ACT Government
Education

Ms [redacted]
Nominated Supervisor
RE: Nicholls Early Childhood Centre

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. As you are aware, the Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law* (the *Law*). One of the Authority's roles is to investigate suspected offences under the *Law*.

2. As you may be aware, the Authority is currently investigating a suspected offence at Nicholls Early Childhood Centre SE-00009819 (the Service) operated by Community Services of Gungahlin Inc PR-00005825 (the Provider).

3. The suspected offence relates the alleged inadequate response to a child (2.5 years) regularly injuring peers by biting, scratching and hitting, while in attendance at the Service between March 2020 and July 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 sufficient evidence to support a case to answer regarding suspected offences under the *Law*. <u>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.</u>

6. Detailed instructions of how to respond appear at the end of this Notice.

7. If substantiated, the allegation may constitute an offence under section 167 of the *Law*. If, after considering all available evidence, the Authority finds any offence substantiated, it will need to consider whether compliance action is required.

8. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

9. The evidence obtained during the investigation to date supports an offence under the *Law* relating to the protection of children from harms and hazards likely to cause injury.

Allegations relating to Law

10. The evidence obtained during the investigation raise the following allegations of offences under the *Law* –

Allegation

It is alleged that, between March and July 2022, you, as the Nominated Supervisor failed to ensure that every reasonable precaution was taken to protect children attending the Service from harm and any form of hazard likely to cause injury, in that, support strategies were not adequately implemented, as required by the Behaviour Support Policy, to guide behaviours of [redacted] (2:7) in contravention of s167(2) of the *Law*.

Background

11. On 15 July 2022, the Provider notified the Authority of a parent complaint alleging that the Service was not protecting their child from ongoing injuries from another child. Refer to Attachment A.

12. Furthermore, on 12 August 2022, the Authority received a direct complaint alleging that the Service had failed to adequately inform, and involve, a parent in regard to the biting, scratching and hitting behaviours of their child.

13. It was determined by the Authority that there were reasonable grounds to suspect that an offence had, or may have, occurred at the Service and a decision was made to investigate a suspected offence under sections 167 of the *Law.*

Legislation Relevant to Allegation

14. The following provisions of the *Law* are relevant to Allegation 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: $10 000, in the case of an individual

Evidence Relevant to Allegation

15. Included with the Notification from the Provider were a number of documents. Refer Attachment B.

16. Relevant documents accompanying the Notification included:

    a) Incident/Accident/Illness reports;

    b) Behaviour Support Policy;

c) Email Chain ;

d) Email Chain ( )

e) Report 14/07/2022 ( )

f) Behaviour Management Plan ( )

g) Meeting notes with

17. Documents relevant to this allegation submitted by the Provider under notice allowable under section 215 of the *Law* included:

    a) Educator Working Directly with Children Records and Child Attendance records from February to July 2022 inclusive;

    b) Copies of policy and procedure relating to:
        i. Supervision of children
        ii. Inclusion
        iii. Grievances and complaints.

    Documents not attached due to size, however, can be provided upon request.

18. Documents from the ACEQA database identify you as a current Nominated Supervisor at the Service. Refer to Attachment C.

19. Witness evidence supports that, in March 2022, there was sufficient risk of harm to children in the Silver Wattle from 's behaviour that educators commenced recording her incidents in the Behaviour Management Sheets.

20. A review of the Incidents/Illness/Injury reports submitted by the provider indicates that 19 injuries occurred to children between March 2022 and May 2022 as a result of 's actions prior to the creation of the Behaviour Management Plan (BMP) on 11 May 2022. There were several further injuries to children subsequent to its creation.

21. The volume of records being maintained by the Service and evidence from the witnesses, support that there was inadequate communication with the parent of , , including a failure to inform her of and involve her with the development and implementation of the BMP, contrary to the Behaviour Support Policy, within a reasonable time.

22. Please note that some witness statements were obtained exercising powers under section 215 of the *Law*. To clarify, educator witnesses were compelled by notice to attend before Authorised Officers and provide evidence. Failure to comply is an offence under the *Law*, as is obstructing or hindering the Authority's investigation.

23. Relevant extracts from Complainant 's statement include:

    a) My daughter, , born , was enrolled at the Nicholls Early Childhood Centre between early January 2021 and 14 July 2022.

    b) is currently 2years and 8 months old at this time.

c) *is not diagnosed with any medical condition. During enrolment at the Service, I did not signify that had any additional needs.*

d) *About March 2022, took over as the room leader from*

e) *About April 2022, I did have conversations with educators at pick up time from the Silver Wattle room, in particular in relation to 's behaviour.*

f) *Often, I had to question as to what the behaviours he was referring to. He was often vague.*

g) *Around April 2022, I had a conversation with in relation to 's behaviour in the office at pick up time. She asked me about how things were going at home with 's behaviour.*

h) *I do recall a conversation with at handover in the room about this time at pick up. This conversation focused on possible triggers and strategies to support . This was a short conversation in a busy room with other parents and children coming and going.*

i) *After a few weeks there were no incidents with and I had been speaking with educator, or assistant educator, and was being told that everything was fine with 's behaviour.*

j) *On the afternoon of Thursday, 14 July 2022, about 2pm I received a call from Office Manager for the Service, to advise that there a number of incidents with other children and that was in the office and needed to be picked up.*

k) *I organised for my mother, , to attend the Service and collect . As far as I am aware my mother wasn't given any details of the incident.*

l) *The following day, Friday 15 July 2022, I received an email from advising that due to the incidents involving , she would be suspended from the Service until plans and strategies were put in place to support and guide 's behaviour. The email also advised that a meeting was to take place on Monday 18 July 2022 and inviting me to attend.*

m) *On Monday 18 July 2022, about 8.30am, I attended the meeting at the Service. Present at the meeting was , and me.*

n) *AO Cropper has shown me meeting minutes, or notes, of a meeting I attended on 18/07/2022. In attendance was , and me. I have now read these minutes and confirm that they are overall somewhat accurate but some of the language tend to put the Service in a more reasonable light.*

o) *On Sunday 17 July 2022, I believe developed I forwarded an email an email to in relation to and may result in me not attending the meeting.*

p) *It is my belief that that on the 14 July 2022, was unwell while attending the Service which is likely to have affected her behaviours.*

q) *During the meeting [redacted] referred to a Behaviour Management Plan, that I had never seen or been consulted on, regarding its development, although I was asked at times if there were any strategies or triggers, I was aware of that would assist [redacted]'s behaviour.*

r) *During the meeting I request a copy of the Behaviour Management Plan and was informed that they would have to de-identify it and send it. I received it later the same day by email.*

s) *[redacted] told me during the meeting that she had recently received 5-6 formal complaints from parents to both herself and the regulatory body. And therefore, that she must take action.*

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

[redacted]

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

Contraventions Supported by the Allegation

26. Evidence gathered appears to support contraventions of sections 167(2) of the *Law.*

Potential Compliance Action

27. 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. Potential compliance actions 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.

28. Relevant legislation for enforceable undertakings and partial prohibition appears below.

29. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, or advising the Authority of any proposed change in employment.

30. 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
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

31. As mentioned previously, this notice is your opportunity to respond to the allegations and evidence set out in this Notice.

32. 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.

33. 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

34. 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*.

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

36. 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.

37. The *Law* applies to you as nominated supervisor and to any service are employed 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.

38. 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

39. Should you have any questions about this Show Cause Notice please contact Authorised Officer Brian Cropper via email at brian.cropper@act.gov.au

Yours sincerely

Jo Williams
Director
Education and Care Regulation and Support
ACT Education Directorate

28 October 2022