



Ms [REDACTED]
Nominated Supervisor
RE: Blinky Bill Early Childhood Centre

Email: [REDACTED]@gmail.com

Dear Ms [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance (CECA).
2. 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* (the *Law*). One of the Authority’s roles is to investigate suspected offences under the *Law*.
3. The Authority is currently investigating multiple suspected offences at Blinky Bill Early Childhood Centre SE-00009751 (the Service) operated by G8 Education Limited PR-00000898 (the Provider). 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 obtained evidence from other sources and the Authority has determined that you have a case to answer regarding suspected offences. However, the Authority’s investigation is not complete until you have had an opportunity to respond to the allegations, 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 allegations may constitute offences under sections 166 and 167 of the *Law*. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities (or any combination of them) it will need to consider whether compliance action is required.
6. “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 hitting, yelling, physically dragging a child, unreasonable restraint of a child, using threatening or humiliating language, isolating, or shaming children.

7. Where 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. Further details regarding potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

8. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas: Inappropriate discipline and protection of children from harms and hazards.

Facts

9. On 22 November 2023, the Authority received a notification of complaint (NOT-40926672) from the Provider, advising of an allegation that you, whilst engaged in the role of Centre Director, had inappropriately interacted with a child [REDACTED] on 17 November 2023. Refer Attachment A.
10. Accompanying the notification were supporting documents including complaint email and Centre Directors version of events. Refer Attachment B.
11. On 28 November 2023, upon request of the Authority, the Provider furnished the following relevant information:
 - (a) CCTV Foyer and CCTV preschool room
 - (b) Relevant emailsRefer Attachment C for relevant documents (CCTV video supplied upon request due to size).
12. Due to the risk of harms and hazards likely to cause injury if children are subject to inappropriate interactions amounting to discipline, the Authority determined to investigate, engaging suspected offences under sections 166 of the *Law*.

Allegations

13. It is alleged that on 17 November 2023, you, as a staff member of the Service, subjected a child, believed to be [REDACTED] to conduct amounting to inappropriate discipline, unreasonable in the circumstances, in that, you yelled at, cornered, shamed, and restrained him, contravening section 166(3) of the *Law*.
14. It is alleged, that on 17 November 2023, by not ensuring that a child was not subjected to inappropriate discipline, you, as the nominated supervisor of the Service have not taken every reasonable precaution to protect children from harm and hazard likely to cause injury or illness, in contravention of section 167(2) of the *Law*.
15. The following provisions of the *Law* are relevant to the Allegations:

Section 166(3) of the Law - Offence to use inappropriate discipline

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

- (a) Any form of corporal punishment; or
 - (b) Any discipline that is unreasonable under the circumstances.
- Penalty: \$11 400

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: \$11 400

Evidence relevant to the Allegations

16. On 12 January 2024, the Provider furnished documents pursuant to a notice issued by the Authority under section 215 of the *Law* (215 notice). Relevant documents include:
- a) Child Attendance records,
 - b) Working Directly with Children (WDWC) records,
 - c) Policies and procedures
 - d) Personal file [REDACTED]
 - e) Internal investigation.

Refer Attachment D for relevant documents.

CCTV Video

17. [REDACTED]

[REDACTED]

19. [REDACTED]

20. [REDACTED]

21. [REDACTED]

22. [REDACTED]

23. [REDACTED]

[REDACTED]

24. At 8:52:37 Ms [REDACTED] enters the room and removes her son.

Refer to photo extracts of CCTV at Attachment E.

25. Relevant extracts from the Provider Policies noted by you include the following:

Child Protection Statement of Commitment

PROHIBITED ACTIONS

To protect and support children, GS team members are not to abuse their position of authority and trust in any way that may cause harm to children. I will not engage in prohibited actions including:-

- Engaging in unlawful behaviour
- Engaging in grooming behaviours.
- Actions which cause physical, psychological, emotional, sexual or interpersonal harm to a child.
- Any form of corporal punishment or unreasonable discipline likely to cause emotional or physical harm. This may include:
 - o Intimidation, restraining, smacking, shaking, kicking, pushing, dragging, grabbing, exerting force or throwing an object at a child, or
 - o Humiliating, threatening, bullying behaviours or any form of verbal abuse toward a child including yelling.
- Depriving a child of basic needs such as food, shelter or medical care.
- Failing to fulfil responsibilities as a mandatory reporter, or utilising mandatory reporting obligations not in good faith as a means of causing distress, detriment or harassment. This includes:
 - o Failure to reduce or remove risk of a child becoming the victim of child abuse and neglect
 - o Concealing a child abuse or neglect offence or offenses
 - o Ignoring or disregarding any concerns, suspicions or disclosures of child abuse and neglect

Positive Interactions Centre Policy

In relation to interactions with children during instances of challenging behaviour

Non-physical intervention is the recognised means of managing the behaviour of children and young people. Where a problem with a child or young person's behaviour becomes apparent, non-physical interventions include:

- Directing other children and young people to move away from the situation;
- Talking with the individual child or young person (asking the child or young person to stop the behaviour and telling the child or young person what will happen if he/she does not stop);
- Directing the child or young person to a safe place;
- Directing other children and young people to a safe place;

- Following the Behaviour Guidance Plan for the child and/or sending for assistance from other team members, or in extreme cases, the police;
- Use of verbal directions is always preferred to physical intervention;
- It is not appropriate to make physical contact with a child or young person (e.g. pushing, grabbing, poking, pulling, blocking) in order to ensure they comply with directions;
- Team members must not hold children against their will (e.g. on their laps, between their legs or on the floor) to ensure attention at group time;
- Under no circumstances should team members engage in any form of conduct which might cause physical or emotional harm to children and young people.
- Team members will actively encourage children to make choices regarding their behaviour in a positive manner and acknowledge and guide children's attempts to resolve conflict in a non-physical manner.
- Team members will establish, with the children, room limits that allow children to have ownership and encourage self-regulation of behaviour.
- Team members will look at the child's strengths and interests as a means of positively influencing a child's behaviour and teaching them strategies to enter into social play in a manner that is age and developmentally appropriate.

Refer to Policy and Procedure at [Attachment D](#).

26. Authority records indicated that you were the nominated supervisor on 17 November 2023. Refer to [Attachment F](#) for NS01.

27. Relevant extracts from your interview with the Provider include the following:

[REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

(c) [REDACTED]

[REDACTED]

[Redacted]

(f)

[Redacted]

Refer to your provider interview at Attachment D.

28. During the investigation, the Authority obtained a witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the specific circumstances surrounding the alleged offences, the witness is identifiable from the content of their evidence.

29. Please note witness statements obtained from educators utilise powers under section 215 of the *Law*, imposing an obligation to attend before the Authority and provide relevant evidence under questioning by an Authorised Officer. It is an offence to fail to comply.

30. Relevant extracts from Witness A's statement include:

(a)

[Redacted]

(b)

[Redacted]

(c)

[Redacted]

(d)

[Redacted]

(e)

[Redacted]

(f)

[Redacted]

(g)

[Redacted]

(h)

[Redacted]

(i)

[Redacted]

(j)

[Redacted]

(k)

[Redacted]

(l)

[Redacted]

(m)

[Redacted]

(n)

[Redacted]

(o)

[Redacted]

(p)

[Redacted]

(q)

[Redacted]

(r)

[Redacted]

(s)

[Redacted]

(t)

[Redacted]

(u)

[Redacted]

31. Relevant extracts from Witness B statement include:

a)

[Redacted]

[Redacted]

[Redacted]

d)

e)

f)

g)

h)

i)

j)

k)

l)

m)

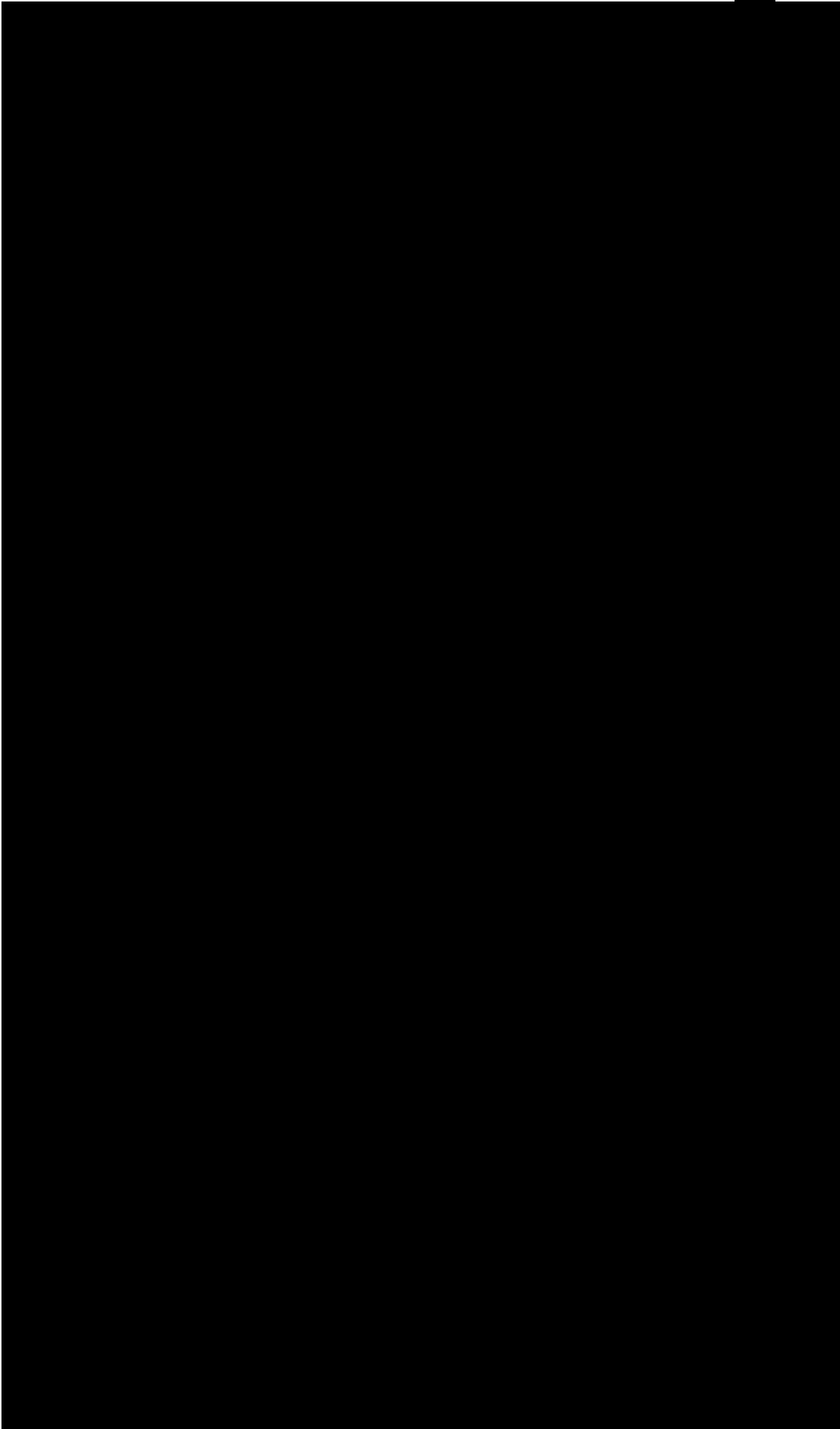
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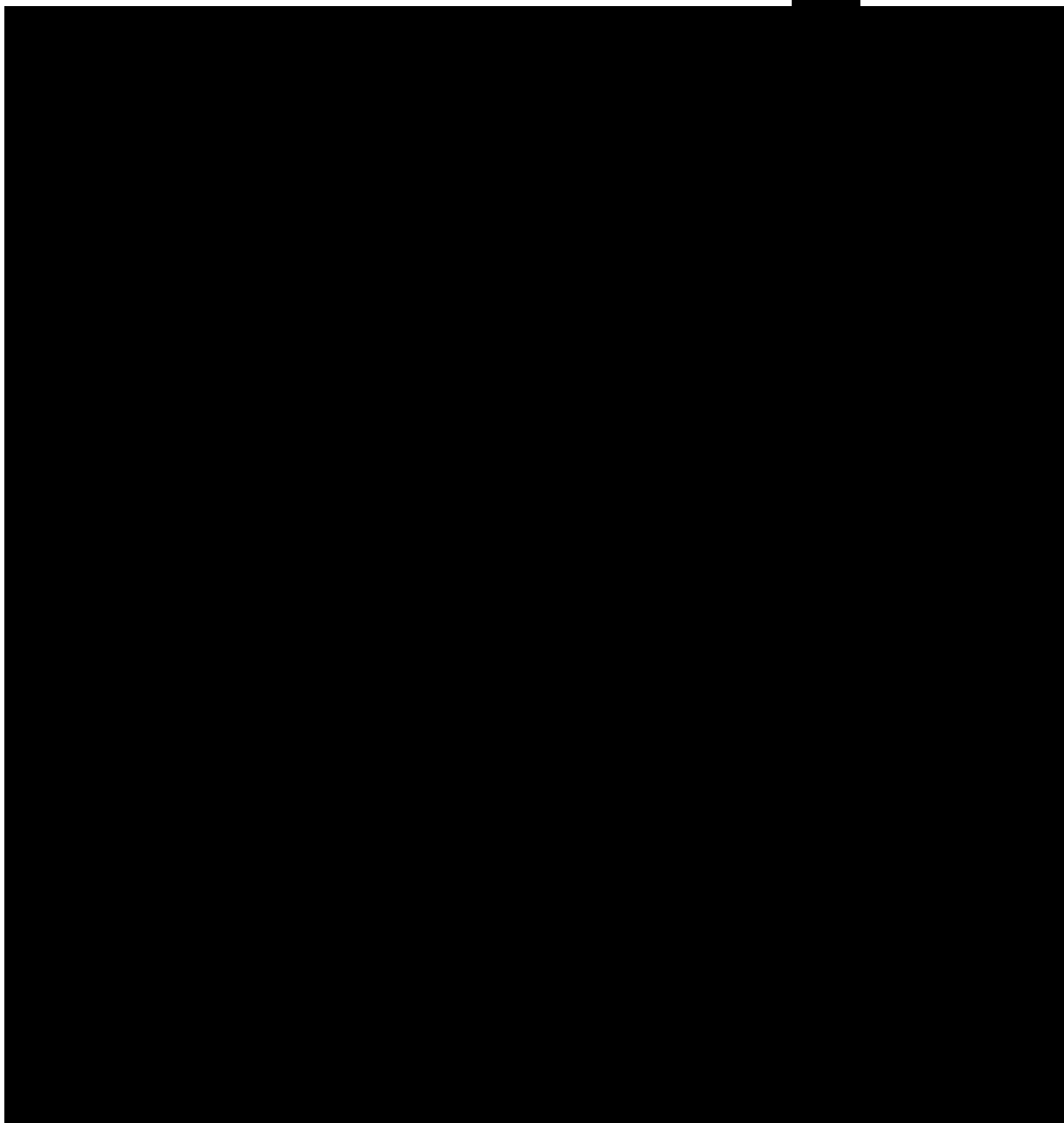
p)

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r)



32. Relevant extracts from Witness C include the following:



Contraventions supported by evidence.

33. Evidence gathered appears to support that [REDACTED] was subjected by you to conduct amounting to discipline, inclusive of a restrictive practice, unreasonable in the circumstances, contravening section 166(3) of the *Law*, and as a nominated supervisor, engaging an offence under section 167(2) of the *Law*.

Fitness and Propriety as Nominated Supervisor

34. *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.
35. 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. At minimum, fitness and propriety includes honesty, knowledge and ability.
36. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection of children from harm and hazards, and educational programs, with specific obligations contained in both the *Law* and the *Regulations*.
37. 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).
38. The nominated supervisor must also possess the ability to manage educators and any other staff, service premises, relationships with families and respond to children with medical and/or behavioural needs.
39. During the investigation, there is evidence to support that you subjected [REDACTED] to conduct amounting to inappropriate discipline on 17 November 2023.
40. This evidence raises a concern about your ability to manage and supervise an education and care service.
41. 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.

Potential Compliance Action

42. 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;
 - b. Enforceable undertaking under section 179A of the *Law*; or
 - c. Prohibition from working in the early education and care sector and/or acting in a role as Nominated Supervisor.
43. Relevant legislation for prohibition, enforceable undertakings and partial prohibition appears below.

44. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
45. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector as a whole.
46. 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.
47. 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.
48. Prohibition refers to prohibition from working in the early education and care sector.

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 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

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 182(3) - Grounds for issuing a prohibition notice

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.

Effect of an Enforceable Undertaking

49. An Enforceable Undertaking is a formal “promise” to the Authority to do or not do certain things. Terms vary, but examples of requirements may include:

- a. only working with children under supervision; or
- b. doing some additional training to improve your skills as an educator; or
- c. keeping the Authority advised of your workplace; or
- d. having an approved mentor.

50. 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.

51. 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

52. 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

53. As mentioned previously, no decision has been made regarding the allegations - 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. 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.
54. 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 brian.cropper@act.gov.au or by post to:

Children's Education and Care Assurance (CECA)
Education Directorate
Attention: Brian Cropper
GPO Box 158, Canberra ACT 2601.

Caution

55. 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*.
56. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
57. 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.
58. The *Law* applies to you as a nominated supervisor and to any service you are engaged 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>.
59. 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>

60. Should you have any questions about this Show Cause Notice please contact Senior Investigator Brian Cropper on email brian.cropper@act.gov.au.

Yours Sincerely



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care, Regulation and Support

20 March 2024