



██████████
Person with Management and Control
Communities@Work
RE: Communities@Work Abacus child Care and Education Centre

Email: ██████████@commsatwork.org

Dear ██████████

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. 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 (ACT) (the Law)*, together with receiving and investigating complaints arising under the *Law*.
2. Authorised Officers are currently investigating suspected offences at Communities@Work Abacus Child Care and Education Centre SE-00009744 (the Service), operated by Communities@Work PR-00005824 (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 to answer for the Provider regarding suspected offences under the *Law*. 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 166(1), 167(1) and 174(2) of the *Law* (or any combination of them). 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. All such determinations are made via the Authority’s case management processes, involving a dedicated case management committee.
6. If any 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. Potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

7. The evidence obtained during the investigation to date supports offences under the *Law* within the following areas:
 - a. Educator-Child Interactions; and
 - b. Notification requirements.

Background to Investigation

8. On 29 November 2021, the Authority received a notification from the Provider regarding interactions of [REDACTED] with children, over an extended period of time, from 6 August 2021 to 23 November 2021. Refer Attachment A for initial documentation supplied relevant to the notification. Other relevant documents obtained is attached separately.
9. It was determined by the Authority that there were reasonable grounds to suspect that offences have, or may have, occurred at Service, and a decision was made to investigate suspected offences under sections 166, 167 and 174 of the *Law*.

First Set of Grounds – Educator-Child Interactions

Allegation One – Inappropriate Discipline and Harms

10. It is alleged that, on 6 August 2021, the Provider failed to ensure that no child being educated and cared for was subjected to discipline that was unreasonable in the circumstances, in that [REDACTED] (an educator employed at the Service) grabbed [REDACTED] (a child being educated and cared for by the Service) by his upper arms, pulled him off a bike, then yelled words to the effect of “we don’t do that!” close to his face, in response to [REDACTED] arguing with another child (unknown), in contravention of section 166(1) of the *Law*, engaging an additional offence under section 167(1) of the *Law*.
11. “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 yelling, physically dragging a child, unreasonable restraint of a child, using threatening or humiliating language, isolating, or shaming children.

Legislation Relevant to Allegation One

Section 166(1) of the *Law* – Offence to use inappropriate discipline

The approved provider 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 in the circumstances.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case

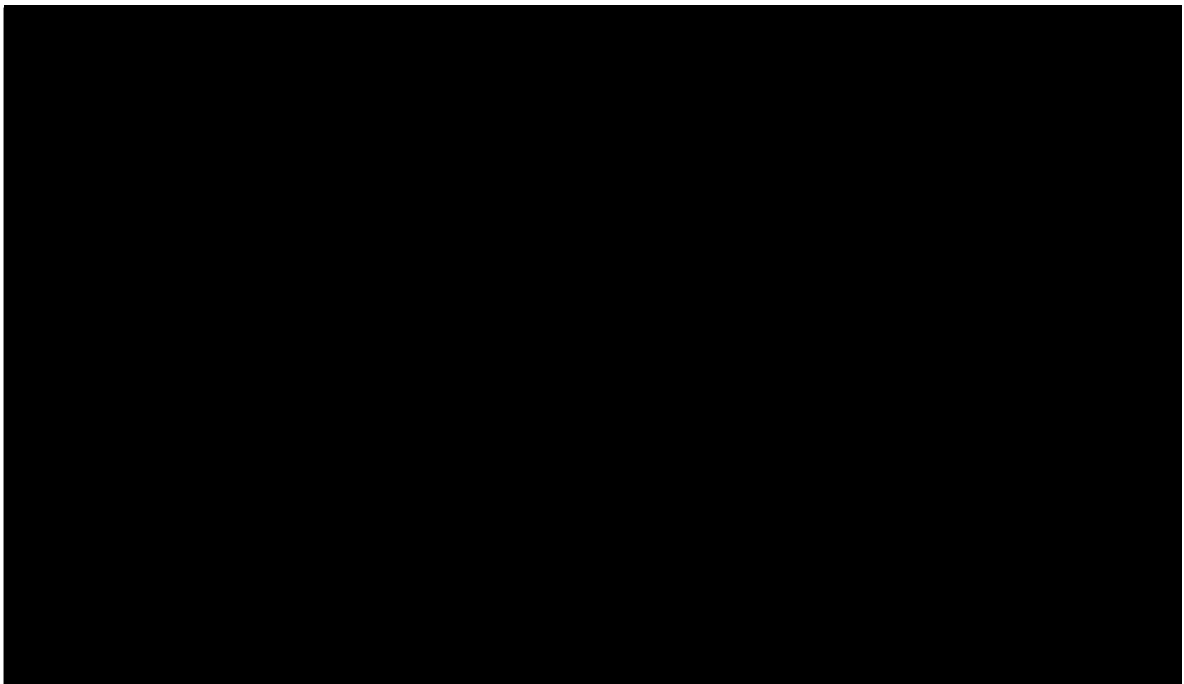
Section 167(1) of the *Law* - Offence relating to protection of children from harm and hazards

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

12. On 13 December 2021, a notice for production of documents, allowable under section 215 of the *Law*, was issued.
13. Records produced by the Provider indicated that the Service was operating on 6 August 2021, [REDACTED] was in attendance and [REDACTED] was working directly with children.
14. Documents produced by the Provider included records of the Provider's investigation and outcomes. Refer Attachment B.
15. It was noted that, [REDACTED] was stood down during the Provider's enquiries and, at the conclusion, his contract was not renewed. The Authority is not aware of [REDACTED] current employment arrangements.
16. During the investigation, the Authority obtained numerous witness statements, relevant extracts from which appear below. Please note that all witness statements were obtained utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.
17. Relevant extracts from Witness A 's statement are:



[REDACTED]

18. Relevant extracts from Witness B's statement are:

- [REDACTED]
19. The Authority's view is that ensuring children are not subjected to inappropriate discipline is a reasonable precaution to take to protect children from harm and from hazards likely to cause injury. Accordingly, a contravention of section 166(1) results in automatic substantiation of an offence under section 167(1) of the *Law*.

Contraventions Supported by Allegation One

20. Evidence gathered appears to support contraventions of section 166(1) of the *Law*, engaging a contravention of s 167(1).

Allegation Two – Inappropriate Interactions and Harms

21. It is alleged that, between 6 August 2021 and 23 November 2021, the Provider failed to take every reasonable precaution to protect children from harm or hazards likely to cause injury, in that [REDACTED] [REDACTED] was permitted to work directly with children without adequate strategies in place to ensure interactions were appropriate, which did not meet the requirements of Regulation 155.
22. Significant non-compliance with Regulation 155 may support an additional offence under section 167. The Authority's view in this instance is that, if the allegation is substantiated, an offence under section 167(1) would be supported.

Legislation Relevant to Allegation Two

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.

Regulation 155 – Interactions with children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that –

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

Evidence Relevant to Allegation Two

23. Documents produced by the Provider included:

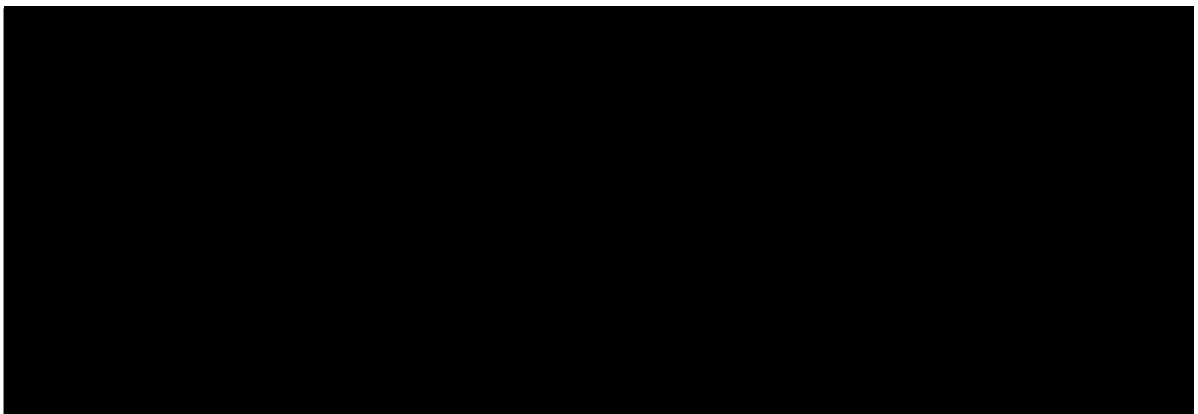
- a. records of the Provider's investigation and outcomes, including discussion note of 6 August 2021. Refer Attachment B;
- b. [REDACTED] entire staff file, including:
 - i. notes of his interview on 27 November 2020, in which he disclosed [REDACTED];
 - ii. Employment history, indicating no previous experience working with children;
 - iii. Letter from [REDACTED] dated 29 October 2021;
 - iv. Australian Apprenticeships Training Plan, which indicated no special needs had been identified.

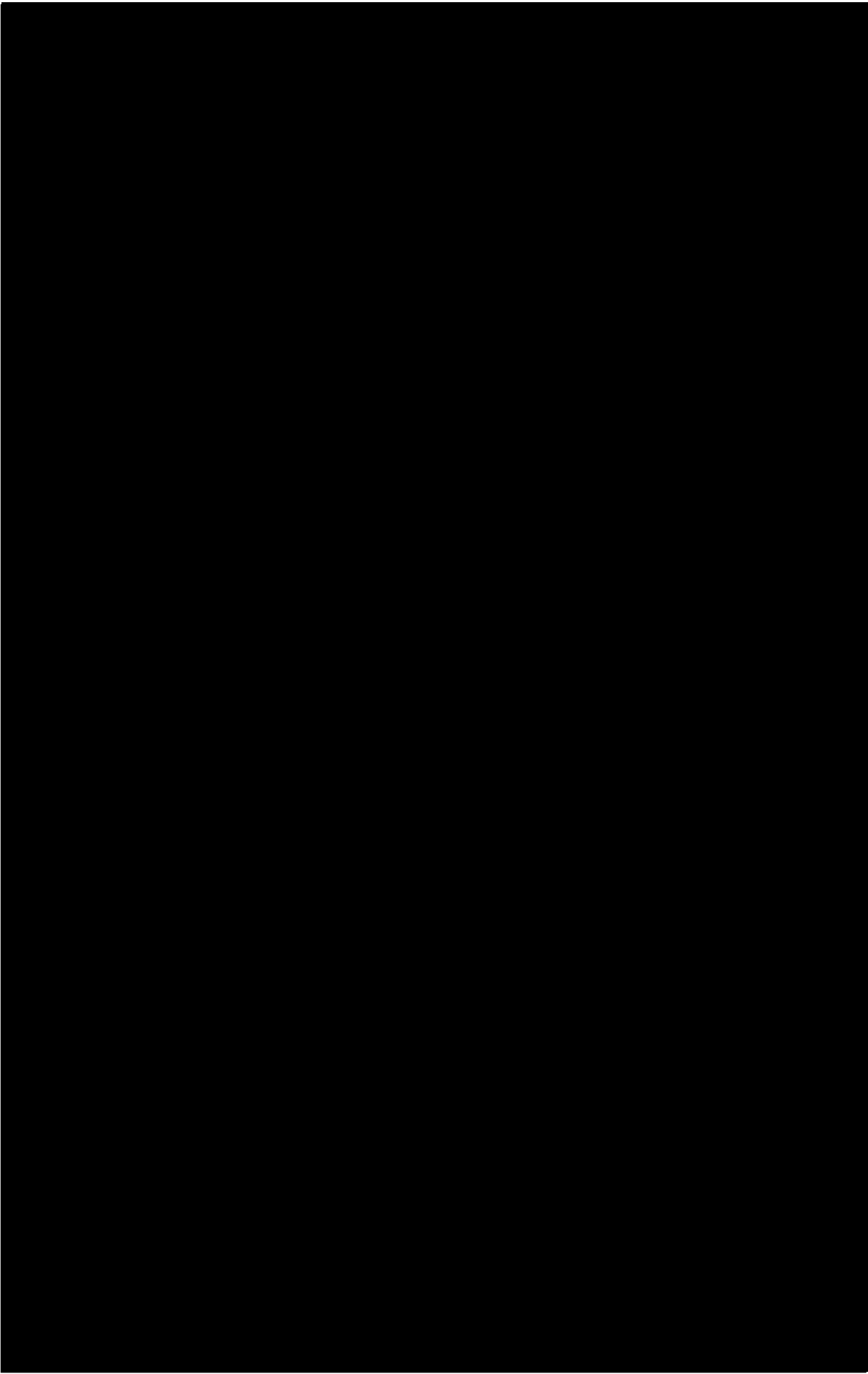
Refer Attachment C for extracts of staff file referred to.

24. The staff file did not contain any indication of any regular direct monitoring or performance management plan being implemented.

25. As mentioned, additional evidence was obtained during the investigation from witnesses, utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.

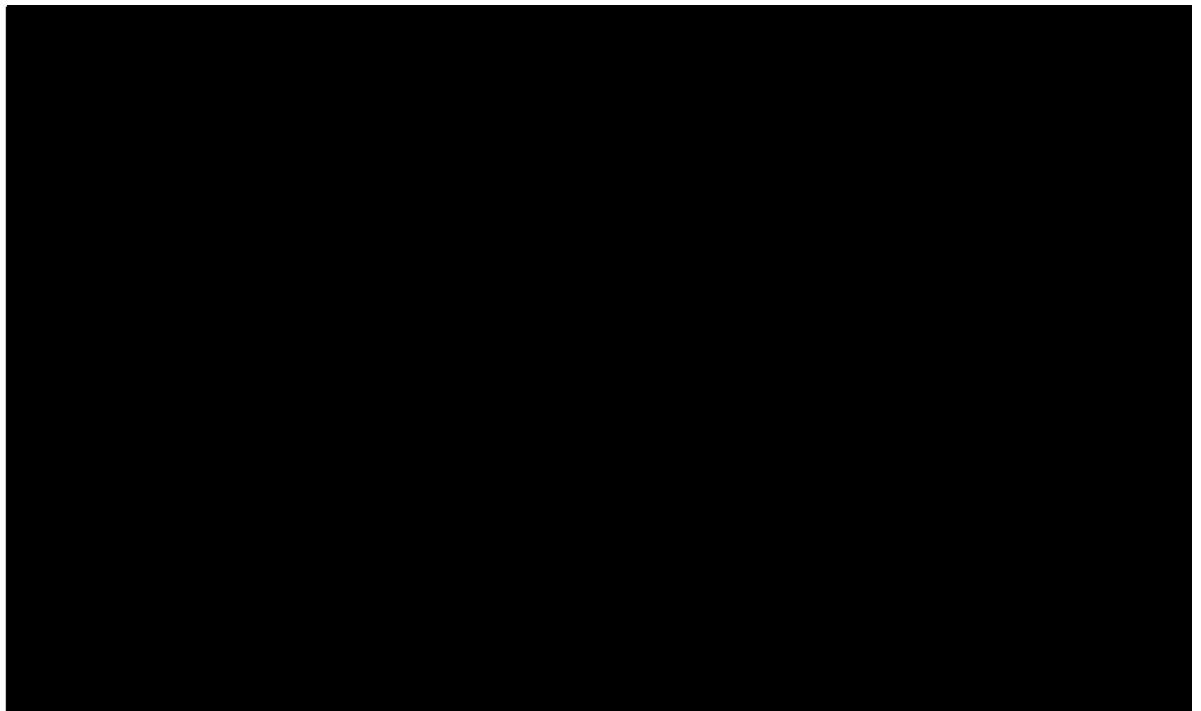
26. Relevant extracts from Witness A are:

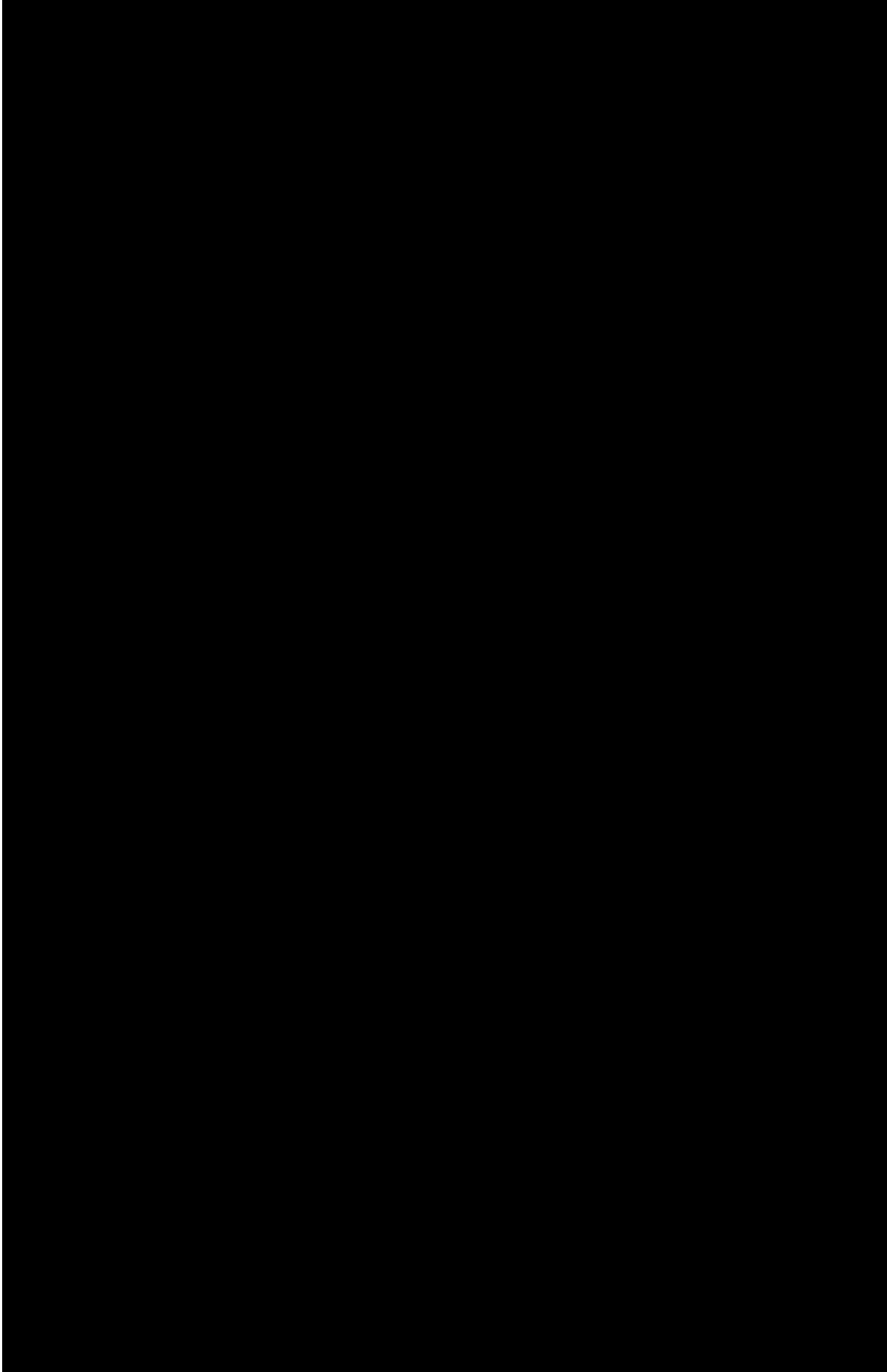


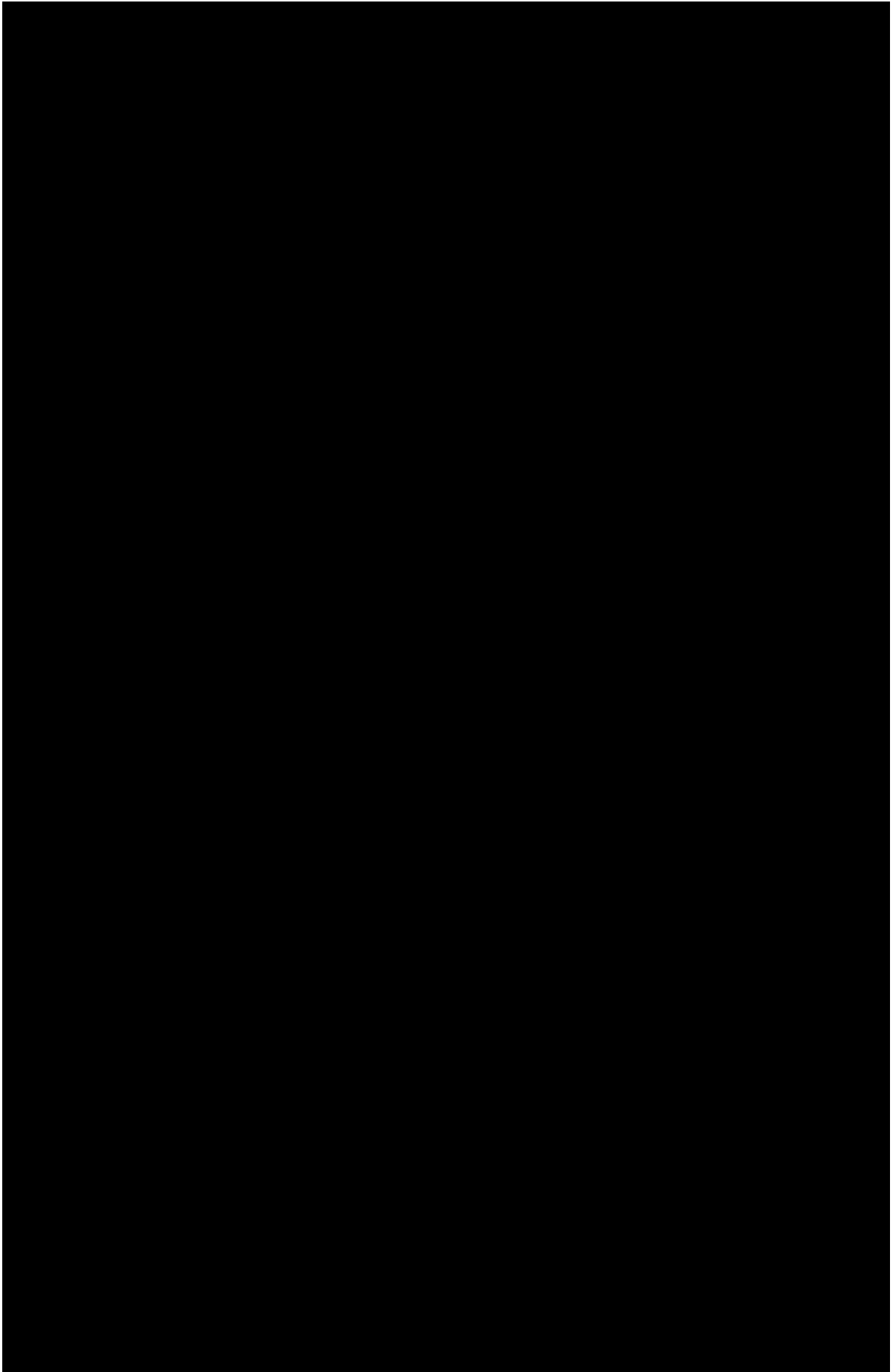


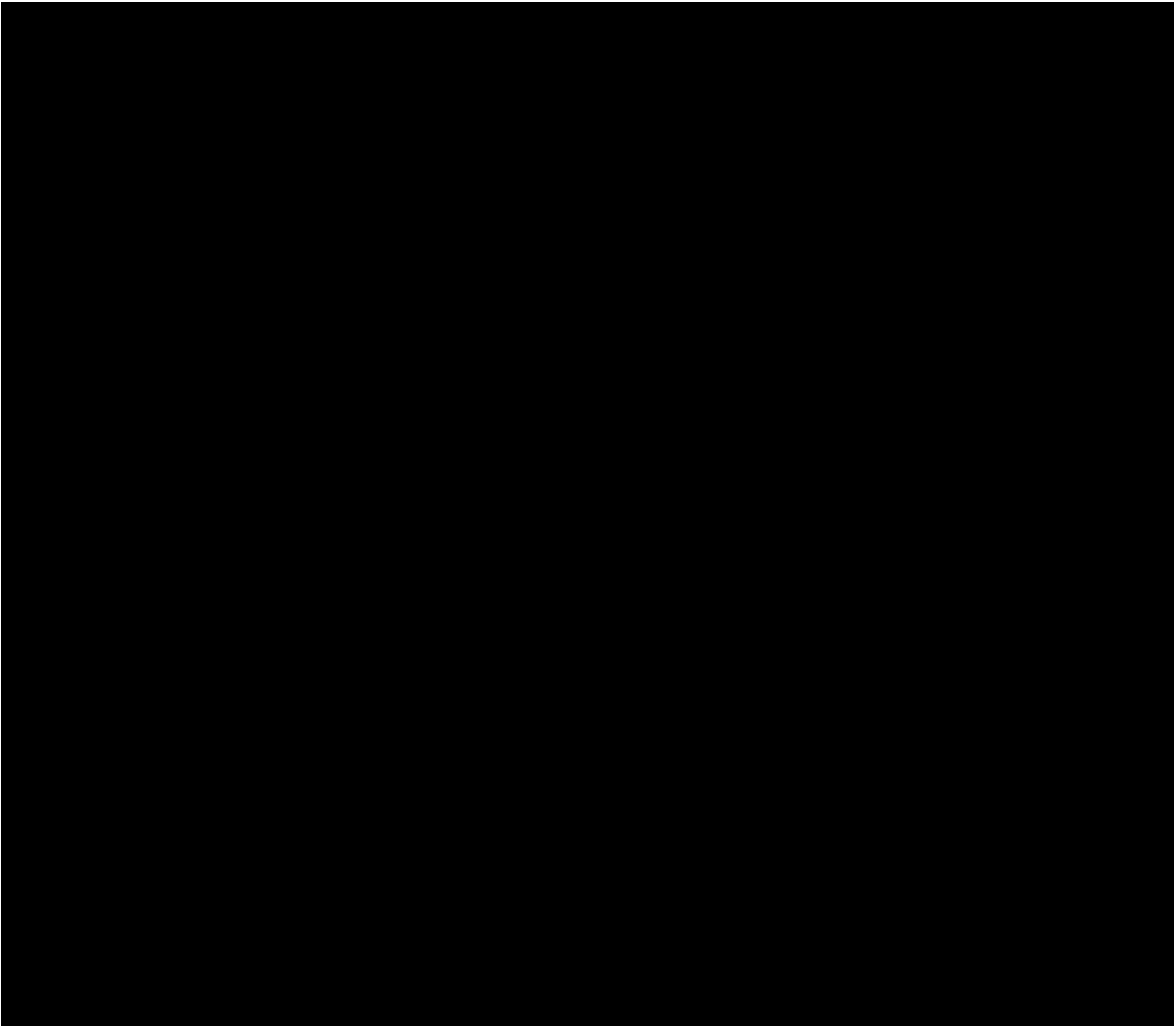


27. Relevant extracts from Witness B's statement are:









Contraventions Supported by Allegation Two

28. Evidence gathered appears to support contraventions of section 167(1) of the *Law* and Regulation 155.

Second Set of Grounds – Notification Requirements

Allegation Three– Failure to Notify

29. It is alleged that the Provider failed to notify the Regulatory Authority of a complaint that the Law was contravened or an allegation of physical abuse on 6 August 2021, in contravention of section 174 of the *Law*.

Legislation Relevant to Allegation Three

Section 174 – Offence to fail to notify certain information to Regulatory Authority

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider –
- (a) any serious incident at the approved education and care service;
 - (b) any complaints alleging –

- (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
- (ii) that this Law has been contravened;
- (c) information in respect of any other prescribed matters

Penalty: \$4000, in the case of an individual.

\$20 000, in any other case.

- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to:
 - (a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

Regulation 175 – Prescribed information to be notified to Regulatory Authority

- (2) For the purposes of section 174(2)(c) of the *Law*, the following matters are prescribed-
 - (c) any circumstance arising at the service that poses a risk to the health, safety or wellbeing of a child or children attending the service.
 - (d) any incident where the approved provider reasonably believes that physical abuse or sexual abuse of a child or children has occurred or is occurring while the child is or the children are being educated and cared for by the education and care service;
 - (e) allegations that physical or sexual abuse of a child or children has occurred or is occurring while the child is or the children are being educated and cared for by the education and care service (other than an allegation that has been notified under section 174(2)(b) of the *Law*).

Regulation 176(2) – Time to notify certain information to Regulatory Authority

For the purpose of section 174(4) of the *Law*, a notice must be provided:

- (a) in case of a notice under section 174(2)(a)-
 - (i) in the case of the death of a child, as soon as practicable but within 24 hours of the death, or at the time that the person becomes aware of the death; and
 - (ii) in the case of any other serious incident, within 24 hours of the incident or the time that the person becomes aware of the incident;
- (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident;
- (c) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

Evidence Relevant to Allegation Three

30. On 23 November 2021, the Authority was notified of an allegation of inappropriate conduct by ██████████ on 23 November 2021. Relevant documentation contained information regarding an allegation of inappropriate discipline or physical abuse on 6 August 2021 (Refer Attachment A).
31. The allegation of 6 August 2021 was not notified to the Regulatory Authority within the prescribed time, either as a complaint that the Law was contravened, or an allegation of physical assault.

Contravention supported by Allegation Three

32. Evidence gathered appears to support a contravention of section 174(2) of the *Law*.

Potential Compliance Action

33. 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. 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*.
34. 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. 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 as a result of the investigation.
35. 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

36. As mentioned previously, this letter is your 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.

37. At Attachment D 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 Tanya.Masterman@act.gov.au or by post to:

Children's Education and Care Assurance
Attention Tanya Masterman
GPO Box 158
Canberra ACT 2601.

Caution

38. 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*.
39. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
40. 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.
41. 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>.
42. 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>
43. Should you have any questions about this Show Cause Notice please contact Senior Investigator Tanya Masterman on email Tanya.Masterman@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director
Education and Care Regulation and Support
ACT Education Directorate

22 March 2022