



Ms [REDACTED]

Email: [REDACTED]@gmail.com

Dear Ms [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 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. Authorised Officers are currently investigating an allegation that you inappropriately disciplined a child on 23 August 2022 at Papilio Early Learning Yarralumla SE-00009805 (the Service) operated by Papilio Early Learning Yarralumla PR-40001112 (the Provider).
3. Web addresses to the *Education and Care Services National Law (ACT)* (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). However, the Authority’s investigation is not complete until you have had an opportunity to respond to the allegation and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
5. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the alleged conduct may constitute inappropriate discipline, which is an offence under section 166(3) of the *Law*.
7. “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.
8. If, after considering all available evidence, the Authority finds an offence has occurred, it will need to consider whether compliance action is required. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment.

9. Possible compliance actions include the following (further details appear at the end of this Notice):
  - a) The Authority issuing you with an official caution;
  - b) An Enforceable Undertaking pursuant to section 179A of the *Law*; and
  - c) A Prohibition Notice pursuant to section 182 of the *Law*.

**Background**

10. On 23 August 2022, the Authority received a Notification (NOT-4764786) from the Provider of a complaint alleging that an educator had used incorrect behaviour management strategies toward a child. Refer to Attachment A.
11. On 25 August 2022, further information was submitted to the Authority from the Provider advising that an investigation had been conducted and the allegation was not substantiated, but you had been counselled and moved to the preschool rooms for additional mentoring and support. Refer to Attachment B.
12. Due to the risk of harm to children when subjected to inappropriate discipline, the Authority determined to investigate the suspected offence.

**Allegation of Inappropriate Discipline**

13. It is alleged that, at about 9.35am on 23 August 2022, you, [REDACTED] whilst employed as an educator at the Service, subjected a child being educated and cared for by the Service, believed to be [REDACTED] (aged 3) to inappropriate discipline, in that you interfered with his face in response to his behaviour, amounting to discipline considered unreasonable in the circumstances, contravening s166(3) of the *Law*.

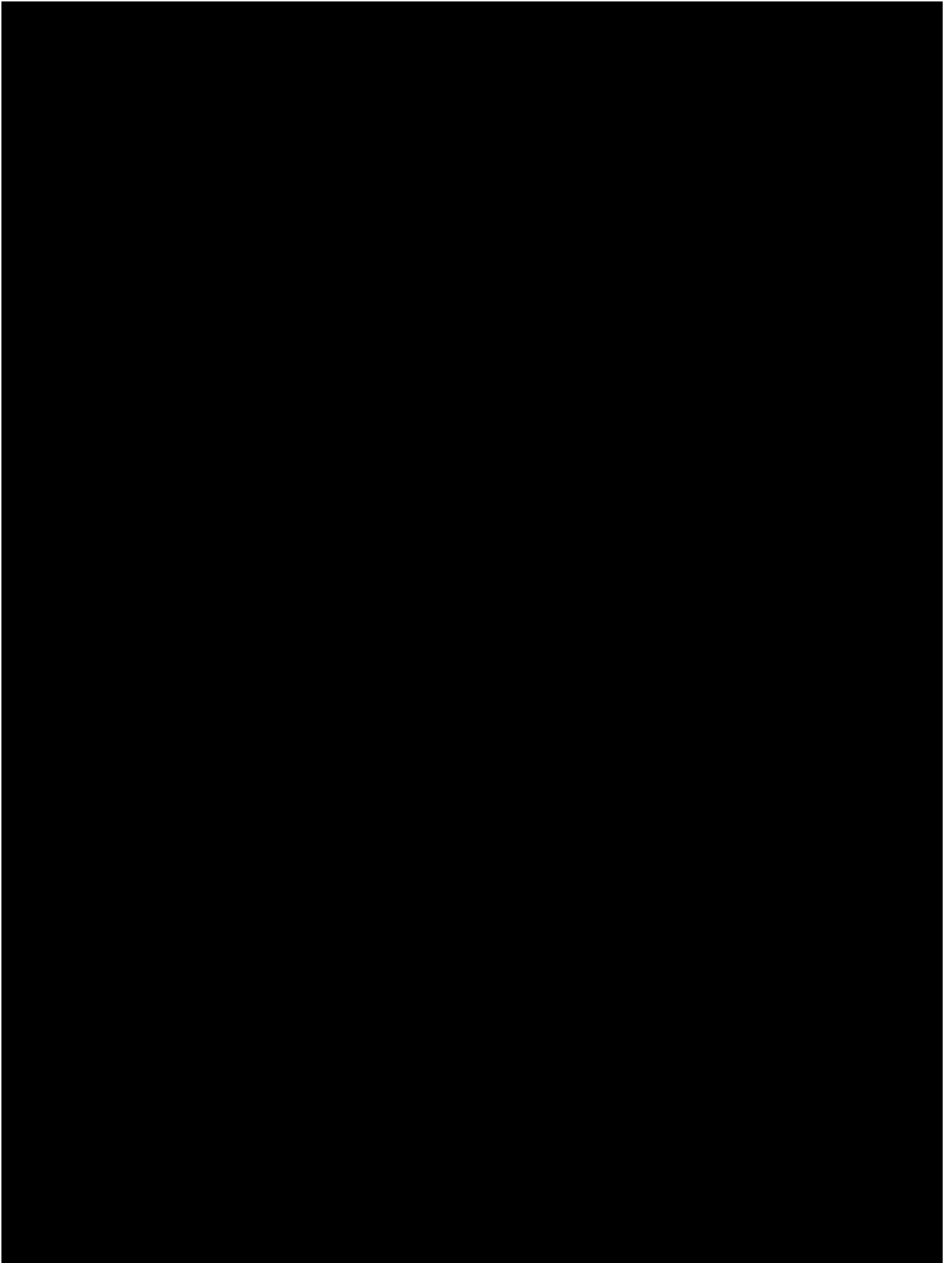
**Evidence relevant to Allegation**

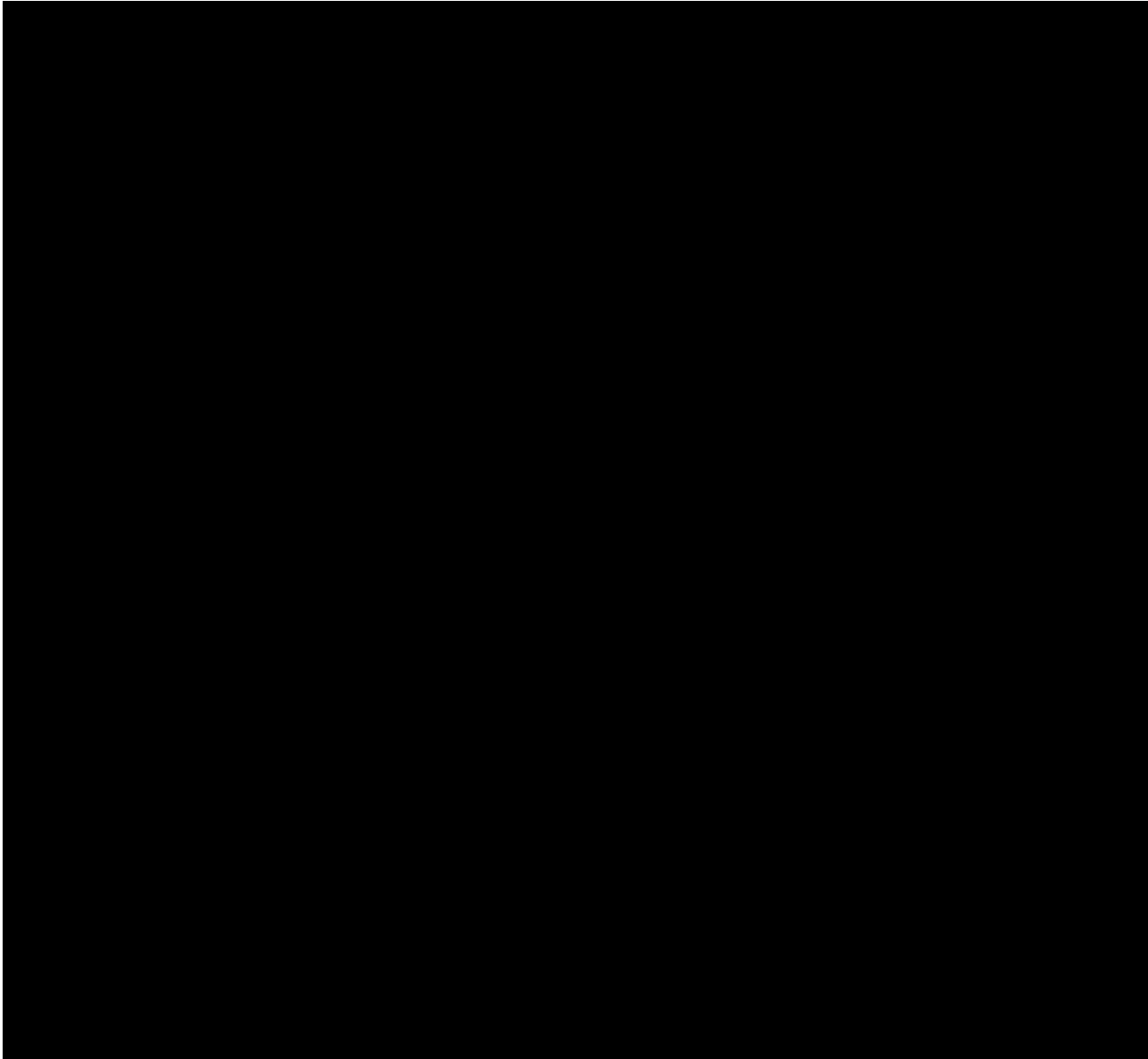
14. Evidence relevant to the Allegation obtained from the Provider included:
  - a) Child attendance records;
  - b) Working directly with children records;
  - c) Investigation documents; and
  - d) Policy and Procedures.

Refer to Attachment C.

15. During the investigation, the Authority obtained further statements from witnesses, relevant extracts from which appear below, with personal information redacted where not required for procedural fairness purposes.

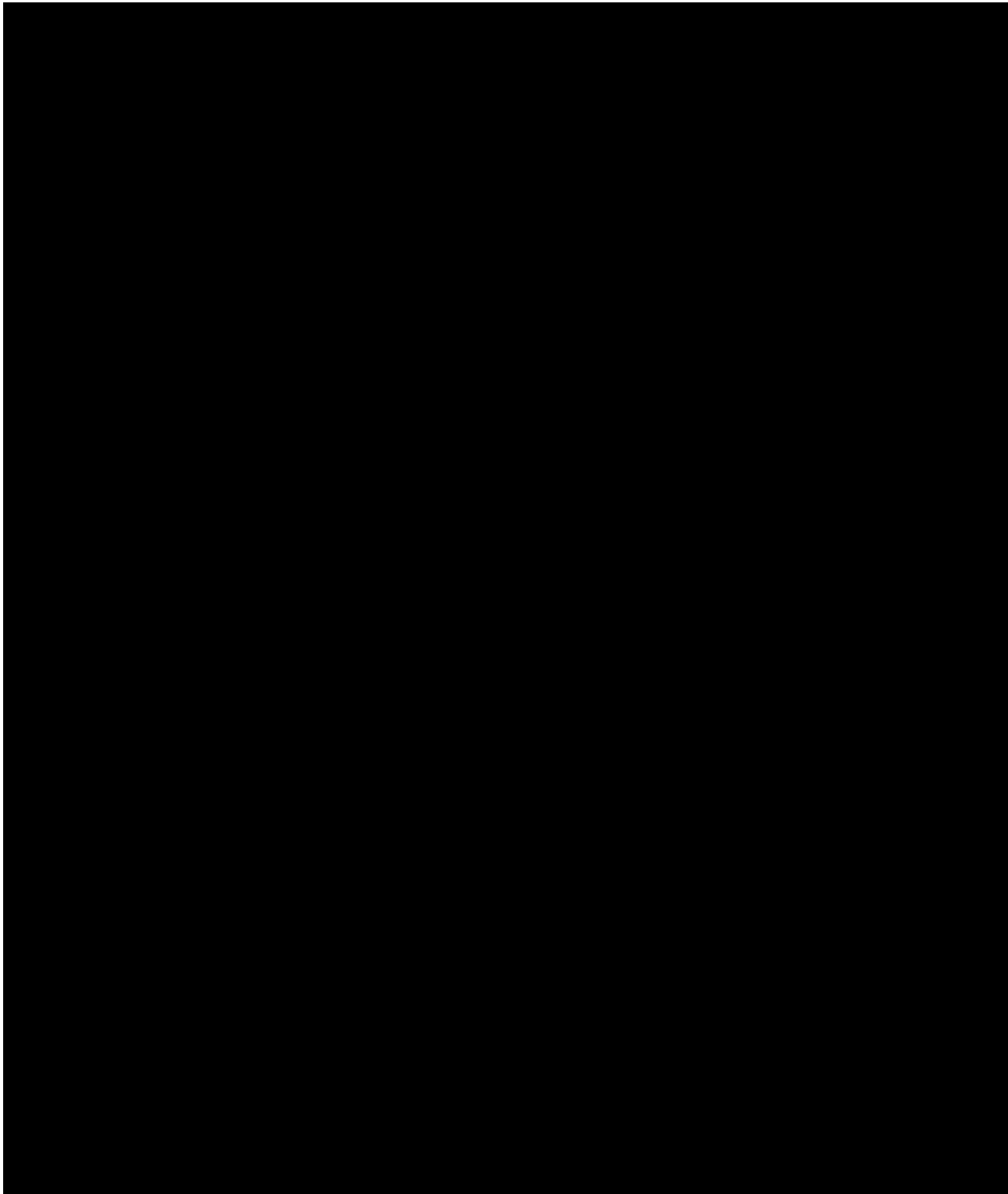
16. Relevant extracts from Witness A's statement are:





17. Relevant evidence from Witness B's statement are:





Contravention Supported by Evidence

18. The evidence currently available to the Authority relevant to the Allegation is sufficient to support the following offence under the *Law*:

**Section 166(3) – Offence to Use Inappropriate Discipline**

- (3) A staff member of, or a volunteer at, an education and care service must not subject any child being educated and cared for by the service to-

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

**Potential Compliance Actions**

19. Should the offence be substantiated on the balance of probabilities, the Authority will need to consider whether any compliance action is required. As well as administrative action such as a formal Caution Letter, the potential statutory compliance actions are an enforceable undertaking or prohibition, as set out below:

**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.

**Section 182 of the Law – Grounds for giving prohibition notice**

- (2) 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.
- (3) 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.

### **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.

#### Effect of an Enforceable Undertaking

20. 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; or
  - d) having an approved mentor.
21. 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.
22. 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.

#### Effect of a Prohibition Notice

23. If, after considering all available evidence and any submission you wish to make, the Authority decides to issue a prohibition notice, while the prohibition notice is in force you must not:
- (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.

#### Right of response

24. You have a right to respond to the allegations set out in this notice. You may respond in writing or by way of a recorded interview with two Authorised Officers.

### Responding in Writing

25. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if compliance action should be taken. If you need additional time, please direct a request with reasons to the contact officer. 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.

### Responding in an Interview

26. If you wish to respond in a recorded interview with Authorised Officers, please advise the contact officer within seven days. A convenient time will be arranged for you to attend at the Authority's premises in Stirling, ACT, to provide your response in person. You are permitted to bring a support person to that interview, as long as the person does not have any connection with the Provider or the Service.
27. If you respond in writing, please direct your written submission via email to Senior Investigator Brian Cropper at [Brian.Cropper@act.gov.au](mailto:Brian.Cropper@act.gov.au) or by post to:

Brian Cropper -  
Senior Investigator  
Children's Education and Care Assurance  
GPO Box 158  
CANBERRA ACT 2601


### Caution

28. Please be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.

### Legislation

29. The *Law* applies to you as an educator and to any service you may be employed at.
30. 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>.
31. 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>
32. Should you have any questions about this Show Cause Notice please contact Brian Cropper by email at [Brian.Cropper@act.gov.au](mailto:Brian.Cropper@act.gov.au).

Yours Sincerely,

  
Jo Williams  
Director Children's Education and Care Assurance  
ACT Education Directorate  
27 January 2023