



[Redacted]

Nominated Supervisor
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 may be 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 you have a case to answer regarding suspected offences. However, the Authority’s investigation is not complete until you have 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 (or any combination of them) 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 interactions 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, you as Nominated Supervisor failed to ensure that no child being educated and cared for by the Service is subjected to any conduct amounting to discipline that is 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(2) of the *Law*, and giving rise to a contravention of s167(2) of said *Law*.

Legislation Relevant to Allegations

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

Section 166(2) of the Law - Offence to use inappropriate discipline

A Nominated Supervisor of an education and care service must ensure that no child being educated and cared for by the Service is subjected to-

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

Penalty: \$11 400

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

A 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

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 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 children [redacted] and [redacted] attending Before School Care on 7 March 2024 with siblings, [redacted] and [redacted]. Refer Attachment C.
17. WDWC records identify [redacted], [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 A's statement regarding unprompted disclosure from sibling [redacted] include:

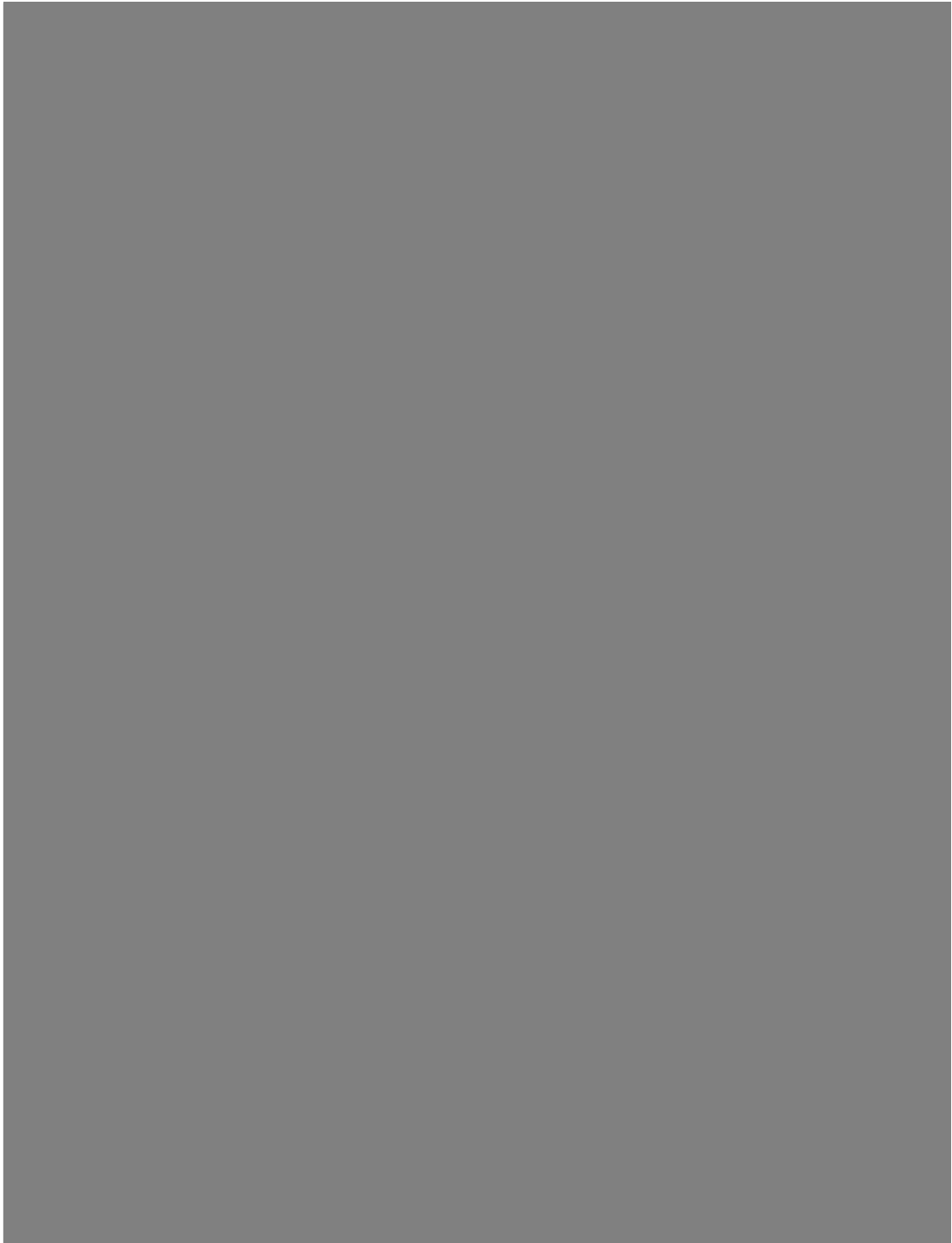






22. Furthermore, Complainant A records her contemporaneous complaint in an email forwarded to Provider on evening of 7 March 2024. Refer to email titled Incident at Duffy at Attachment B.

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.

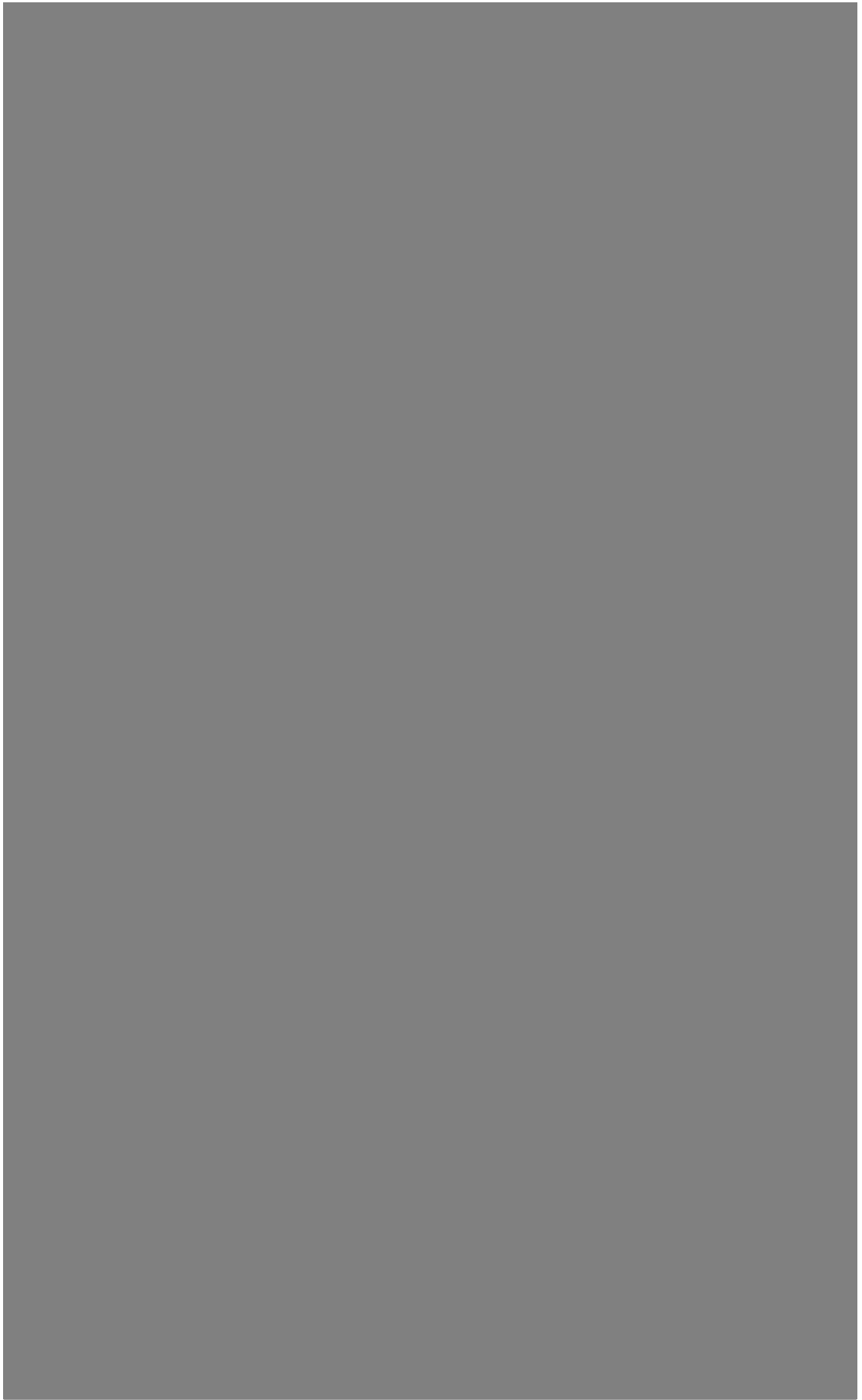
25. Relevant extracts from Witness A's statement include:





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





- [REDACTED]
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] as 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 or completed 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] 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. Authority records indicate that you were the Nominated Supervisor between 22 March 2023 and 29 April 2024. Refer to Attachment F for NSO-1 and dates.

Contraventions supported by evidence.

38. Evidence gathered appears to support that children [REDACTED] were subjected to inappropriate interaction amounting to discipline, inclusive of a restrictive practice, unreasonable in the circumstances, contravening section 166(2) of the *Law* and giving rise to a contravention of s167(2) of the *Law*.
39. 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.

Fitness and Propriety as Nominated Supervisor

40. *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.
41. 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.
42. 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*.
43. 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).

44. 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.
45. During the investigation, there is evidence to support that you failed to ensure that [REDACTED] was sufficient aware of his obligations as Responsible Person and educator thereby ensuring his conduct toward children, [REDACTED] did not amount to discipline, unreasonable in the circumstances on 7 March 2024.
46. This evidence raises a concern about your ability to manage and supervise an education and care service.
47. 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

48. 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 working in the early education and care sector and/or acting in a role as Nominated Supervisor.
49. Relevant legislation for prohibition, enforceable undertakings and partial prohibition appears below.
50. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
51. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector as a whole.
52. 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.
53. 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.
54. Prohibition refers to prohibition from working in the early education and care sector.

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 of the Law – Grounds for giving prohibition notice

- (1) The Regulatory Authority may give a prohibition notice to a person who is in any way involved in the provision of an approved education and care service if it considers that there may be an unacceptable risk of harm to a child or children if the person were allowed –
 - (a) to remain on the education and care service premises; or
 - (b) to provide education and care to children.
- (2) For the purposes of subsection (1), a person may be involved in the provision of an approved education and care service as any of the following –
 - (a) an approved provider;
 - (b) a nominated supervisor;
 - (c) an educator;
 - (d) a family day care educator;
 - (e) an employee;
 - (f) a contractor;

- (g) a volunteer;
- (h) a person who was formerly a person referred to in paragraphs (a) to (g) in relation to the approved education and care service –
or in any other capacity

Section 183 – Show cause notice to be given before prohibition notice

- (1) Before giving a prohibition notice, the Regulatory Authority must give the person a notice (a *show cause notice*) –
 - (a) stating that the Regulatory Authority proposes to give the person a prohibition notice; and
 - (b) stating the reasons for the proposed prohibition; and
 - (c) inviting the person to make a written submission to the Regulatory Authority, within a stated time of at least 14 days, about the proposed prohibition.

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.

Effect of an Enforceable Undertaking

- 55. An Enforceable Undertaking is a formal “promise” to the Authority to do or not do certain things. Terms vary, but examples of requirements may include:
 - a. only working with children under supervision; or
 - b. doing some additional training to improve your skills as an educator; or
 - c. keeping the Authority advised of your workplace; or
 - d. having an approved mentor.
- 56. It is a flexible way to ensure ongoing compliance with the *Law* and *Regulations* and may be appropriate depending on the level of risk to children.
- 57. If you offer an enforceable undertaking and the Authority accepts it, failure to comply with any of its terms after acceptance allows the Authority to apply to the relevant tribunal or court for an order under section 181(2) of the *Law* to enforce the undertaking.

Effect of a Prohibition Notice

58. If, after considering all available evidence and any submission you wish to make, the Authority decides to issue a prohibition notice, while the prohibition notice is in force you must not:
- a. provide education and care to children for an education and care service; or
 - b. be engaged as an educator, family day care educator, employee, contractor or staff member of, or perform volunteer services for, an education and care service; or
 - c. carry out any other activity relating to education and care services.

Right of response

59. As mentioned previously, no decision has been made regarding the allegations - 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.
60. At Attachment G 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

61. 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*.
62. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against 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 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>.
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 Senior Investigator Brian Cropper on email 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