

[REDACTED]
[REDACTED]
[REDACTED]

Email: [REDACTED]

Dear [REDACTED]

Show Cause Notice – Potential Compliance Action (including 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. Authorised Officers are currently investigating an allegation that you subjected a child to inappropriate discipline on 8 August 2021 at Communities@Work Abacus Child Care and Education Centre SE-00009744 (the Service) operated by Communities@Work PR-00005824 (the Provider). The Authority has also made enquiries into your interactions with children during the period 6 August 2021 to 23 November 2021.
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*. Other inappropriate interactions with children, although not meeting the threshold of suspected inappropriate discipline, are relevant to a consideration of risk to children.
7. “Discipline” is any strategy employed by an educator with the intention of changing a child’s behaviour. There does not need to be intent to cause harm, and that is not being suggested by the Authority. 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. Possible compliance actions appear at the end of this Notice.
9. The Authority appreciates the significant impact of receiving a late diagnosis of Autism and ADHD, that it can take time to develop effective self-care and emotional regulation strategies through a new lens, and that an early education and care service can present a very challenging environment from a sensory and executive functioning perspective. However, the Authority's primary consideration must be to ensure the health, safety and wellbeing of children being educated and cared for, which is the first objective of the National Quality Framework in section 3(2)(a) of the *Law*.

Background

10. On 29 November 2021, the Authority received a notification from the Provider regarding your interactions with children over an extended period of time, from 6 August 2021 to 23 November 2021. The *Law* required the Provider to notify the Authority of the matters raised.
11. Within the notification, the Provider advised that it was investigating the concerns raised about your interactions with children, and that you had been stood down whilst that investigation was ongoing.
12. Due to the risk of harm to children when subjected to inappropriate discipline or interactions, the Authority determined to investigate suspected offences.

Allegation of Inappropriate Discipline

13. It is alleged that, on 6 August 2021, in the late morning in the outdoor area, whilst educating and caring for children at the Service, you grabbed [REDACTED] (a child being educated and cared for by the Service) by his upper arms, pulled him off a bike, then yelled words to the effect of "we don't do that!" close to his face, in response to [REDACTED] arguing with another child (unknown), in contravention of section 166(3) of the *Law*.

Evidence relevant to Allegation

14. Evidence relevant to the Allegation obtained under compulsory notice from the Provider included:
 - a. Handwritten record of conversation of 6 August 2021 between yourself, [REDACTED] and [REDACTED];
 - b. Notes of your response to the allegation.

Refer Attachment A for a copy of relevant information obtained from the Provider, redacted where appropriate.

15. During the investigation, the Authority obtained further statements from witnesses, relevant extracts from which appear below, with information redacted where not required for procedural fairness purposes. Please note that all witness statements were obtained exercising a compel power under section 215 of the Law, which is permissible to gather relevant information to investigate suspected offences under the Law.
16. Relevant extracts from Witness A's statement are:



17. Relevant extracts 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:

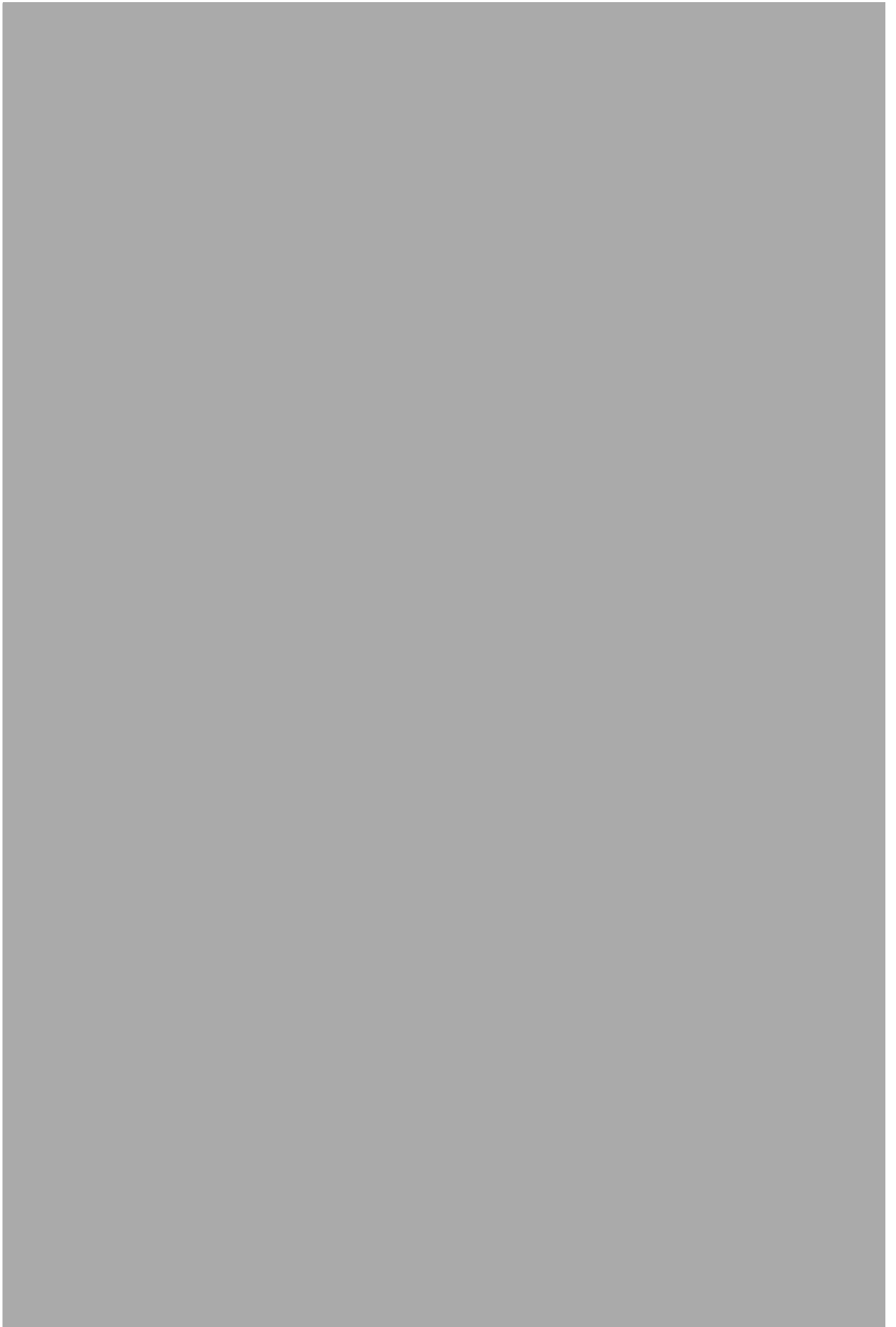
Section 166(3) – Offence to Use Inappropriate Discipline

- (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.

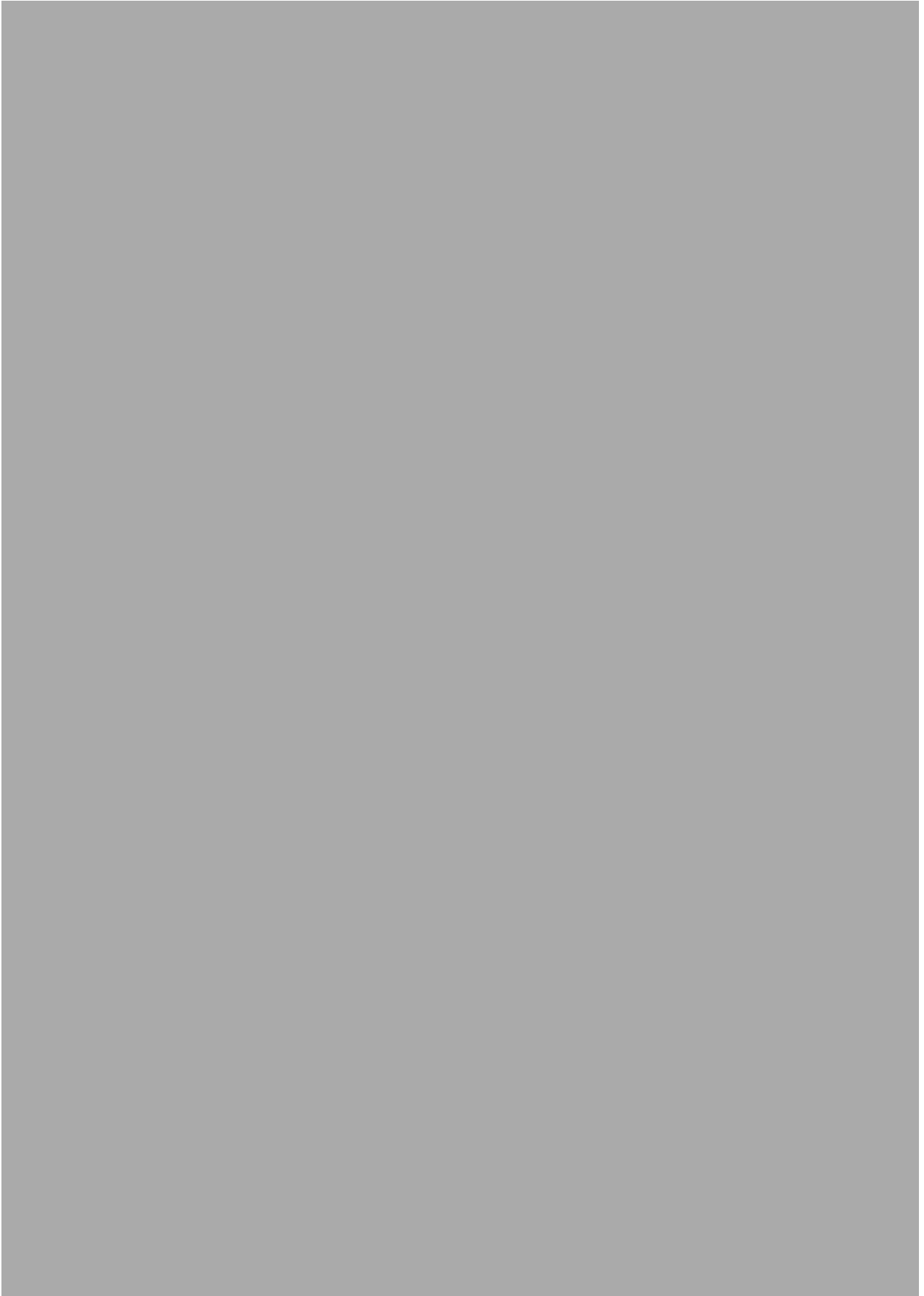
Allegations of Inappropriate Interactions

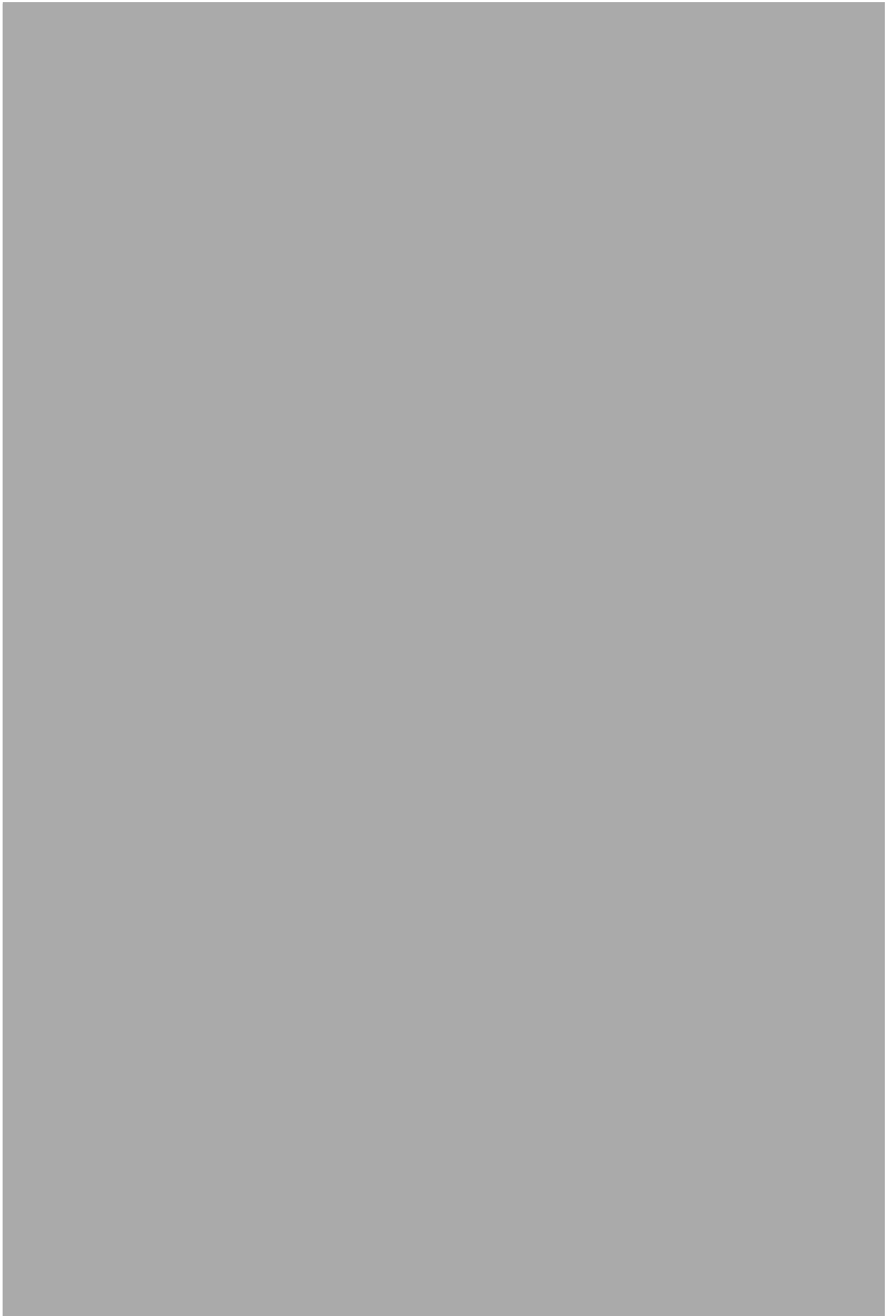
19. During the investigation, the Authority obtained additional information indicating inappropriate conduct by yourself in the presence of children, including yelling and inappropriate physical contact with children.
20. Relevant evidence obtained from the Provider included:
 - a. Handwritten notes from educator witnesses; and
 - b. Notes of your response to allegations raised by the Provider.
21. Refer Attachment B for a copy of relevant information obtained from the Provider, redacted where appropriate.
22. Relevant information was also obtained from witness statements taken by the Authority under section 215 of the *Law*, relevant extracts from which appear below, with personal information redacted where not required for procedural fairness purposes.
23. Relevant excerpts from Witness A's statement are:





24. Relevant excerpts from Witness B's statement are:





25. Although the evidence in paragraphs 22, 25 and 26 above may not support additional offences of inappropriate discipline, it indicates a concerning lack of emotional regulation in the presence of children. The alleged behaviour interactions have potential to cause distress to children and pose a risk of harm to their safety, health and wellbeing. All interactions with children must meet the requirements of Regulation 155, which states:

Regulation 155 – Interactions with Children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that –

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

Potential Compliance Actions

26. Should the offence be substantiated on the balance of probabilities and/or if the Authority is satisfied that there is an unacceptable risk of harm to children if you are permitted to provide education and care, 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

27. An Enforceable Undertaking is a formal “promise” to the Authority to do or not do certain things. Terms vary, but examples of requirements include matters such as:
 - a. only working with children under supervision;
 - b. doing some additional training to improve your skills as an educator;
 - c. providing evidence from a professional (such as a psychologist or psychiatrist) relating to improved emotional regulation and stress management;
 - d. keeping the Authority advised of your workplace;
 - e. having an approved mentor.

28. An Enforceable Undertaking is a flexible way to permit educators to continue working in early education and care, whilst still ensuring compliance with the *Law* and *Regulations*, and may be appropriate depending on the level of risk to children.
29. 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

30. 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

31. 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

32. 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.
33. At Attachment C to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.

Alternative - Responding in an Interview

34. If you wish to respond in a recorded interview with two 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. If you wish to respond via recorded interview, please also advise of any required disability adjustments, such as sensory accommodations or minimising eye contact.
35. If you respond in writing, please direct your written submission via email to Senior Investigator Tanya Masterman at Tanya.Masterman@act.gov.au or by post to:

Tanya Masterman
Senior Investigator
Children's Education and Care Assurance

GPO Box 158
CANBERRA ACT 2601

Caution

36. 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

37. The *Law* applies to you as an educator and to any service you may be employed at.
38. 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>.
39. 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>
40. Should you have any questions about this Show Cause Notice please contact Tanya Masterman by email at Tanya.Masterman@act.gov.au.

Yours sincerely,



Clare Brookes
Senior Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

22 March 2022