



Ms [REDACTED]
Person with Management or Control
ACT Education Directorate
RE: Curtin Primary School - Curtin North Preschool Unit

Email: [REDACTED]

Dear Ms [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). 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 obtained evidence from other sources and the Authority has determined that the Provider has a case to answer regarding suspected offences. However, the Authority's 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 165, 167, and 217 of the *Law* and regulation 177 of the *Regulations*. 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. 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

7. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas:
 - a. Supervision and protection from harms and hazards;
 - b. Protection from harms and hazards;
 - c. Compliance with a compulsory notice to produce evidence; and
 - d. Record-keeping.

Background to investigation

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

Refer Attachment B.

5. Due to the 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 and 217 of the *Law* and Regulation 177.

First Set of grounds – Supervision and Protection from Harm

Allegation One – Sections 165 and 167 of the Law

7. It is alleged that on 8 May 2023, the Provider 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 ██████████ (4:11) and ██████████ (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(1) of the *Law*, and giving rise to a contravention of 167(1) of said *Law*.

Legislation Relevant to Allegations One and Two

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

Section 165(1) of the Law - Offence to inadequately supervise children

The Approved Provider 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
\$50 000, 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: \$10 000, in the case of an individual
\$50 000, in any other case.

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 point maps.
 - (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]
- a. Enrolment application.
 - b. Eating plan.

c. Personal care plan.

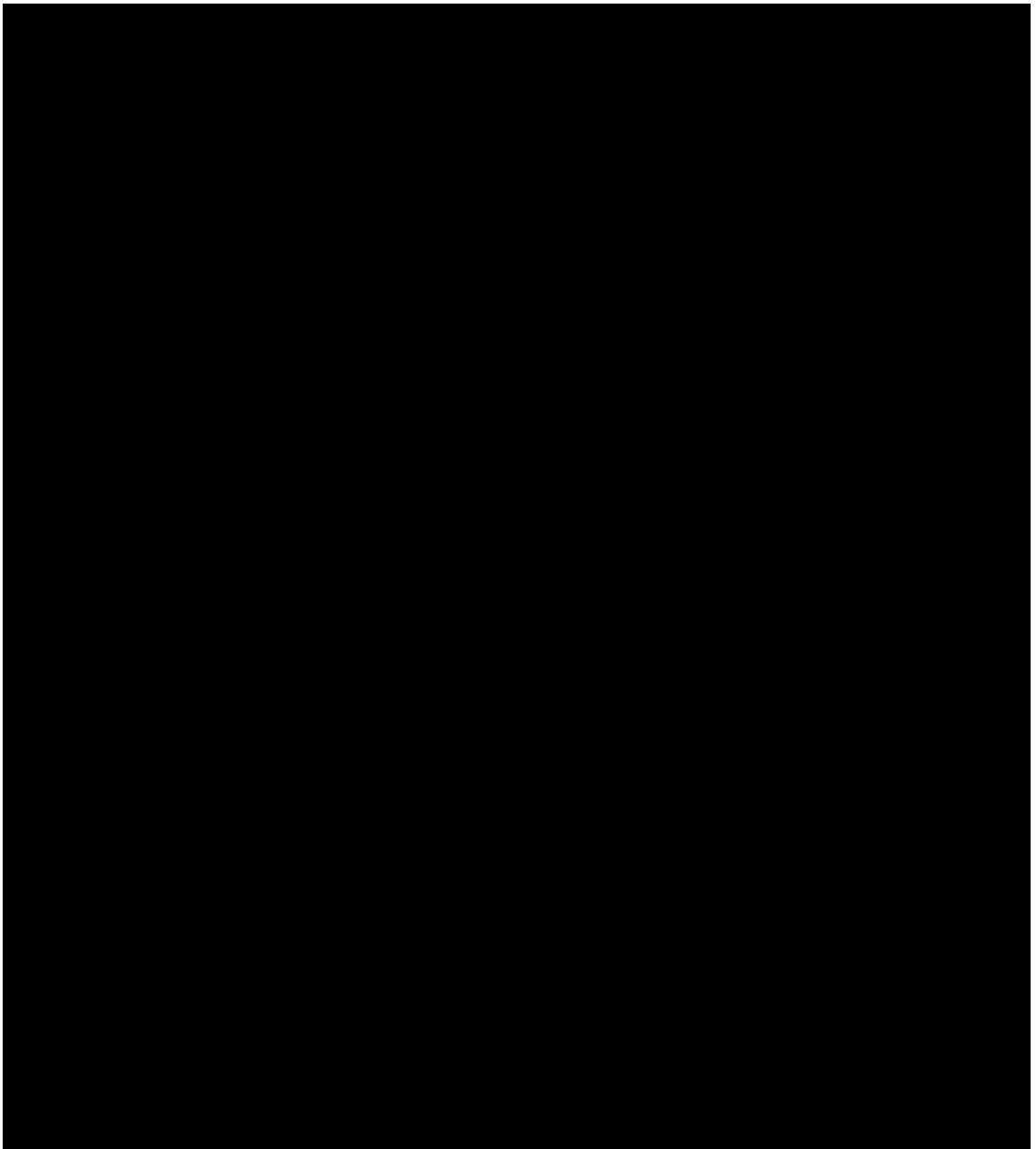
d. Adjustment matrix.

Refer Attachment E.

11. During the investigation, the Authority obtained 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.

12. 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.

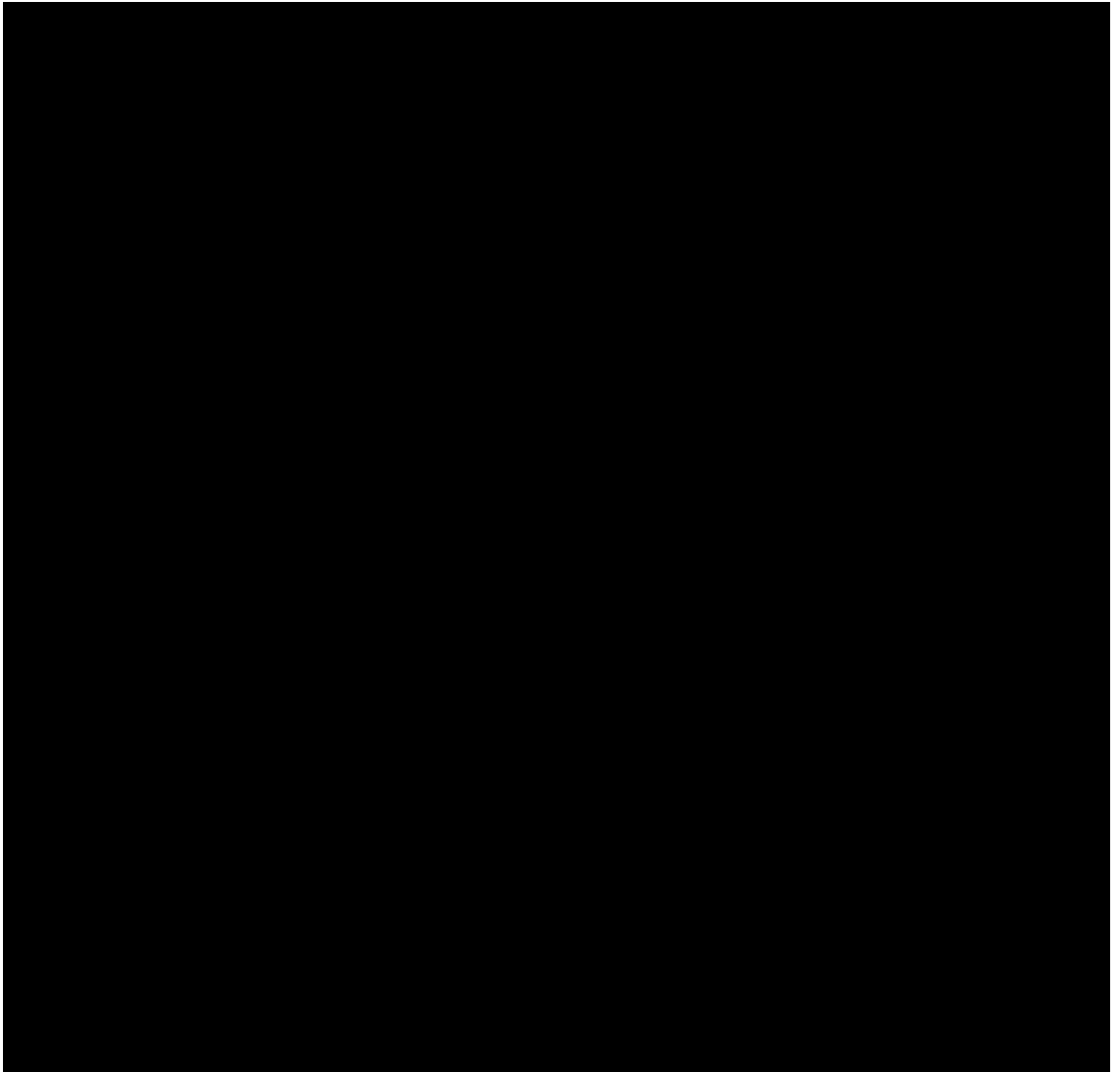
13. Relevant extracts from Witness A's statement include:



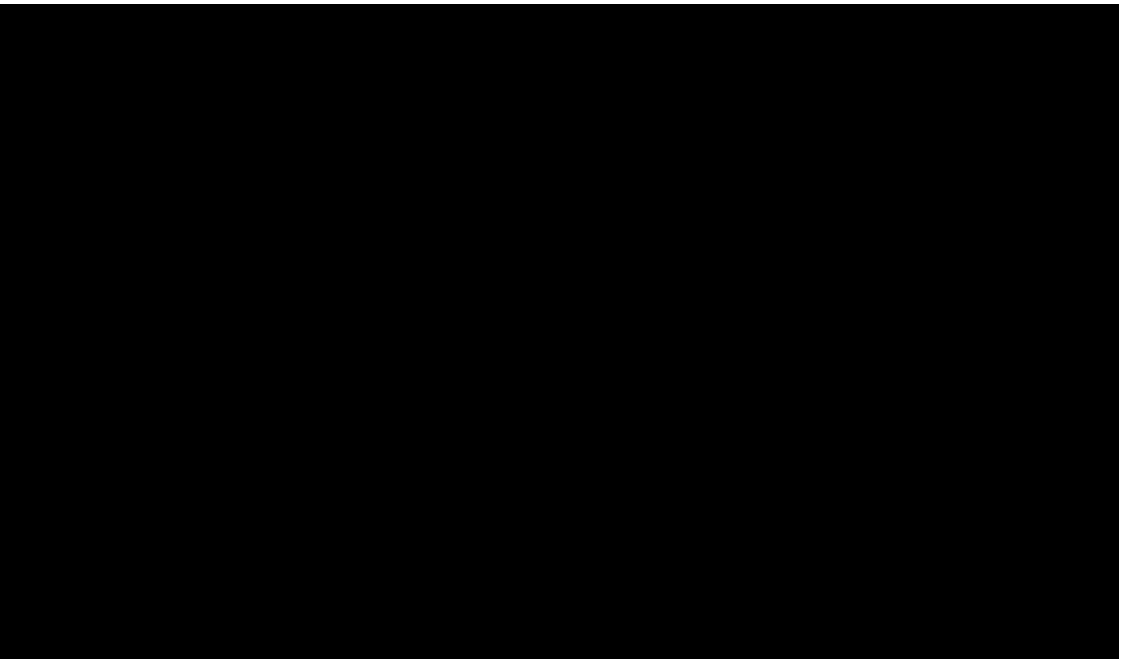
[REDACTED]

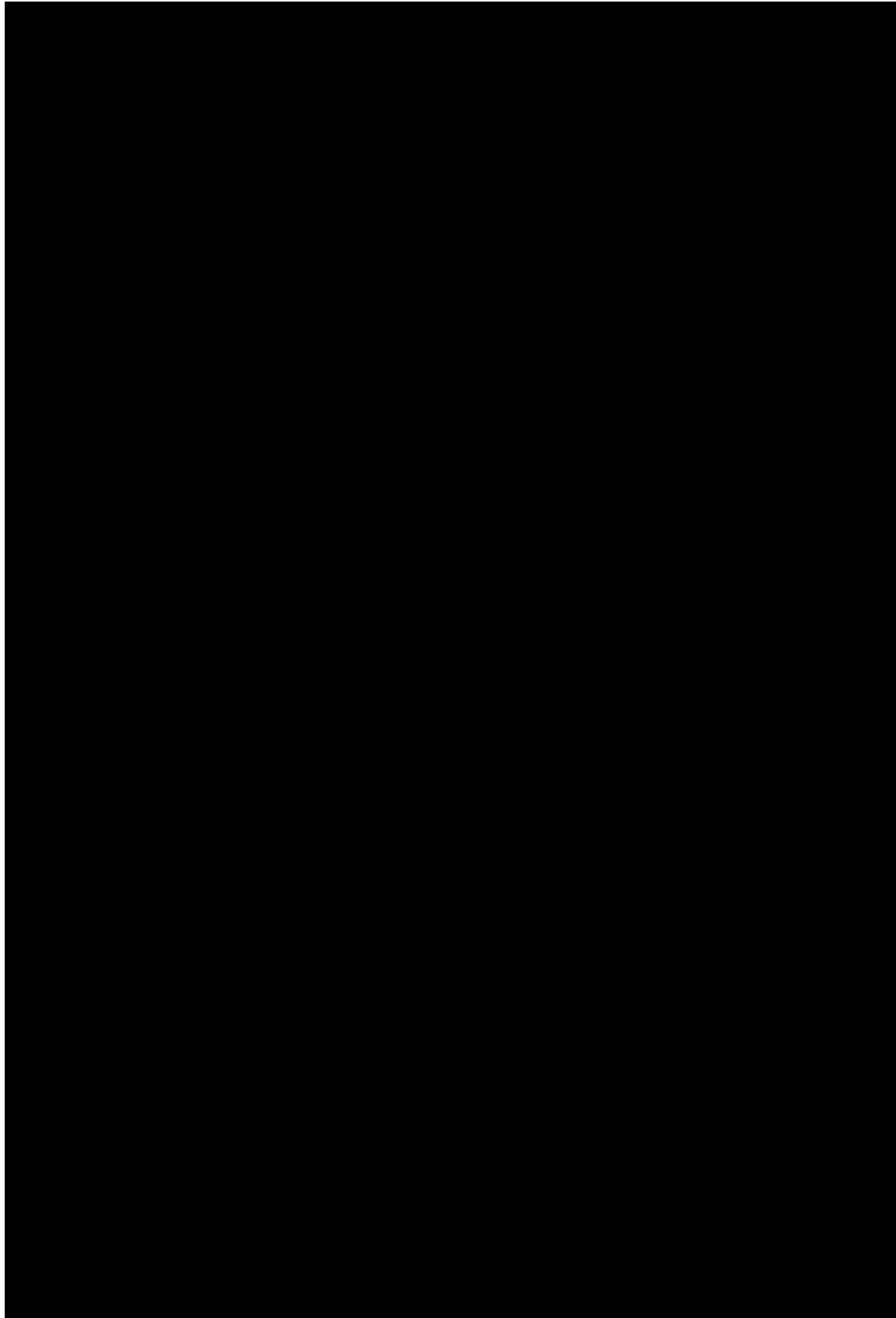
14. Relevant extracts from Witness B's statement include:

[REDACTED]

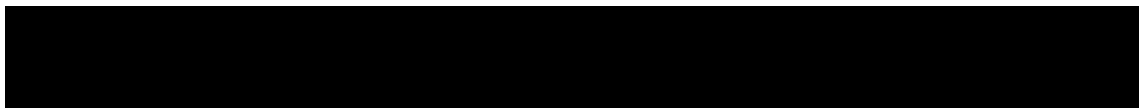


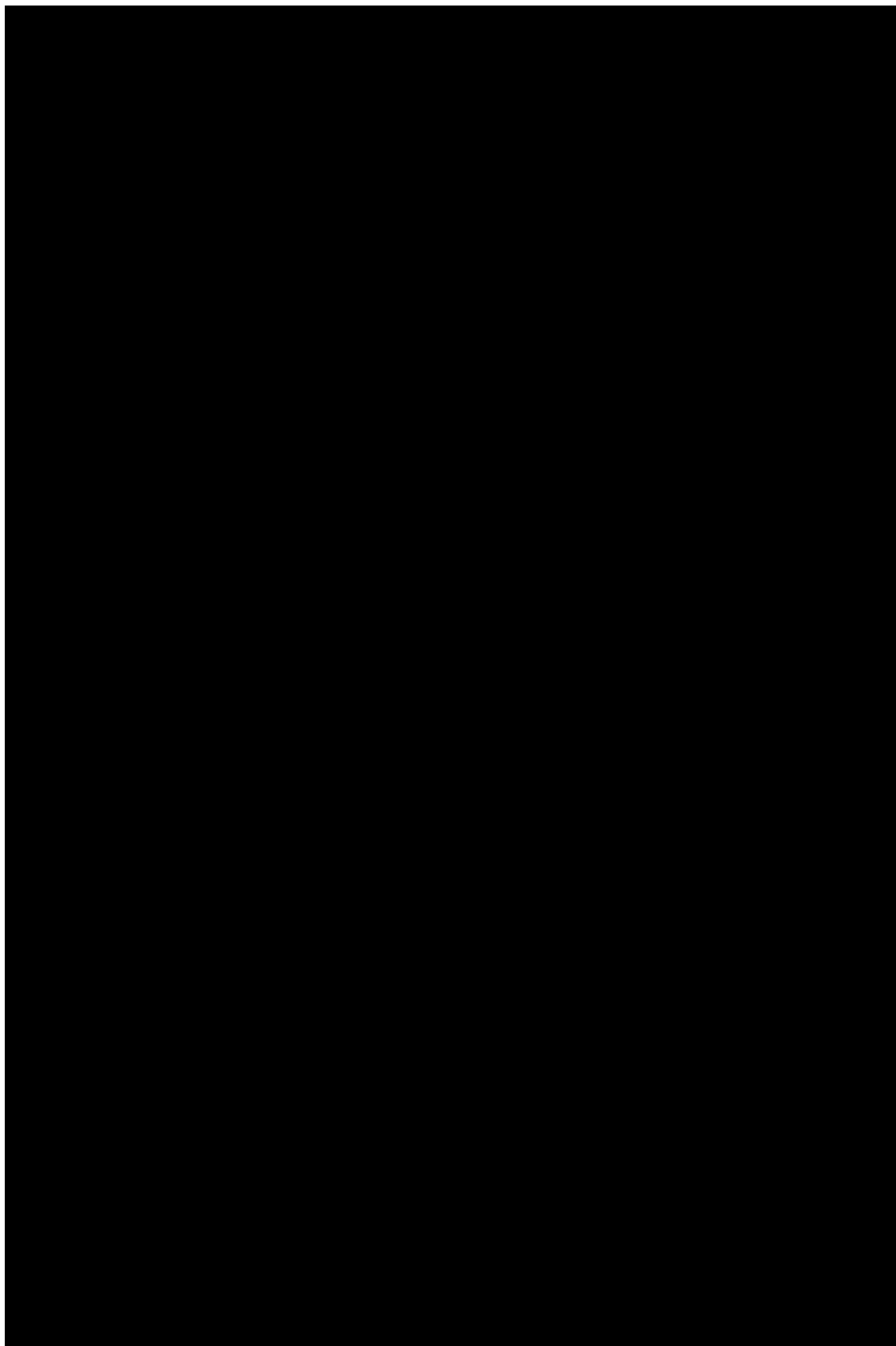
15. Relevant extracts from Witness C's statement include:





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





17. The working directly with children (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

break cover. Critically, between 12:15 to 1pm, the two remaining educators supervised nineteen children and provided one-on-one support to ■■■. Refer to WDWC at [Attachment C](#).

18. Witness evidence and documents support the Provider being aware of the level of one-on-one support required by ■■■ necessitating employment of Ms ■■■■■ to perform that duty. Refer to [Attachment E](#) for support documents.

19. 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.

20. The following issues support inadequate supervision on 8 May 2023:

- a. Children ■■■ and ■■■ left the service unsupervised and unnoticed.
- b. Child ■■■■■ cut her own hair.
- c. Sign in and Out sheet not completed.
- d. Educator, ■■■■■ skipped lunch to maintain ratio.

21. Analysis of an area map and Witness A's statement support that children, ■■■ and ■■■ 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.

22. 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(1) engages an offence under section 167(1) of the *Law*.

Contraventions Support Allegations

23. Evidence gathered appears to support contraventions of section 165(1) and 167(1) of the *Law*.

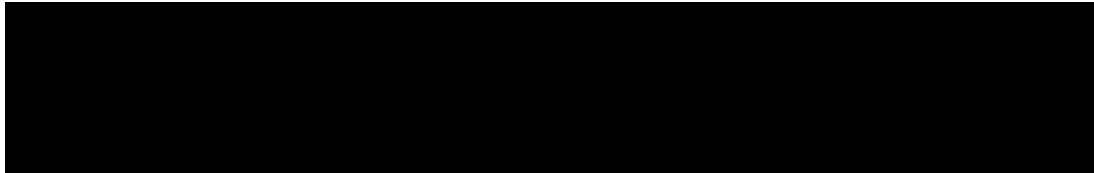
Second set of grounds – Protection from harm

Allegation Two – Section 167 of the *Law*.

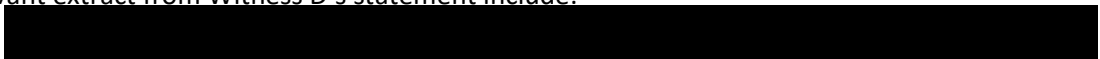
24. It is alleged that by the 8 May 2023, the Provider failed to ensure that every reasonable precaution was taken to protect children from harm and any form of hazard, in that, risk assessment failed to highlight and enact maintenance of bushes in proximity to the rear fence, facilitating two children, believed to be ■■■■■ (4:11) and ■■■■■ (4:4), in scaling the fence and leaving the Service unnoticed by educators, in contravention of Section 167(1) of the *Law*.

Evidence Relevant to Allegation Two

25. 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.
26. 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.
27. 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.
28. 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.
29. Relevant extracts from Witness A's statement include:



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



Contraventions Support Allegations

31. Evidence gathered appears to support contraventions of section 167(1) of the *Law*.

Third set of grounds – Compliance with Law and Regulations

Allegation Three – Section 217 of the *Law*.

32. It is alleged that by 1 June 2023, the Provider failed to comply with the requirements of a Notice issued under section 215 of the *Law*, in that child attendance records were not furnished to the Authority in their entirety, contravening section 217 of said *Law*.

Allegation Four – Regulation 177.

33. It is alleged that on 8 May 2023, the Provider failed to take reasonable steps to ensure prescribed records were accurate, in that, child attendance records were not kept in compliance with Government policy pursuant to regulation 158(2) and therefore regulation 158(1), contravention Regulation 177(2).

Allegation Five – Regulation 177

34. It is alleged that by 9 May 2023, the Provider failed to take reasonable steps to ensure prescribed records were accurate, in that, Incident, injury, trauma, illness record was not completed for each child in compliance with regulation 87, giving rise to a contravention of regulation 177(2).

Legislation Relevant to Allegations Three, Four and Five

Section 215 of the Law – Power of regulatory Authority to obtain information, documents and evidence by notice.

- (1) This section applies if the regulatory Authority reasonably suspects that an offence has or may have been committed against this Law.
- (2) The regulatory Authority may, by written notice, require a specified person-
 - (a) To provide to the Regulatory Authority, in writing signed by that person or, if the person is not an individual, by competent officer of that person, within the time and in the manner specified in the notice, any relevant information that is specified in the notice; or
 - (b) To produce to the Regulatory Authority, or person specified in the notice acting on the regulatory Authority's behalf, in accordance with the notice, any relevant documents referred to in the notice; or..
- (3) The notice must-
 - (a) Warn the person that a failure or refusal to comply with the notice would constitute an offence; and
 - (b) Warn the person about the effect of sections 217, 218 and 219.

Section 217 of the Law – Offence to fail to comply with notice or requirement.

A person must not refuse or fail to comply with a requirement under section 215 or 216 to the extent that the person is capable of complying with that requirement.

Penalty: \$8000, in the case of an individual
\$40 000, in any other case

Regulation 177 – Prescribed enrolment and other documents to be kept by provider.

- (1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider –
 - (b) An incident, injury, trauma and illness record as set out in regulation 87;
 - (k) A children's attendance records as set out in regulation 158;
- (2) The approved provider of the education and care service must take all reasonable steps to ensure the documents referred to in sub regulation (1) are accurate.

Penalty: \$2000

- (3) Subject to Subdivision 4, the approved provider of the education and care service must ensure that-

Subject to sub regulation (4), the documents referred to in sub regulation (1) in relation to a child enrolled at the service are made available to a parent of the child on request;

Regulation 158 – Children’s attendance record to kept by provider

- (1) The approved provider of an education and care service must ensure that a record of attendance is kept for the service that-
 - (a) Records the full name of each child attending the service; and
 - (b) Records the date and time each child arrives and departs; and
 - (c) Is signed by one of the following persons at the time that the child arrives and departs-
 - (i). The person who delivers the child to the education and care service premises or collects the child from the education and care service premises;
 - (ii). A nominated supervisor or an educator.
- (2) A preschool program provided by a school is not required to comply with sub-regulation (1) if it keeps attendance records in accordance with the education law, or Government education department policy, of the participating jurisdiction.

Regulation 87 - Incident, injury, trauma and illness record

- (1) The approved provider of an education and care service must ensure that an incident, injury, trauma and illness record is kept in accordance with this regulation.
- (2) -
- (3) The incident, injury, trauma and illness record must include—
 - (a) details of any incident in relation to a child or injury received by a child or trauma to which a child has been subjected while being educated and cared for by the education and care service or the family day care educator, including—
 - (i) the name and age of the child; and
 - (ii) the circumstances leading to the incident, injury or trauma; and
 - (iii) the time and date the incident occurred, the injury was received or the child was subjected to the trauma;
 - (b) details of any illness which becomes apparent while the child is being educated and cared for by the education and care service or the family day care educator including—
 - (i) the name and age of the child; and
 - (ii) the relevant circumstances surrounding the child becoming ill and any apparent symptoms; and
 - (iii) the time and date of the apparent onset of the illness;
 - (c) details of the action taken by the education and care service or family day care educator in relation to any incident, injury, trauma or illness which a child has suffered while being educated and cared for by the education and care service or family day care educator, including—
 - (i) any medication administered or first aid provided; and
 - (ii) any medical personnel contacted;
 - (d) details of any person who witnessed the incident, injury or trauma;

(e) the name of any person—

- (i) whom the education and care service notified or attempted to notify, of any incident, injury, trauma or illness which a child has suffered while being educated and cared for by the education and care service or family day care educator; and
- (ii) the time and date of the notifications or attempted notifications;

(f) the name and signature of the person making an entry in the record, and the time and date that the entry was made.

- (4) The information referred to in subregulation (3) must be included in the incident, injury, trauma and illness record as soon as practicable, but not later than 24 hours after the incident, injury or trauma, or the onset of the illness.

Evidence relevant to Allegation Three

35. On 23 May 2023, the Authority issued a notice allowable under section 215 of the *Law* (215 Notice) to a Person with Management and Control (PMC), Ms [REDACTED], noting there were a further three PMC's listed. A requirement of the 215 Notice included at item 4.

Child attendance records for all children who attended the Service on 8 May 2023, inclusive of full name and time of arrival and departure, as required by Regulation 158.

Refer Attachment F for 215 Notice, PMC particulars and email.

36. On 31 May 2023, a response to the 215 Notice from the Provider was received by the Authority which included a Student Roll for the Service. There were no times included. Refer to Attachment C for the Service's Student Roll.
37. On 26 June 2023 a response to further enquiries by the Authority identified times that child [REDACTED] and [REDACTED] left the Service early. This information was not included in 215 Notice response from the Provider on 31 May 2023. Refer to Attachment G for correspondence.
38. Furthermore, the Provider's response on 31 May 2023 did not include a Student Sign In/Out Book sheet, utilised at the Service to record children attending late or leaving early, for the period covering 8 May 2023. The Authority notes there were no entries for that day recorded in this book, however, consider this document a Child Attendance record for that period. Refer to Attachment D for Sign In/Out Book.
39. Documents and communication records support that child attendance records were not furnished in entirety by the Provider as required by the 215 Notice.

Evidence relevant to Allegation Four

40. In response to Authority enquiries, the attached communication advised the Provider was exempt from Regulation 158(1) as the attendance records held by the Provider were compliant

with ACT Education Directorate policy, as required by Regulation 158(2). Refer to email at [Attachment H](#).

41. Section 33 of the Education Act 2004 specify the following:

s33 -Keeping records of enrolment and attendances for government schools

(1) The principal of a government school, or the person giving an approved educational course (government), must ensure that the following information is entered in the register of enrolments and attendances:

- (a) the full name of each student enrolled at the school or course;
- (b) a record of the attendance or nonattendance of the student at the school or course on every day when the school or course is open for attendance.

This section requires an attendance record to be kept. It is not prescriptive as to how details are recorded.

42. A search of the ACT Directorate policy website identified the ACT Public School Student Attendance and Roll Marking Procedure that outlines how Child Attendance records are to be kept in compliance with Section 33 of the *Education Act 2004*. The document outlines the following:

4.1 Section 32 & 33 of the Act requires principals to maintain an accurate enrolment and attendance register which details the full name of every student and a record of their attendance/non-attendance.

4.2 Attendance data is recorded digitally in the School Administration System (SAS), the official register of enrolment and attendance. Where SAS is not accessible, paper records of attendance can be kept and SAS records can be updated when available.

4.5 School attendance records detail the time of arrival and departure each day and will clearly indicate whether a student is/is not physically present on the school grounds. A student's lack of participation in a class cannot be reflected on their attendance record. Any concerns in relation to engagement should be addressed through school engagement support processes.

8.1. Under the Education and Care Services National Law (ACT) Act 2011 and the Education and Care Services National Regulations 2011 (Regulation 158), principals must comply with attendance and roll marking procedures.

Refer to [Attachment I](#) for Student Attendance and Roll Marking Procedures.

43. Documentation and correspondence support that child attendance records, including Child In/Out sheets, were not kept accurately in compliance with the Providers Attendance and Roll Marking policy pursuant to 158(2), or within the requirements of 158(1), of the *Regulations*.

Evidence relevant to Allegation Five

44. Required documents furnished to Authorities pursuant to 215 Notice included Incident Reports maintained under Regulation 87. Refer to Attachment C for incident reports.
45. In response to Authority enquiries, the Provider advised that details were not kept in hardcopy form, however, information maintained like those required under Regulation 87. Refer to Attachment J for email response.
46. Analysis of incident reports furnished by Provider identify the following non-compliance with regulation 87 including :
- a) Incident report not kept for each child as required by Regulation 87(3)(a);
 - b) Age of child not included as required by Regulation 87(3)(a)(i);
 - c) Time and date of incident as required by Regulation 87(3)(a)(iii);
 - d) Details of any witness as required by regulation 87(d);
 - e) Name of any person contacted as required by Regulation 87(e)(i);
 - f) Time and date of notification as required by regulation 87(3)(e)(ii);
 - g) Name and signature of person making an entry into the record, and time and date that entry was made as required by 87(3)(f).

Contraventions Supported Allegations

47. Evidence gathered appears to support contraventions of section 217 of the *Law and Regulations* 158 and 177(2).

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 the 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.
49. 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.
50. A compliance notice requires specific steps to be undertaken by the Provider to demonstrate to the Authority how compliance with the Law and Regulations will be achieved and maintained. It is tailored in each circumstance to address the specific non-compliance identified because of the investigation.
51. 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.
52. In your response, you may wish to make suggestions as to how this can be demonstrated. The Authority is not bound by any suggestions but will consider them as part of the Authority’s case management process.

Right of response

53. 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.
54. At Attachment K 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

55. 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.

56. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
57. 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.
58. 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>.
59. 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>
60. Should you have any questions about this Show Cause Notice please contact Brian Cropper on Brian.Cropper@act.gov.au.

Yours Sincerely



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

7 August 2023