



Ms [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
Email: [REDACTED]

Dear Ms [REDACTED]

**Show Cause Notice – Proposed Prohibition**

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance. As you may be aware, the Authority is the regulator of education and care services in the ACT and is responsible for monitoring and enforcing compliance with the *Education and Care Services National Law (ACT)* (the *Law*). One of the Authority’s roles is to investigate suspected offences under the *Law*.
2. The Authority has received information regarding allegations that on 5 October 2021, you inappropriately disciplined a child, [REDACTED] who was in your personal care. Furthermore, it is alleged that on 26 October 2021, you used inappropriate methods to keep child, [REDACTED], in bed, whilst employed as an educator at Artemis Early Learning Fyshwick, SE-40002132 (the Service) operated by Canberra Childcare Pty Ltd ATF The Fyshwick Child Care Trust, PR-00005814 (the Provider).
3. The Authority’s records indicated that you were a nominated supervisor of the Service at the time of the alleged incidents.
4. 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.
5. The Authority does not intend to make further enquiries into this matter (unless new relevant information emerges) however, the Authority cannot proceed to the proposed Prohibition Notice or any other compliance action until you have had an appropriate opportunity to respond to the allegations and evidence obtained. This is the reason for sending this Show Cause Notice (Notice) to you.
6. Detailed instructions of how to respond appear at the end of this Notice.

**Grounds for issuing Show Cause Notice for Proposed Prohibition.**

7. On 20 December 2021, the Authority received notification (NOT-40605787) from the Provider regarding your conduct towards children while employed as an educator at the Service.
8. The Provider also advised they had investigated the allegations, gathering witness accounts/summaries, reviewing video footage (no longer available) and conducting a workplace interview with you. The Provider advised your employment at the Service had been terminated.

9. The Authority sent you a Show Cause Notice on 20 January 2022 via email, and again via registered post on 10 February 2022. The Show Cause Notice outlined the allegations raised, and copies of relevant evidence supporting the allegations for you to respond to. The Authority noted that you had signed for receipt of the hard copy document on 2 March 2022 with Australia Post. Refer copy of Show Cause Notice and communication pathways at Attachment A.
10. As a result of no response to the Show Cause Notice, and the potential of risk associated with the conduct as alleged, the Authority determined to formally investigate the allegations.

### **Allegations**

#### **Allegation One**

11. It is alleged that, on the afternoon of 5 October 2021, whilst educating and caring for children in the Preschool room of the Service, you smacked the bottom of a child in your personal care (██████████), pulled his hair, yelled at him and isolated him in a kitchenette before removing him after several minutes, taking him to the bathroom, again yelling at him and smacking him several more times, which occurred in view of children enrolled at the Service.

#### **Allegation Two**

12. It is alleged on 26 October 2021, you, grabbed a child, (██████████), and returned them to their bed multiple times, for the purpose of resting, with the child apparently wanting to play, causing distress to the child.

#### **Allegation Three**

13. It is alleged that on 5 October 2021 and 26 October 2021, you, in capacity of Nominated Supervisor at the Service, have failed to ensure reasonable precautions were taken to protect children being educated and cared for from injury, being psychological injury, when you reacted as alleged to (██████████) on 5 October 2021 in children's presence, and when you inappropriately interacted with (██████████) by way of forcing sleeping, on 26 October 2021, in breach of section 167(2) of the *Law*.

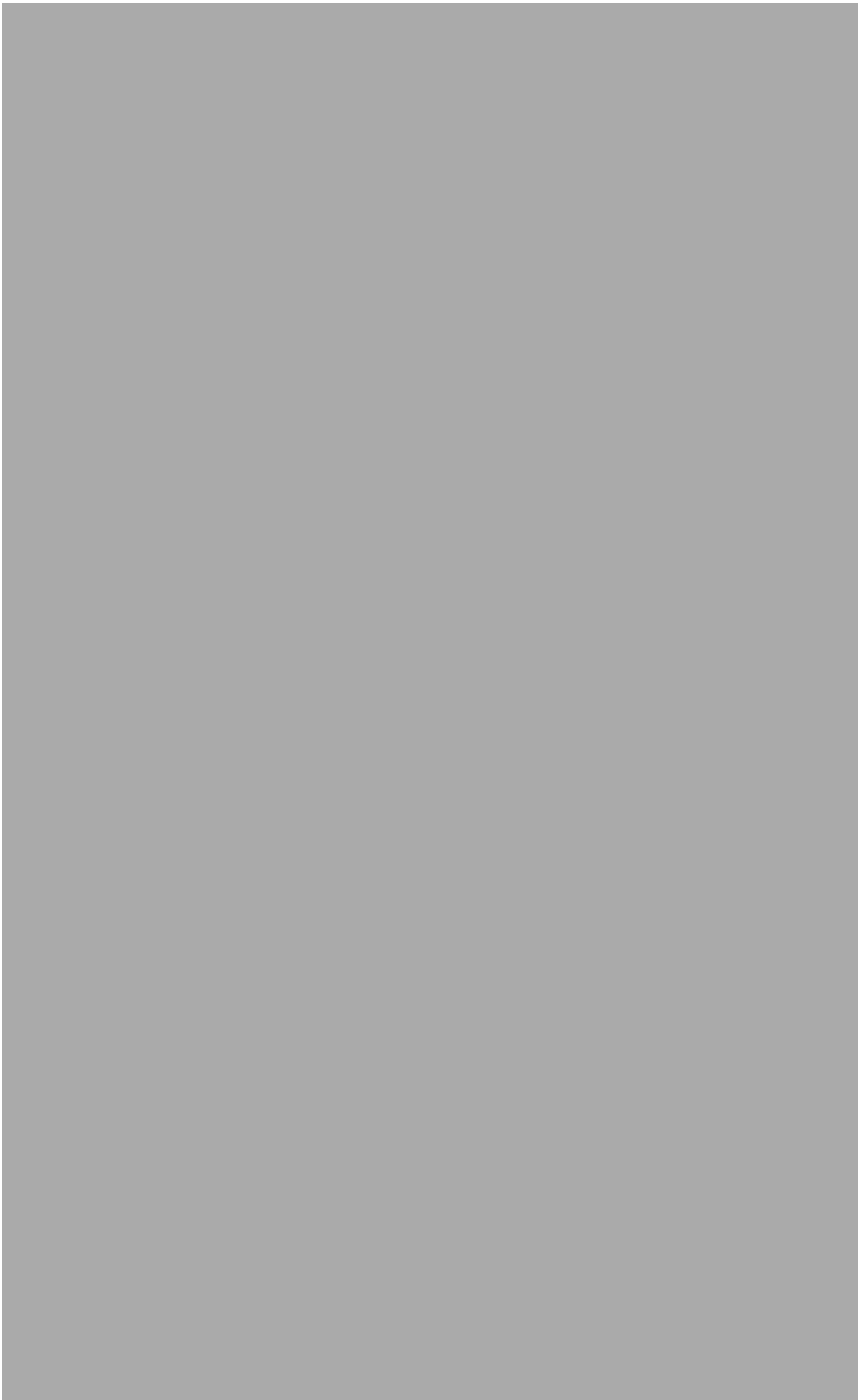
### **Evidence relevant to Allegations**

14. Evidence relevant to the allegations consisted of information obtained from the Provider, which was included in the previous Show Cause Notice, as well as formal statements from identified witnesses obtained by the Authority under the *Law*.

#### **Witness Evidence Relevant to Allegation One**

15. Relevant extracts from Witness A's statement obtained under section 215 of the *Law*:

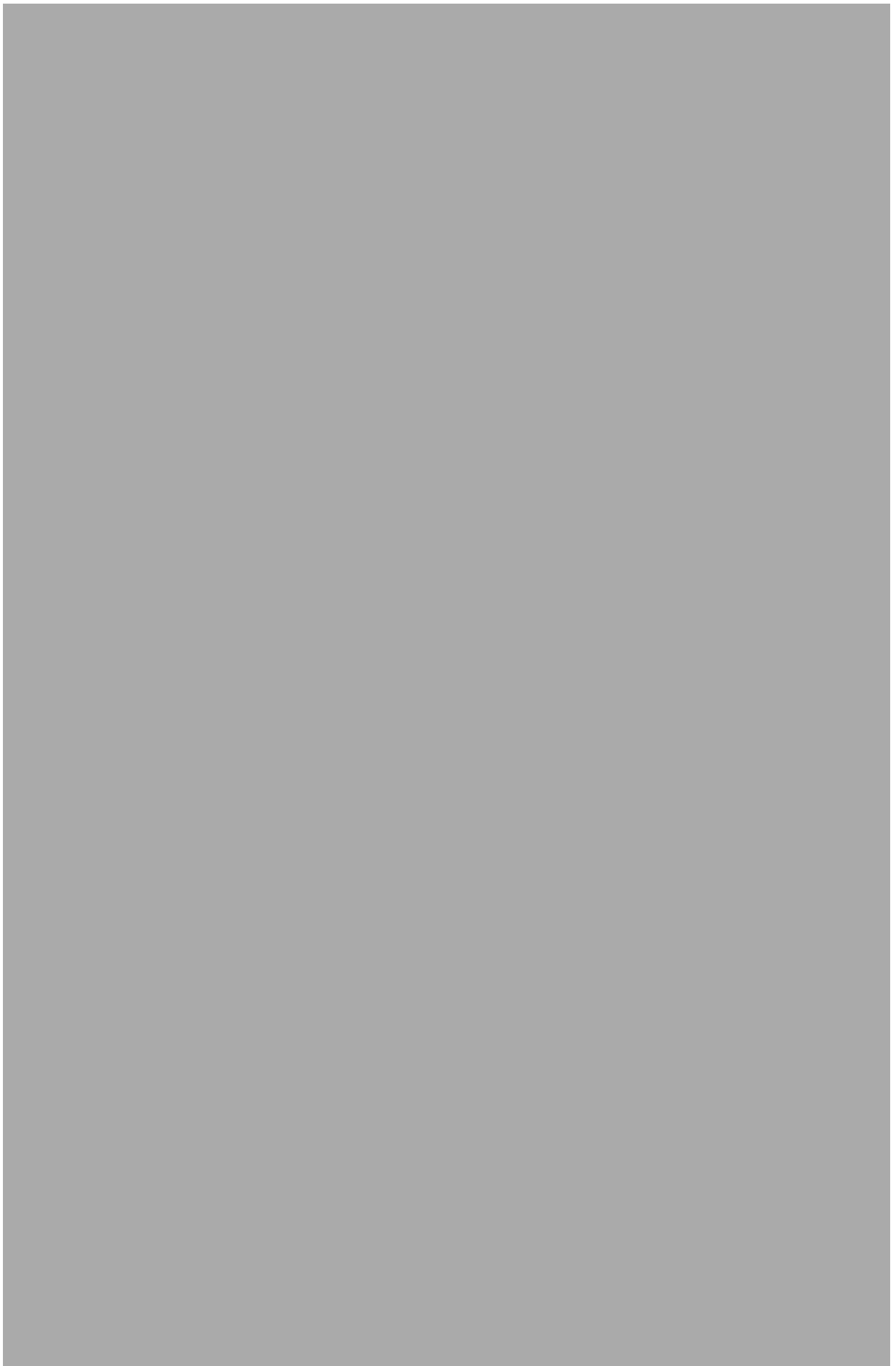






16. Relevant extracts from Witness B's statement obtained under section 215 of the *Law*:







17. Relevant extracts from Witness C's statement obtained under section 215 of the *Law*:







Witness Evidence Relevant to Allegation Two

18. Relevant extracts from Witness A's statement obtained under section 215 of the *Law*:



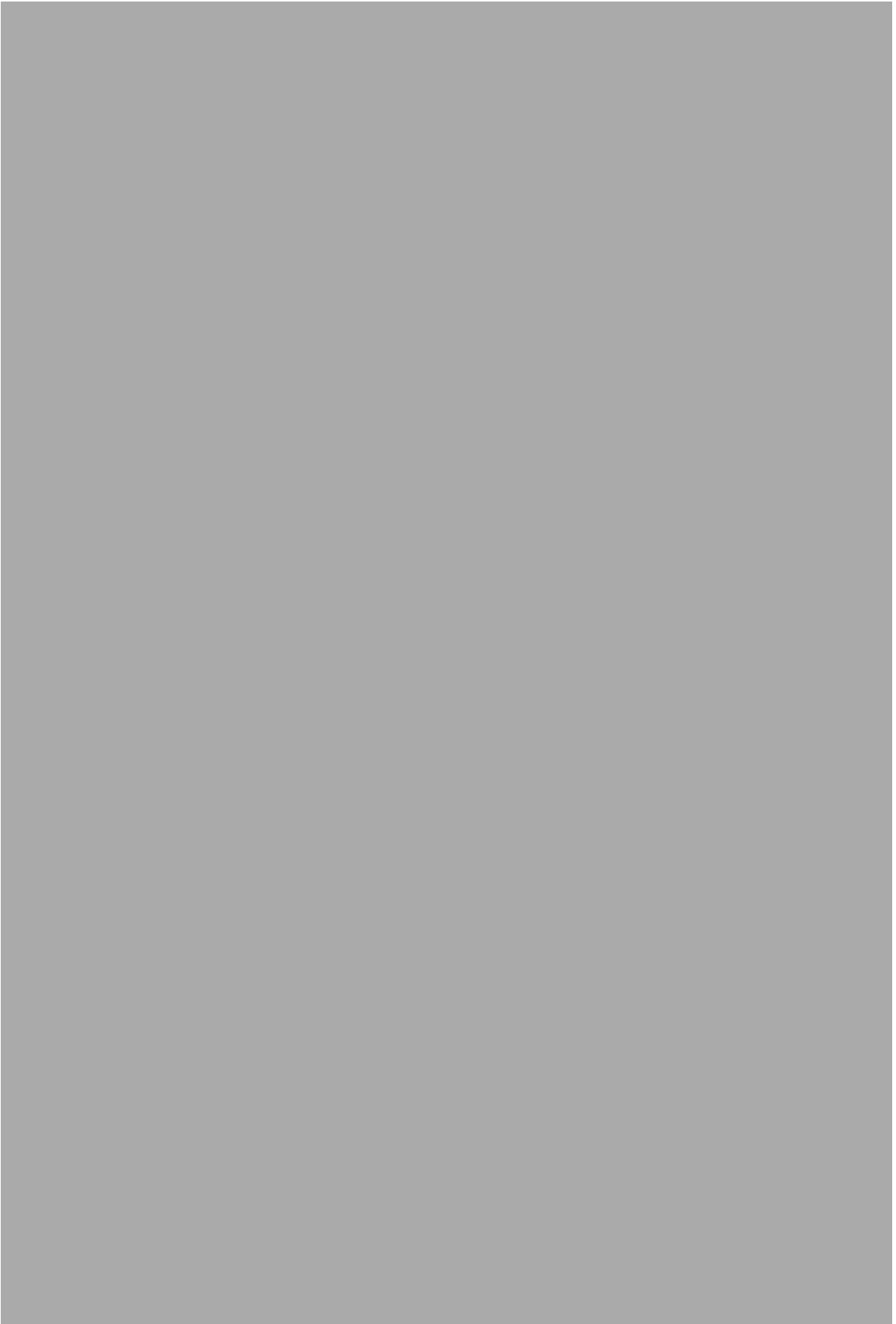
[REDACTED]

19. Relevant extracts from Witness B's statement obtained under section 215 of the *Law*:

[REDACTED]



20. Relevant extracts from Witness C's statement obtained under section 215 of the *Law*:



### Evidence Relevant to Allegation Three

21. All evidence relevant to Allegations One and Two support the allegation that as a Nominated Supervisor, you did not consider any impact of your alleged conduct occurring, as already outlined, on 5 October 2021 and 26 October 2021. Therefore, you did take all reasonable precautions to protect children being educated and cared for on these days from harm and hazard likely to cause injury, specifically psychological injury when being witness and/or victim to the alleged conduct.

### Legislative Provisions Relevant to Evidence obtained

22. Section of Law engaged by the allegations, and relevant to the investigation is as follows:

#### **Section 167(2) 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

### Risk Engaged by Evidence obtained

23. The evidence currently available to the Authority, relevant to the allegations, appears to indicate that, on 5 October 2021 you subjected a child in your personal care to significant inappropriate discipline in front of other enrolled children. In addition, on 26 October 2021, you subjected a child being educated and cared for by the Service to inappropriate interactions. This conduct, if substantiated, is sufficient grounds to support that there may be an unacceptable risk of harm to a child or children if you are permitted to provide education and care to children.

### Fitness and Propriety as Nominated Supervisor

24. The evidence currently available to the Authority also raises questions of fitness and propriety to be in a role as nominated supervisor. This question will only require consideration by the Authority if, after considering all available evidence (including any further response from you), the Authority decides that you do not pose an unacceptable risk of harm to children.
25. 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.
- 26. The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the position and may change over time to meet social and political expectations. At minimum, fitness and propriety includes honesty, knowledge, and ability.
- 27. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection from harm and hazards, and educational programs. Specific obligations are contained in both the *Law* and the *Regulations*. 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), and also possess the ability to manage educators and any other staff, service premises and relationships with families.
- 28. The information currently available to the Authority raises a concern about your ability to manage and supervise an education and care service.
- 29. The purpose of this Show Cause Notice is to provide you with an opportunity to respond to the evidence outlined above, and to also address the point of your fitness and propriety to be a nominated supervisor.

**Potential Compliance Actions**

- 30. 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; or
  - (b) Enforceable undertaking under section 179A of the *Law*; or
  - (c) Prohibition from acting in a role as Nominated Supervisor under section 182(3) of the *Law*;  
or
  - (d) Prohibition under section 182(1) of the *Law*.

**Relevant sections of Law engaged by Potential compliance actions**

**Section 182 of the Law – 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 –

- (a) an approved provider;
  - (b) a nominated supervisor;
  - (c) an educator;
  - (d) a family day care educator;
  - (e) an employee;
  - (f) a contractor;
  - (g) a volunteer;
  - (h) a person who was formerly a person referred to in paragraphs (a) to (g) in relation to the approved education and care service –  
or in any other capacity
- (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.

**Section 183 – Show cause notice to be given before prohibition notice**

- (1) Before giving a prohibition notice, the Regulatory Authority must give the person a notice (a ***show cause notice***) –
- (a) stating that the Regulatory Authority proposes to give the person a prohibition notice; and
  - (b) stating the reasons for the proposed prohibition; and
  - (c) inviting the person to make a written submission to the Regulatory Authority, within a stated time of at least 14 days, about the proposed prohibition.

**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.
- (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.

#### Effect of a Prohibition Notice

31. If the Authority decides to issue a prohibition notice, you must not do the following while the prohibition notice is in force:
  - (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.
32. 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.

#### Effect of an Enforceable Undertaking

33. An Enforceable Undertaking is a formal “promise” to the Authority to do or not do certain things. Terms vary, but examples of requirements are:
  - a. only working with children under supervision;
  - b. doing some additional training to improve your skills as an educator;
  - c. keeping the Authority advised of your workplace; and/or
  - d. having an approved mentor.
34. It is a flexible way to ensure ongoing compliance with the *Law* and *Regulations* and may be appropriate depending on the level of risk to children.
35. If you offer an enforceable undertaking and the Authority accepts it, 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.

#### **Right of response**

36. 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.
37. You may, within 14 days of receiving this Notice, make a written submission for the Authority’s consideration in deciding if the allegations are substantiated, the level of risk to children and whether any compliance action should be taken.

38. At Attachment B to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.
39. If a response to this notice is not received, the Authority will determine a finding based on available evidence, as outlined and provided to you in this notice.
40. Please direct your written submission via email to Authorised Officer Janine Fairburn at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au) or by post to:

Janine Fairburn  
Children's Education and Care Assurance  
Education and Care, Regulation and Support  
ACT Education Directorate  
GPO Box 158, CANBERRA ACT 2601

**Caution**

41. 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*.
42. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against 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.
43. The *Law* applies to you as a former nominated supervisor and educator and to any service you may be employed 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>.  
  
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>
44. Should you have any questions about this Show Cause Notice please contact Janine Fairburn by email at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).

Yours sincerely,



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

11 July 2022