

Ms [REDACTED]  
Nominated Supervisor  
RE: Margaret Hendry Preschool

Email: [REDACTED]

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 (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*. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, 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;

### **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*.

### **Allegation – Protection from Harm**

#### **Allegation – Section 167 of the *Law***

10. It is alleged that during 2020, the Nominated Supervisor 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 formalised into a plan in consultation with family, and communicated to staff, contravening s167(2) of the *Law*.

#### **Legislation Relevant to Allegation**

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

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

The 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: \$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 sub regulation (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

12. 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:
- a. Enrolment record
  - b. Communication emails
  - c. Health information
  - d. Support plans
  - e. Toileting records
  - f. Internal enquiries
  - g. Policy and Procedure
  - h. Working Directly with Children records August 2020
  - i. Incident reports – [REDACTED]

Refer Attachment B.

13. Enrolment documents dated 19 May 2019, identify [REDACTED] medical conditions, being [REDACTED]. Included is a link to [REDACTED]. Refer to Attachment B (p1-15) for enrolment records.
14. Email dated 6 February 2020, from Ms [REDACTED] to Service supplying copy of [REDACTED] Action Plan dated 16/11/18 inclusive of prescribed medication usage. Ms [REDACTED] advises of an updated plan by end of February. Refer Attachment B for [REDACTED] plan (p16-21).
15. Email dated 10 February 2020 from parent, Ms [REDACTED] list 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).
16. Updated [REDACTED] plan forwarded by parent on 19 February 2020. [REDACTED] plan dated 10/02/2020. Refer updated [REDACTED] plan (p27-32).
17. Medication Authorisation plan signed by parent 24 February 2020, three weeks after school commencement for [REDACTED]. Refer Attachment B for [REDACTED] plan (p89-93) and medication authorisation record.
18. Incident reports furnished by Provider identify [REDACTED] as 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 Attachment B for Incident reports (p262-285).
19. Furthermore, [REDACTED] runs 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).

20. 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.

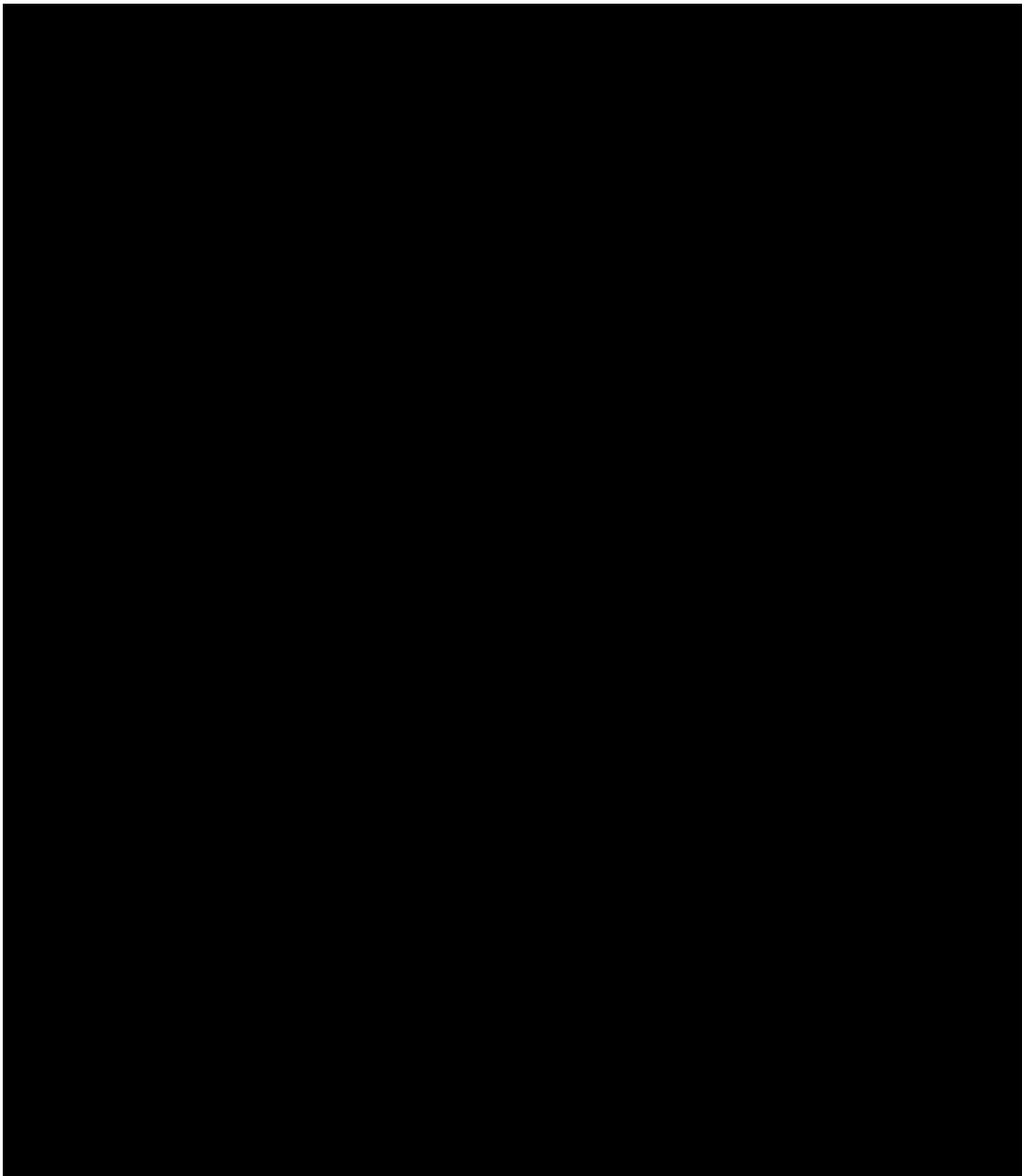
5.10 Medical conditions policy to be provided to parents.

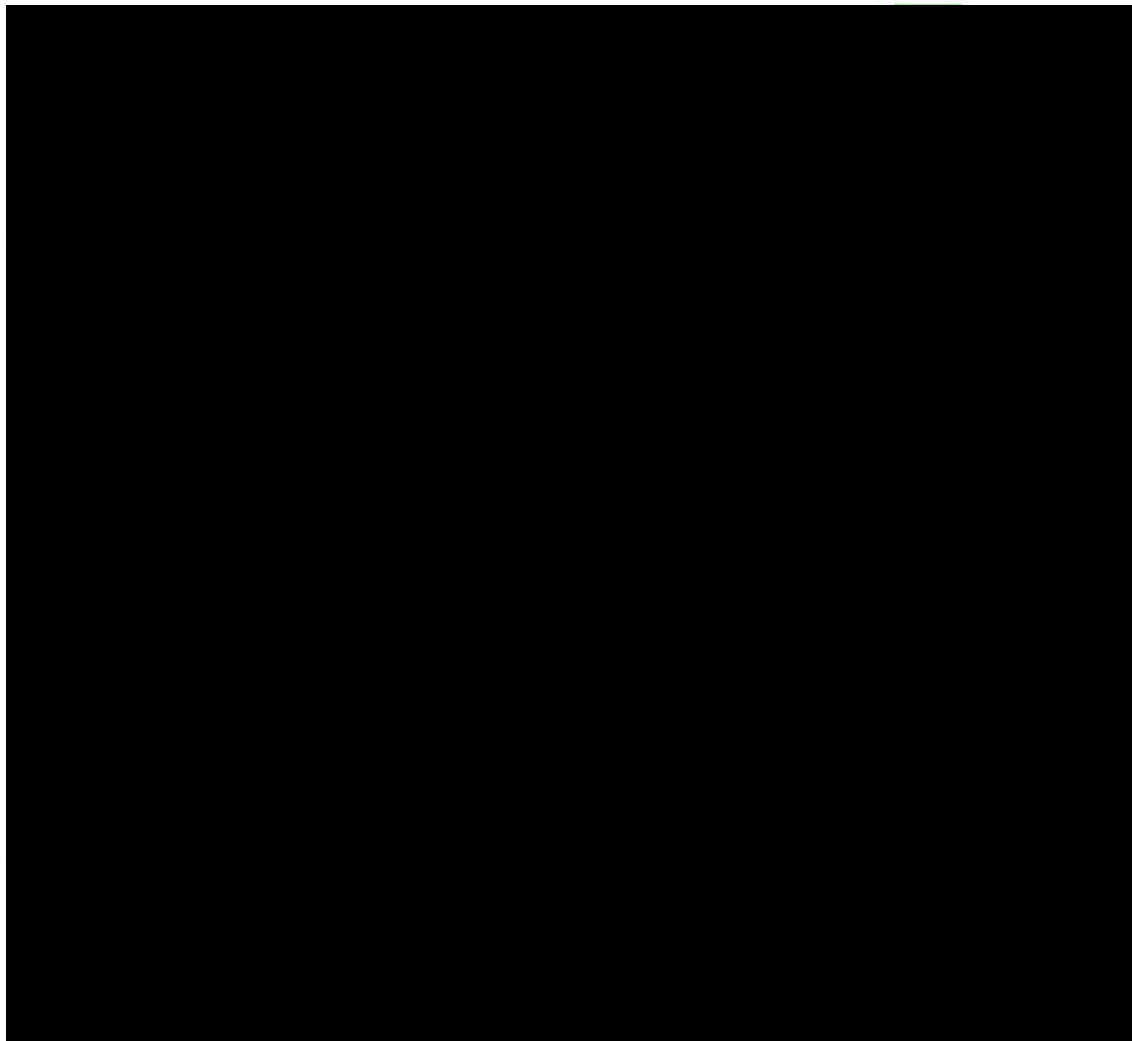
A copy of the ACT Public Preschool Medical Conditions procedures is to be provided to the parent of a child enrolled at the preschool if the preschool is aware that the child has a specific health care need, allergy or other relevant medical condition.

Refer to Attachment B for ACT Public Preschool - Medical Conditions Procedure.

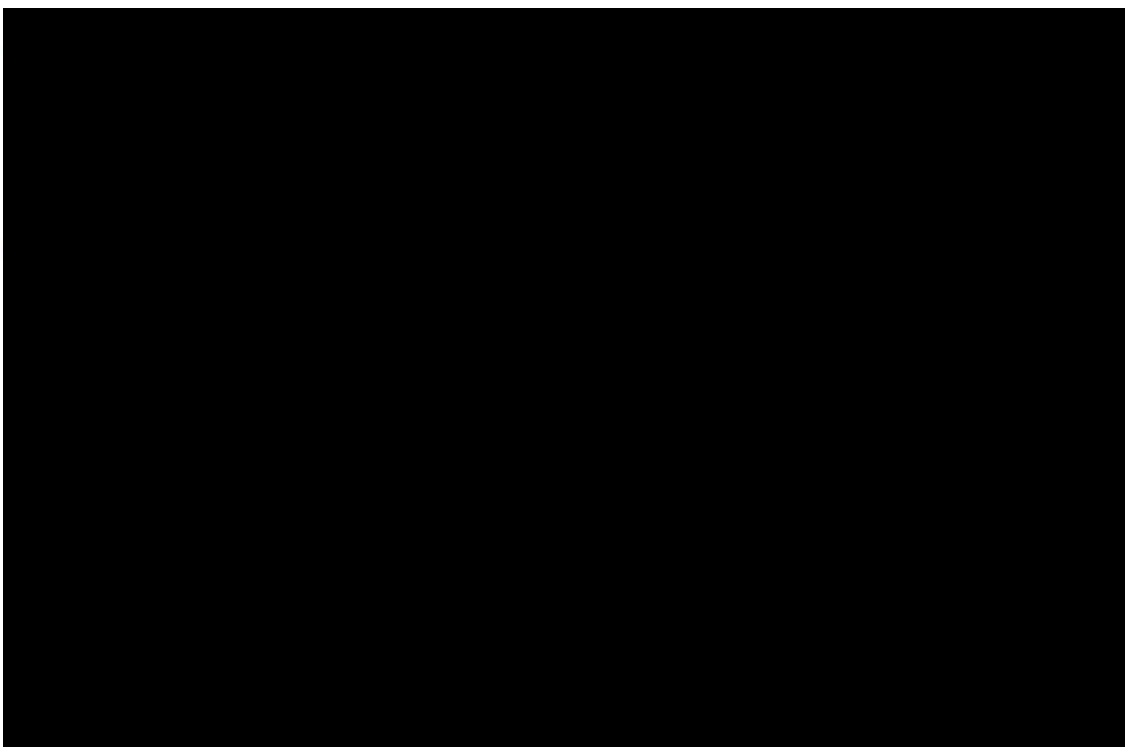
21. Unsigned and undated Individual Learning Plan furnished by Provider for [REDACTED] do not appear to have been developed, formalised, or communicated in consultation with family or educators, to support and guide staff with challenging characteristics for [REDACTED]. Refer to [REDACTED] [REDACTED] Individual Learning Plan at Attachment B (P96-99).
22. Application for Level of Adjustment appears to have been completed on 20 March 2020. Refer Attachment B for form (p94).

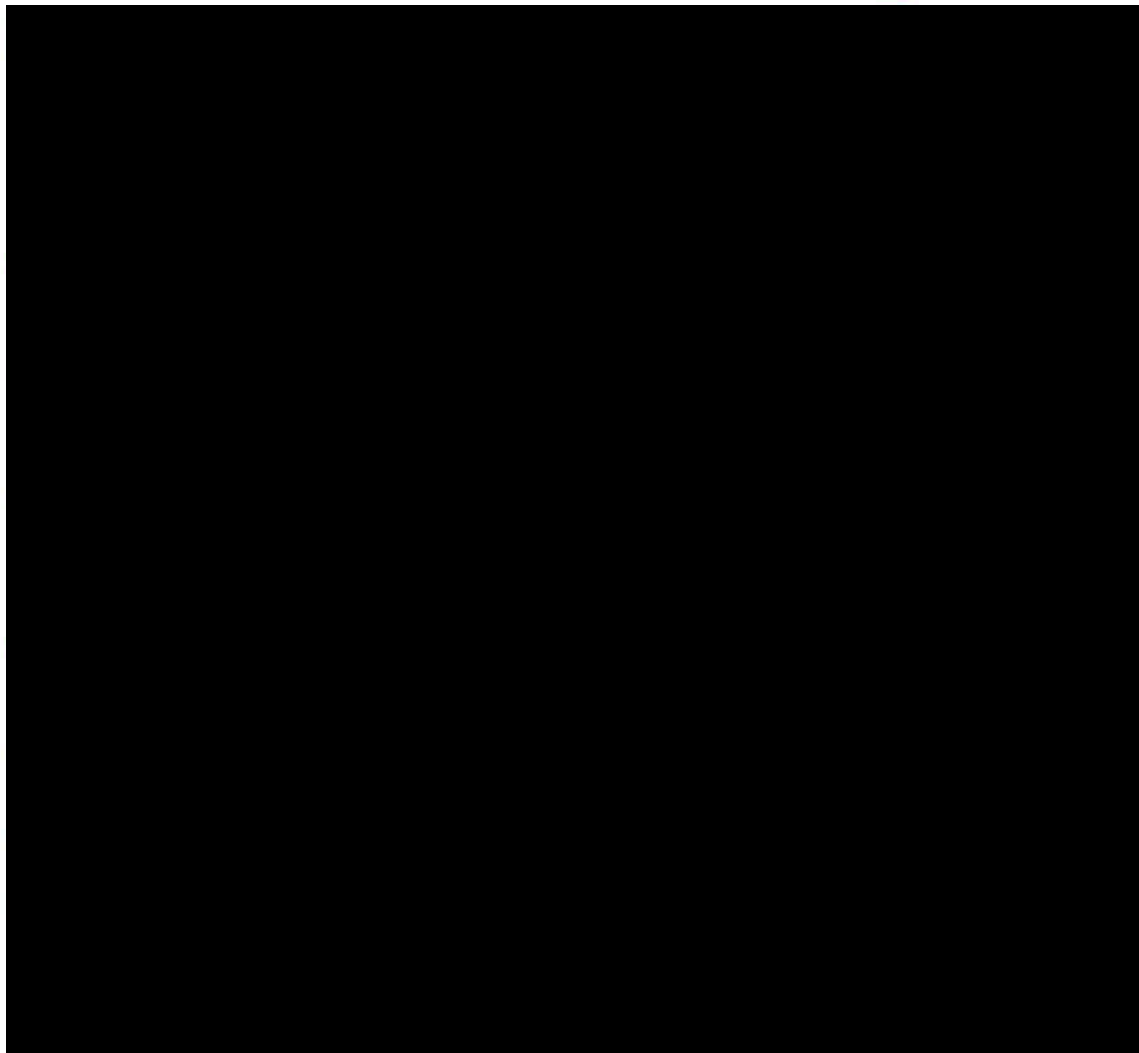
23. An unsigned Care and Learning Plan dated 14 August 2020, furnished by Provider appears developed for toileting only. Refer to Attachment B for Care and Learning Plan (p100-104).
24. During the investigation, the Authority obtained witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the specific circumstances surrounding the alleged offences, witnesses are identifiable from the content of their evidence.
25. 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.
26. Relevant extracts from Witness A's statement include:



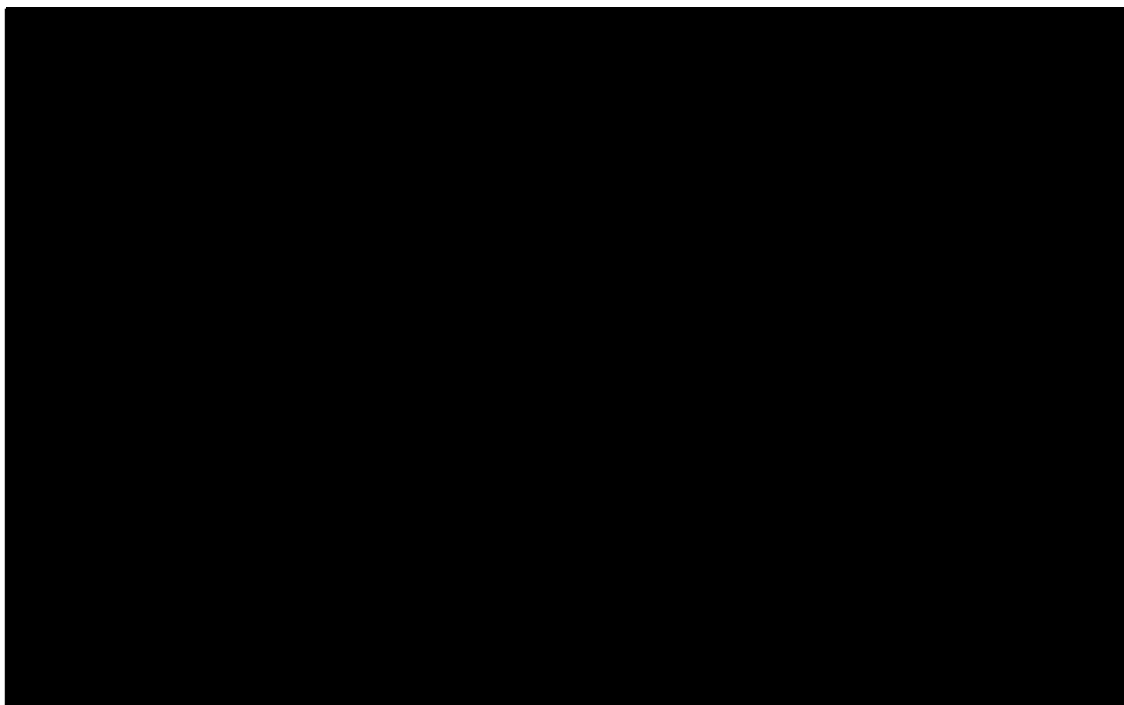


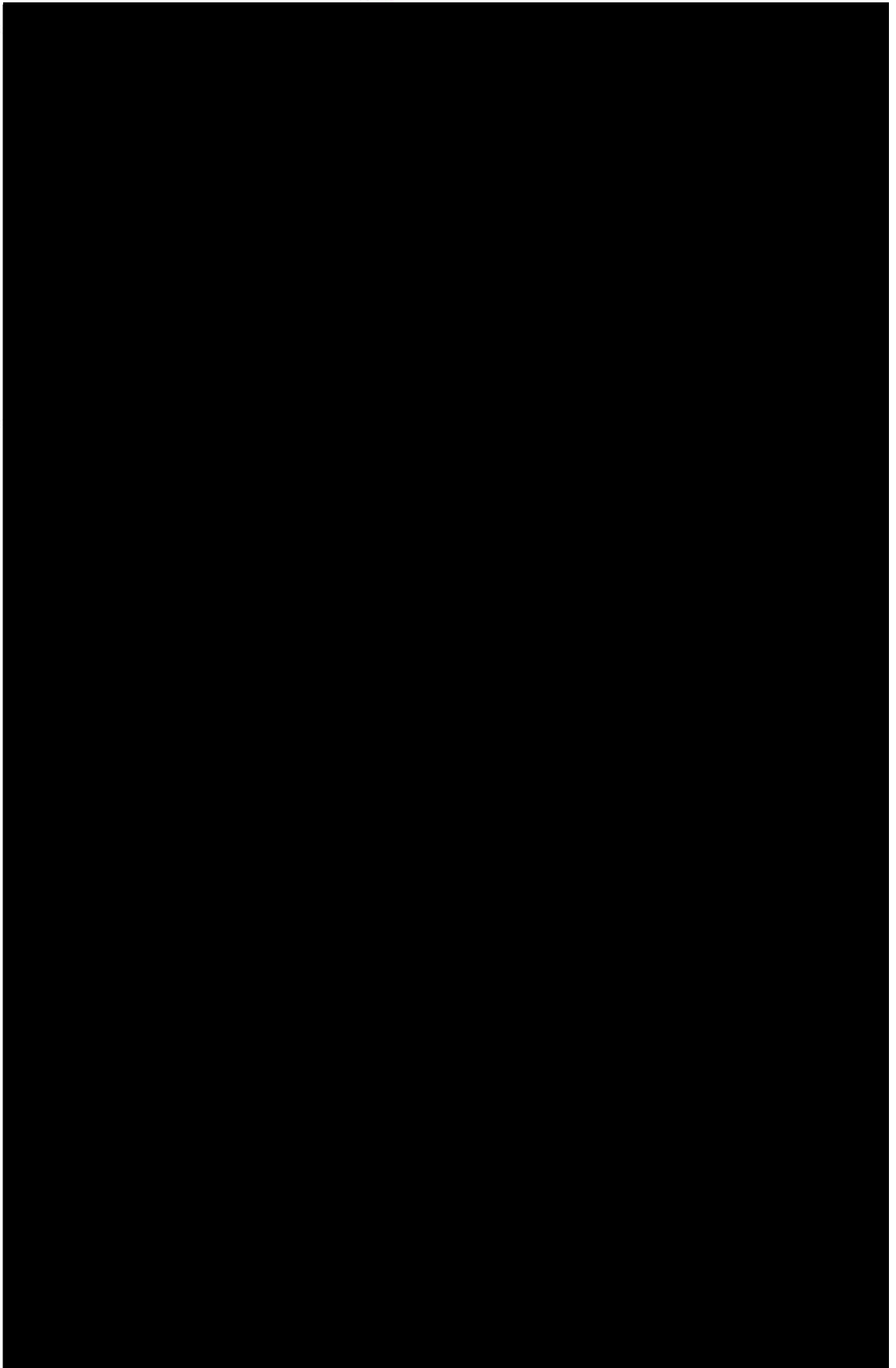
27. Relevant extracts from Witness B's statement include:





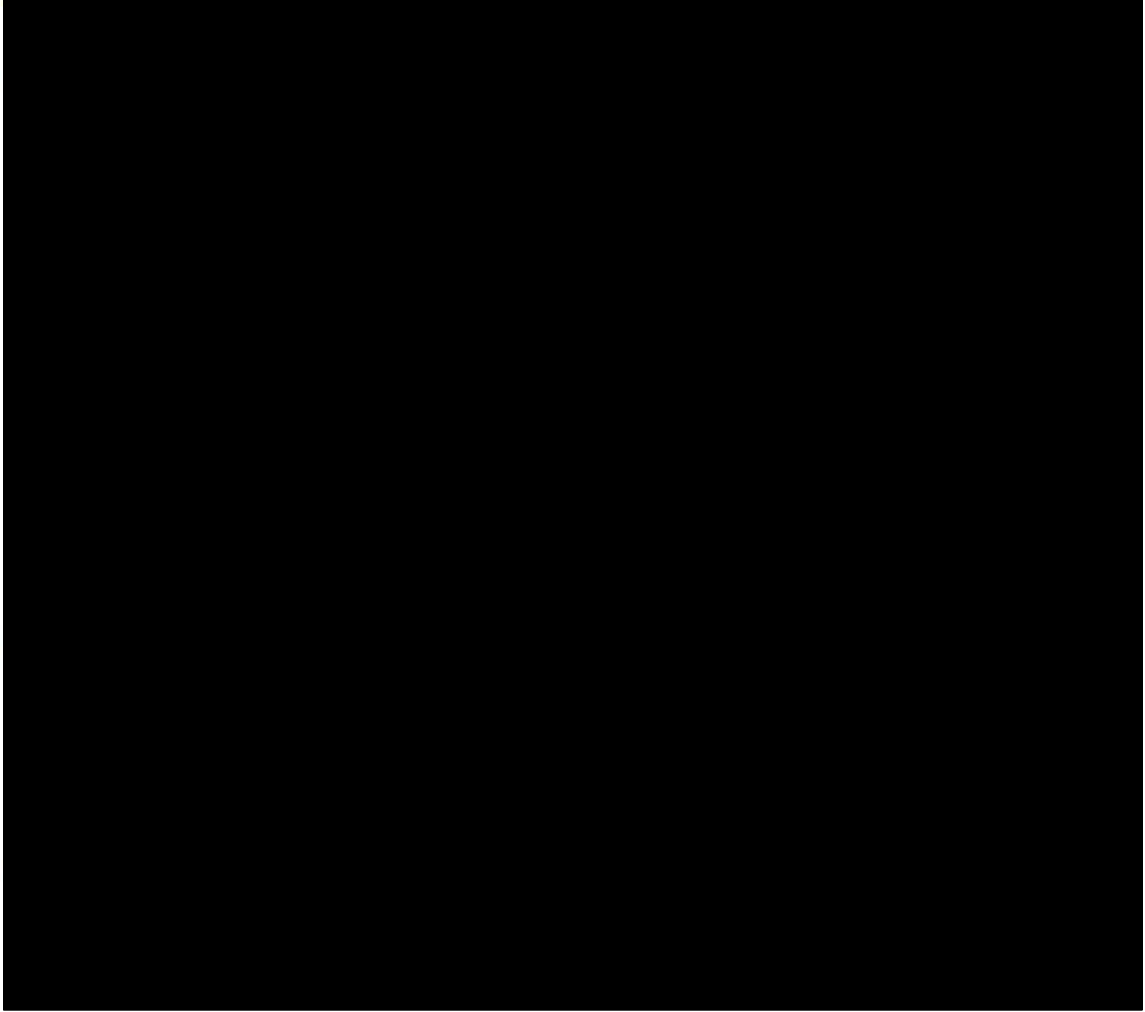
28. Relevant extracts from Witness C's statement include:



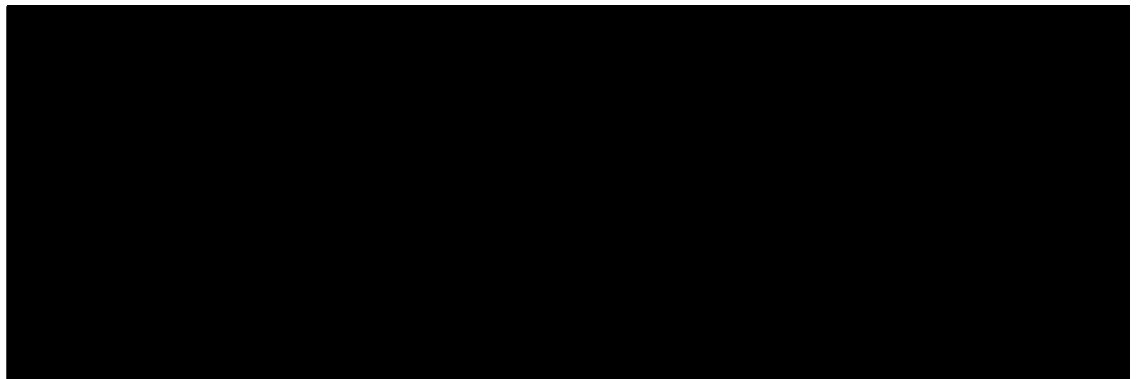


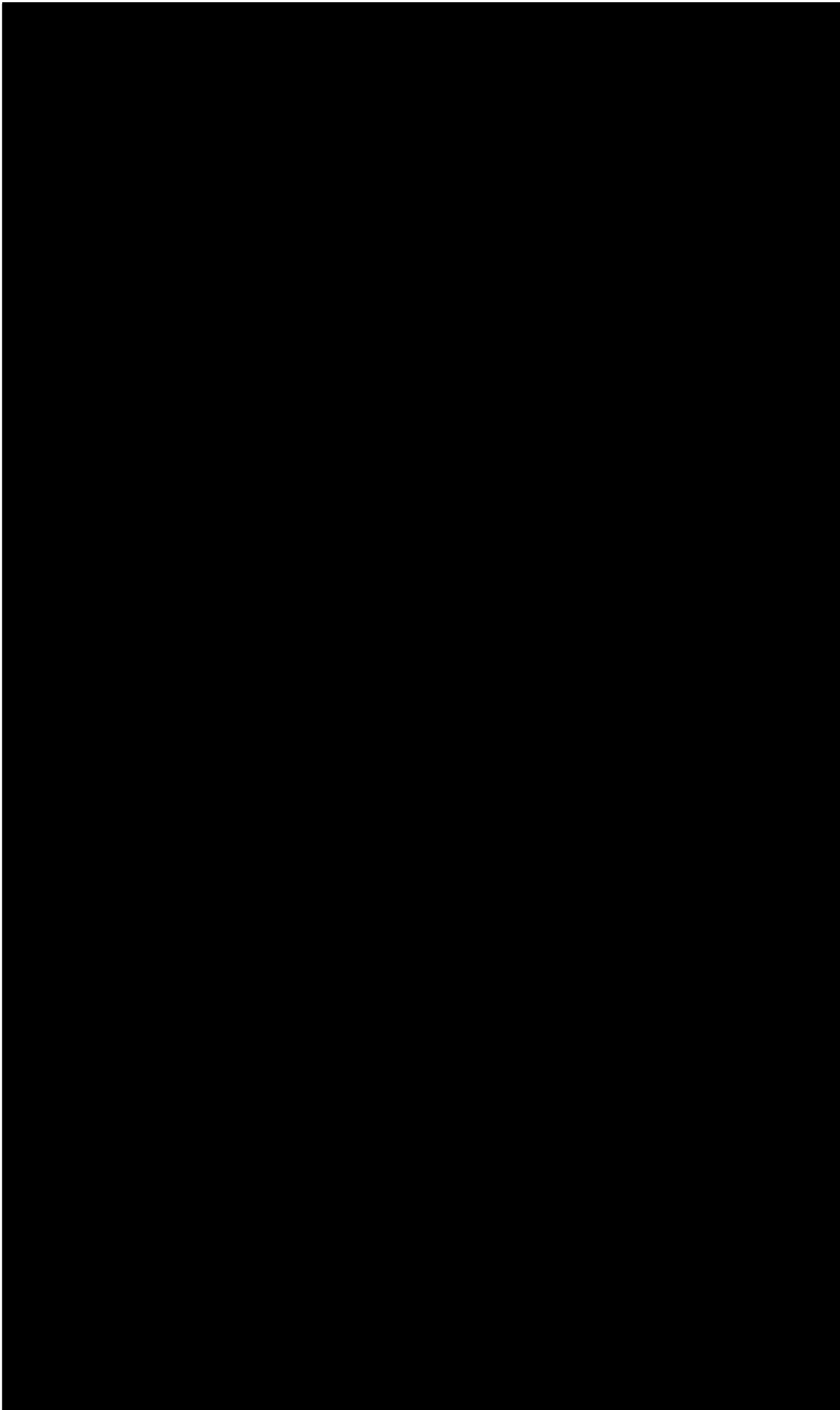


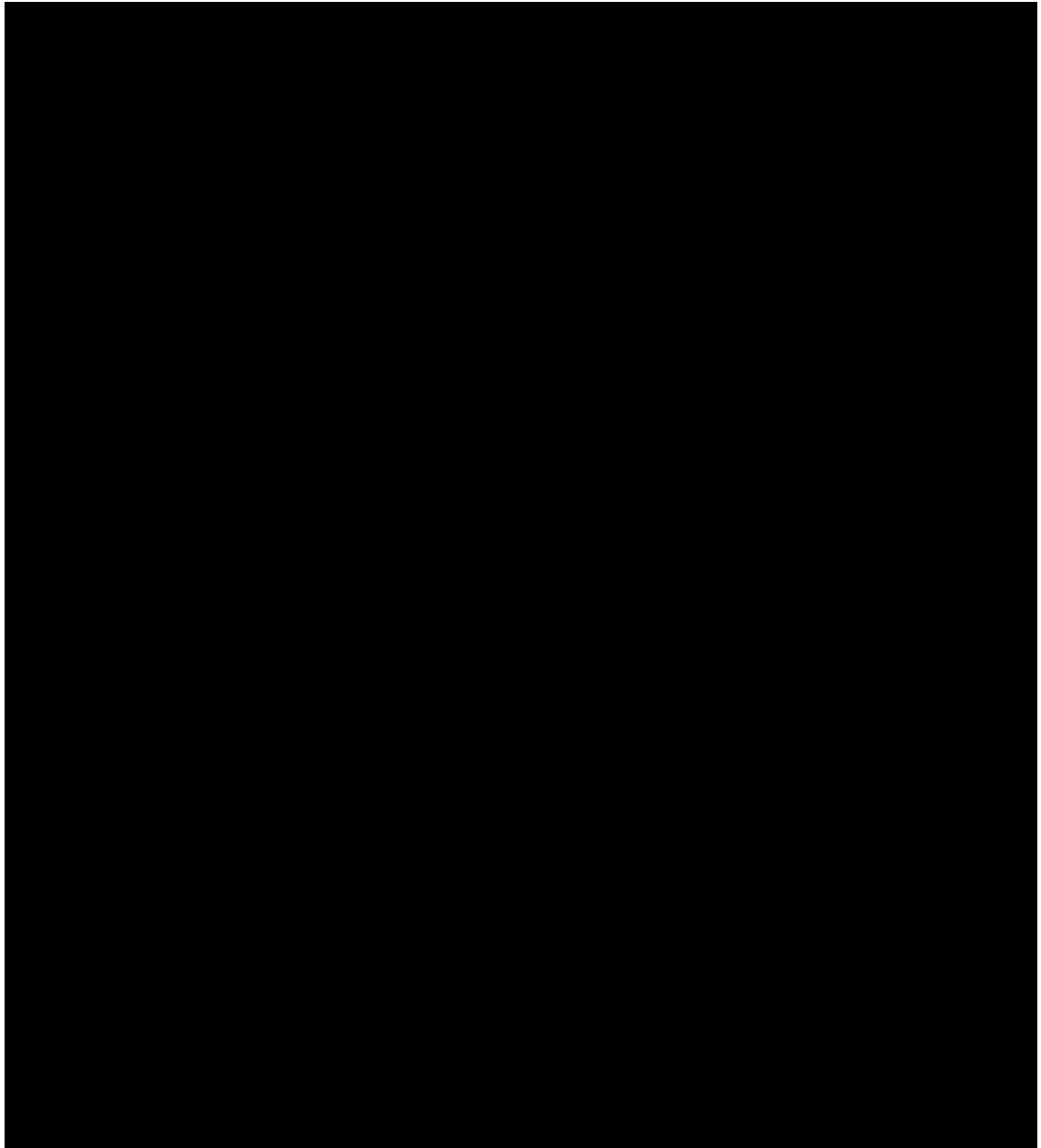
29. Relevant extracts from Witness D's statement include:



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







31. The following support a failure to ensure every reasonable precaution was taken to protect [REDACTED] from harm and hazard likely to cause injury:
- a. Diagnosis known 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], [REDACTED] [REDACTED].
  - d. Insufficient response and support for emerging toileting issue during February 2020.
  - e. Parent allegedly not given copy of medical policy.

### Contraventions Support Allegations

32. Evidence gathered appears to support the [REDACTED] [REDACTED] attended the Service without completed formalised support plans in place to guide staff in responding to challenges arising from his diagnosis, contravening of section 167(2) of the *Law*.
33. Authority records indicate that you were the Nominated Supervisor between 2019 to currently. Refer Attachment C for NS01.

### *Fitness and Propriety as Nominated Supervisor*

34. *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.
35. 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. At minimum, fitness and propriety includes honesty, knowledge and ability.
36. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection of children from harm and hazards, and educational programs, with specific obligations contained in both the *Law* and the *Regulations*.
37. 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).
38. The nominated supervisor must also possess the ability to manage educators and any other staff, service premises, relationships with families and respond to children with medical and/or behavioural needs.
39. During the investigation, there is no apparent evidence identifying that you had ensured adequate support plans were in place for [REDACTED] to protect him from harm and hazard likely to cause injury.
40. This evidence raises a concern about your ability to manage and supervise an education and care service.
41. 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**

42. 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.
43. Relevant legislation for enforceable undertakings and partial prohibition appears below.
44. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
45. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector as a whole.
46. 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.
47. 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**

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**

48. 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.
49. 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](mailto:brian.cropper@act.gov.au) or by post to:

Children's Education and Care Assurance (CECA)  
Education Directorate  
Attention: Brian Cropper  
GPO Box 158, Canberra ACT 2601.

### **Caution**

50. 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*.
51. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
52. 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.
53. 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>.
54. 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>
55. Should you have any questions about this Show Cause Notice please contact Senior Investigator Brian Cropper on email [brian.cropper@act.gov.au](mailto:brian.cropper@act.gov.au).

Yours sincerely



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

27 June 2024