

[REDACTED]  
Person with Management and Control  
BMA Belconnen Pty Ltd ATF BMA Belconnen Unit Trust  
RE: Bright Minds Academy Belconnen

Email: [REDACTED]

Dear [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. 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 Bright Minds Academy Belconnen SE-40012576 (the Service), operated by BMC Belconnen Pty Ltd ATF BMA Belconnen Unit Trust PR-40013290 (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 evidence supports a case to answer for multiple Provider offences. However, the Authority’s investigation is not complete until the Provider has had an opportunity to respond to the allegation/s 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 allegation/s may constitute offences under sections 165, 166, 167 and 173 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 include the following (further details appear at the end of this Notice):
  - a. Non-statutory Administrative Action (similar to a caution) with no further action;
  - b. Non-statutory Administrative Action with measures to be taken and evidence produced:

- c. Compliance 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;
  - b. Supervision and protection from harm; and
  - c. Notification requirements.

**Background to Investigation**

- 8. On 10 November 2021, the Authority received a direct complaint regarding multiple concerns about the operation of the Service. One concern related to conduct of an educator on 10 November 2021, which was notified by the Provider on 11 November 2021, as required under the *Law*. Refer Attachment A for documentation relevant to the notification.
- 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 of sections 166 and 167.
- 10. Information received during the investigation provided reasonable grounds to suspect additional offences under sections 165 and 174.
- 11. On 2 December 2021, the Provider notified the Authority of a complaint from a parent regarding educator/child interactions and child/child interactions. That complaint was amalgamated into the existing investigation. Refer Attachment B for documents relevant to that notification.
- 12. Two concerns, regarding failure to adequately care for a child's injury on 28 April 2021 resulting in an urgent hospital visit, and failure to notify that serious incident to the Authority, were investigated as suspected offences under sections 167 and 174, but evidence obtained did not support a case to answer by the Provider regarding those allegations. Accordingly, details have not been included in this Notice.
- 13. During the investigation, the Authority obtained numerous witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. One statement was obtained voluntarily, and the remainder were obtained utilising powers under section 215 of the *Law*, imposing an obligation to attend and provide relevant evidence under questioning by an Authorised Officer. It is an offence to fail to comply. The Authority is emphasising this to the Provider, as some witnesses may be identifiable due to the content of their evidence regarding some allegations.

**First Set of Grounds – Educator-Child Interactions**

**Allegation One – Inappropriate Discipline and Harms**

14. It is alleged that, at approximately 8:35am on 10 November 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] yelled at [REDACTED] and shut him in the bathroom, in response to aggressive behaviour, including lashing out physically at another child, in contravention of section 166(1) of the *Law*, engaging an additional offence under section 167(1) of the *Law*.

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

15. On 29 November 2021, the Provider was advised of the investigation and a notice for production of documents, allowable under section 215 of the *Law*, was issued.
16. Records produced by the Provider indicated that:
- a. the Service was educating and caring for children on 10 November 2021;
  - b. [REDACTED] was a child enrolled at the Service in the Adventurers room and was signed in at 7:20am on 10 November 2021;
  - c. [REDACTED] was an educator working directly with children in Explorers room from 6:30am to 8:00am, then Adventurers from 8:00am to 3:00pm (with lunch from 10:20am to 11:20am).
17. Documents submitted by the Provider included educator statements and a record of interview with outcome. Refer Attachment A above.
18. Relevant extract from the Complainant's statement is:



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19. It is the Authority's view that ensuring children are not subjected to inappropriate discipline is a reasonable precaution to take to protect children from harm, and so a contravention of section 166(1) of the *Law* engages an additional contravention of 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 further contravention of section 167(1) of the *Law*.

**Second Set of Grounds – Supervision and Protection from Harm**

Allegation Two – Sections 165, 167 of the *Law*

21. It is alleged that, during November 2021, the Provider has failed to ensure adequate inclusion support capacity in Adventurers and Explorers rooms, resulting in failure to ensure adequate supervision of all children being educated and cared for, in contravention of section 165(1) of the *Law* and failure to take every reasonable precaution to protect children from harm and from hazards likely to cause injury, in contravention of section 167(1) of the *Law*.

Legislation Relevant to Allegation Two

22. The following provisions of the *Law* and *Regulations* are relevant to Allegation 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 Two

23. Evidence gathered indicated contributing factors in the following areas relevant to Allegation Two:
- a. Staffing – stress levels, number and capacity;

- b. Child support plans and strategies;
- c. Resources;
- d. Professional development/training; and
- e. Provider involvement/management.

**Factor A – Staffing, Stress Levels, and Capacity**

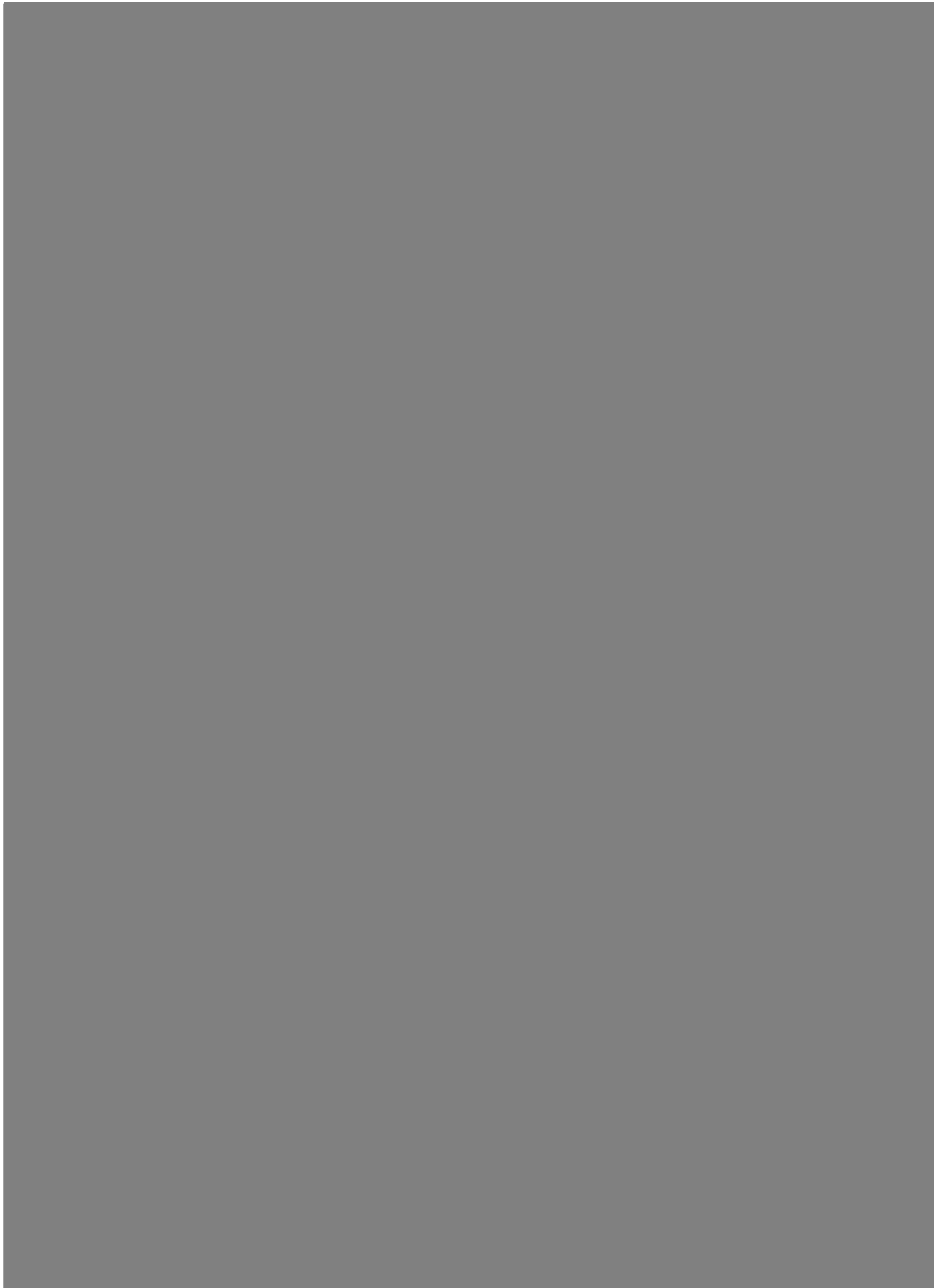
- 24. Utilising children’s attendance records and working directly with children records for 10 November 2021 submitted by the Provider, the Authority carried out a ratio analysis of the Service for that day, which indicated that staffing numbers met prescribed minimum levels. Refer Attachment C
- 25. Documents submitted by the Provider included the Staffing Arrangements Policy 2021, which outlined issues affecting adequacy of supervision, including that there may be times when minimum ratio requirements are not sufficient to ensure children are adequately supervised. Refer Attachment D.
- 26. Relevant extracts from Witness C’s statement are:





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





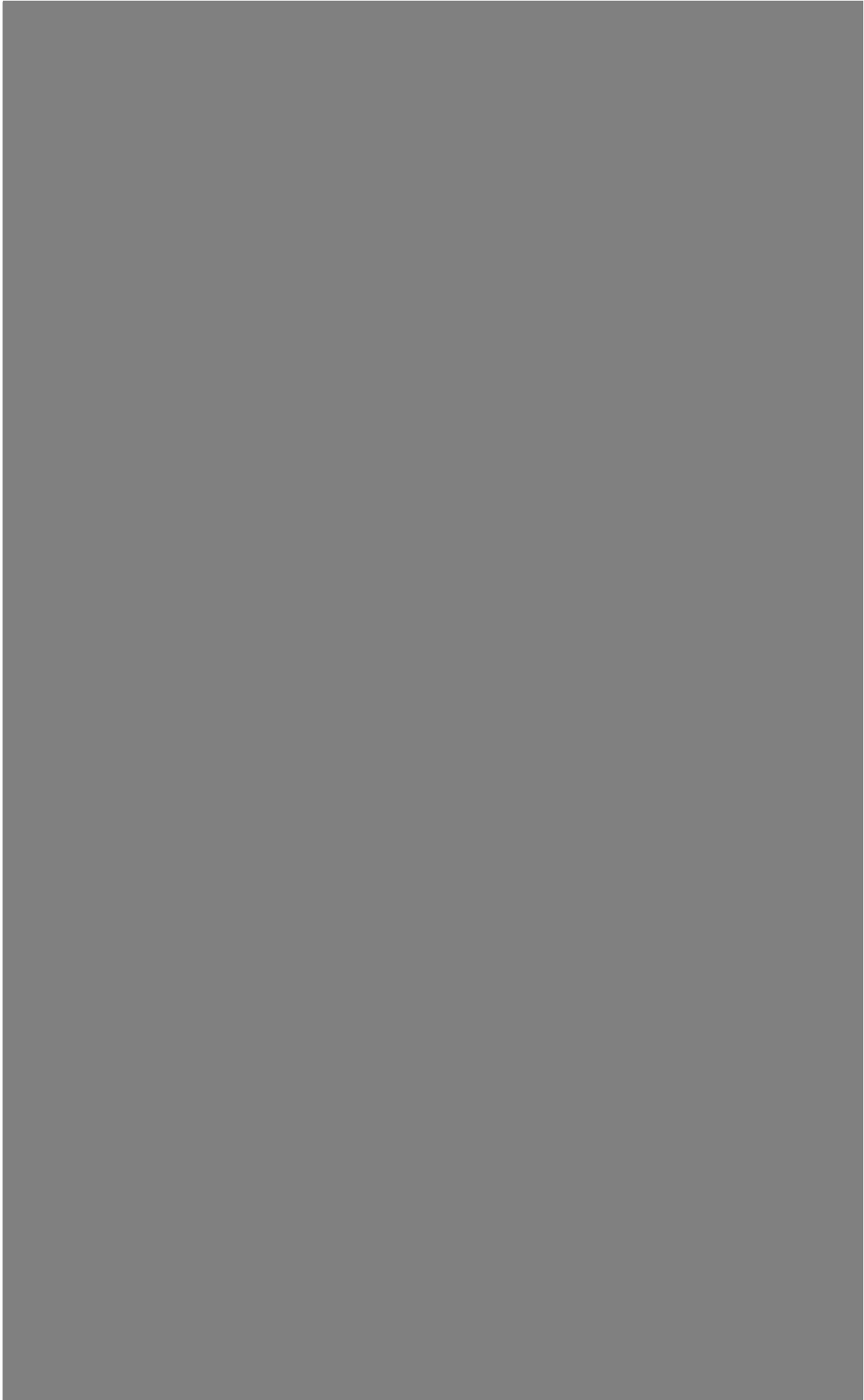
28. Relevant extracts from Witness B's statement are:





29. Relevant extracts from Witness D's statement are:







**Factor B - Child Support Plans/Strategies**

30. Documents submitted by the Provider included the Additional Needs Policy 2021 (linked to Regulations 155 and 156) which outlined adjustments to learning environments, development of written individual support plans where appropriate, and regular professional development on inclusive practices. Refer Attachment E

31. Relevant extracts from Witness C's statement are:



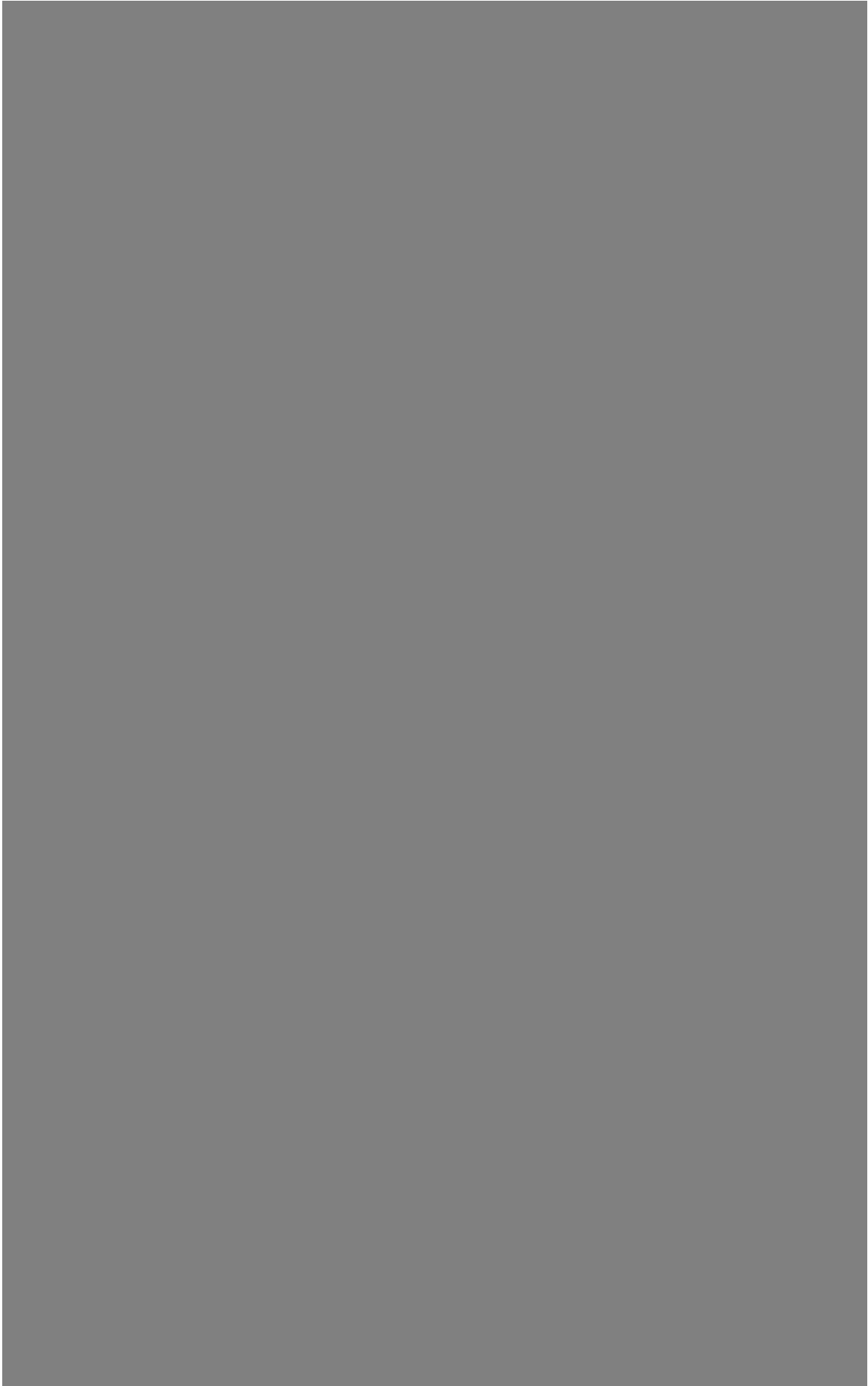


32. Relevant extracts from Witness A's statement are:



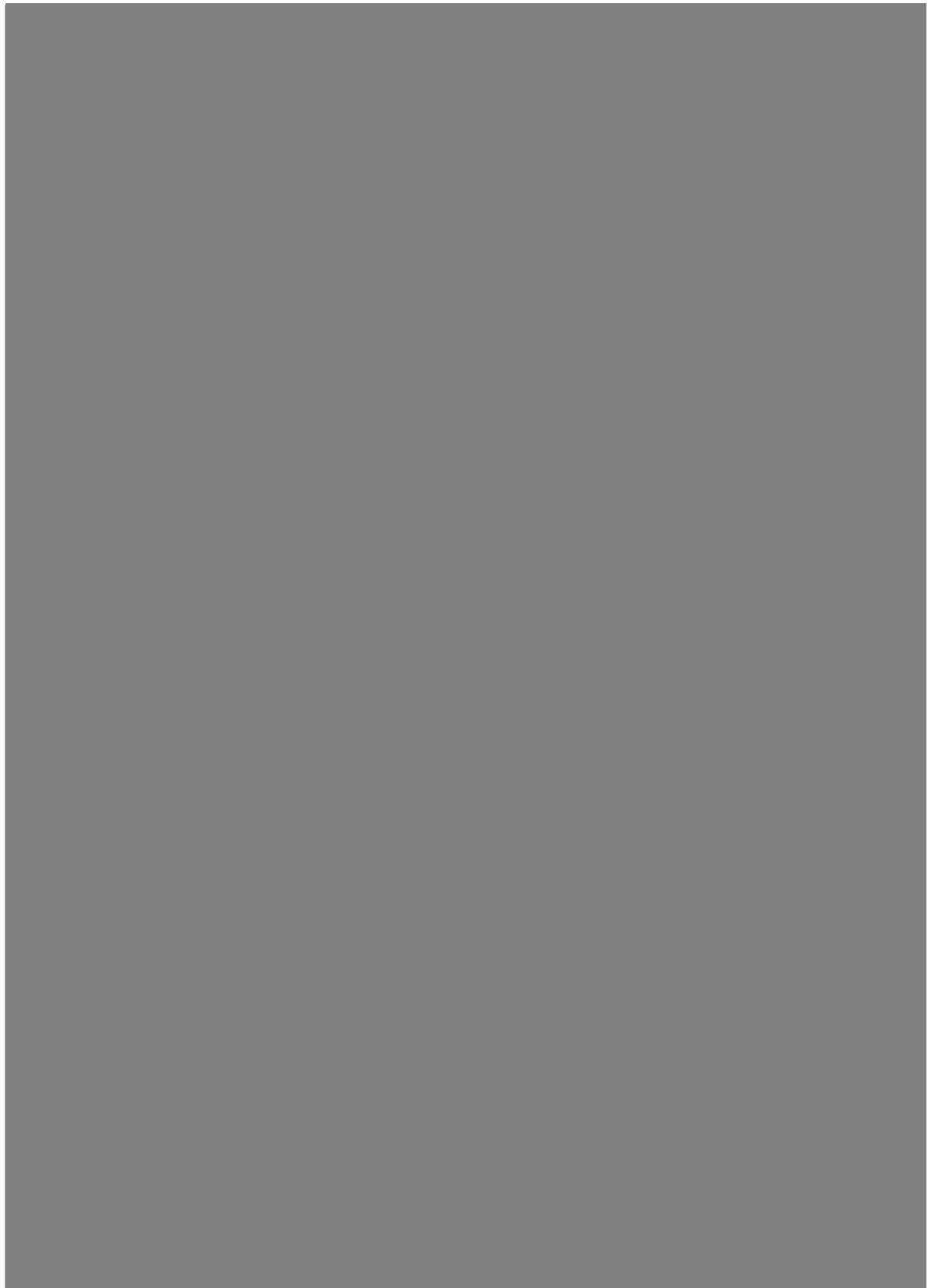
33. Relevant extracts from Witness B's statement are:

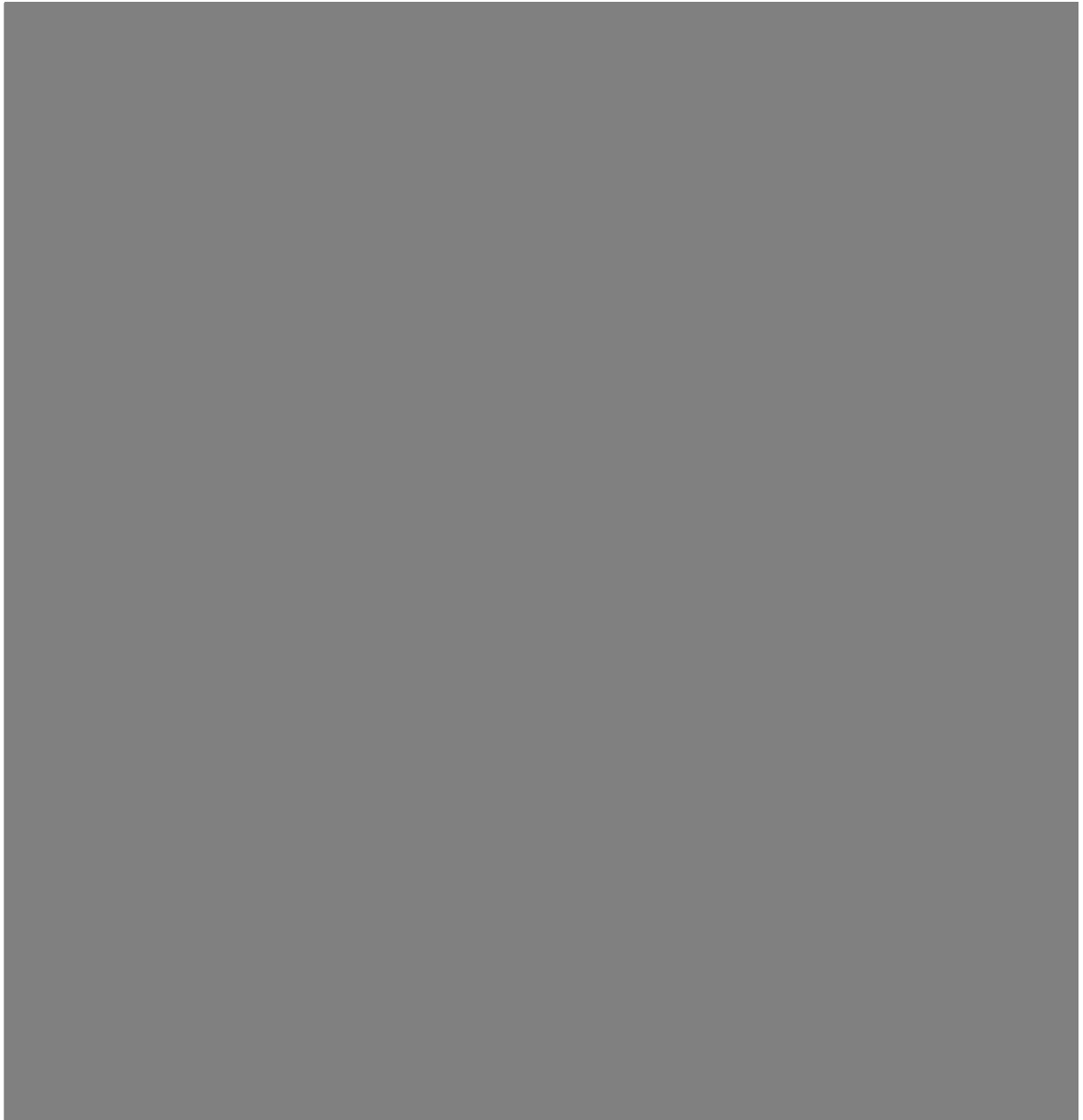






34. Relevant extracts from Witness D's statement are:





**Factor C – Resources**

35. Relevant extracts from Witness C's statement are:





36. Relevant extracts from Witness A's statement are:



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



38. Relevant extracts from Witness D's statement are:





**Factor D - PD/Training**

39. Relevant extracts from Witness C's statement are:



40. Relevant extracts from Witness A's statement are:



41. Relevant extracts from Witness D's statement are:



**Factor E - Provider Involvement/Management**

42. Relevant extracts from Witness C's statement are:



43. Relevant extracts from Witness A's statement are:



44. Relevant extracts from Witness B's statement:



Contraventions Supported by Allegation Two

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

*Third Set of Grounds – Notification Requirements*

Allegation Three – Failure to Notify

46. It is alleged that the Provider failed to notify the Regulatory Authority that [REDACTED] had ceased to be employed or engaged by the Service within the prescribed time of seven days, in contravention of section 173(2)(b) of the *Law*.

Legislation Relevant to Allegation Three

**Section 173(2)(b) – Offence to fail to notify certain circumstances to Regulatory Authority**

- (2) An approved provider must notify the Regulatory Authority of the following in relation to an approved education and care service operated by the approved provider -
- (b) if a nominated supervisor of an approved education and care service -
- (i) ceases to be employed or engaged by the service; or
  - (ii) is removed from the role of nominated supervisor; or
  - (iii) withdraws consent to the nomination.

Penalty: \$4000, in the case of an individual.  
\$20 000, in any other case.

- (4) A notice under subsection (1) or (2) must –
- (a) be in writing; and
  - (b) include any prescribed information.
- (5) A notice under subsection (2) must be provided within the relevant prescribed time to the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

**Regulation 174 – Time to notify certain circumstances to Regulatory Authority**

- (2) For the purpose of section 173(5) of the *Law*, a notice must be provided:
- (b) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant event.

Evidence Relevant to Allegation Three

47. The Authority's records indicate that [REDACTED] was a nominated supervisor of the Service commencing on 29 December 2020.
48. On 14 February 2022, the Provider notified the cessation of [REDACTED] engagement as nominated supervisor, with a cessation date of 10 December 2021. Refer Attachment F for Notification.
49. The notification of cessation was required to be made by 17 December 2021.

Contravention supported by Allegation Three

50. Evidence gathered appears to support a contravention of section 173(2)(b) of the *Law*.

### **Potential Compliance Action**

51. 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*.
52. 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.
53. 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**

54. 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.
55. 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 [Tanya.Masterman@act.gov.au](mailto: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**

56. 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*.
57. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.

58. 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.
59. 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>.
60. 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>
61. Should you have any questions about this Show Cause Notice please contact Senior Investigator Tanya Masterman on email [Tanya.Masterman@act.gov.au](mailto:Tanya.Masterman@act.gov.au).

Yours sincerely



Jo Williams

Director

Education and Care Regulation and Support

ACT Education Directorate

12 April 2022