



Email:

Dear

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 any or all of the allegations are substantiated, I am considering compliance action based on suspected contraventions of the *Law* and the *Regulations* regarding failure to take reasonable precautions to protect children from harm and from hazard.
4. During the investigation, the Authority received documentation which raised an additional suspected contravention regarding accuracy of prescribed records. As a delegate of the Authority, I am considering compliance action under Part 7 of the *Law*.

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 three sets of grounds that support offences under the *Law*.
6. The first set of grounds relates to protecting a child from harm or hazards. The second set of grounds relates to failure to notify the Authority of a prescribed matters. The third set of grounds relates to accuracy of prescribed records.

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 Xrays 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, and failure to notify prescribed matters to the Authority

First set of grounds –Protection from Harm

Allegations One and Two

9. It is alleged that, on 9 February 2021, the Provider failed to take reasonable precautions to protect children from harm and from hazards likely to cause injury in that [REDACTED], sustained an unwitnessed significant facial injury, no first aid treatment was given and contact not made promptly with parent/authorised nominee, in contravention of section 167 (1) of the *Law*.
10. Further or in the alternative, the Provider 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(1) 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(1) of the *Law* - Offence relating to protection of children from harm and hazards

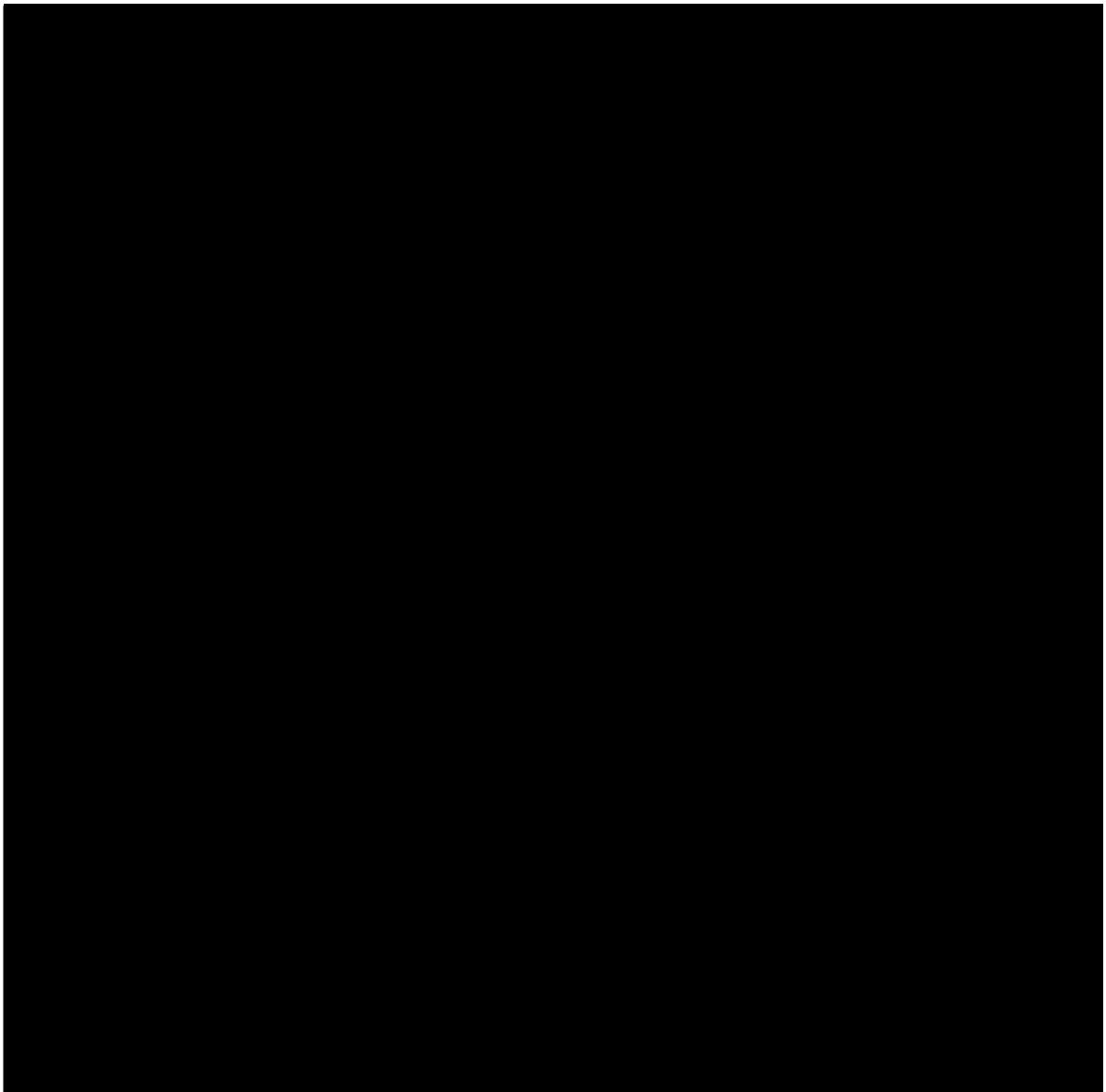
The Approved Provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury.

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

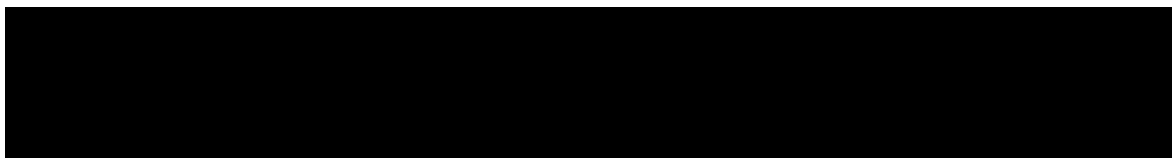
Evidence Relevant to Allegations One and Two

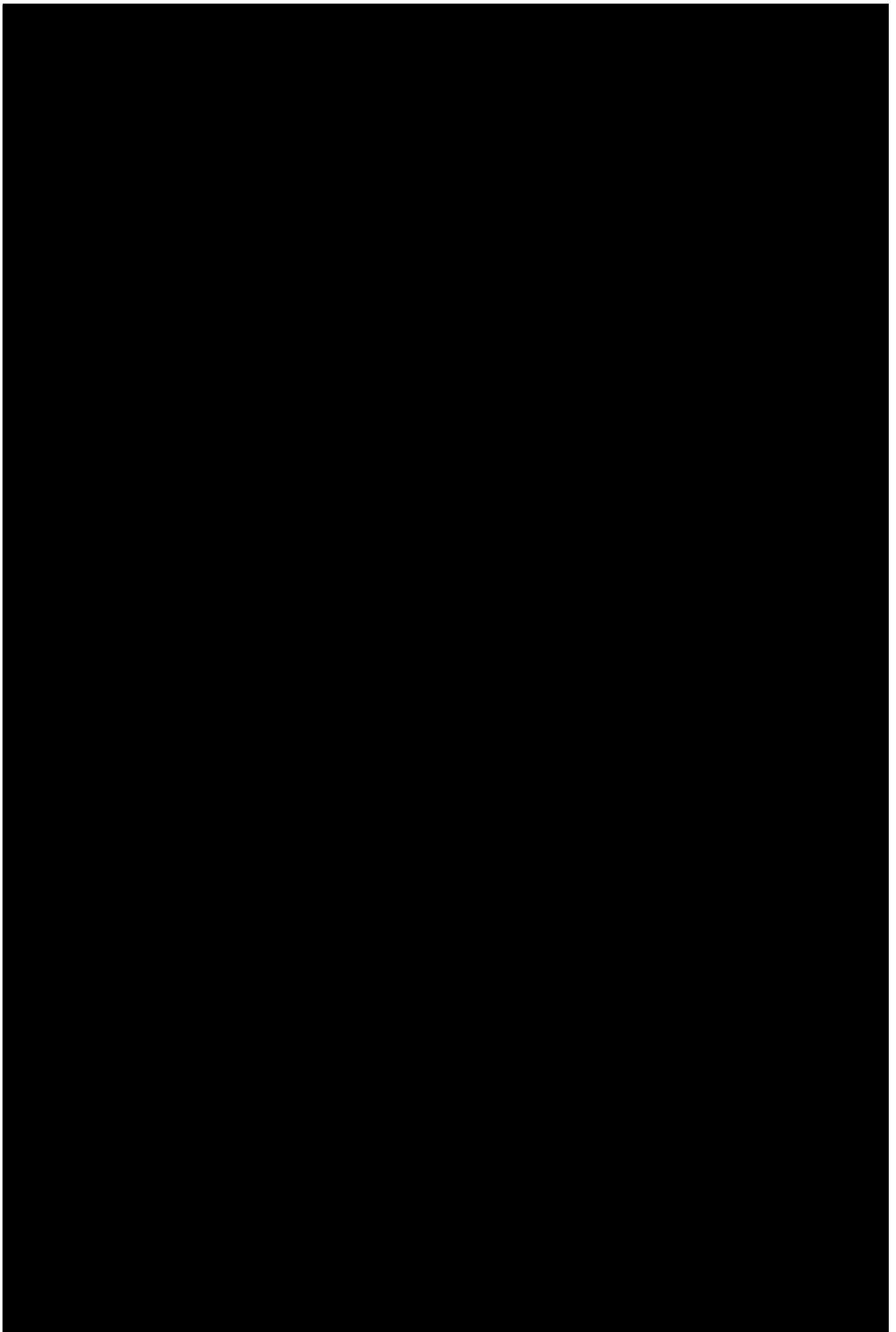
12. On 22 February 2021, the Provider was advised of the investigation and a notice for production of documents, allowable under section 215 of the *Law*, was issued.
13. Records produced by the Provider indicated that the Service was operating on 9 February 2021, [REDACTED] was in attendance and an 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] 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:

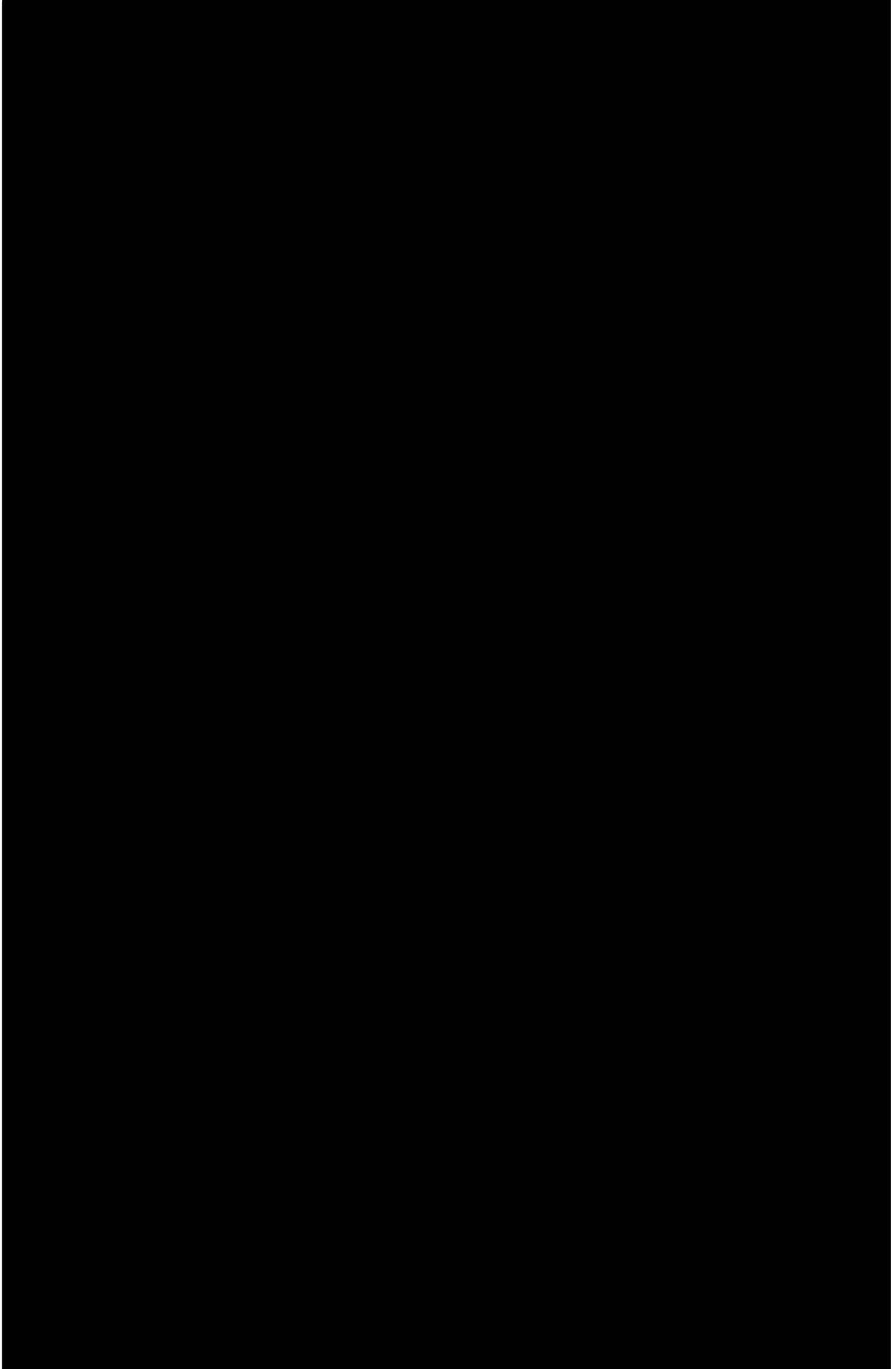


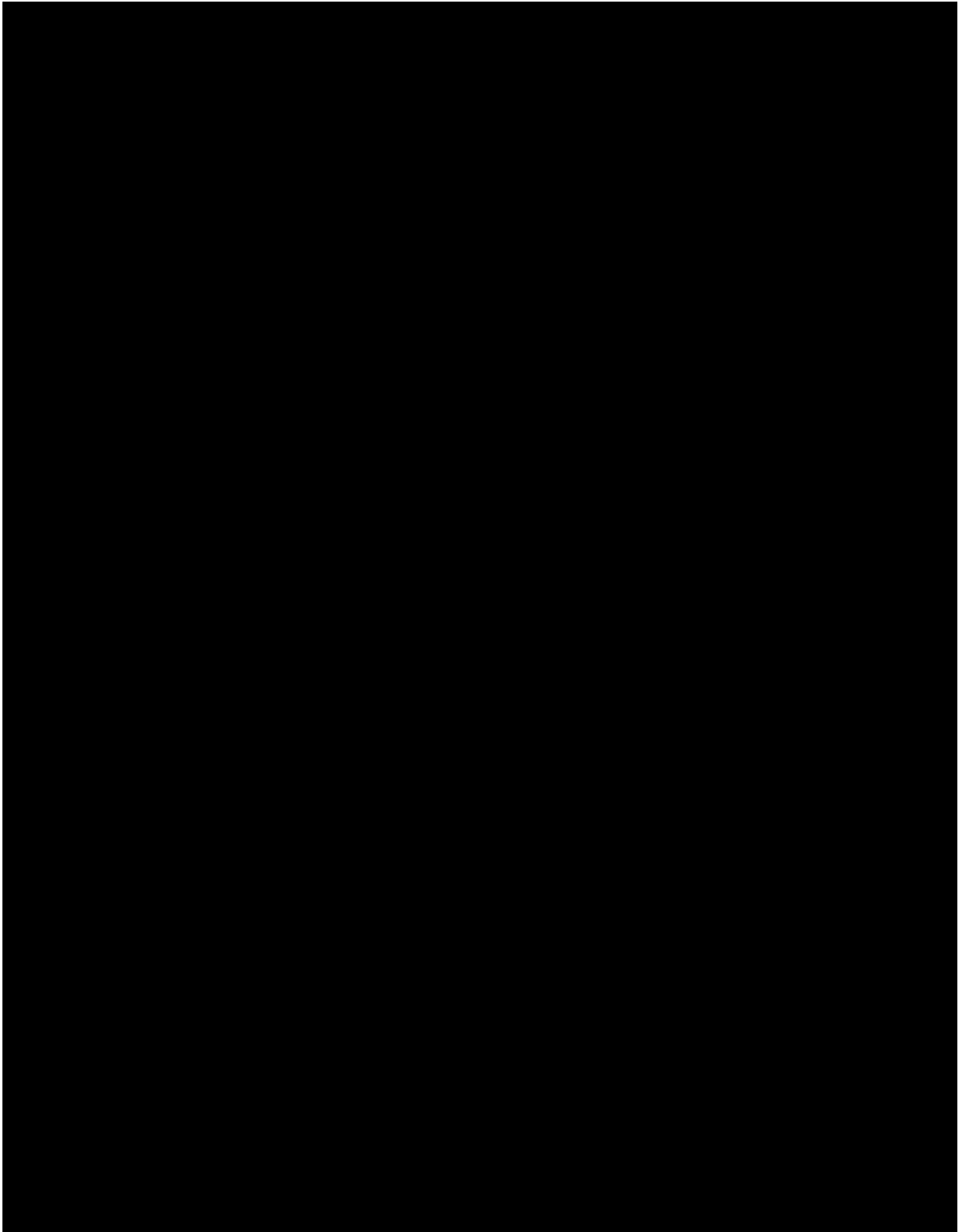
20. Relevant extracts from Witness B's statement are:



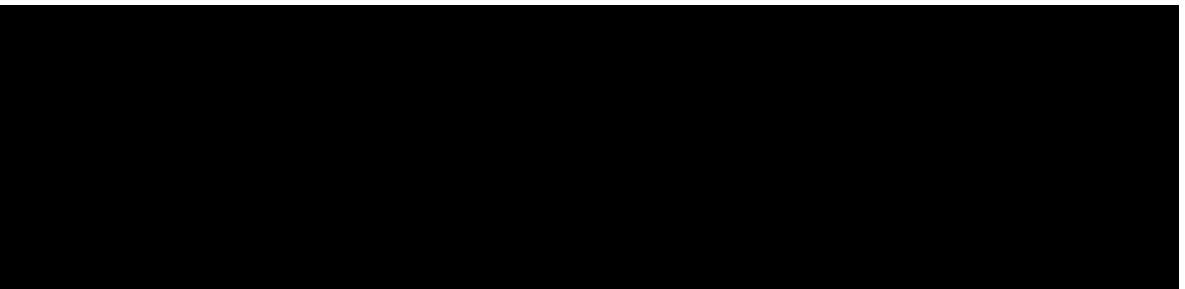


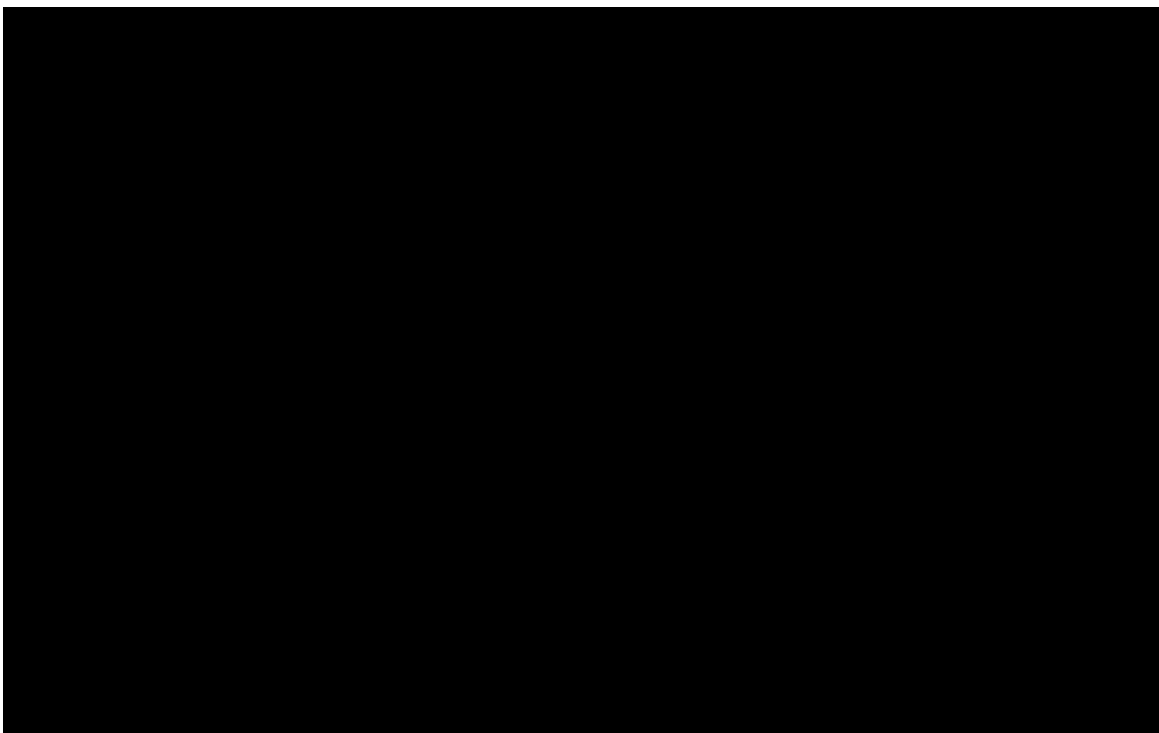
21. Relevant extracts from Witness C's statement are:





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(1) of the *Law*.

Second Set of Grounds – Failure to Notify

Allegation Three

24. It is alleged that the Provider failed to notify the Regulatory Authority of a serious incident on 9 February 2021, a complaint that a serious injury occurred on 9 February 2021, and an outbreak of Hand Foot and Mouth at the Service, 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 –
 - (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 12 – Meaning of *serious incident*

- (b) any incident involving serious injury or trauma to a child occurring while that child is being educated and cared for by an education and care service –
 - (i) which a reasonable person would consider required urgent medical attention from a registered medical practitioner; or
 - (ii) for which the child attended, or ought reasonably to have attended, a hospital.

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.

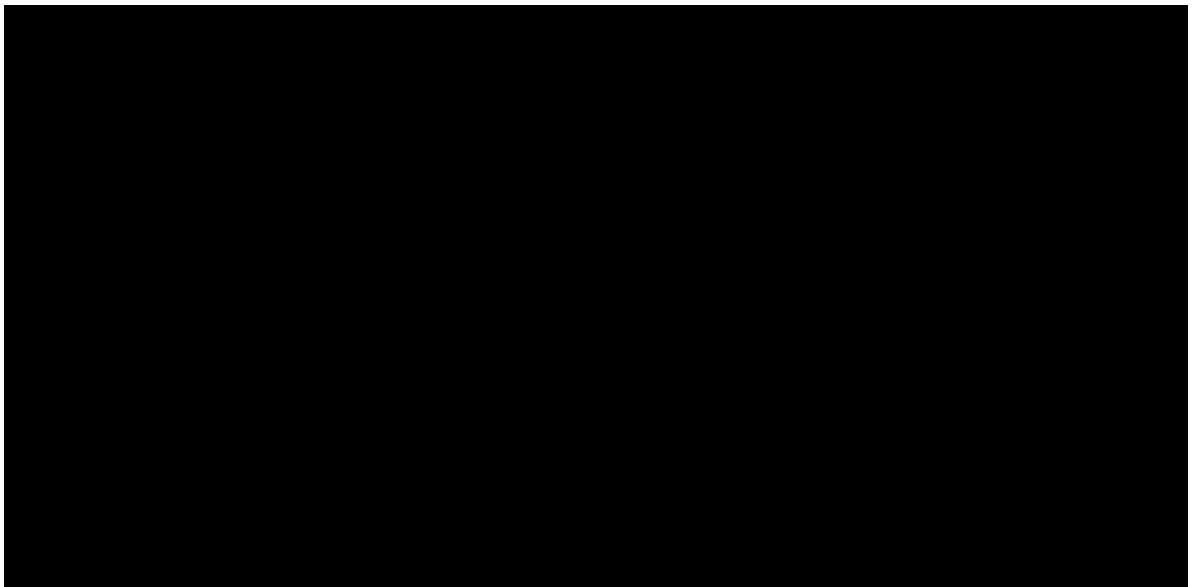
Regulation 176(2)(b) – Time to notify certain information to Regulatory Authority

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

- (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

25. Relevant extracts from [REDACTED] statement are:



26. The injury sustained by [REDACTED] on 9 February 2021 resulted in multiple medical visits, including hospital, and constituted a “serious incident” within the meaning of Regulation 12.

27. The concerns expressed by [REDACTED] concerning the unwitnessed injury to [REDACTED] constituted a complaint that the *Law* had been contravened.
28. Any outbreak of hand, foot and mouth at the Service constituted a circumstance arising at the Service which poses a risk to the health, safety and wellbeing of children, within the meaning of Regulation 175(2)(c).
29. None of the matters in paragraphs 26 to 28 (inclusive) were notified to the Regulatory Authority.

Contravention supported by Allegation Three

30. Evidence gathered appears to support a contravention of section 174(1) of the *Law*, engaging further contraventions of sections 165(1) and 167(1) of the *Law*.

Fourth Set of Grounds – Accuracy of Prescribed Records

Allegation Four – Inaccurate Working Directly with Children Records

31. It is alleged that the Provider failed to take reasonable steps to ensure that a prescribed record (being working directly with children records for 9 February 2021) was accurate, in contravention of Regulation 177(2).

Legislation Relevant to Allegation Four

Regulation 151 – Record of educators working directly with children

The approved provider of a centre-based service must keep a record of educators working directly with children that includes the following information:

- (a) The name of each educator who works directly with children being educated and cared for by the service;
- (b) The hours that each educator works directly with children being educated and cared for by the service.

Regulation 177 – Prescribed enrolment and other documents to be kept by approved provider

- (1) For the purposes of section 175(1) of the *Law*, the following documents are prescribed in relation to each education and care service operated by the approved provider –
 - (h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151.
- (2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

Penalty: \$2000

Evidence Relevant to Allegation Four

32. The 215 Notice issued by the Authority during the course of the investigation required production of working directly with children records for 9 February 2021.
33. The Provider produced an Excel table of electronic sign-in, sign-out records in chronological order. For ease of use, the records were sorted into alphabetical order, so that each educator's times were together. Refer Attachment D.1 for the original records and Attachment D.2 for the sorted records.
34. Ratio analysis was carried out utilising child attendance records and working directly with children records. Refer Attachment E for analysis, which notes inaccuracies/non-completions in working directly with children records.
35. The Provider did not take reasonable steps to ensure that the working directly with children records were accurate before producing them to the Regulatory Authority under section 215 of the *Law*.

Contravention supported by Allegation Four

36. Evidence gathered appears to support a contravention of Regulation 177(2).

Proposed Compliance Action

37. The Authority is proposing compliance action under Part 7 of the *Law*, should the Authority find that any or all of the allegations are substantiated on the balance of probabilities. Potential compliance actions include:
 - a. A Compliance Notice under section 177 of the *Law*; or
 - b. Non-statutory action.

Right of response

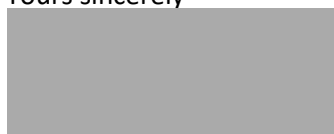
38. You have a right to respond to the allegations set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
39. At Attachment F to this Notice is a '4 Step Guide to Responding 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

40. 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*.
41. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
42. 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 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>.
44. 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>
45. 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