

[Redacted]

Person with Management or Control
WODEN COMMUNITY SERVICE LIMITED
RE: Duffy OSHC

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).
2. 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*.
3. The Authority is currently investigating multiple suspected offences regarding Duffy OSHC, SE-00009668 (the Service) operated by WODEN COMMUNITY SERVICE LIMITED - PR-00005883 (the Provider). 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 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 166 and 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. “Discipline” is any strategy employed by an educator with the intention of changing a child’s behaviour. Discipline that is inappropriate within the meaning of section 166 of the *Law* includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child. Examples include hitting, yelling, physically

dragging a child, unreasonable restraint of a child, using threatening or humiliating language, isolating, or shaming children.

7. 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

8. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas:
 - a. Inappropriate discipline.
 - b. Protection from harm.

Facts

9. On 8 March 2024, the Authority received a notification of parent complaint (NOT-40964358) from the Provider, advising of an allegation that an educator, [REDACTED] had inappropriately grabbed and dragged children after failing to comply with his direction on 7 March 2024. Refer Attachment A.
10. Accompanying the notification were supporting documents including email complaint with Provider response and notice of investigation. Refer Attachment B.
11. Due to the risk of harms and hazards likely to cause injury if children are subject to inappropriate conduct amounting to discipline, the Authority determined to investigate, engaging suspected offences under sections 166 and 167 of the *Law*.
12. Evidence obtained during the investigation to date, support the allegation and suspected offences under the *Law*.

Allegation

13. It is alleged that by 7 March 2024, the Provider failed to ensure that no child being educated and cared for by the Service was subjected to any conduct amounting to discipline, unreasonable in the circumstances, in that, [REDACTED] grabbed and dragged children, believed to be [REDACTED] 8:4 old and [REDACTED] 8 old, by the arm toward a gate, in contravention of s166(1) of the *Law*, and giving rise to a contravention of s167(1) of said *Law*.

Legislation Relevant to the Allegations

14. The following provisions of the *Law* are relevant to the Allegation:

Section 166(1) of the Law - Offence to use inappropriate discipline

The Approved Provider of an education and care service must ensure that no child being educated and cared for by a service is subjected to-

- (a) Any form of corporal punishment ; or
- (b) Any discipline that is unreasonable under the circumstances.

Penalty: \$11 400, in the case of an individual

\$57 400, 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 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 117A Placing a person in day-to-day charge

For the purposes of the definition of a *person in day-to-day charge* in section 5(1) of the Law, a person is in day-to-day charge of an education and care service if—

- (a) the person is placed in day-to-day charge by the approved provider or a nominated supervisor of the education and care service; and
- (b) the person consents to the placement in writing.

Regulation 117B Minimum requirements for a person in day-to-day charge

(1) An approved provider or a nominated supervisor of an education and care service must not place a person in day-to-day charge unless—

- (a) the person has attained the age of 18 years; and
- (b) the approved provider or nominated supervisor (as the case requires)—
 - (i) has had regard to the matters set out in sub regulation (2); and
 - (ii) has taken reasonable steps to ensure that the person has adequate knowledge and understanding of the provision of education and care to children and an ability to effectively supervise and manage an education and care service.

(2) For the purposes of sub regulation (1)(b)(i), the matters are—

- (a) the person's history of compliance with—

- (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and
 - (iii) a children’s services law of a participating jurisdiction; and
 - (iv) an education law of a participating jurisdiction; and
- (b) any decision under the Law to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person under—
- (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and
 - (iii) a children’s services law of a participating jurisdiction; and
 - (iv) an education law of a participating jurisdiction.

Regulation 117C Minimum requirements for a nominated supervisor

- (1) For the purposes of section 161A of the Law, the prescribed minimum requirements for nomination of a person as a nominated supervisor of an education and care service are that the person must—
- (a) have attained the age of 18 years; and
 - (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.
- (2) In determining whether to nominate a person as a nominated supervisor, an approved provider of an education and care service must have regard to the following matters—
- (a) the history of the person’s compliance with—
 - (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and
 - (iii) a children’s services law of a participating jurisdiction; and
 - (iv) an education law of a participating jurisdiction;
 - (b) any decision under the Law to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person under—
 - (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and
 - (iii) a children’s services law of a participating jurisdiction; and
 - (iv) an education law of a participating jurisdiction.

Evidence relevant to the Allegation

15. On 10 April 2024, the Provider furnished documents pursuant to notice issued by the Authority under section 215 of the *Law* (215 notice). Relevant documents include:
- a) Responsible person record.
 - b) Child Attendance records.
 - c) Working Directly with Children (WDWC) records.
 - d) Policies and procedures.
 - e) Personnel file [redacted]
 - f) Internal investigation.

Refer Attachment C for relevant documents.

16. Child Attendance records identify [redacted] and [redacted] attending Before School Care on 7 March 2024 with siblings, [redacted] and [redacted]. Refer Attachment C.

17. WDWC records identify [redacted] and [redacted] as educators in attendance at the Service between 7am and 9.30am on 7 March 2024. Refer Attachment C.

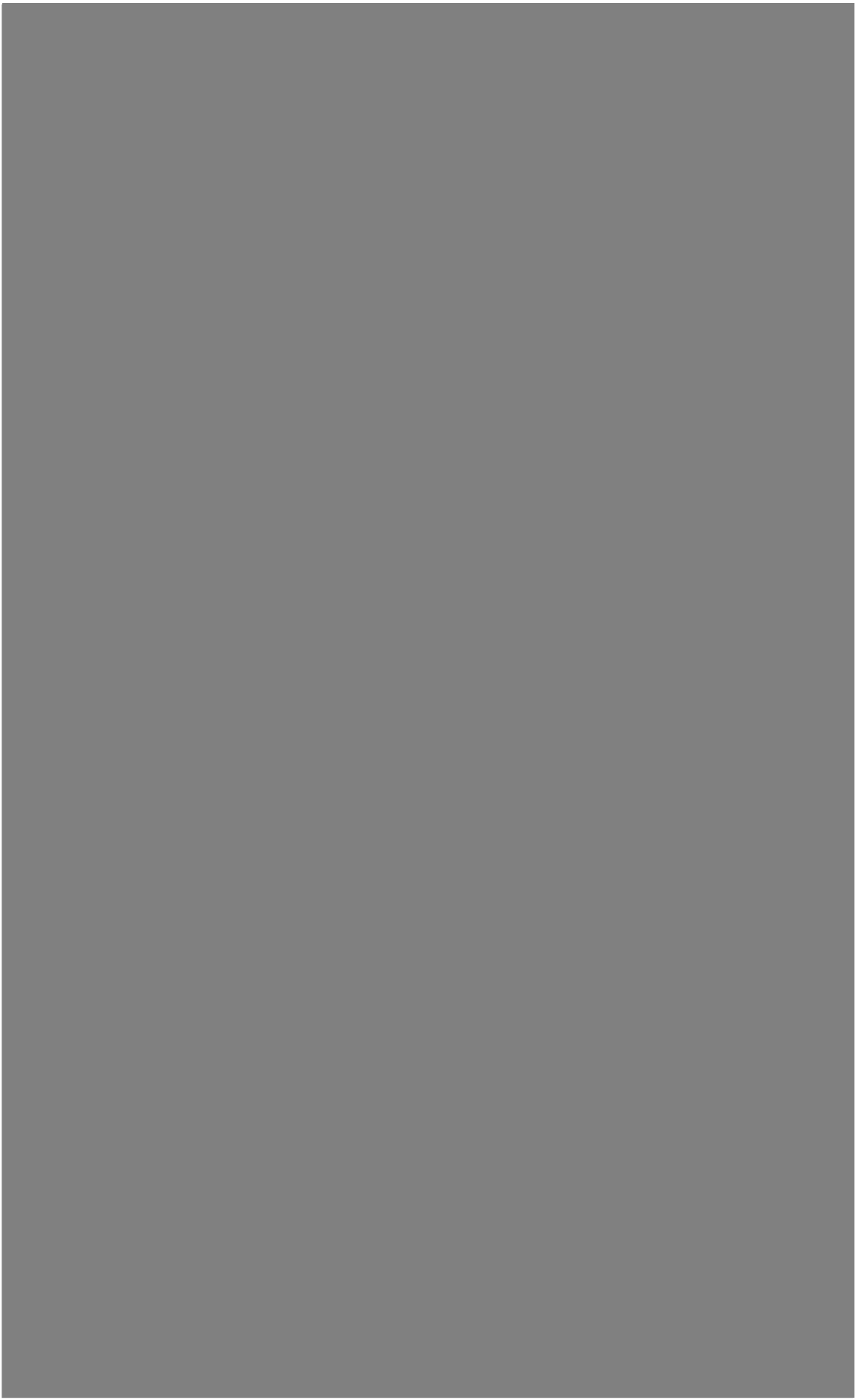
18. Documents and evidence indicate that [redacted] was the Responsible Person for Before School Care on 7 March 2024. Refer to Attachment C for responsible person form.

19. During the investigation, the Authority obtained a witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the specific circumstances surrounding the alleged offences, witnesses may be identifiable from the content of their evidence.

20. Please note witness statements obtained from educators utilise powers under section 215 of the *Law*, imposing an obligation to appear before the Authority and provide relevant evidence under questioning by an Authorised Officer. It is an offence to fail to comply.

21. Relevant extracts from complainant, Complainant A's statement regarding unprompted disclosure evidence from sibling [redacted] include:







22. Furthermore, Complainant A records her contemporaneous complaint in an email forwarded to Provider on evening of 7 March 2024. Refer to email titled Incident at Duffy at Attachment B.

23. Relevant extracts from Complainant B's statement include:

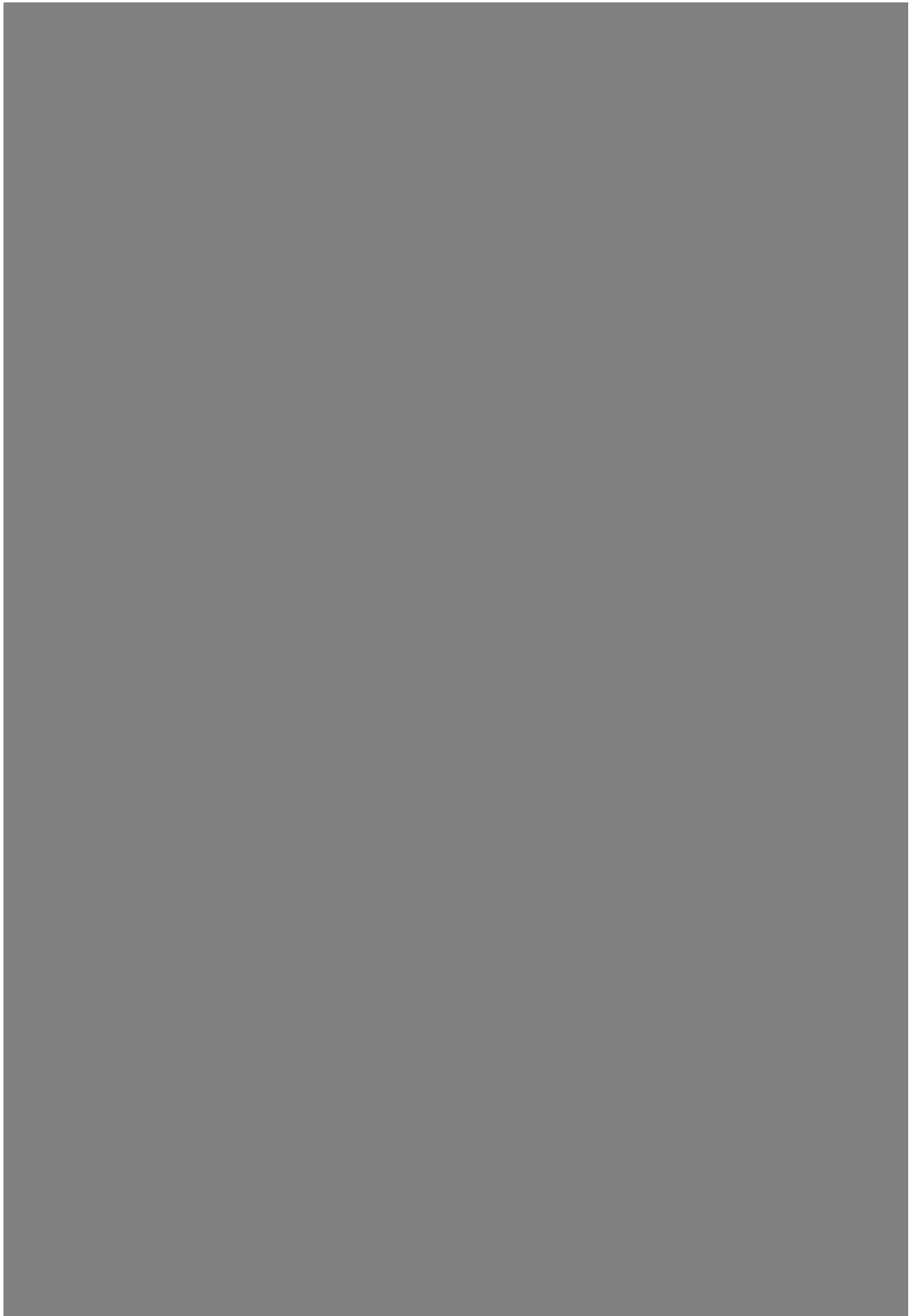




24. Complainant B also forwards an email complaint to Provider on 7 March 2024 regarding the incident. Refer to Attachment B for email titled Urgent Complaint.

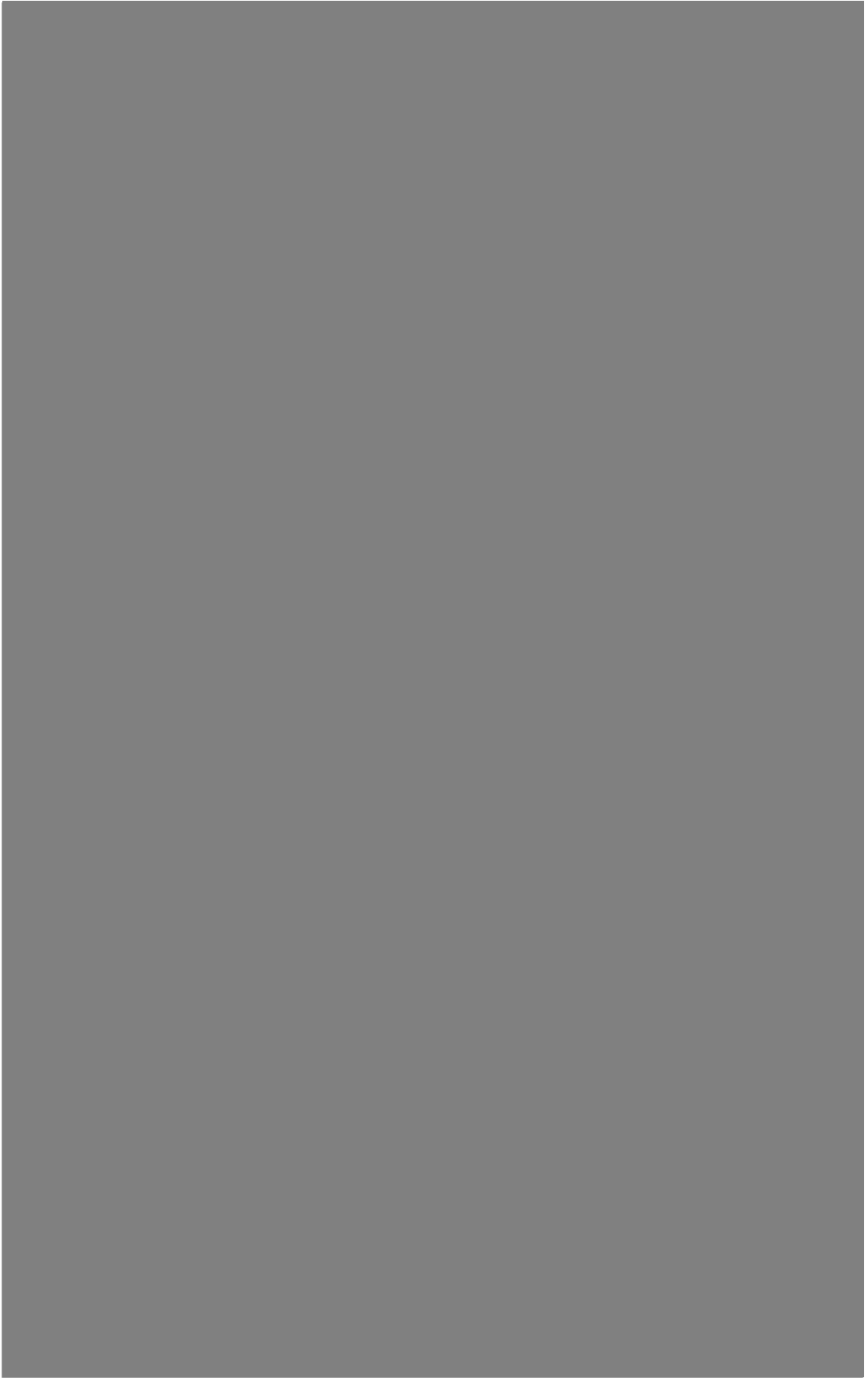
25. Relevant extracts from Witness A's statement include:





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







27. Witness B's email response to Provider request dated 13 March 2024 contains corroborative evidence. These emails were not furnished to the Authority on 10 April 2024. Refer to Attachment D for emails.
28. [redacted] appears to have been a Nominated Supervisor at Wanniasa OSHC between 02/05/2023 and 22/01/2024, noting documentation was not furnished by the Provider in his personnel file. Refer to Attachment D for NS01 dates and NS01 Nominated Supervisor consent form.
29. However, included within personnel file, was [redacted] performance management discussion and plan dated 5 May 2023, arising from interactions with parents and children at Wanniasa OSHC, in particular, shouting and yelling at children. Refer to Attachment C for Performance Management Form, Plan and signed Code of Conduct.
30. Records indicate [redacted] performance was still of concern in the area of:
 - a) Complying with applicable Australian Laws and WCS policy and procedure
 - b) Upholds WCS vision, values and behaviours, goals, integrity and reputation.Refer Attachment C for Formal Meeting Notes dated 17 July 2023.
31. An email version of events is completed by [redacted] on 7 March 2024, presumably on request of Provider, that include an admission to interacting with [redacted] on the basis of protecting [redacted] (sibling).
32. [redacted] believed child [redacted] was about to suffer grievous bodily harm, uses a restrictive practice upon child, [redacted] taking hold of him. It appears no incident report, or parent contact, was undertaken by [redacted], who, as a former Nominated Supervisor and current Responsible

Person, should be aware of reporting requirements. Refer Attachment B for statement of [REDACTED] [REDACTED] 07032024.

33. Training records for [REDACTED] appear to support the Provider did not ensure that [REDACTED], as responsible person, had adequate knowledge and understanding of the provision of education and care to children by 7 March 2024 as required by regulation. Refer to Attachment C for training records.
34. On 13 June 2024, Provider furnished balance of internal investigation pursuant to original 215 Notice issued by Authority. Relevant documents include:
 - a) Investigation report (final).
 - b) Risk matrix.
 - c) Summary of findings.
 - d) Recommendation.Refer to Attachment E for further investigation documents.
35. Furthermore, Provider's interview precis with [REDACTED], expand on his interactions with the children, [REDACTED] and [REDACTED] and appears inconsistent with child disclosures, Witness B's evidence and [REDACTED] initial email version. The Authority notes [REDACTED] further email addendum to his original email of 7 March 2024. Refer Investigation report 5.6 (a)-(d) and email addendum at Attachment E.
36. [REDACTED] also outlines that he had never undertaken training in relation to conflict resolution within his further email on 7 March 2024. Refer to email addendum at Attachment E.
37. The Authority notes that the Provider's investigation report refers to complainants' emails as hearsay and infers that it is inadmissible. No exploration of any exception to the hearsay rule appears to have been considered.
38. Within the Provider's investigation final report, the child witness interview precis is referred to. There appears no accompanying record of interview with either child outlining their ages or detailing questions asked and answer given. Refer Investigation Report Attachment E.

Contraventions supported by evidence.

39. Evidence gathered appears to support that children, [REDACTED] and [REDACTED] were subjected to inappropriate interaction amounting to discipline, inclusive of a restrictive practice, unreasonable in the circumstances, contravening section 166(1) of the *Law* and giving rise to a contravention of s167(1) of the *Law*.
40. Ensuring that no child is subjected to corporal punishment, or discipline unreasonable in the circumstances, is viewed as being a reasonable precaution to take to protect children from harm likely to cause injury.

Potential Compliance Action

41. 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 an 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*.
42. 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.
43. 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*.

Right of response

44. 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.
45. 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 to 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

46. 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*.
47. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
48. 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.
49. 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>.
50. 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>.
51. 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

25 July 2024