



██████████
████████████████████
██████████
Email: ██████████@gmail.com

Dear ██████████,

Show Cause Notice – Proposed Compliance Action

1. The ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance, have recently investigated an allegation that you pushed and shut a child in a shed, whilst engaged as an educator at Communities@Work Isabella Plains Early Childhood Service SE-00011293 (the Service) operated by Communities Work PR-00005824 (the Provider), on 6 and 7 May 2021.
2. Web addresses to the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.
3. If one or more allegation is substantiated I am considering compliance action based on a suspected contravention of the Law supported by evidence gathered during the investigation.
4. This notice offers you the opportunity to respond to the allegations prior to any determination being made. If one or more of the allegations is substantiated, the compliance action I am considering includes an enforceable undertaking pursuant to section 179 of the Law or prohibition pursuant to section 182 of the Law.

Grounds for issuing Show Cause for Compliance Action

5. On 7 May 2021, a notification of complaint (NOT-40536447) was received by the Authority from the Provider advising of allegations that on the 6 May 2021 you pushed a child, believed to be ██████████ ██████████ (aged 3 years), and on 7 May 2021, shut the same child in a shed. Refer to Attachment A.
6. Due to the risk of harm to children when subjected to inappropriate interactions amounting to unreasonable discipline, the Authority determined to investigate the allegations.

7. I consider that the alleged interaction between yourself and [REDACTED] described pushing the child and shutting him in a shed, may constitute unreasonable discipline in the circumstances pursuant to section 166(3) of the *Law*.
8. Under the *Law*, discipline is interpreted as any strategy employed by an educator with the intention of changing a child's behaviour. Discipline that is inappropriate includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child, such as (but not restricted to) yelling, using threatening or humiliating language, isolating, or shaming children.

Allegations of Inappropriate Discipline

Allegation One – Subject Child to Unreasonable Discipline

9. It is alleged that on 6 May 2021, you pushed a child, believed to be [REDACTED] [REDACTED] in the back, after appearing to exit the Service to an outdoor space, in contravention of section 166(3) of the *Law*.

Allegation Two – Subject Child to Unreasonable Discipline

It is alleged that on 7 May 2021, you shut a child, believed to be [REDACTED], in a shed at the rear of the Service, in contravention of section 166(3) of the *Law*.

Evidence relevant to Allegations

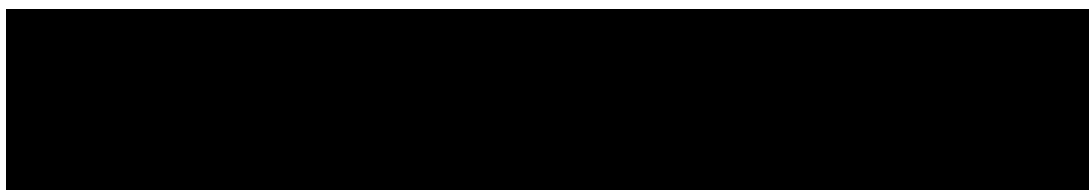
11. On 17 June 2021, the Authority received documents from the Provider pursuant to a Notice allowable under section 215 of the *Law* (215 Notice). These documents included, but were not limited to, the following:
 - a) Working Directly with Children records 6 and 7 May 2021;
 - b) Child attendance records for 6 and 7 May 2021; and
 - c) Internal investigation documents.

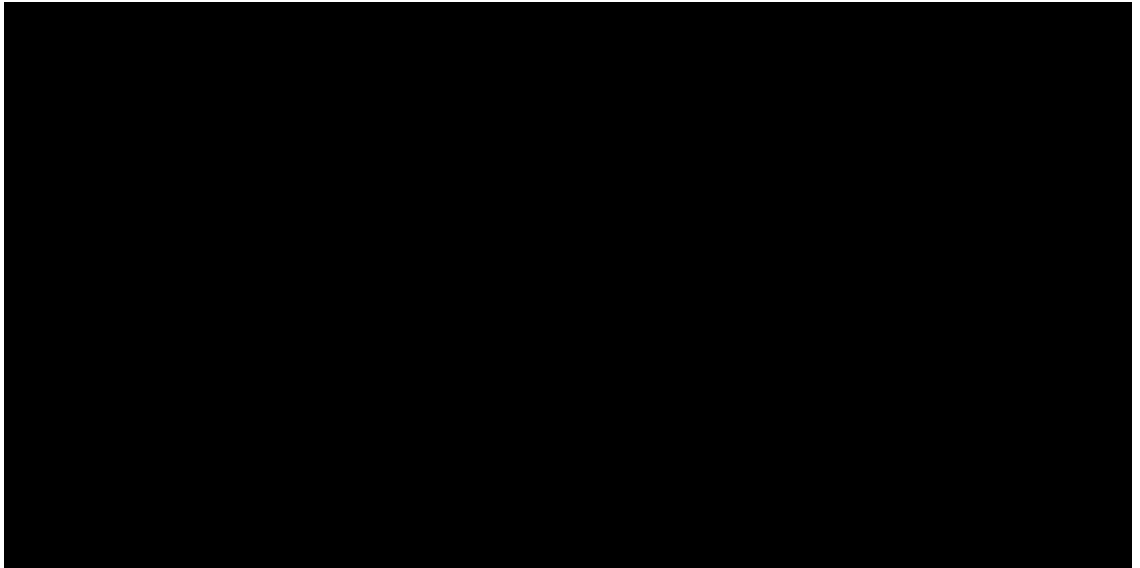
Refer to relevant evidentiary documents at Attachment B

12. During the process of investigating, the Authority obtained statements from witnesses. Relevant excerpts are included below.

Witness Evidence Relevant to Allegation One.

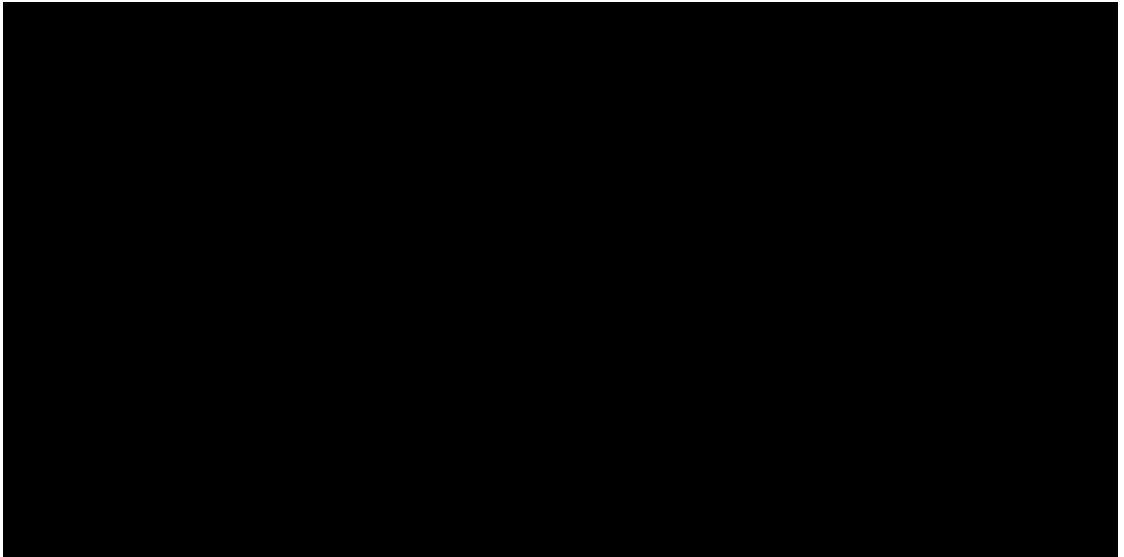
13. Relevant excerpts from Witness A's statement:



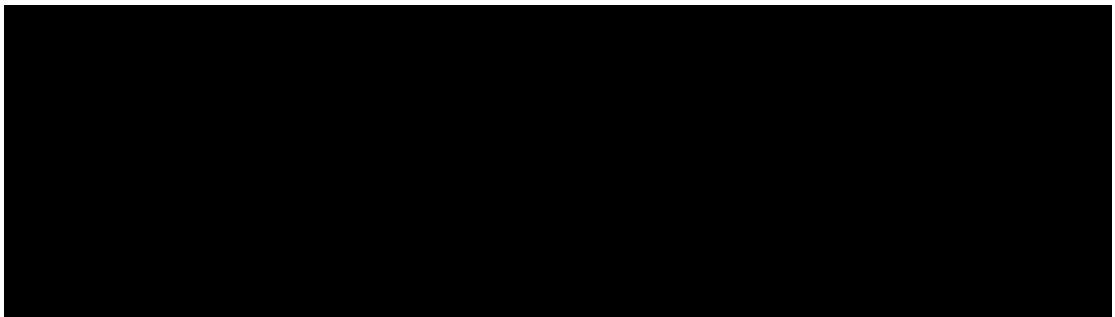


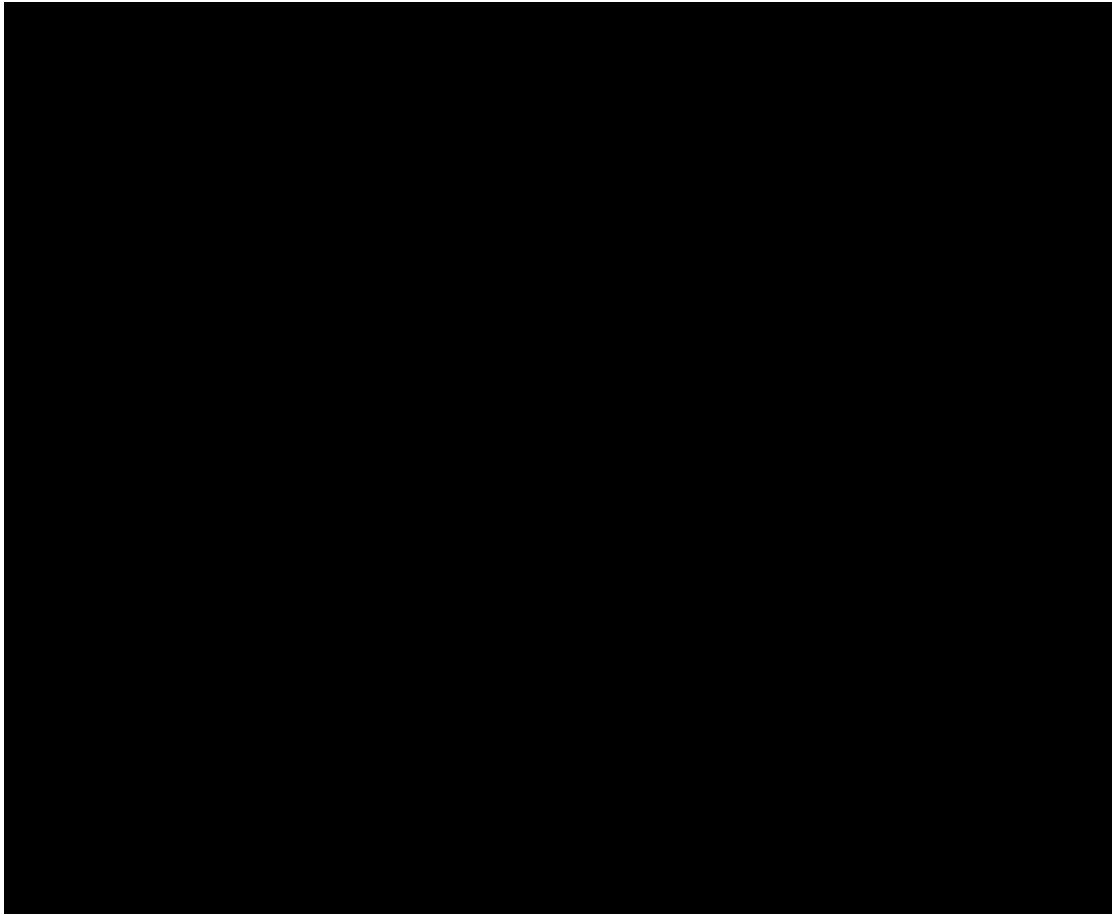
Witness Evidence Relevant to Allegation Two.

14. Relevant excerpts of Witness B's account are as follows:

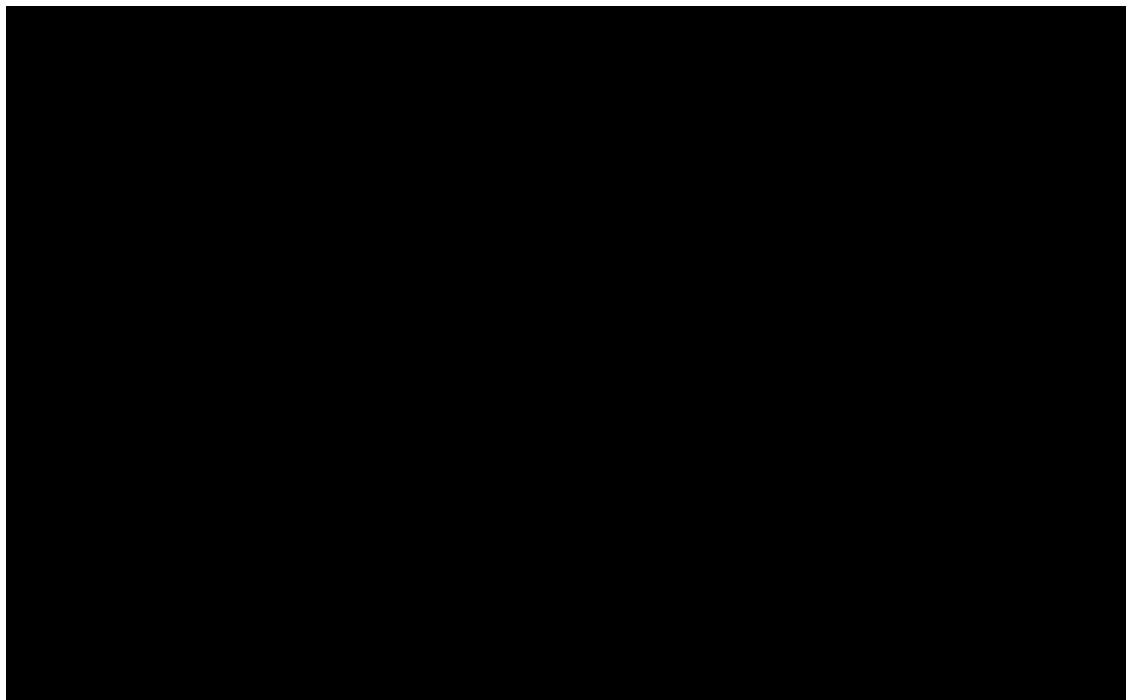


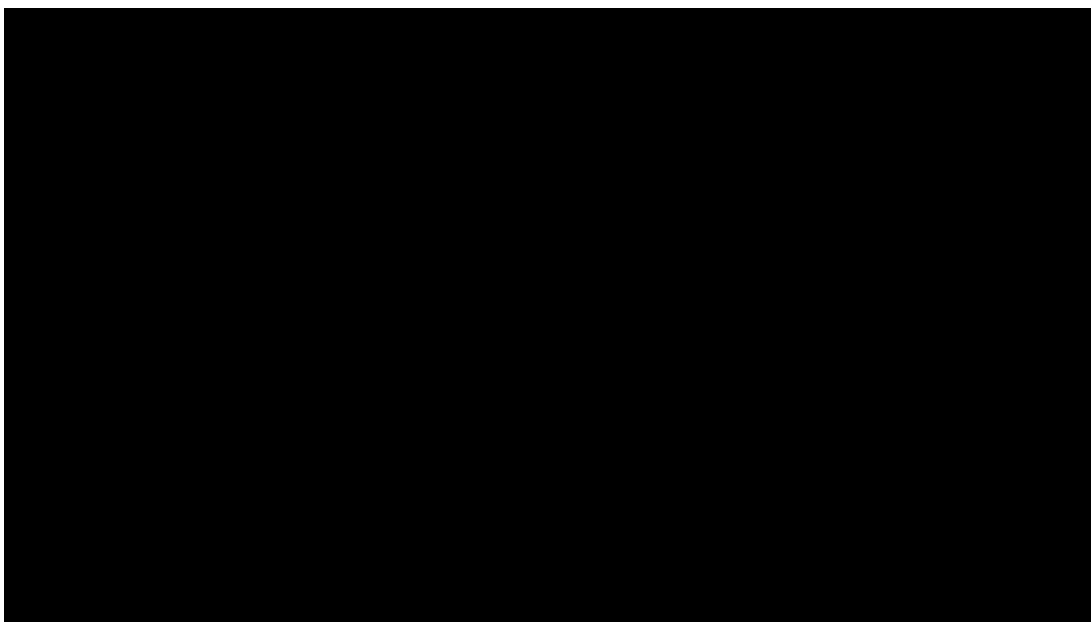
15. Relevant excerpts from Witness C's statement include:





16. The Authority also noted specific relevant excerpts from your resignation letter to the Provider (available via Attachment B), as follows:





Law

17. The evidence obtained by the Authority supports a contravention of the following section of the *Law*:

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

A staff member of, or a volunteer at, an education and care service must not subject any child being educated and cared for by the service to—

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

Contraventions Engaged by Allegation

18. Evidence gathered relevant to the Allegations One and Two include Provider documentation supplied under 215 Notice, NOT-40536447, and witness statements.
19. Relevant evidence gathered supports that, while in the capacity of an educator of the Service, you subjected a child believed to be, [REDACTED] [REDACTED] to inappropriate discipline, considered unreasonable in the circumstances, by pushing him on 6 May 2021 and shutting him in a shed on 7 May 2021.

Potential Compliance Actions

20. Should the allegations be substantiated, statutory compliance actions available to the Authority to consider include an enforceable undertaking or a prohibition notice as set out below:

Section 179A of the Law – Enforceable undertaking

- (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 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.

Effect of an Enforceable Undertaking

21. Should a decision be made to offer you an enforceable undertaking, under section 179A of the *Law*, and you accept the undertaking, 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.

182 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—
 - b) a nominated supervisor;
 - c) an educator;
 - d) an employee;
 - e) a contractor;
 - f) a volunteer;

- (3) The Regulatory Authority may give a prohibition notice to a person to—
- a) prohibit the person from being nominated as 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 a Prohibition Notice

22. 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

23. You have a right to respond to the allegation set out in this notice. This notice offers you that opportunity to respond to the allegations prior to any determination being made. You may, within 21 days of receiving this notice, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
24. At Attachment C 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 Authorised Officer Brian Cropper at brian.cropper@act.gov.au or by post to:
- Brian Cropper, Senior Investigator
Children's Education and Care Assurance
GPO Box 158, CANBERRA ACT 2601

Caution

25. 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 other evidence provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.

26. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal. 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.
27. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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>.
28. 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>
29. Should you have any questions about this Show Cause Notice please contact Brian Cropper by telephone on (02) 620 71104 or email to brian.cropper@act.gov.au.

Yours sincerely,



Clare Brookes
Senior Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

15 September 2021