



Ms [REDACTED]
Nominated Supervisor
Curtin Primary School - Curtin North Preschool Unit

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 multiple suspected offences at Curtin Primary School - Curtin North Preschool Unit SE-00011179 (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 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 for you to answer regarding a suspected offence under the *Law*.
5. However, the Authority’s investigation is not complete until you have had an opportunity to respond to the allegation and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you as a person who is a Nominated Supervisor. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the allegation may constitute an offence under sections 165-167 of the *Law*. If, after considering all available evidence, the Authority finds any offence is substantiated (or any combination of them), it will need to consider whether compliance action is required.
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.

Facts

3. On 8 May 2023, the Authority received a notification (NOT-40853124) from the Provider advising that two children, [REDACTED] aged 4:11 and [REDACTED] aged 4:4), were unaccounted for a period of 10 to 30 minutes, after scaling the rear fence and leaving the Service, unnoticed by educators. [REDACTED] and [REDACTED] were later located and returned by members of the public. Refer Attachment A.
4. Documents accompanying the notification include the following:
 - a. Roll sheet.
 - b. Photo of service rear fence.
 - c. SAS incident report.
 - d. Relevant emails.
 - e. Staffing record book.
 - f. Supervision points maps.

Refer Attachment B.

5. Due to risk of harms and hazards likely to cause injury if children are inadequately supervised, the Authority determined to investigate suspected offences under section 165 and 167 of the *Law*.
6. Information received during the investigation provided reasonable grounds to suspect further additional offences under section 167 of the *Law*.

Legislation Relevant to Allegations One and Two

7. The following provisions of the *Law* are relevant to Allegations One and Two:

Section 165(2) of the Law - Offence to inadequately supervise children

A nominated supervisor of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: \$10 000, in the case of an individual

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: \$10 000, in the case of an individual

Allegation One – Section 165 and 167 of the Law

8. It is alleged that on 8 May 2023, the Nominated Supervisor failed to ensure that all children being educated and care for by the service, were adequately supervised at all times, in that children, believed to be [REDACTED] (4:11) and [REDACTED] (4:4), exited the service by climbing bushes and exiting over a rear fence, unsupervised and unnoticed, later located by

a members of the public about a kilometer away and returned, contravening section 165(2) of the *Law*, engaging a contravention of 167(2) of said *Law*.

Evidence relevant to Allegation One

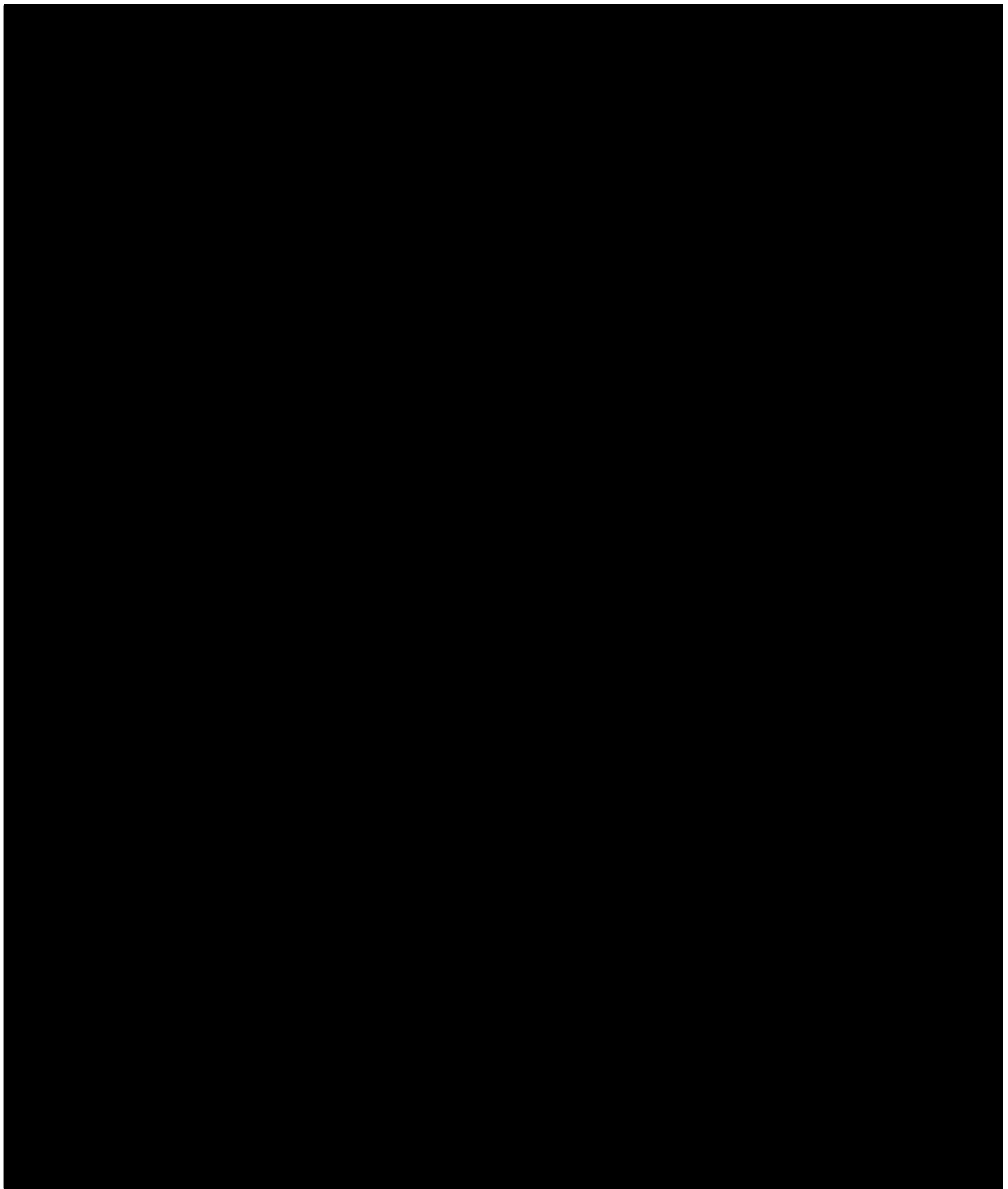
1. On 31 May 2023, the Provider furnished documents pursuant to a notice issued under section 215 on 23 May 2023, which included the following relevant:
 - a. Responsible person.
 - b. WHS email.
 - c. Service risk assessment (current as of 8 May 2023)
 - d. Service Risk Assessment (updated after 8 May 2023)
 - e. Class roll.
 - f. Working Directly with Children Record (WDWC).
 - g. Policy and Procedure including:
 - (i). ACTPS Code of Conduct.
 - (ii). Supervision points map.
 - (iii). Supervision procedure.
 - (iv). Diagram of Service.
 - h. Incident report.

Refer Attachment C for records relevant to the allegation.

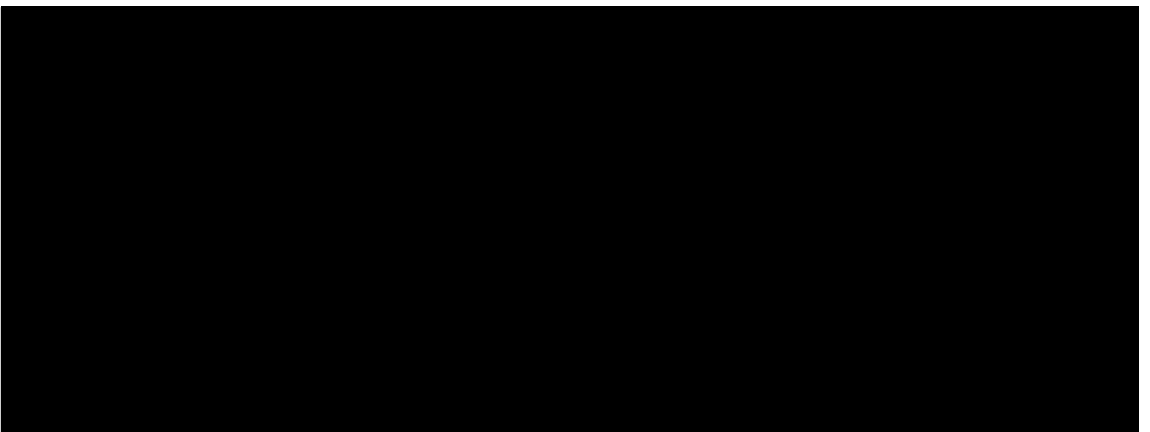
9. On Wednesday 7 June 2023, AO's Fairburn and Cropper conducted an unannounced visit at the Service pursuant to section 199 of the *Law*, where measurements and photographs were taken. Refer to statement of AO Cropper at Attachment D.
10. On 30 June 2023, the Provider furnished documents pursuant to a supplementary 215 Notice issued 26 June 2023 which included the following relevant records for child, [REDACTED]
[REDACTED]
 - a. Enrolment application.
 - b. Eating plan.
 - c. Personal care plan.
 - d. Adjustment matrix.

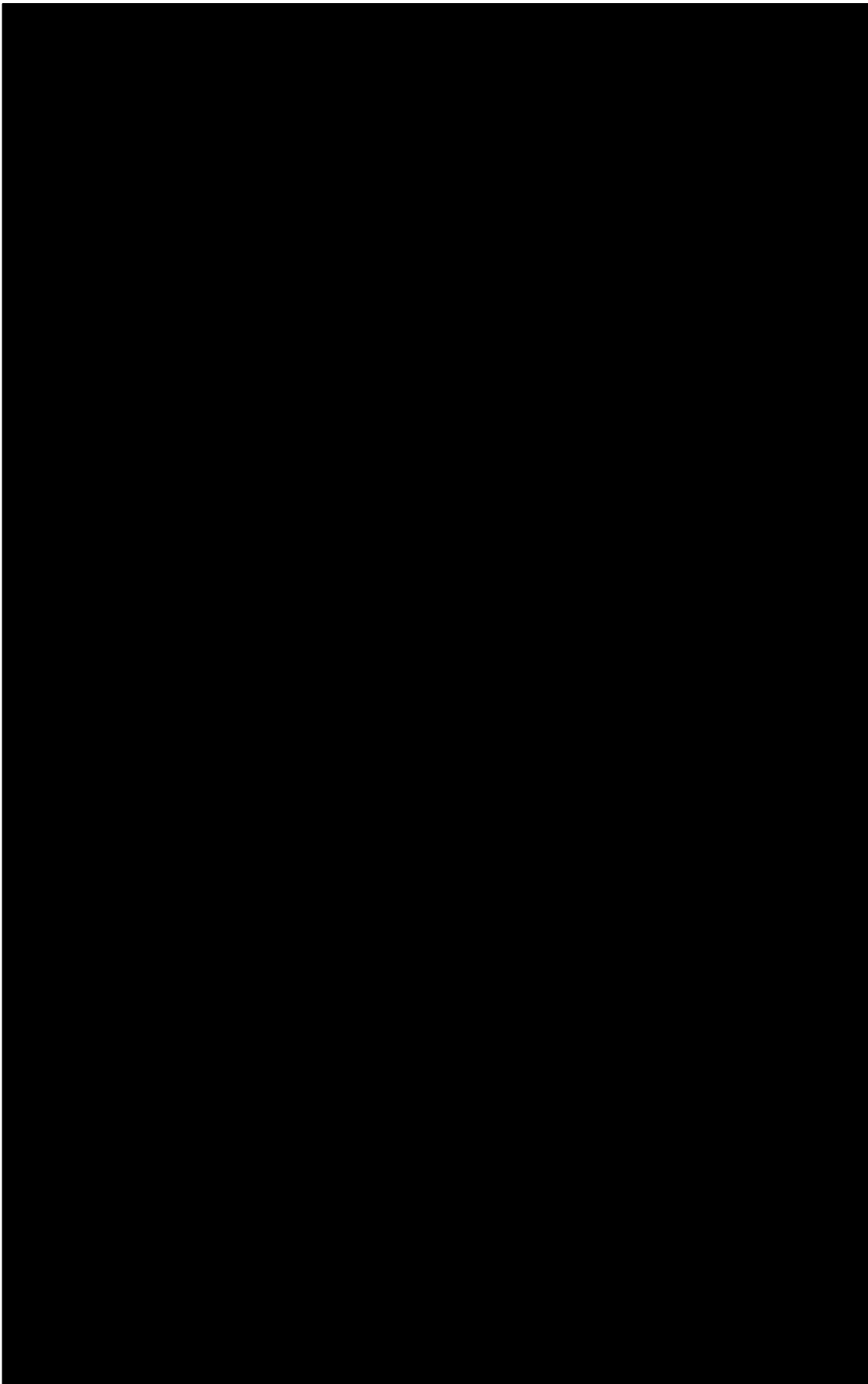
Refer Attachment E.

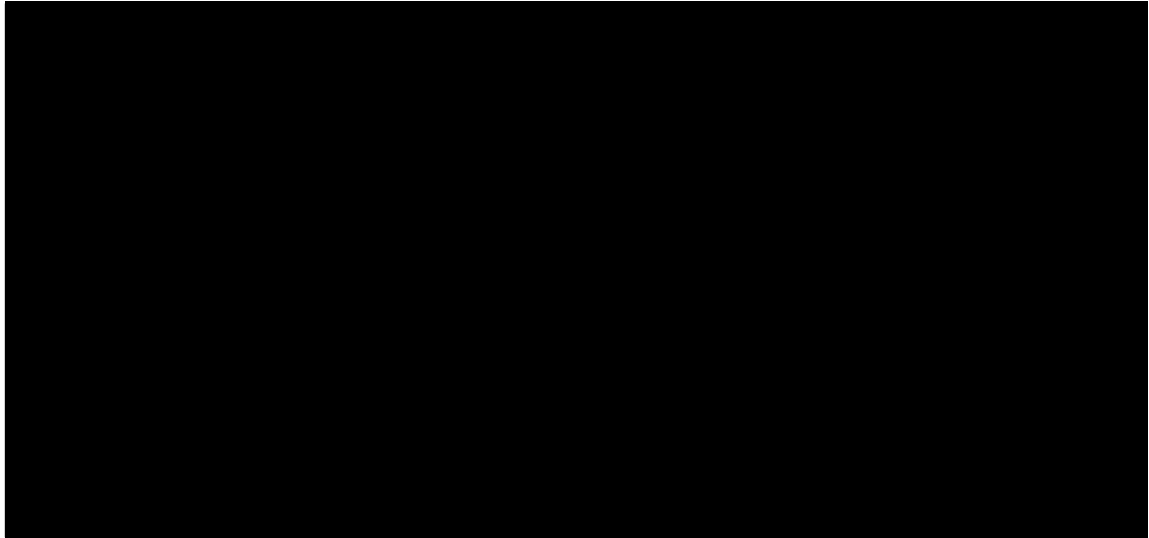
11. During the investigation, the Authority obtained numerous witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the specific circumstances surrounding the alleged offences, witnesses are identifiable from the content of their evidence. 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.
12. Relevant extracts from Witness A's statement include:



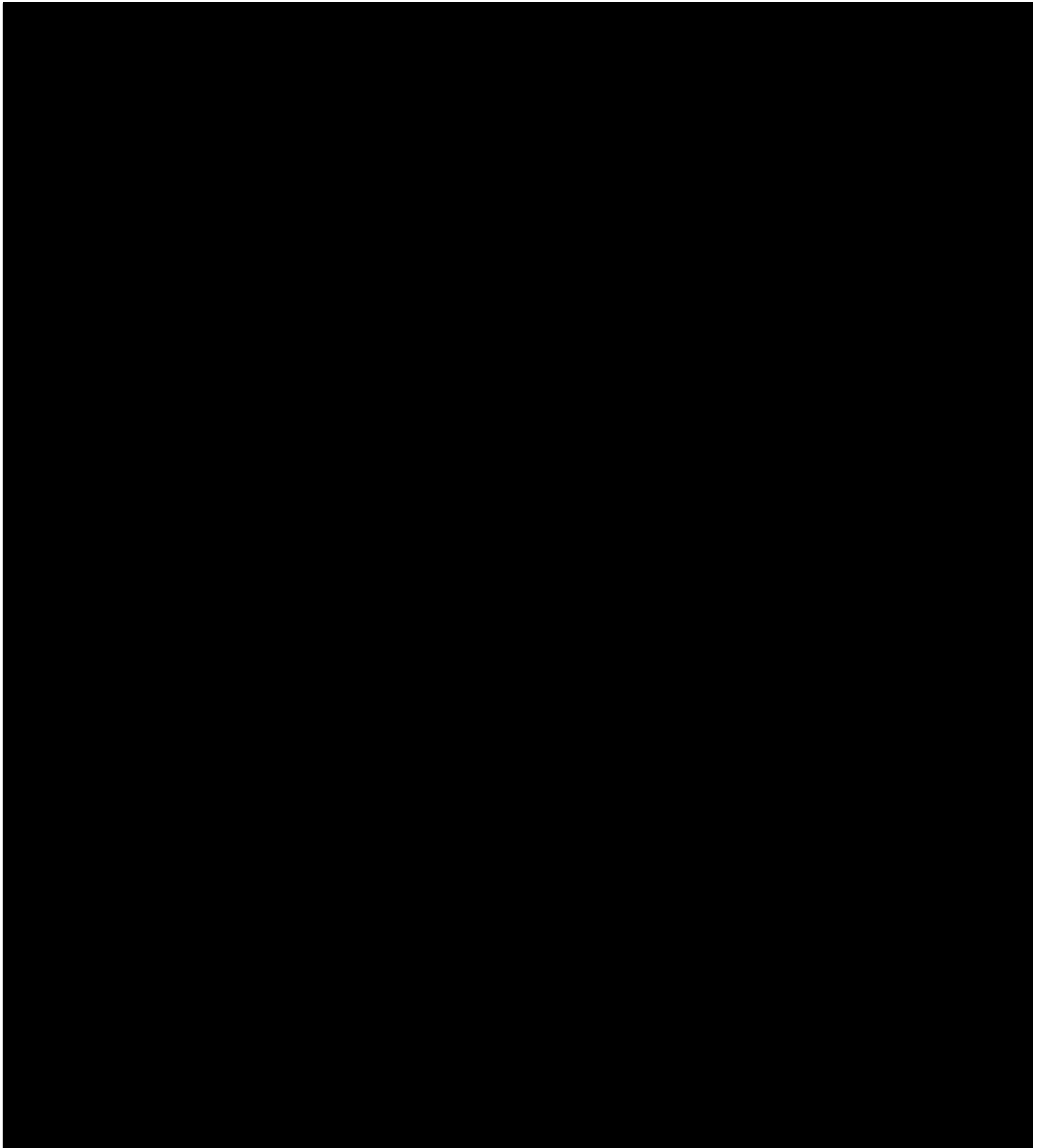
13. Relevant extracts from Witness B's statement include:

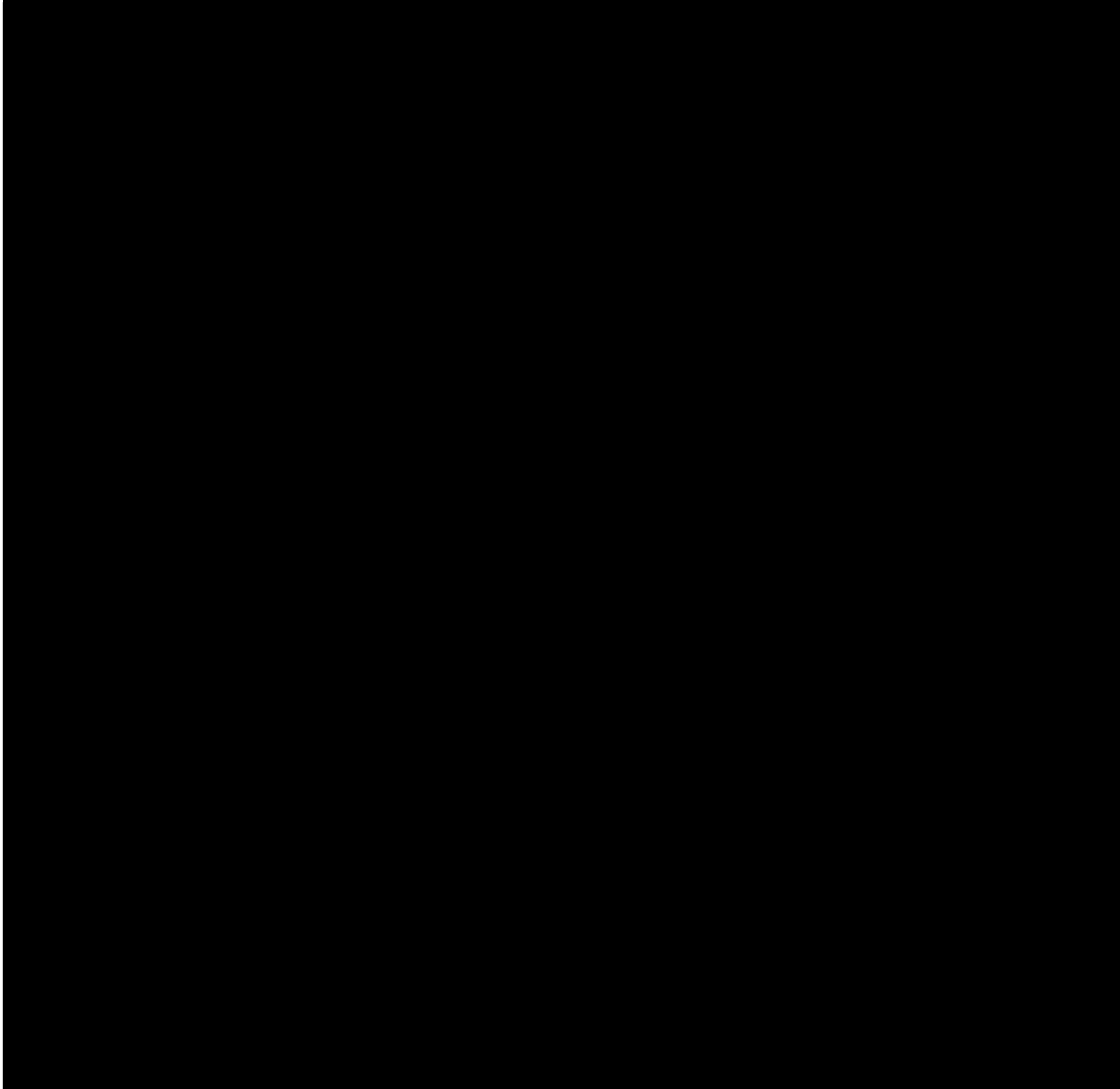




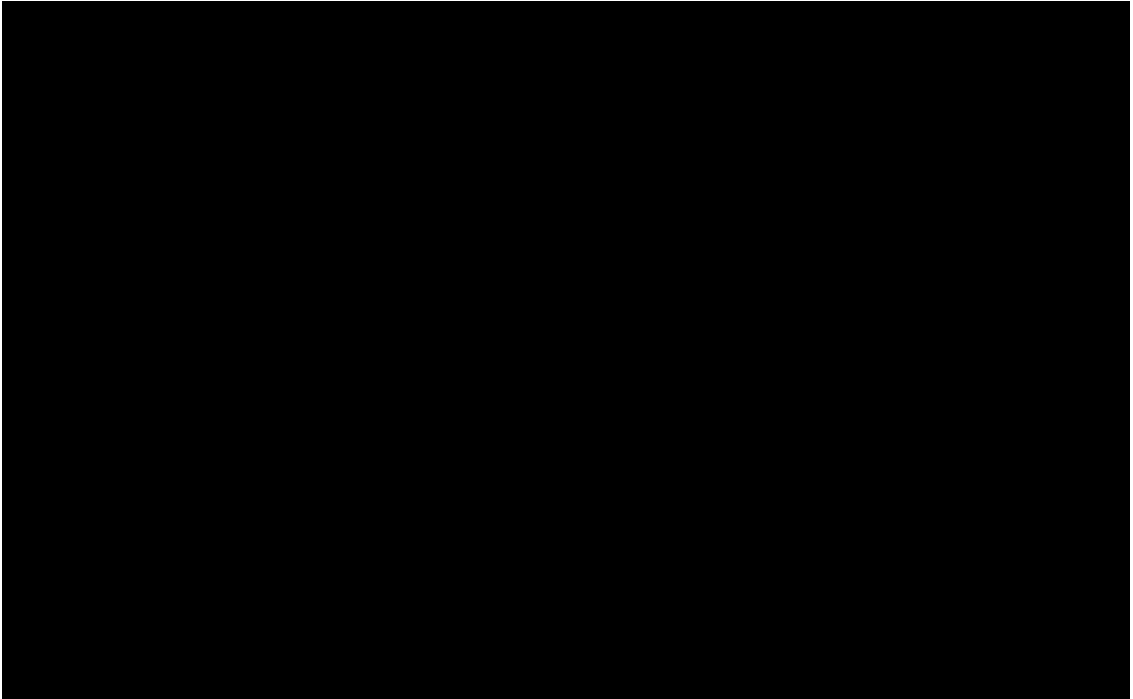


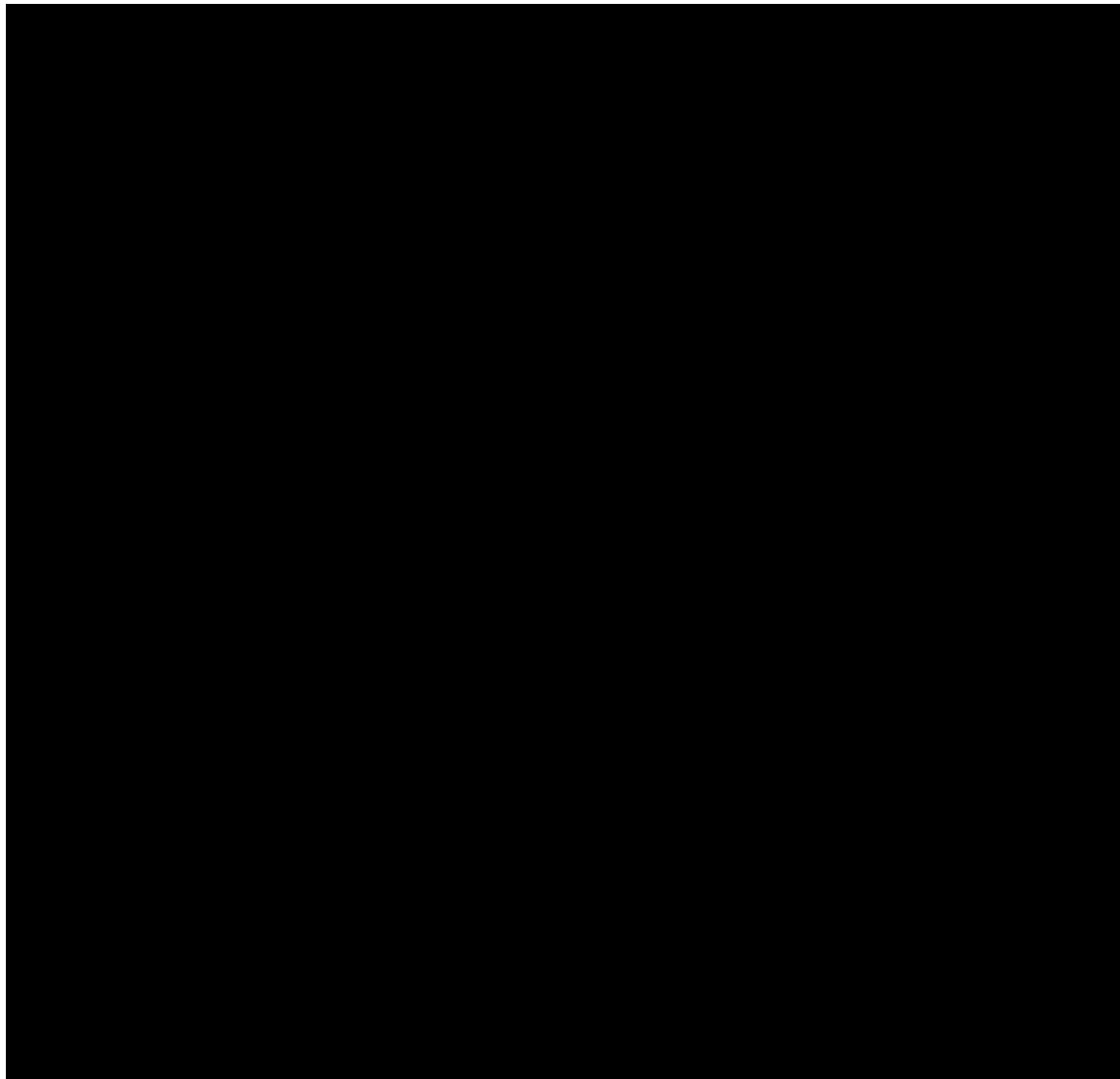
14. Relevant extracts from Witness C's statement include:





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





16. The WDWC record indicate that of the three educators working on 8 May 2023, only Ms [REDACTED] was afforded break cover in the form of Ms [REDACTED]'s attendance. Ms [REDACTED] did not have lunch and Ms [REDACTED] did not have any break cover. Critically, between 12:15 to 1pm, the two remaining educators supervised nineteen children and provided one-on-one support to [REDACTED]. Refer to WDWC at Attachment C.
17. Witness evidence and documents support the Provider being aware of the level of one-on-one support required by [REDACTED] necessitating employment of Ms [REDACTED] to perform that duty. Refer to Attachment E for support documents.
18. Relevant extract from Provider's supervision policy include:

"Implement consistent supervision strategies and not perform other duties while responsible for the supervision of children."

Refer Attachment C for Supervision Policy and Procedure.
19. The following issues support inadequate supervision on 8 May 2023:
 - a. Children [REDACTED] and [REDACTED] left the service unsupervised and unnoticed.
 - b. Child [REDACTED] cut her own hair.
 - c. Sign in and Out sheet not completed.
 - d. Educator, [REDACTED] skipped lunch to maintain ratio.

20. Analysis of an area map and Witness A's statement, support that children, [REDACTED] and [REDACTED] travelled approximately 900 metres past residential backyards, ovals and creeks, taking about 20 minutes to walk each way. Evidence further supports the children being outside of the authorised supervision of the Service between 40 to 60 minutes. Refer to Attachment F for map.
21. The Authority's view is that adequate supervision is a reasonable precaution to take to protect children from harm and from hazards likely to cause injury. Accordingly, a suspected contravention of section 165(2) engages an offence under section 167(2) of the *Law*.

Contraventions Support Allegations

22. Evidence gathered appears to support contraventions of section 165(2) and 167(2) of the *Law*.

Allegation Two – Section 167 of the Law.

23. It is alleged that by the 8 May 2023, the Nominated Supervisor failed to ensure that every reasonable precaution was taken to protect children from harm and any form of hazard, in that, risk assessment failed to highlight and enact the maintenance of bushes in proximity to the rear fence, facilitating two children, believed to be [REDACTED] (4:11) and [REDACTED] (4:4), in scaling the fence and leaving the Service unnoticed by educators, in contravention of Section 167(2) of the *Law*.

Evidence Relevant to Allegation Two

24. Comparison of Service risk assessments effective on 8 May 2023, and subsequently updated, identify maintenance of trees and bushes in proximity of the fence were not identified as a risk at the time of the children leaving the Service. Refer to Attachment C for Risk Assessments.
25. Photo furnished by the Provider with the Notification indicate unkempt trees and bushes near the fence, aiding the children in scaling the fence and hinder supervision. Refer to Attachment B - Photo of where pre-schoolers climbed over.
26. The Provider furnished an email from WHS Advisor inspection advising the following:

The perimeter fence was a standard pool type fence that would meet the height requirements however there are trees planted all along the fence line that the children can climb.

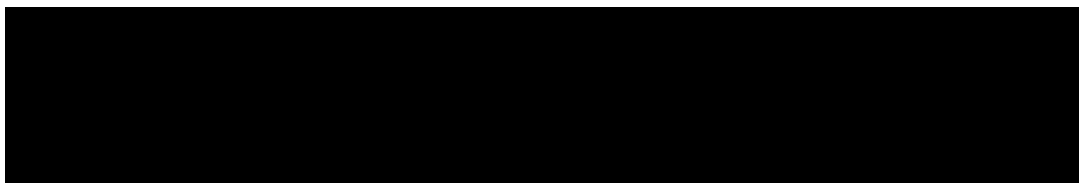
Refer to Attachment C for WHS Visit to Curtin North Preschool - 25052023.

27. Relevant excerpt from the Providers Supervision policy includes the following:

It is acknowledged that the building and facilities will need to be designed and maintained to facilitate supervision and that relief educators will require induction

regarding supervision arrangements and what is required of them in relation to supervising children at Curtin North Preschool.

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



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



30. Provider documents and Authority records identify you as the Nominated Supervisor of the Service on 8 May 2023. Refer to Attachment G.

Contraventions Support Allegations

31. Evidence gathered appears to support contraventions of section 167(2) of the *Law*.

Fitness and Propriety as Nominated Supervisor

8. 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.
9. 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.
10. At minimum, fitness and propriety includes honesty, knowledge and ability.
11. 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*.
12. 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). 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.

13. During the course of the investigation, there is no apparent evidence identifying that you had ensured adequate supervision of all children at all times, being a reasonable precaution to take to ensure children are protected from harm and any hazard, likely to cause injury.
14. This evidence raises a concern about your ability to manage and supervise an education and care service.
15. 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

16. 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.
17. Relevant legislation for enforceable undertakings and partial prohibition appears below.
18. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
19. 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

- (3) 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

20. 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.
21. At Attachment H 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

22. 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*.
23. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
24. 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.
25. 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>.
26. 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>
27. 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



Jo Williams
Director Regulatory Operations
Children's Education and Care Assurance
Education and Care Regulation and Support

7 August 2023