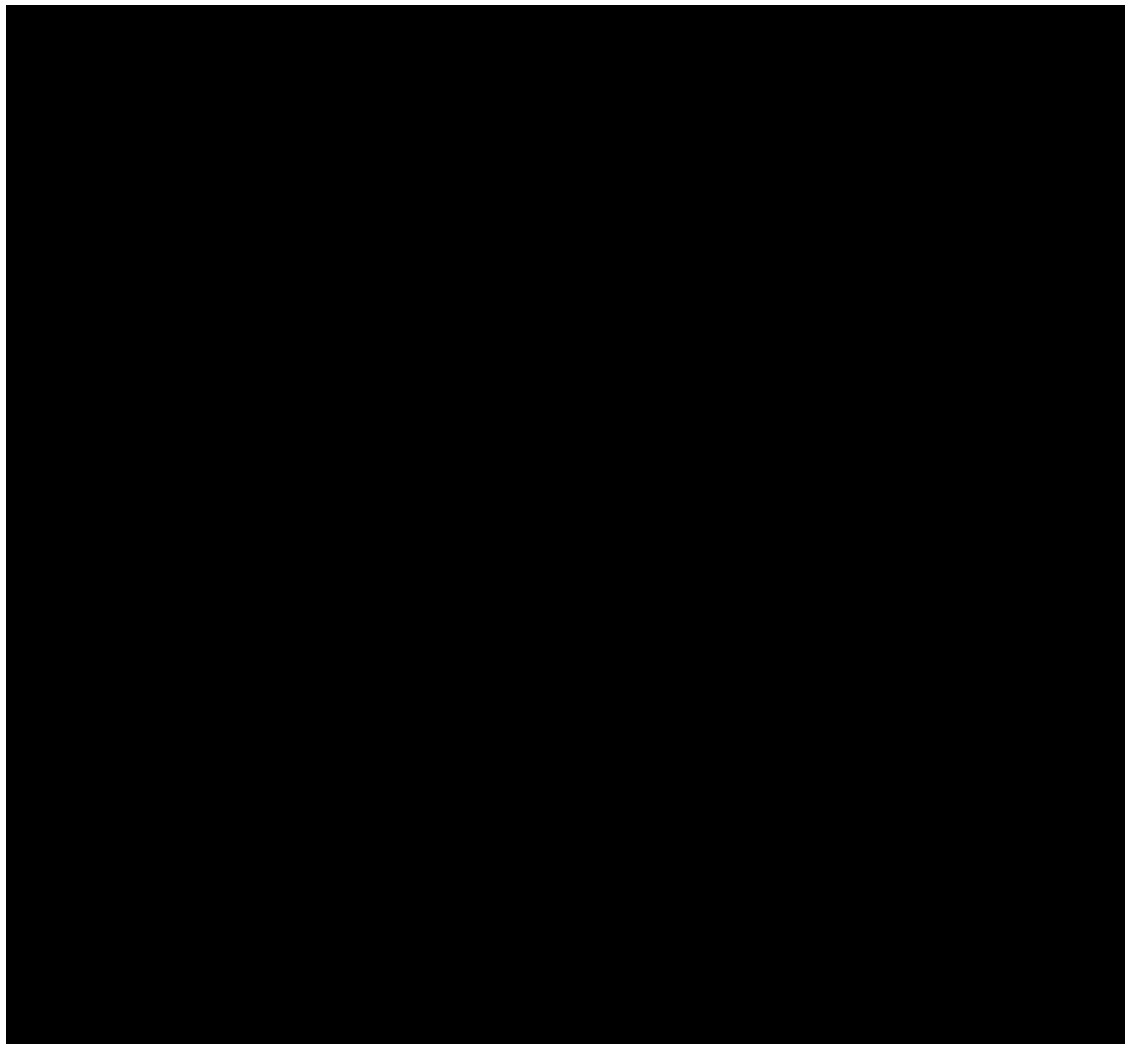
Refer Attachment B.

14. Enrolment documents dated 19 May 2019, identify [redacted] medical conditions, [redacted] [redacted] Included is a link to [redacted] The Provider was aware of [redacted] health care needs. Refer to Attachment B (p1-15) for enrolment records.
15. An email dated 6 February 2020, from Ms [redacted] o Service supplies a copy of an [redacted] Action Plan dated 16/11/18 inclusive of prescribed medication usage. Ms [redacted] advised of an updated plan by end of February. Refer Attachment B for [redacted] plan (p16-21).
16. An email dated 10 February 2020 from Ms [redacted] lists exhibited characteristics, triggers, and strategies to guide [redacted] behaviours. The email is forwarded to staff responsible for education and care of [redacted] The Authority notes toileting issues are linked to occurrences of [redacted] Refer to Attachment B for About me email (p22-26).
17. An updated [redacted] plan forwarded to Provider by parent on 19 February 2020. [redacted] plan dated 10/02/2020. Refer updated [redacted] plan (p27-32).
18. A Medication Authorisation plan signed by parent 24 February 2020, three weeks after school attendance of [redacted] commenced. Refer Attachment B for [redacted] plan (p89-93) and medication authorisation record.
19. Incident reports furnished by Provider identify [redacted] s present at the Service from first day of term, being 3 February 2020. Listed are occurrences of [redacted] being resistant, and upset, during toileting, becoming a significant characteristic of Service attendance. Refer to Incident reports (p262-285).

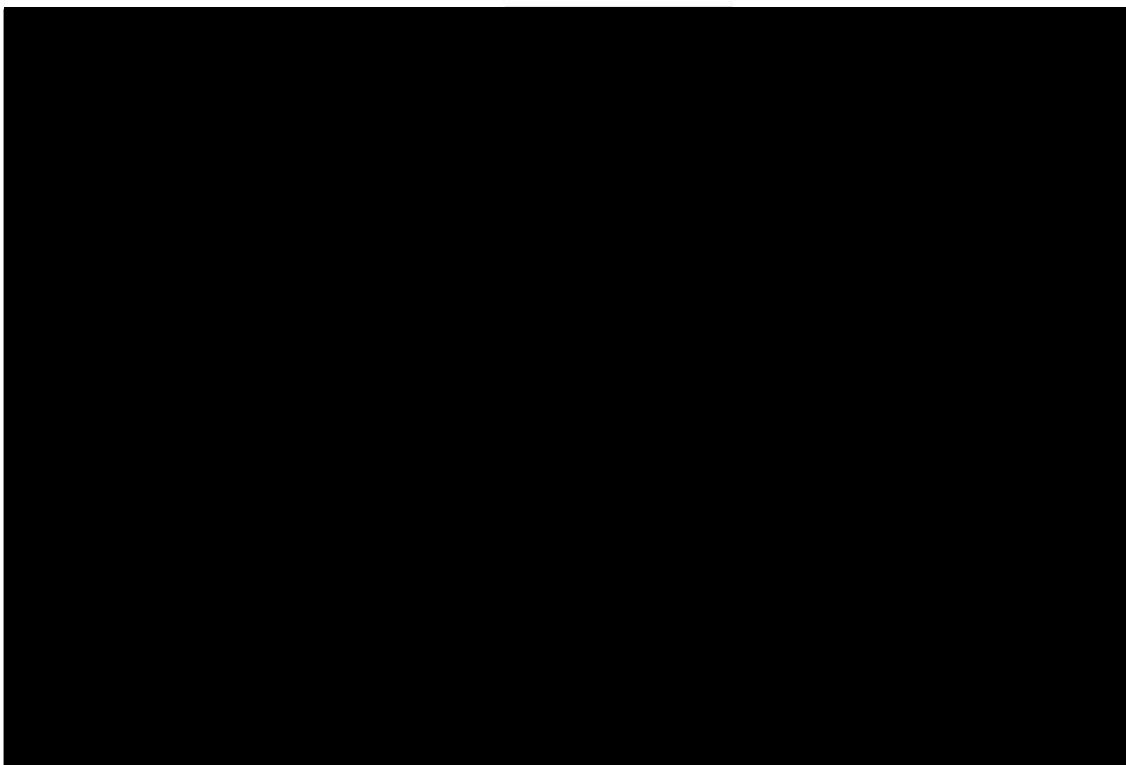
20. Furthermore, [redacted] ran away from staff and preschool area, and on one occasion, (Incident #2165 24 February 2020), is missing and unaccounted for. Refer to Attachment B for Incident report (p272).
21. Relevant extracts from ACT Public Preschool-Medical Conditions Procedure in effect during 2020 and furnished by the Provider pursuant to 215 Notice, include:
- 5.2 Information regarding medical conditions must be located in a prominent area so that all staff members and volunteers have access to the information, particularly in emergency situations. It is the responsibility of all educators to ensure relief staff or volunteers are made aware of the location of this information. These plans are formulated between families, medical professionals and the school.
- 5.7 Risk Minimisation Plan and Communication Plan
Educators must write a risk minimisation plan, accompanied by a communication plan for any student enrolled at Preschool with a medical condition. These plans must be created in collaboration with the family and other educators at the service. They will also, where possible, be informed by written information and plans from the child's doctor.
The risk minimisation plan must;
- ensure the risks relating to the child's specific health care needs are assessed and minimised;
 - include the development and implementation of relevant food handling, preparation and storage procedures;
 - identify any known allergens that pose a risk to children and strategies to inform parents and minimise any risks are developed and implemented;
 - include the process to ensure that all staff can identify the child, the child's medical management plan and locate the child's medication; and
 - ensure practices and procedures that require the child not to attend without any relevant medication specific to the health need.
- Copies of the risk minimisation plans and communication plans must be kept in the child's files in the front office as well as any individual file located in the preschool office.
- 5.10 Medical conditions policy to be provided to parents.
A copy of the ACT Public Preschool Medical Conditions procedures is to be provided to the parent of a child enrolled at the preschool if the preschool is aware that the child has a specific health care need, allergy or other relevant medical condition.
Refer to Attachment D for ACT Public Preschool - Medical Conditions Procedure.
22. Unsigned and undated Individual Learning Plan furnished by Provider for [redacted] do not appear to have been developed, formalised, or communicated in consultation with family, or educators, that support and guide staff with challenging characteristics for [redacted].
Refer to [redacted] Individual Learning Plan at Attachment B (P96-99).
23. Application for Level of Adjustment appears to have been completed on 20 March 2020. Refer Attachment B for form (p94).

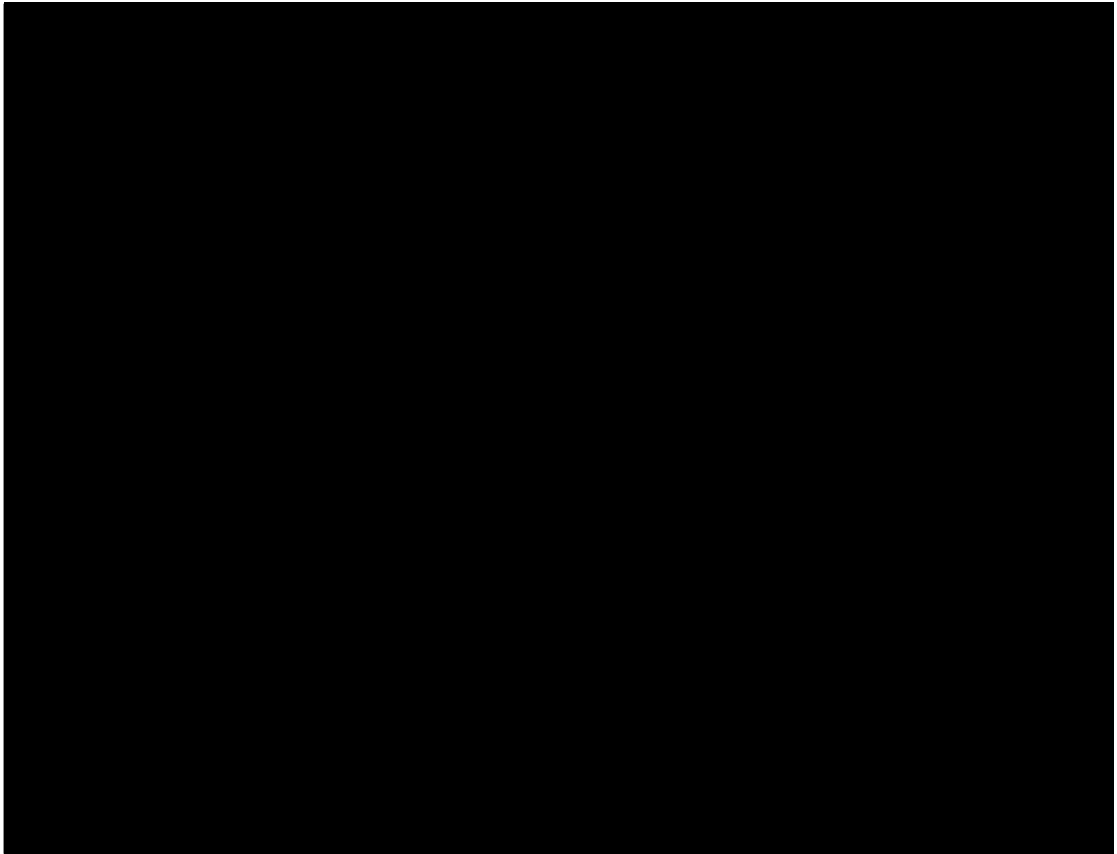
24. An unsigned Care and Learning Plan dated 14 August 2020, furnished by Provider appears developed for toileting only. Refer to Attachment B for Care and Learning Plan (p100-104).
25. During the investigation, the Authority obtained witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the specific circumstances surrounding the alleged offences, witnesses are identifiable from the content of their evidence.
26. Please note that most witness statements were obtained utilising powers under section 215 of the *Law*, imposing an obligation to attend before the Authority and provide relevant evidence under questioning by an Authorised Officer. It is an offence to fail to comply.
27. Relevant extracts from Witness A's statement include:



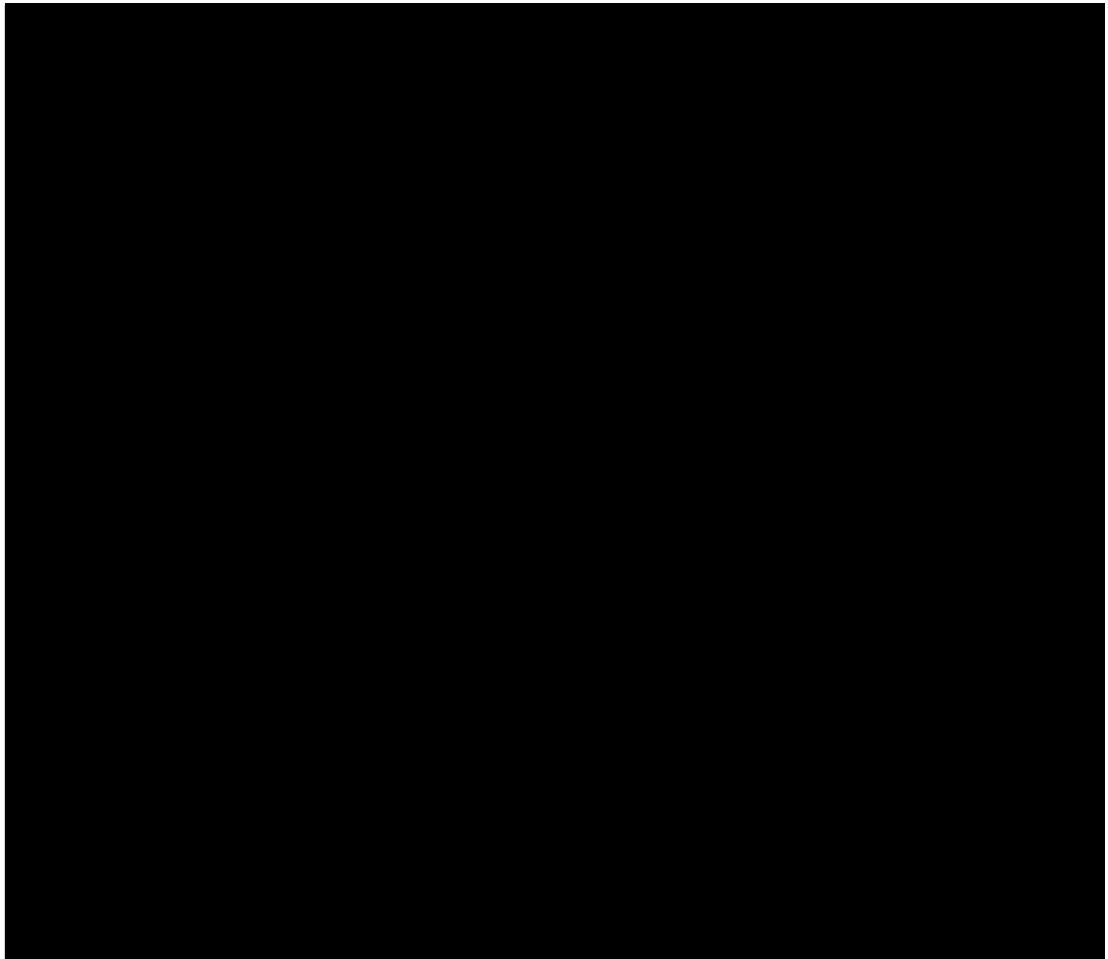


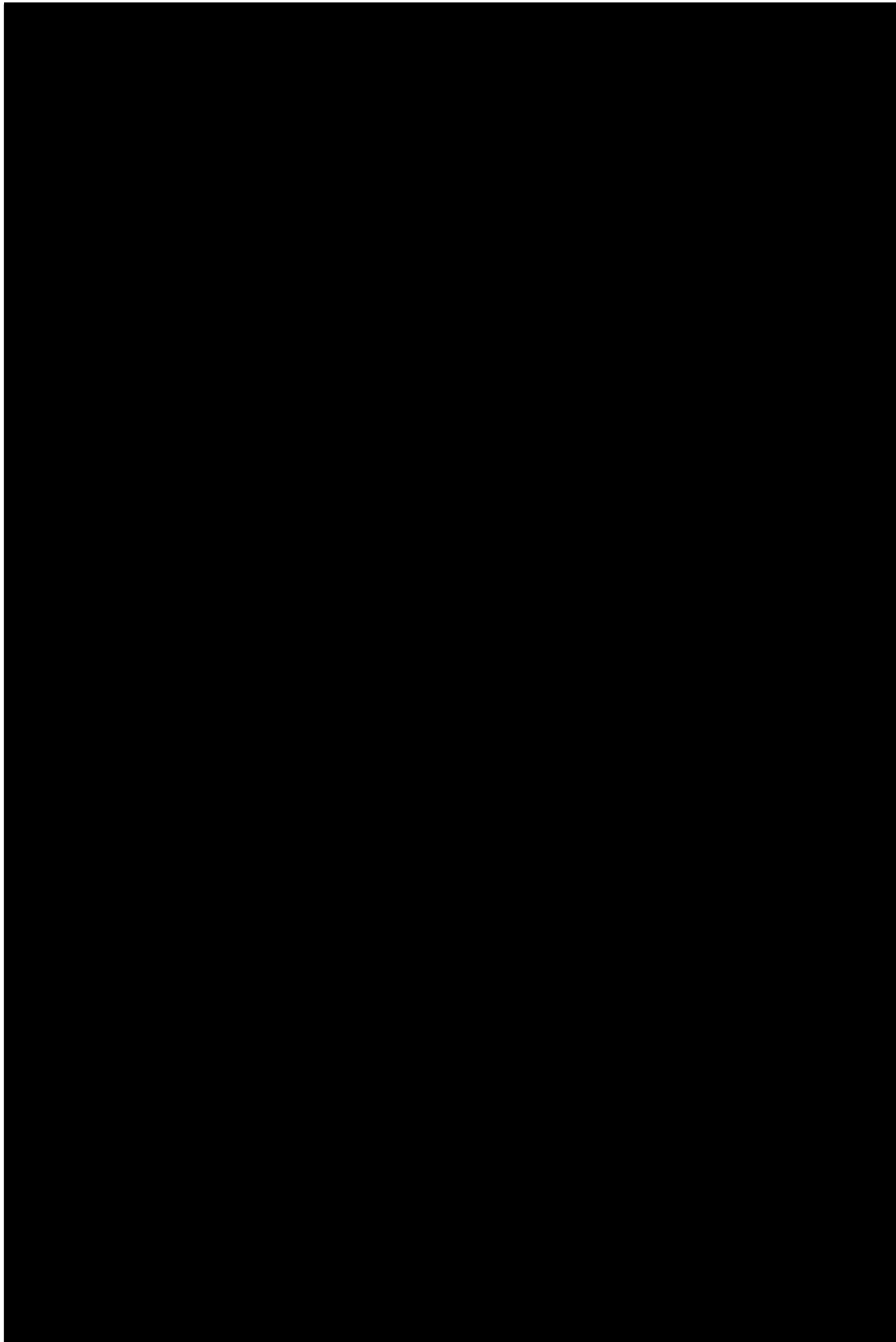
28. Relevant extracts from Witness B's statement include:



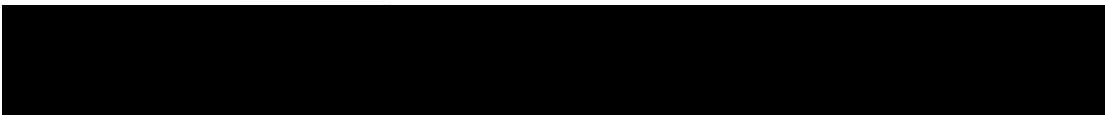


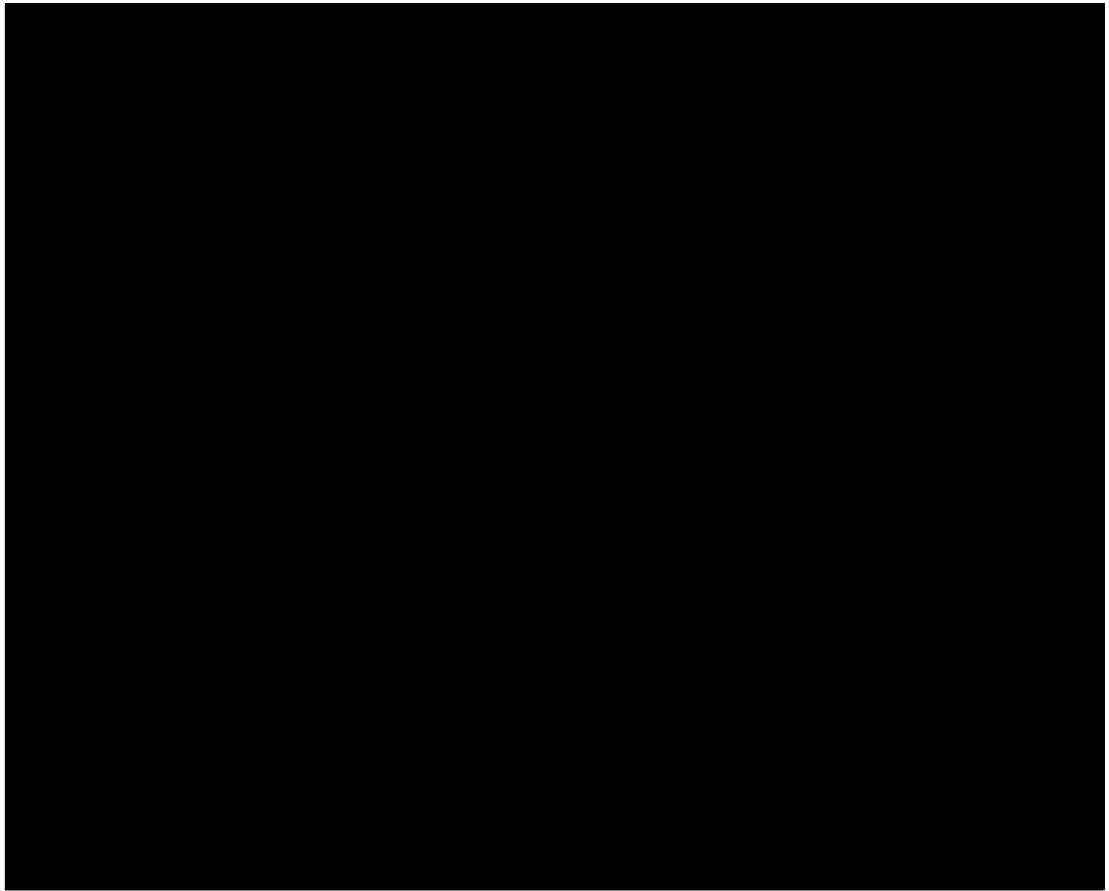
29. Relevant extracts from Witness C's statement include:



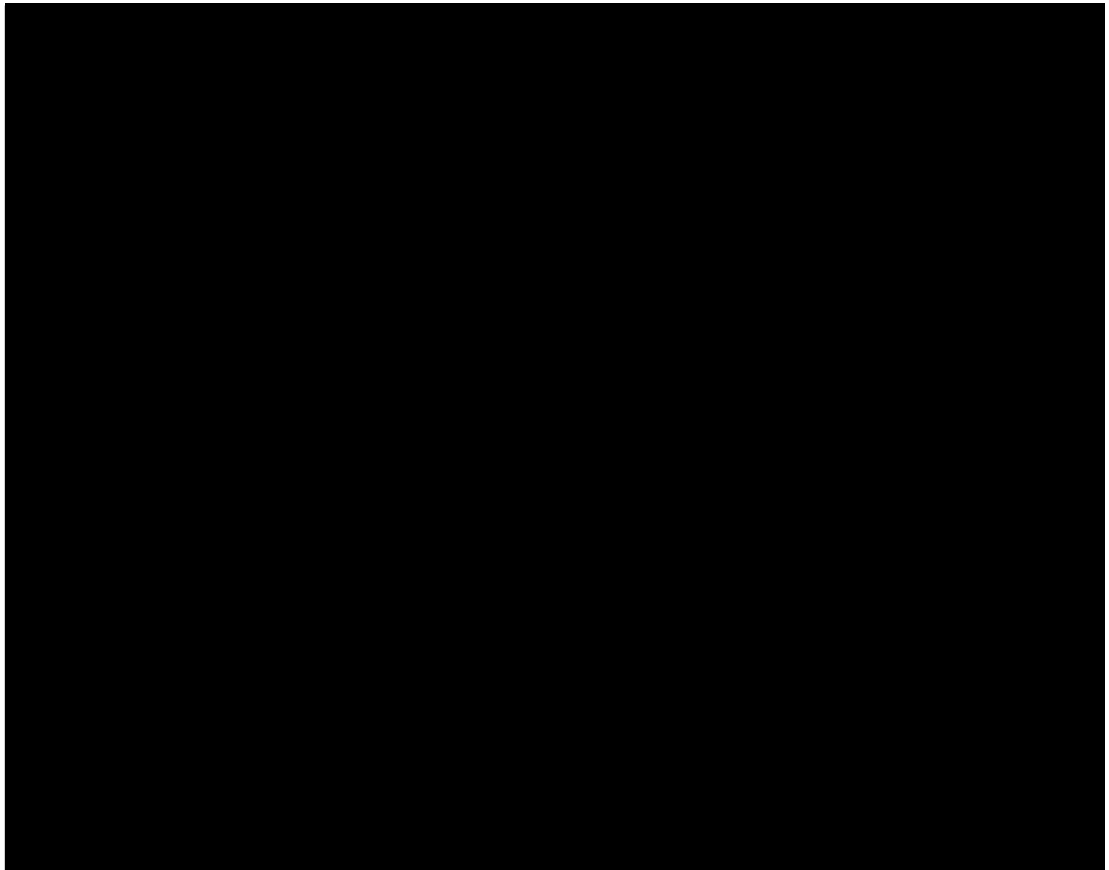


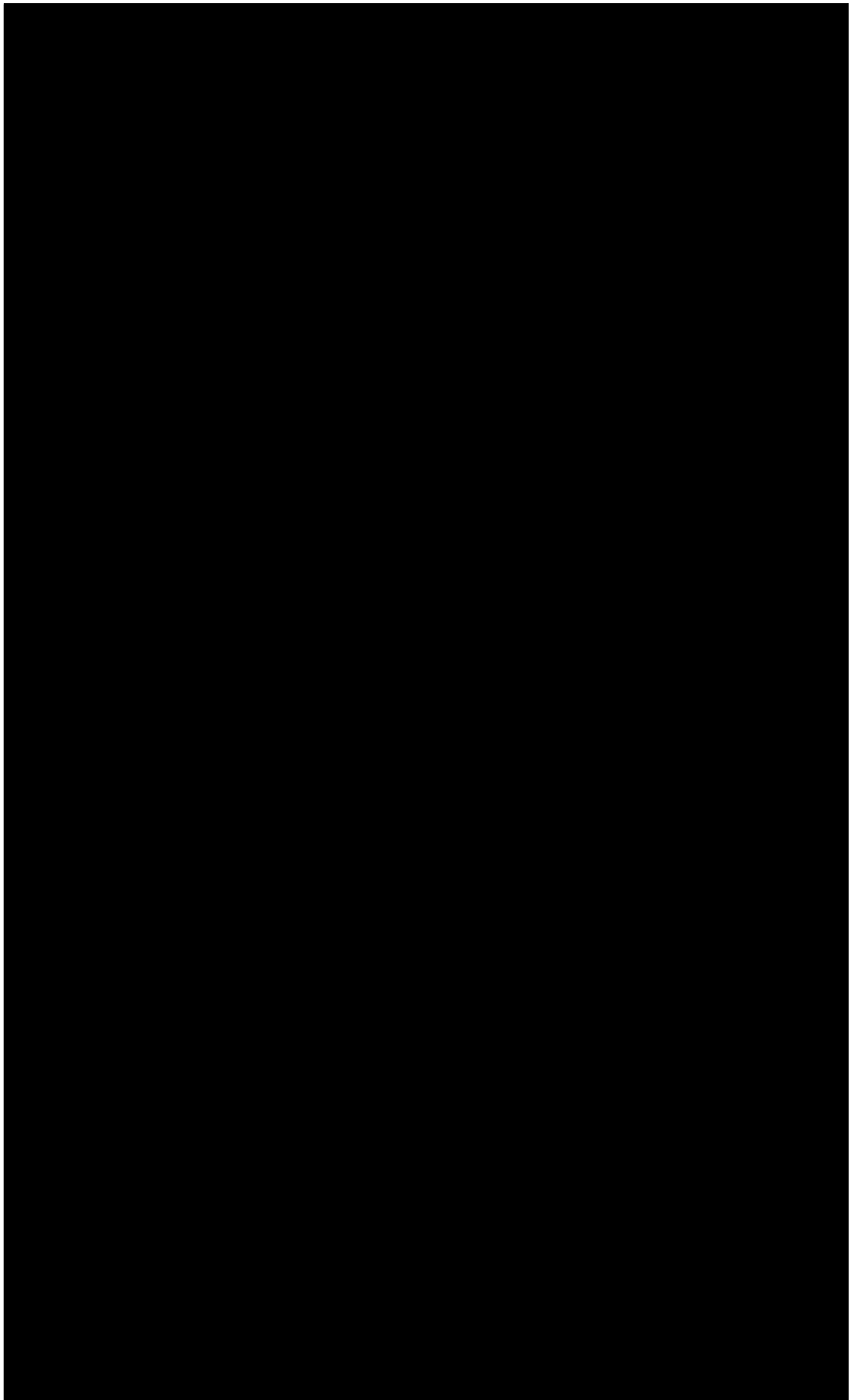
30. Relevant extracts from Witness D's statement include:

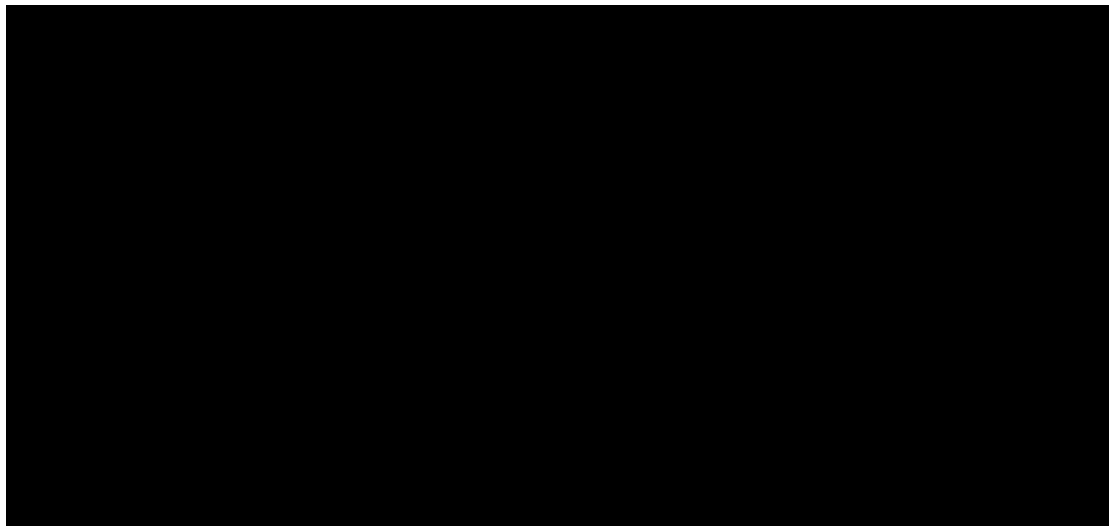




31. Relevant excerpts from Witness E's statement include:







32. The following issues support a failure to ensure every reasonable precaution was taken to protect [redacted] from harm and hazard likely to cause injury:
- a. Provider was aware of diagnosis in May 2019.
 - b. [redacted] attended Service without completed medical documents relating to [redacted]
 - c. [redacted] attended Service with no formal plan to support and guide staff in relation to challenges related to characteristic of [redacted] inclusive of running away.
 - d. Insufficient response and support for emerging toileting issue during February 2020.
 - e. Parent allegedly not given copy of medical policy.

Contraventions Support Allegations

33. Evidence gathered appears to support contraventions of section 167(1) of the *Law*.

Second set of grounds – Failure to Notify

Allegation Two – Section 174 of the *Law*.

34. It is alleged that during August 2020, the Provider failed to notify the Regulatory Authority of a complaint that the *Law* had been contravened, in that the Provider was aware of a complaint that a child, believed to [redacted] [redacted] had been held down and inappropriately toileted, contravening s174(2)(b)(ii) of the *Law*.

Legislation relevant to Allegation Two, Three and Four

174 Offence to fail to notify certain information to 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—

- (a) any serious incident at the approved education and care service;

(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;

(c) information in respect of any other prescribed matters.

Penalty: \$4500, in the case of an individual.

\$22 900, in any other case.

176 Time to notify certain information to Regulatory Authority

(1) For the purposes of section 174(3) of the Law, a notice must be provided within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

(2) For the purposes of section 174(4) of the Law, a notice must be provided—

(a) in the case of a notice under section 174(2)(a)—

(i) in the case of the death of a child, as soon as practicable but within 24 hours of the death, or the time that the person becomes aware of the death; and

(ii) in the case of any other serious incident, within 24 hours of the incident or the time that the person becomes aware of the incident;

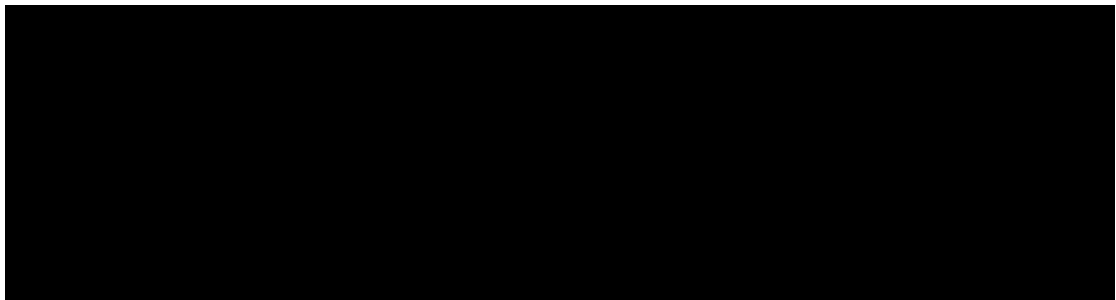
(b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident;

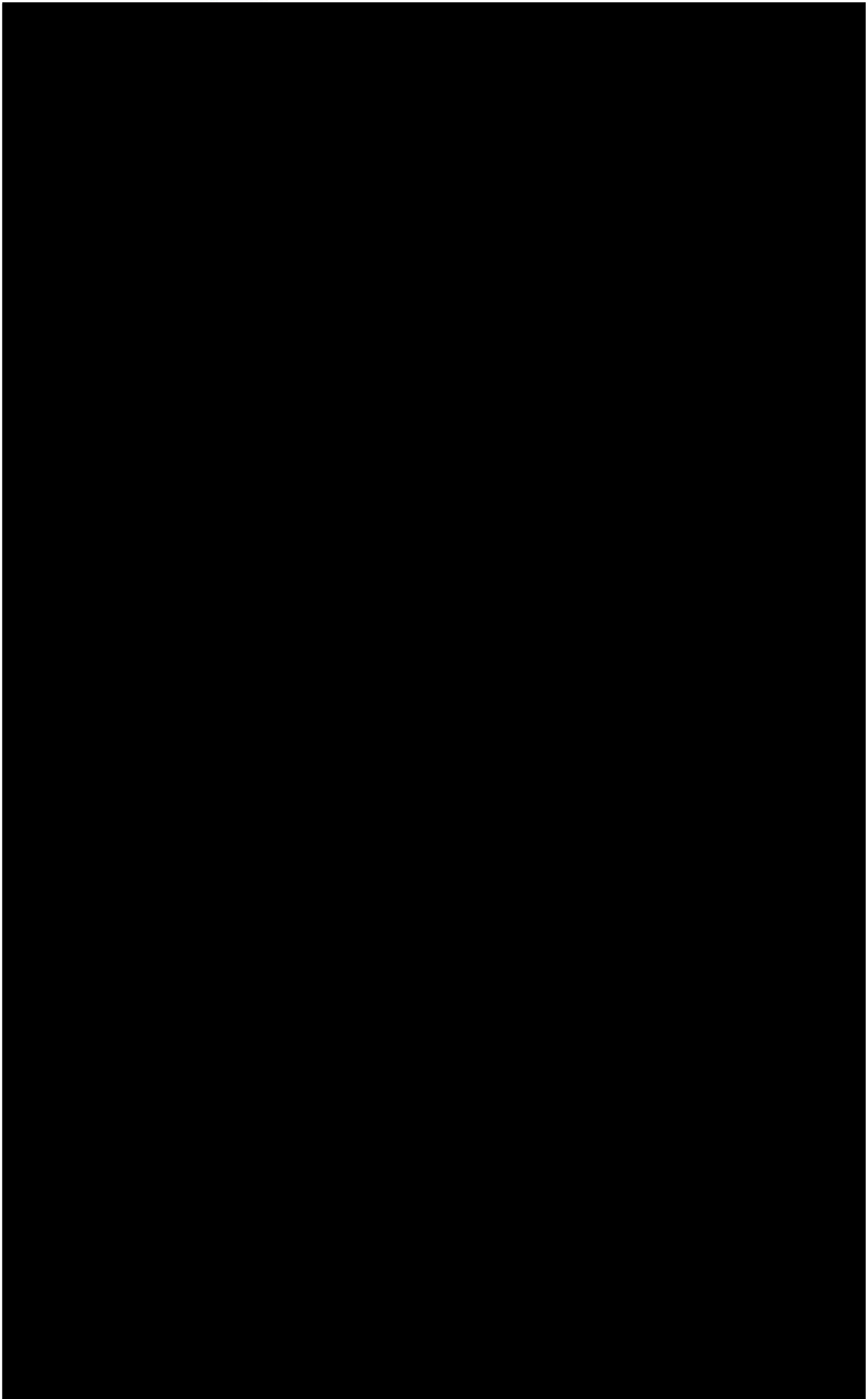
(ba) in the case of a notice under regulation 175(2)(ca), within 24 hours of the commencement of the attendance of the child or children at the education and care service;

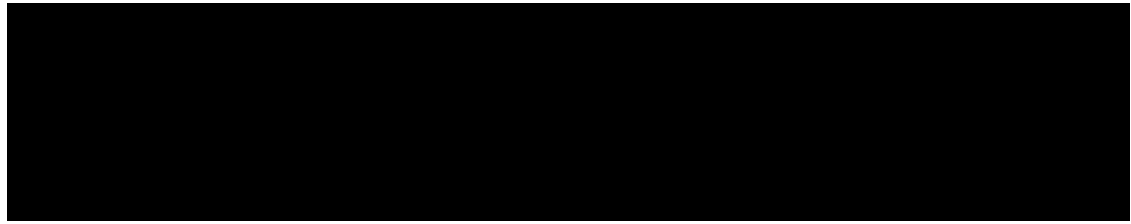
(c) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

Evidence Relevant to Allegation Two (August 2020)

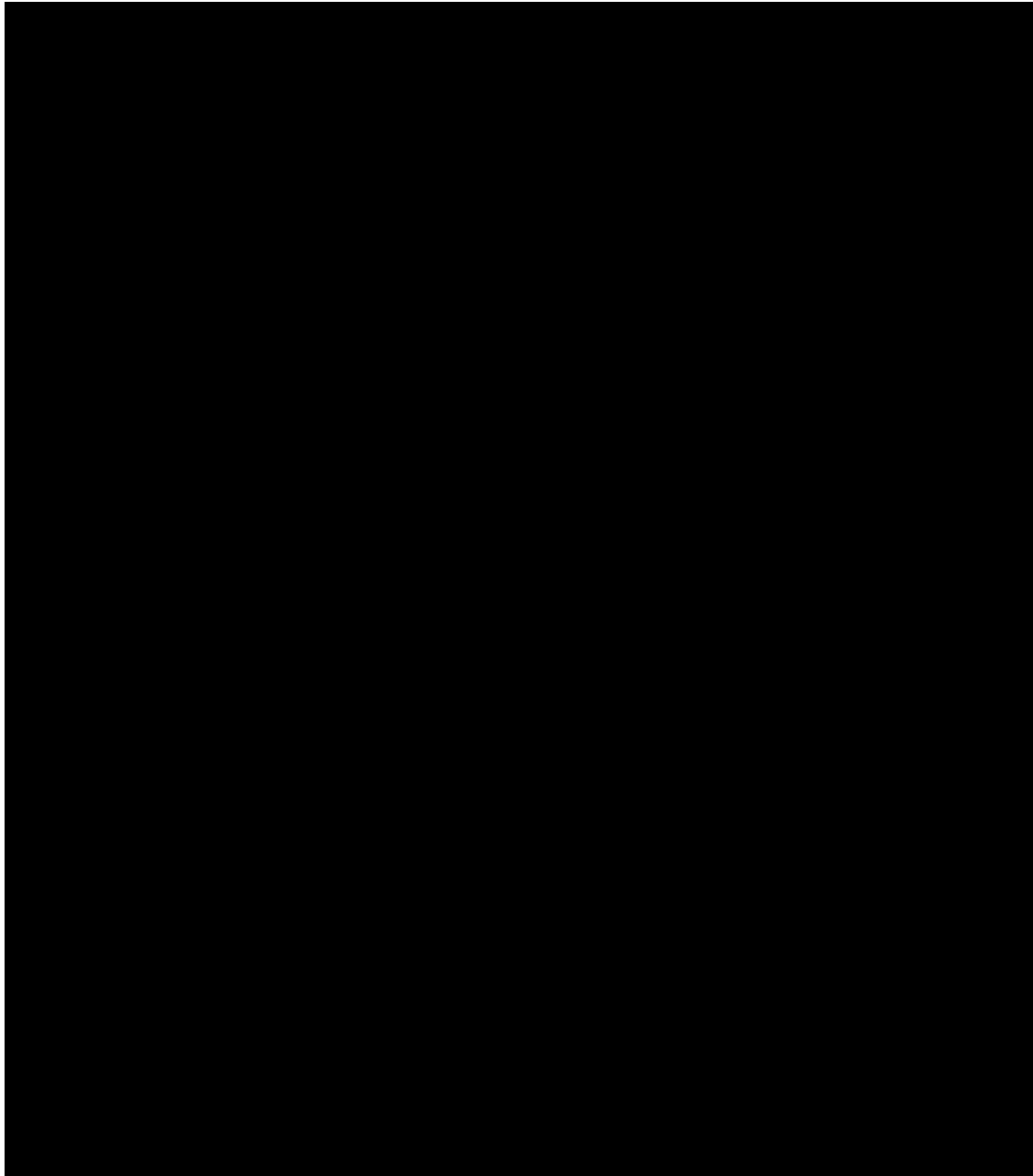
35. Relevant excerpts from Witness A's statement include:







36. Relevant excerpts from Witness B's statement include:



37. Emails furnished by Provider indicate that the meeting referred to by M [redacted] occurred about 10-14 August 2020. Statement evidence support the meeting arose from toileting concerns with multiple attendees. Refer Attachment B email (p149-150).

38. Witness A outlines this meeting occurred as a result of her dissatisfaction, noting there appears no reference to any dissatisfaction or complaint within subsequent email communication regarding plans and strategies for toileting. Refer to Attachment B emails (p149-153).
39. Policy and procedures in effect during 2020, furnished by Provider, include ACT Public Preschool-Complaints Procedure which does not indicate what constitutes a complaint or the reporting timeframes for notifying to the Authority of any complaint that the law had been contravened. Refer to Attachment B (p177-179)

Contraventions Support Allegations

40. Evidence gathered appears to support contraventions of section 174(2)(b)(ii) of the *Law*.

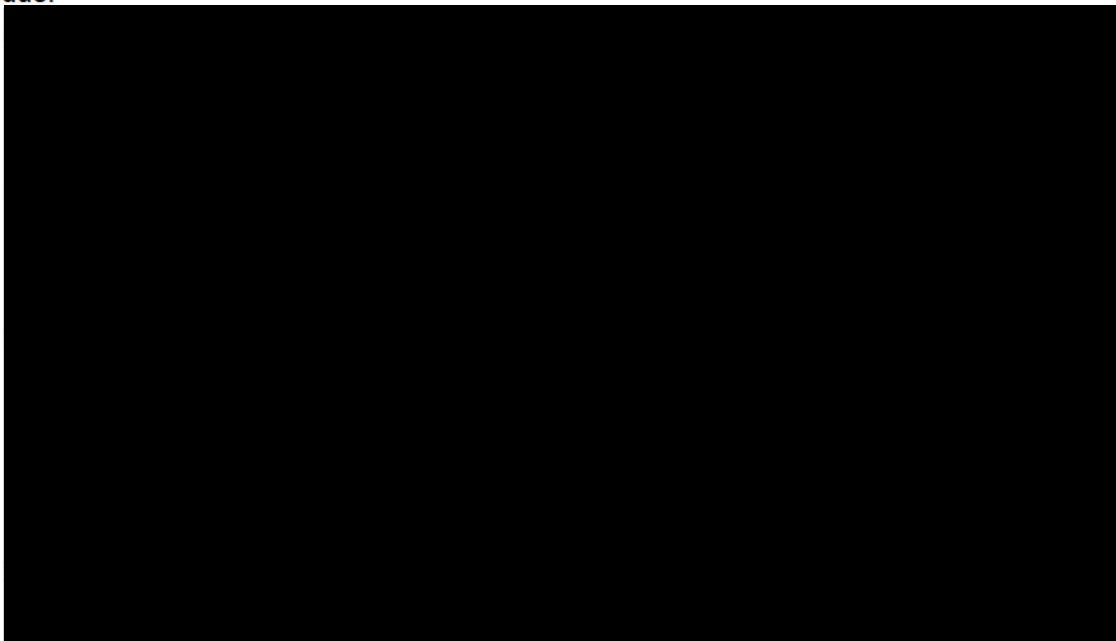
Third set of grounds – Failure to Notify

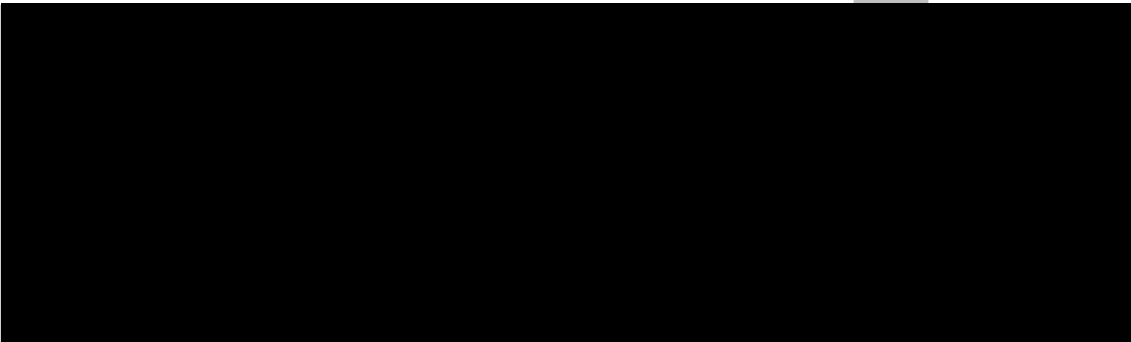
Allegation Three – Section 174 of the *Law* (June 2023).

41. It is alleged that by 12 June 2023, the Provider failed to notify the Regulatory Authority of a complaint that the *Law* had been contravened, in that the Provider was in receipt of a further complaint that child [REDACTED] had been held down and restrained by staff during toileting, contravening s174(2)(b)(ii) of the *Law*.

Evidence relevant to Allegation Three

42. Email dated 3 May 2023 between parent of [REDACTED] and Provider outlined ongoing concerns related to the toileting of [REDACTED]. The response from Provider was to organise a meeting with the parent. Refer to Attachment C for email dated 03 May 2023.
43. Relevant excerpts from Witness A's statement regarding the meeting and complaint of 2023 include:





44. Email from Provider to parents [redacted] and [redacted] confirm a meeting occurred on 26 May 2023 with a precis of meeting outlined in the body for the email. It is noted a reportable conduct investigation was to be undertaken. Refer to Attachment C for email 26/05/2023.
45. Email from parent to Provider dated 11 June 2024 include attachments inclusive of unsigned complaint outlining restrictive practice being used on [redacted] during toileting in 2020 and requesting an investigation. Refer to Attachment C for email, documents, and complaint.
46. Mrs [redacted] articulates a complaint that restriction used in toileting [redacted] has resulted in ongoing toileting issues. The restraint of a child to modify behaviour raises suspicion of a contravention of Section 166 of the *Law* requiring a notification to the Authority within twenty-four hours of complaint receipt. Notification was forwarded to the Authority by Provider on 26 June 2023. Refer to Attachment C.
47. Complaints procedure furnished by the Provider and in effect from March 2023, does not outline what a complaint is or timeframe for reporting. Refer to Attachment B for policy.

Fourth set of grounds – Failure to Notify

Allegation Four – Section 174 of the *Law* (February 2020).

48. It is alleged that by 25 February 2020, the Provider failed to notify the Regulatory Authority of serious incident, in that a child, believed to be [redacted] as missing and unaccounted for, contravening s174(2)(b)(i) of the *Law*.

Evidence relevant to Allegation Four.

49. Incident reports furnished by Provider include incident report #2165 indicating that [redacted] was missing and unaccounted for, within school grounds for an unspecified amount of time. Refer Attachment B.

Contraventions Supported by Allegation

50. Evidence gathered appear to support that the Authority was not notified of [redacted] being missing and unaccounted for.

Fifth set of grounds – Not keep accurate records.

Allegation Five – Regulation 177 (February 2020)

51. It is alleged that between 3 February 2020 and 30 June 2022, the Provider failed to take reasonable steps to ensure prescribed records were accurate, in that, Incident, injury, trauma, illness record was not completed for a child, [REDACTED] in compliance with regulation 87, giving rise to a contravention of regulation 177(2).

Legislation relevant to Allegation Five.

Regulation 177 – Prescribed enrolment and other documents to be kept by 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 –
- (b) An incident, injury, trauma and illness record as set out in regulation 87;
 - (k) A children’s attendance records as set out in regulation 158;
- (2) The approved provider of the education and care service must take all reasonable steps to ensure the documents referred to in sub regulation (1) are accurate.

Penalty: \$2000

- (3) Subject to Subdivision 4, the approved provider of the education and care service must ensure that-

Subject to sub regulation (4), the documents referred to in sub regulation (1) in relation to a child enrolled at the service are made available to a parent of the child on request;

Regulation 87 - Incident, injury, trauma and illness record

- (1) The approved provider of an education and care service must ensure that an incident, injury, trauma and illness record is kept in accordance with this regulation.
- (2) -
- (3) The incident, injury, trauma and illness record must include—
- (a) details of any incident in relation to a child or injury received by a child or trauma to which a child has been subjected while being educated and cared for by the education and care service or the family day care educator, including—
 - (i) the name and age of the child; and
 - (ii) the circumstances leading to the incident, injury or trauma; and
 - (iii) the time and date the incident occurred, the injury was received or the child was subjected to the trauma;
 - (b) details of any illness which becomes apparent while the child is being educated and cared for by the education and care service or the family day care educator including—
 - (i) the name and age of the child; and
 - (ii) the relevant circumstances surrounding the child becoming ill and any apparent symptoms; and
 - (iii) the time and date of the apparent onset of the illness;

- (c) details of the action taken by the education and care service or family day care educator in relation to any incident, injury, trauma or illness which a child has suffered while being educated and cared for by the education and care service or family day care educator, including—
 - (i) any medication administered or first aid provided; and
 - (ii) any medical personnel contacted;
 - (d) details of any person who witnessed the incident, injury or trauma;
 - (e) the name of any person—
 - (i) whom the education and care service notified or attempted to notify, of any incident, injury, trauma or illness which a child has suffered while being educated and cared for by the education and care service or family day care educator; and
 - (ii) the time and date of the notifications or attempted notifications;
 - (f) the name and signature of the person making an entry in the record, and the time and date that the entry was made.
- (4) The information referred to in subregulation (3) must be included in the incident, injury, trauma and illness record as soon as practicable, but not later than 24 hours after the incident, injury or trauma, or the onset of the illness.

Evidence relevant to Allegation Five

52. Documents furnished by the Provider pursuant to 215 Notice include SAS incident reports in relation the distress and frequency of [redacted] toileting. The records were not completed in compliance with Regulation 87. Refer Attachment B for incident reports.

Contraventions Supported Allegations

53. Evidence gathered appears to support contraventions of Regulation 87, giving rise to a contravention of Regulation 177(2).

Potential Compliance Action

54. 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 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; or
- 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.
 - f. Cancellation of the service approval under section 79 of the Law.
55. 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.
56. A compliance notice requires specific steps to be undertaken by the Provider to demonstrate to the Authority how compliance with the Law and Regulations will be achieved and maintained. It is tailored in each circumstance to address the specific non-compliance identified because of the investigation.
57. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the Law.
58. 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

59. As mentioned previously, this is the Provider's opportunity to respond to the allegations and evidence set out in this Notice. 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.
60. 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 Brian.Cropper@act.gov.au or by post to:
Children's Education and Care Assurance
Attention: Brian Cropper
GPO Box 158, Canberra ACT 2601.

Caution

61. 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.

62. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
63. 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.
64. 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>.
65. 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>
66. Should you have any questions about this Show Cause Notice please contact Brian Cropper on
Brian.Cropper@act.gov.au.

Yours Sincerely



Nicole Withers
Assistant Director
Children's Education and Care Assurance
Education and Care, Regulation and Support

27 June 2024