



[REDACTED]
Nominated Supervisor
Insight Early Learning Throsby Pty Ltd
RE: Insight Early Learning Throsby

Email: [REDACTED]

Dear [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. The ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated a complaint alleging that the *Education and Care Services National Law (ACT)* (the *Law*) was contravened at Insight Early Learning Throsby SE-40016977 (the *Service*), operated by Insight Early Learning Throsby Pty Ltd PR-40020627 (the *Provider*).
2. 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.
3. This notice offers you the opportunity to respond to the allegations prior to any determination being made. If either or both of the allegations are substantiated, I am considering compliance action based on suspected contraventions of the *Law* and the *Regulations* arising from your failure to take reasonable precautions to protect children from harm and from hazard.
4. As a delegate of the Authority, I am considering compliance action under Part 7 of the *Law*, including an enforceable undertaking or prohibition from being a nominated supervisor.

Grounds for issuing Show Cause for Compliance Action

5. The Authority is considering compliance action based on evidence that supports contraventions of the *Law* arising from the Authority’s investigation. Specifically, the evidence obtained during the investigation suggests one set of grounds that support offences under the *Law*, being protecting a child from harm or hazards.
6. The Authority’s records indicate that you were the Nominated Supervisor of the *Service* at the relevant time, having commenced your role on 15 March 2020 and continuing to date.

Background

7. On 12 February 2021, the Authority received a direct complaint that a child [REDACTED], aged 19 months), had sustained a facial injury (bruising, swelling and potential fracture) on 9 February 2021 that was unwitnessed. The injury did not appear to have been appropriately managed regarding contact and first aid, the injury had required multiple medical visits including X-rays and the incident had not been notified to the Regulatory Authority.

8. Due to the risk occasioned to children when injuries are not appropriately managed, it was determined to investigate suspected offences of failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury.

Grounds –Protection from Harm

Allegations One and Two

9. It is alleged that, on 9 February 2021, you, as Nominated Supervisor, failed to take reasonable precautions to protect children from harm and from hazards likely to cause injury, in that [REDACTED] [REDACTED] sustained an unwitnessed significant facial injury, no first aid treatment was given and contact not made promptly with parent/authorized nominee, in contravention of section 167(2) of the *Law*.
10. Further or in the alternative, you as Nominated Supervisor failed to implement appropriate strategies to ensure that [REDACTED] was appropriately supervised and protected from harm, resulting in an unwitnessed significant facial injury, in contravention of section 167(2) of the *Law*.

Legislation Relevant to Allegation One

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

Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards

A nominated supervisor 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

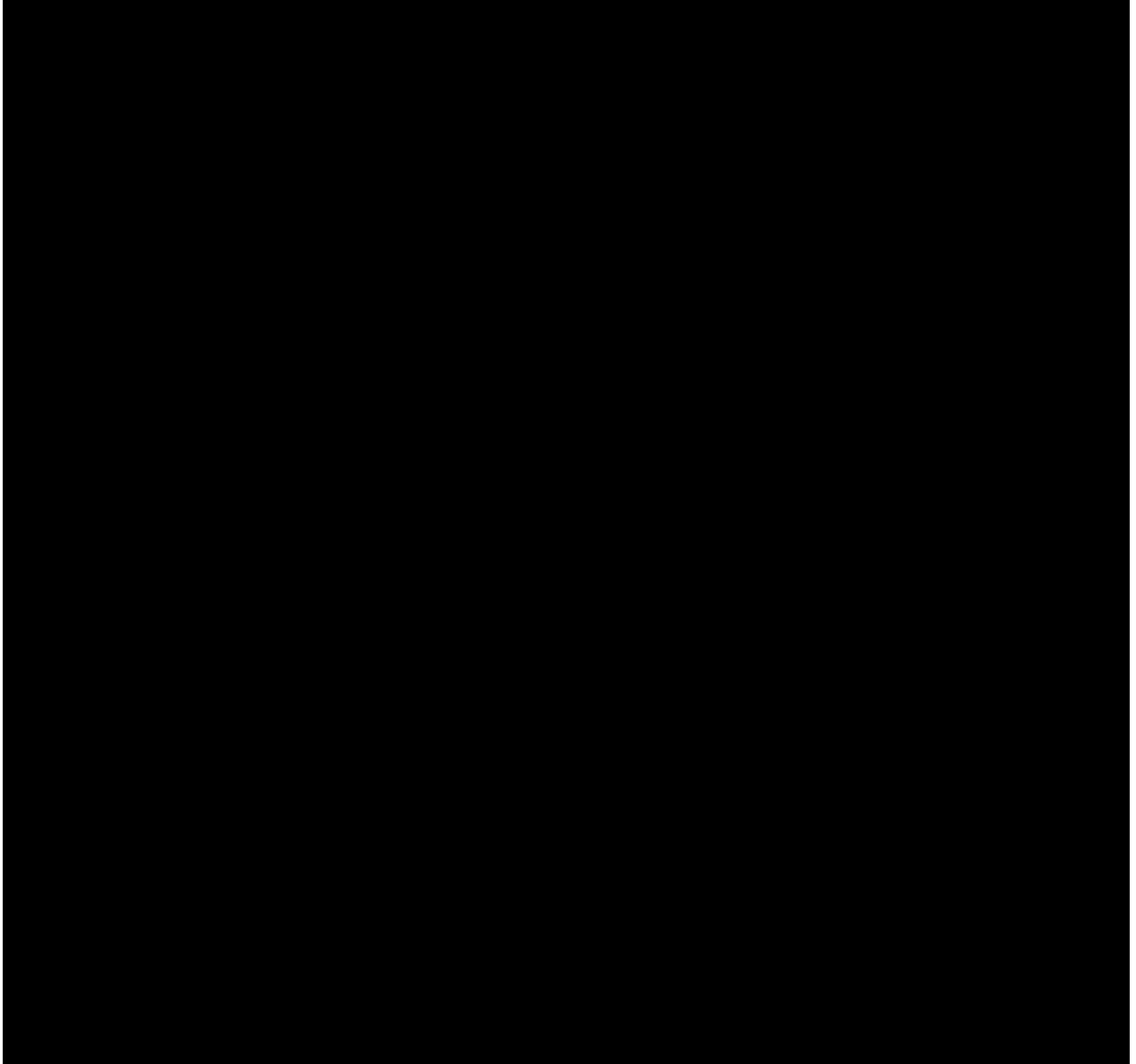
Evidence Relevant to Allegations One and Two

12. On 22 February 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 9 February 2021, [REDACTED] was in attendance and an incident report was prepared. Refer Attachment A for relevant records.
14. Due to evidence obtained, a supplementary notice under section 215 of the *Law*, was issued to the Provider on 12 March 2021, requiring further documents to be produced.
15. Additional evidence obtained from the Provider included an enrolment record for [REDACTED] [REDACTED] and Incident Reports for [REDACTED] from 1 October 2020 to 18 February 2021.
16. The incident reports obtained were analysed, indicating six documented injuries from trips/falls between 1 October 2020 and 18 February 2021. Refer Attachment B for additional records and analysis.

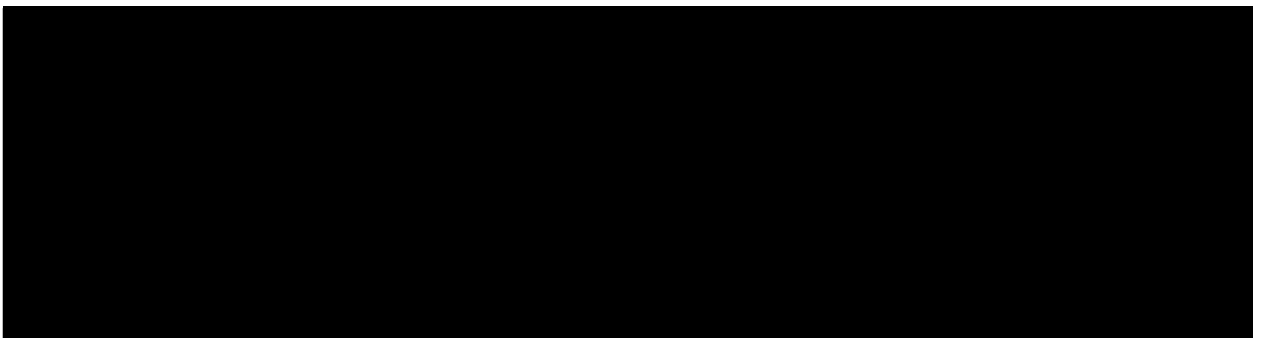
17. As part of the investigation, the Authority obtained a statement from [REDACTED]. Refer Attachment C, for a copy of the statement, redacted where appropriate, including copies of photographs and medical reports.

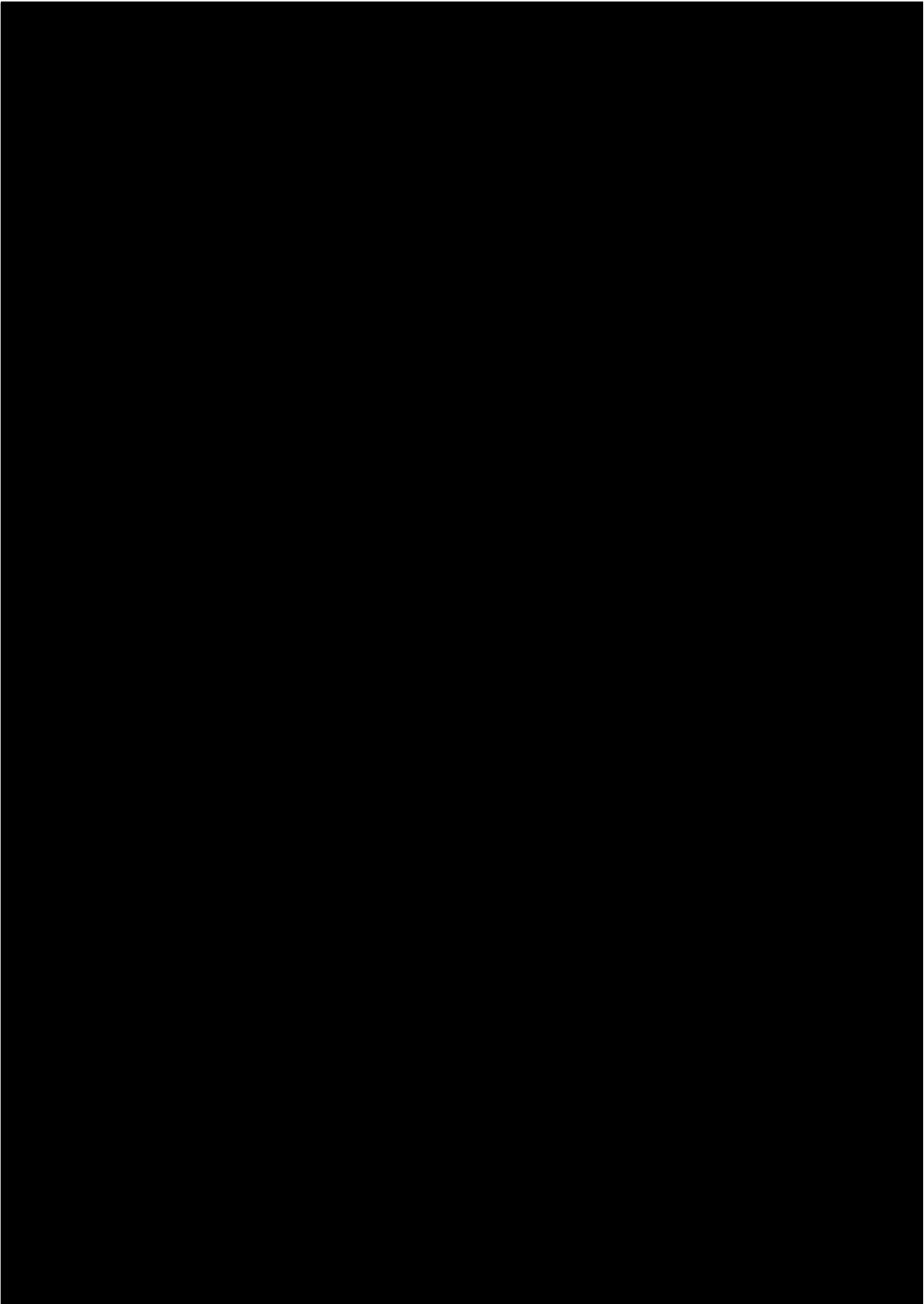
18. As part of the investigation, the Authority obtained statements from additional witnesses, relevant excerpts from which are included below.

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

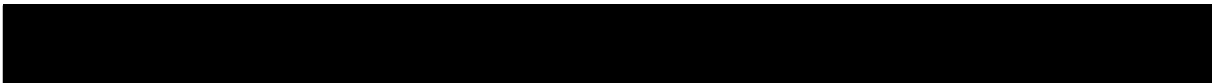


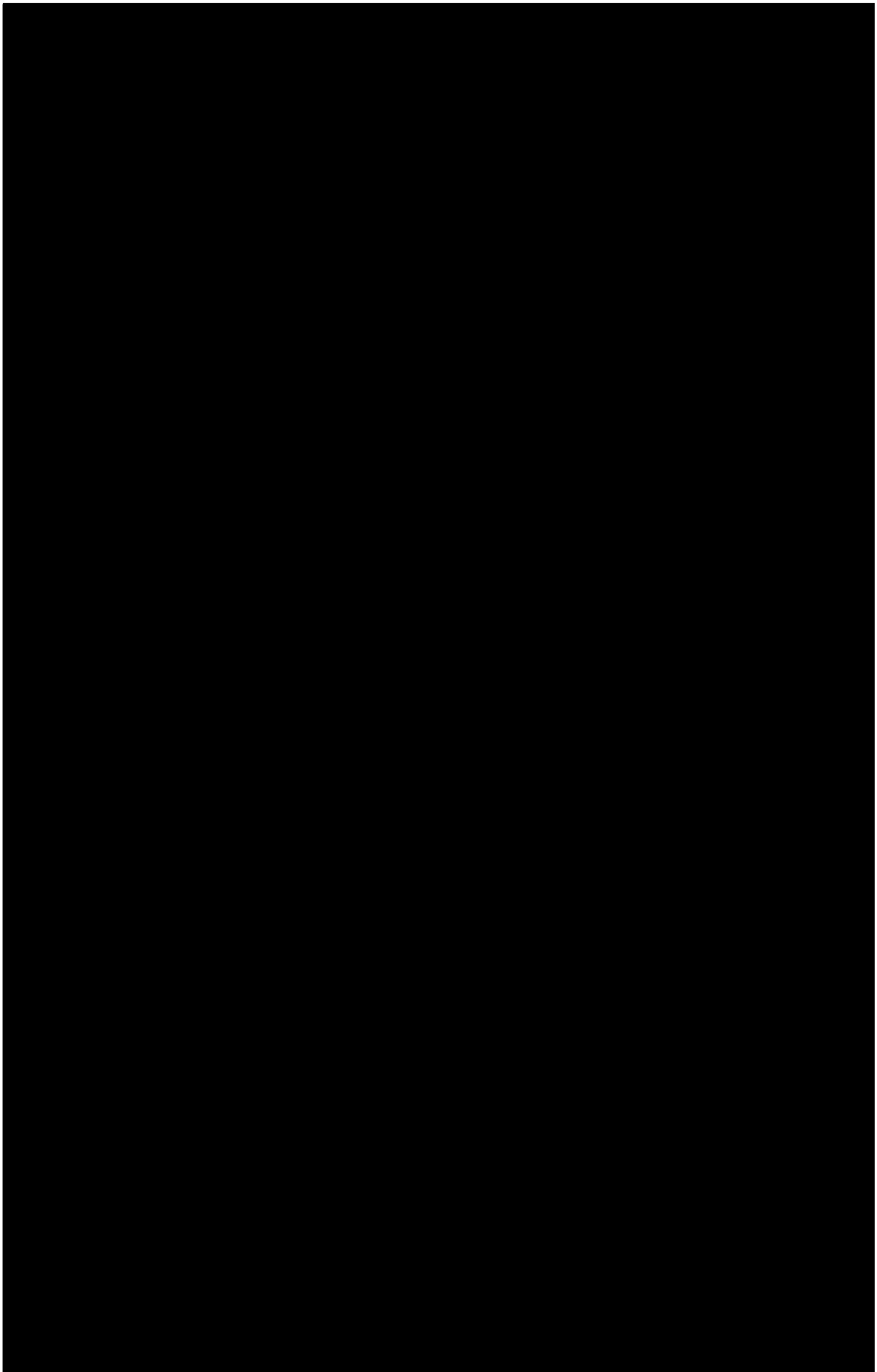
20. Relevant extracts from Witness B's statement are:

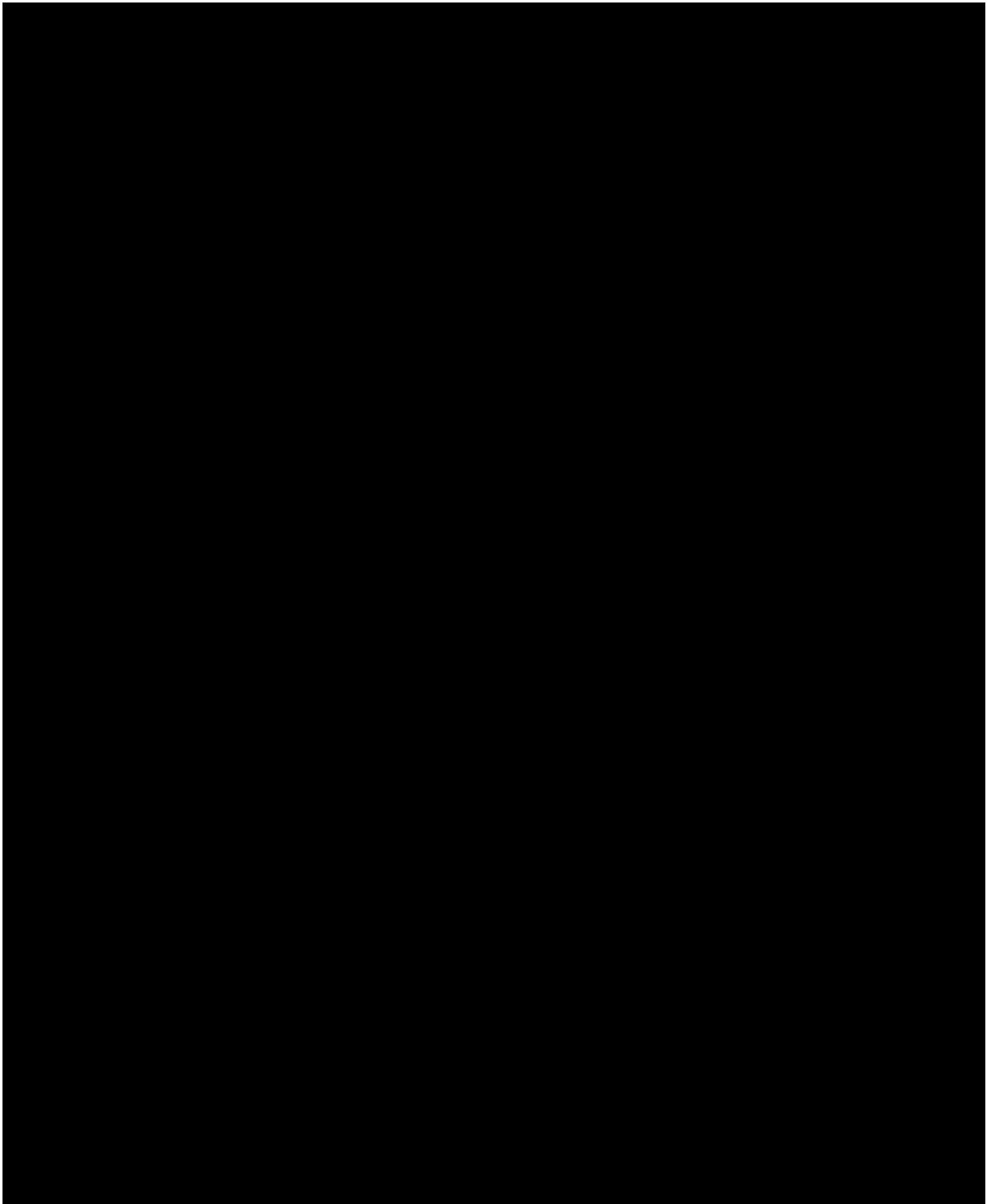




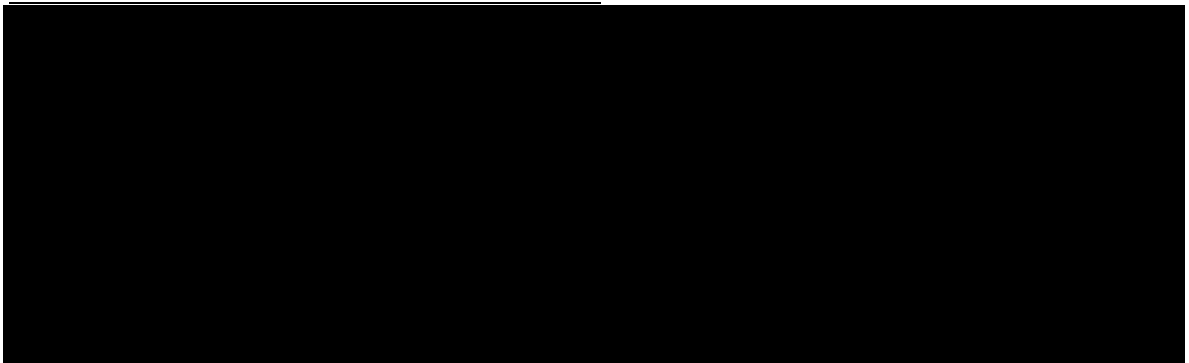
21. Relevant extracts from Witness C's statement are:

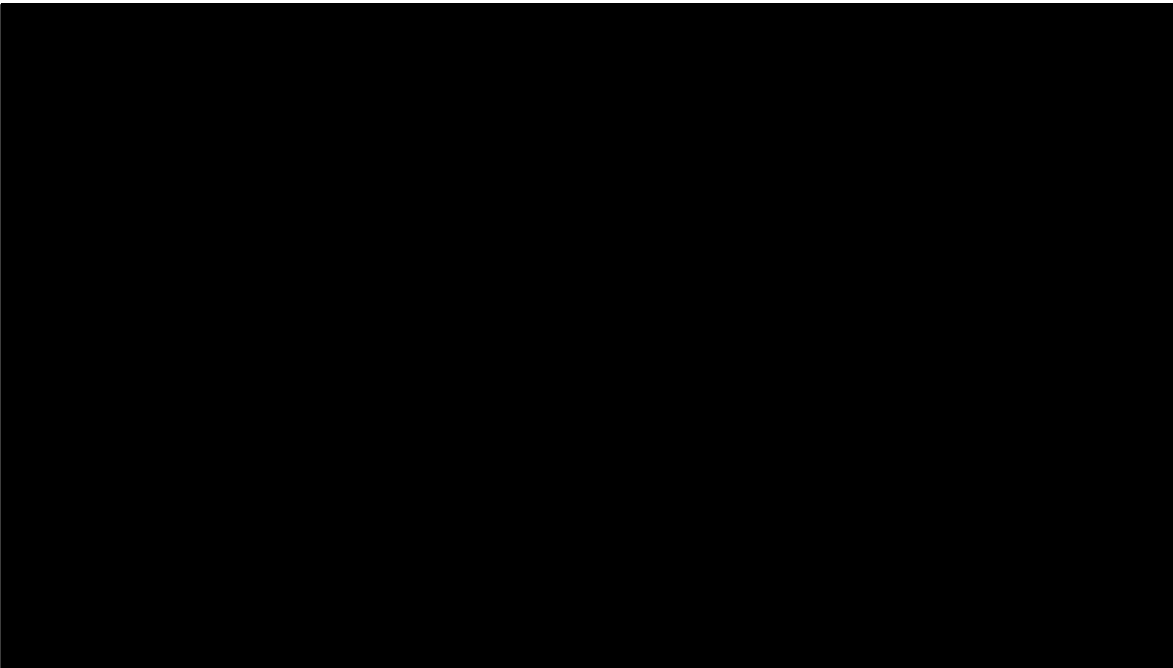






22. Relevant extracts from Witness D's statement are:





Contraventions Supported by Allegations One and Two

23. Evidence gathered appears to support contraventions of section 167(2) of the *Law*.

Fitness and Propriety as Nominated Supervisor

24. During the course of the investigation, evidence gathered raised questions of fitness and propriety to undertake the role of nominated supervisor. As a delegate of the Authority, I am considering compliance action under Part 7 of the *Law*, including prohibition from being a nominated supervisor or an enforceable undertaking.
25. The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the particular position and may change over time to meet social and political expectations.
26. The concept was described in *Australian Broadcasting Tribunal v Bond*¹ as follows:

The expression “fit and proper person”, standing alone, carries no precise meaning. It takes its meaning from context, from the activities in which the person is or will be engaged and the ends to be served by those activities.

27. At minimum, fitness and propriety includes honesty, knowledge and ability.²
28. 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 in the role of nominated supervisor, the person must be honest, have deep knowledge and understanding of the National Quality Framework (including compliance responsibilities), and also possess the abilities to manage educators and any other staff,

¹ (1990) 170 CLR 321 per Toohey and Gaudron JJ.

² *Hughes & Vale Pty Ltd v New South Wales (No 2)* (1955) 93 CLR 127 at 156 per Dixon CJ, McTiernan and Webb JJ.

service premises and relationships with families, and to ensure that children are in appropriate environments for their developmental stage and that those children who require adaptive strategies to ensure their safety are appropriately supported.

29. The purpose of this Show Cause Notice is to provide you with an opportunity to respond to the evidence outlined above, and to specifically address the point of your fitness and propriety to be a nominated supervisor.

Proposed Compliance Action

30. The Authority is proposing compliance action under Part 7 of the *Law*, should the Authority find that the Allegation is substantiated on the balance of probabilities. Potential compliance actions include:

- a. Prohibition from acting in a role as Nominated Supervisor;
- b. Enforceable undertaking under section 179A of the *Law*;
- c. Non-statutory action.

31. Relevant legislation appears below:

Section 179A - Enforceable undertakings

- (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 the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the education and care service.
- (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.
- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

Section 182(3) - Grounds for issuing a prohibition notice

- (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.

Regulation 117C – Minimum requirements for a nominated supervisor

For the purposes of section 161A of the *Law*, the prescribed minimum requirements for nomination of a person as a nominated supervisor of an education and care service are that the person must –

- (a) have attained the age of 18 years; and
- (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.

Right of response

32. You have a right to respond to the allegations set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
33. 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

34. 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*.
35. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.

36. 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.
37. The *Law* applies to you as a nominated supervisor. 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>.
38. 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>
39. Should you have any questions about this Show Cause Notice please contact Senior Investigator Tanya Masterman, on tanya.masterman@act.gov.au.

Yours sincerely



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

17 June 2021