



Email: [Redacted]

Dea [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 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 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 area of inappropriate discipline.

Facts

9. On 8 March 2024, the Authority received a notification of parent complaint (NOT-40964358) from the Provider, advising of an allegation that you had inappropriately grabbed and dragged children after they failed to comply with your direction on 7 March 2024. Refer Attachment A.
10. Accompanying the notification were supporting documents including complaint emails 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 section 166 *Law*.
12. Evidence obtained during the investigation to date, support the allegation and suspected offence under the *Law*.

Allegation

13. It is alleged that on 7 March 2024, as an employee of the Service, you subjected children, believed to be [REDACTED] 3:4 old and [REDACTED] 8 old, being educated and cared for by the Service to conduct amounting to discipline, unreasonable in the circumstances, in that, you grabbed and dragged them by the arm toward a gate, in contravention of s166(3) of the *Law*.

Legislation Relevant to the Allegations

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

Section 166(3) of the Law - Offence to use inappropriate discipline

The staff member of, or volunteer at an education and care service must not subject any 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

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) on 26 March 2024. Relevant documents include:

- a) Responsible person record
- b) Child Attendance records,
- c) Working Directly with Children (WDWC) records.
- d) Policies and procedures.
- e) Email complaints.
- f) Personnel file [REDACTED]
- g) 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] respectively. Refer Attachment C.

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

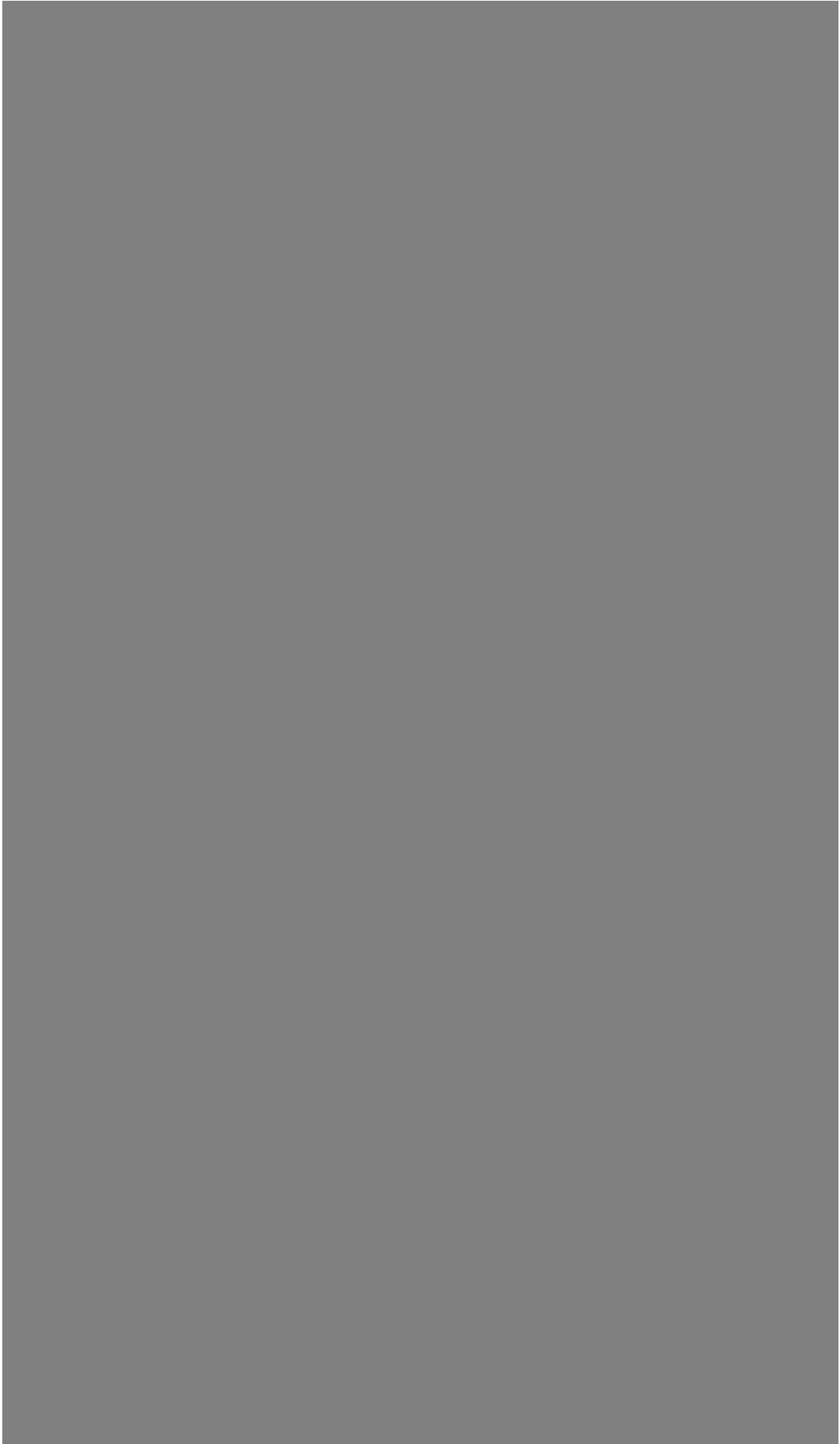
18. Records and evidence indicate you were the Responsible Person in charge of the Before School Care on 7 March 2024. Refer to Attachment C for responsible person form.

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, statement regarding unprompted disclosure from sibling [REDACTED] include:



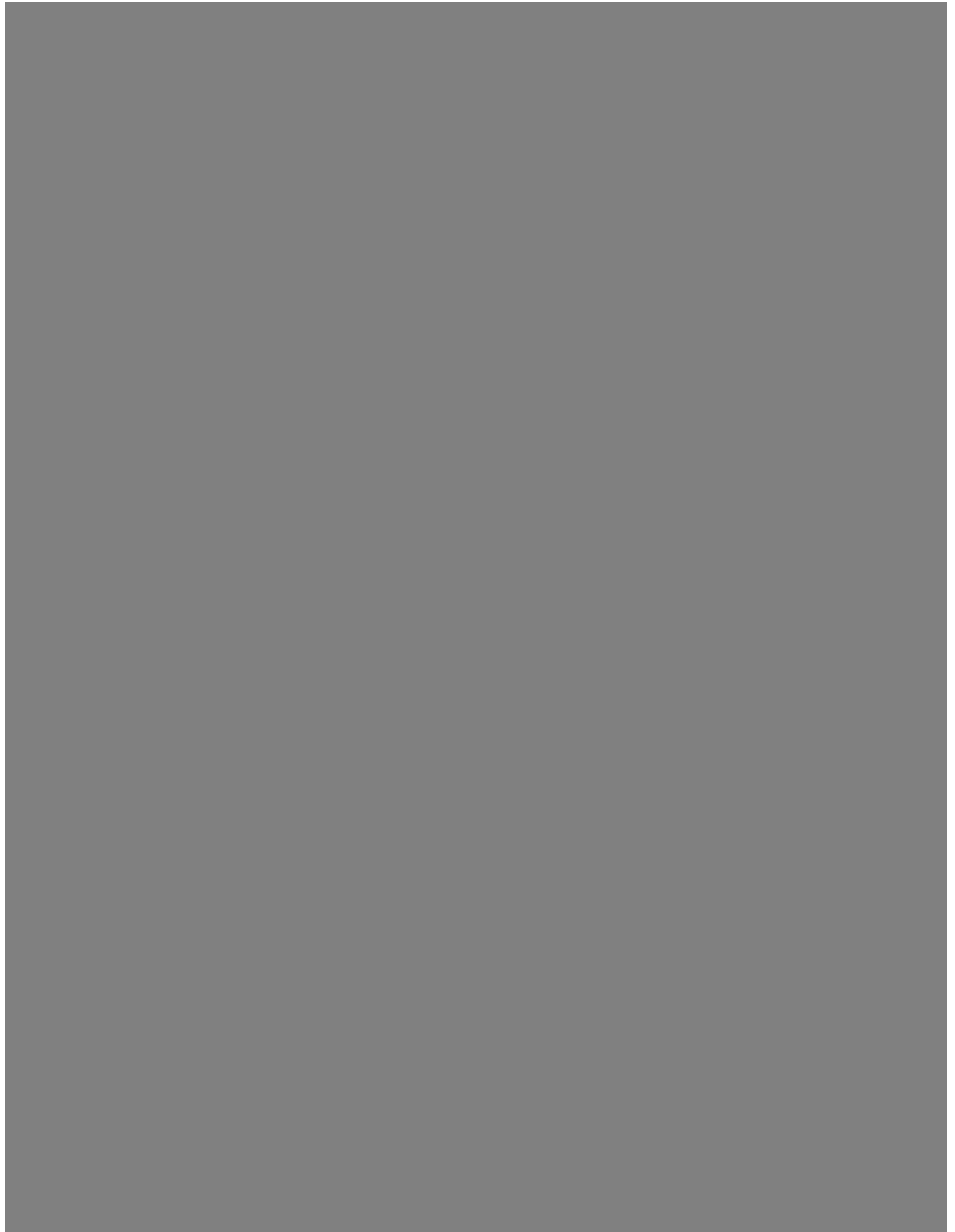




22. Furthermore, Complainant A records her complaint in an email forwarded to Provider on evening of 7 March 2024. Refer to email titled Incident at Duffy at Attachment B.

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





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





27. Witness B responds to Provider request dated 13 March 2024 by email containing corroborative evidence. Refer to Attachment D for emails.
28. Included within personnel file was your performance management plan arising from interactions with parents and children, in particular, shouting and yelling at children. Refer to Attachment C for Performance Management Form, Plan and signed code of conduct.
29. Records indicate your 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.
30. Email version of events was completed by you on 7 March 2024, presumably on request of Provider, include admission of interacting with [REDACTED] (n the basis of protectin [REDACTED] Sibling).
31. You believed child [REDACTED] was about to suffer grievous bodily harm and use a restrictive practice upon child [REDACTED] taking hold of him. It appears no incident report or parent contact was undertaken or completed by you, who, as a former Nominated Supervisor and Responsible Person, should have been aware of reporting requirements. Refer Attachment B for statement of [REDACTED] 07032024.
32. Your training records appear to support that you did not undertake further training, as responsible person, or as noted by the Authority, Nominated Supervisor, or 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.
33. 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 D for further investigation documents.

34. Furthermore, Provider's interview precis with you, expand on your interactions with the children, [REDACTED] and [REDACTED] and appears inconsistent with child disclosure, Witness B's evidence and your initial email version. The Authority notes your addendum to that original email. Refer Investigation report 5.6 (a)-(d) and addendum at Attachment D.

Contraventions supported by evidence.

35. Evidence gathered appears to support that children [REDACTED] and [REDACTED] were subjected to inappropriate interactions amounting to discipline, inclusive of a restrictive practice, unreasonable in the circumstances, contravening section 166(3) of the *Law*.

Potential Compliance Action

36. 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.
37. Relevant legislation for prohibition, enforceable undertakings and partial prohibition appears below.
38. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
39. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector as a whole.
40. 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.
41. 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.
42. 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

43. 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.
44. 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.
45. 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

46. 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

47. 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.
48. 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

49. 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*.
50. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
51. 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.
52. 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>.
53. 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>

54. 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