




Email: 

Dear 

**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 have completed an investigation into alleged supervision offences at Duffy OSHC SE-00009668 (the Service) operated by Woden Community Service Inc. PR-00005883 (the Provider).
3. Specifically, the allegations investigated arose from an incident where you had a child in your personal vehicle in the Service carpark.
4. The Authority has concerns that as Assistant Centre Director and Responsible Person in charge of the Service, your decisions and actions may pose an unacceptable risk to children. However, the Authority’s deliberations will not be complete until you have had an opportunity to respond to the evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
5. 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.
6. Detailed instructions of how to respond appear at the end of this Notice.

**Background**

7. On 10 March 2023, the Authority received Notification from the Provider, advising that on 22 February 2023, a child, believed to be  (10 old), was in your personal vehicle in the carpark of the Service and that you were lighting your cigarette lighter, allowing the child to blow it out.
8. The notification also advised that the Provider was investigating the allegation and that you had been stood down as an educator. Refer to Attachment A.
9. Due to the risk of harm to children when educators are absent from the Service, and alone in a vehicle with a child, the Authority determined to investigate.

Relevant Evidence

10. Evidence relevant to the Allegation obtained from the Provider included the following:
- a) Child attendance and Working Directly with Children records.
  - b) Photos of [redacted] with time stamp.
  - c) Service Policies and procedures
  - d) Internal investigation documents including records relating to your employment and the Provider's internal investigation of the matter.

Refer Attachment B.

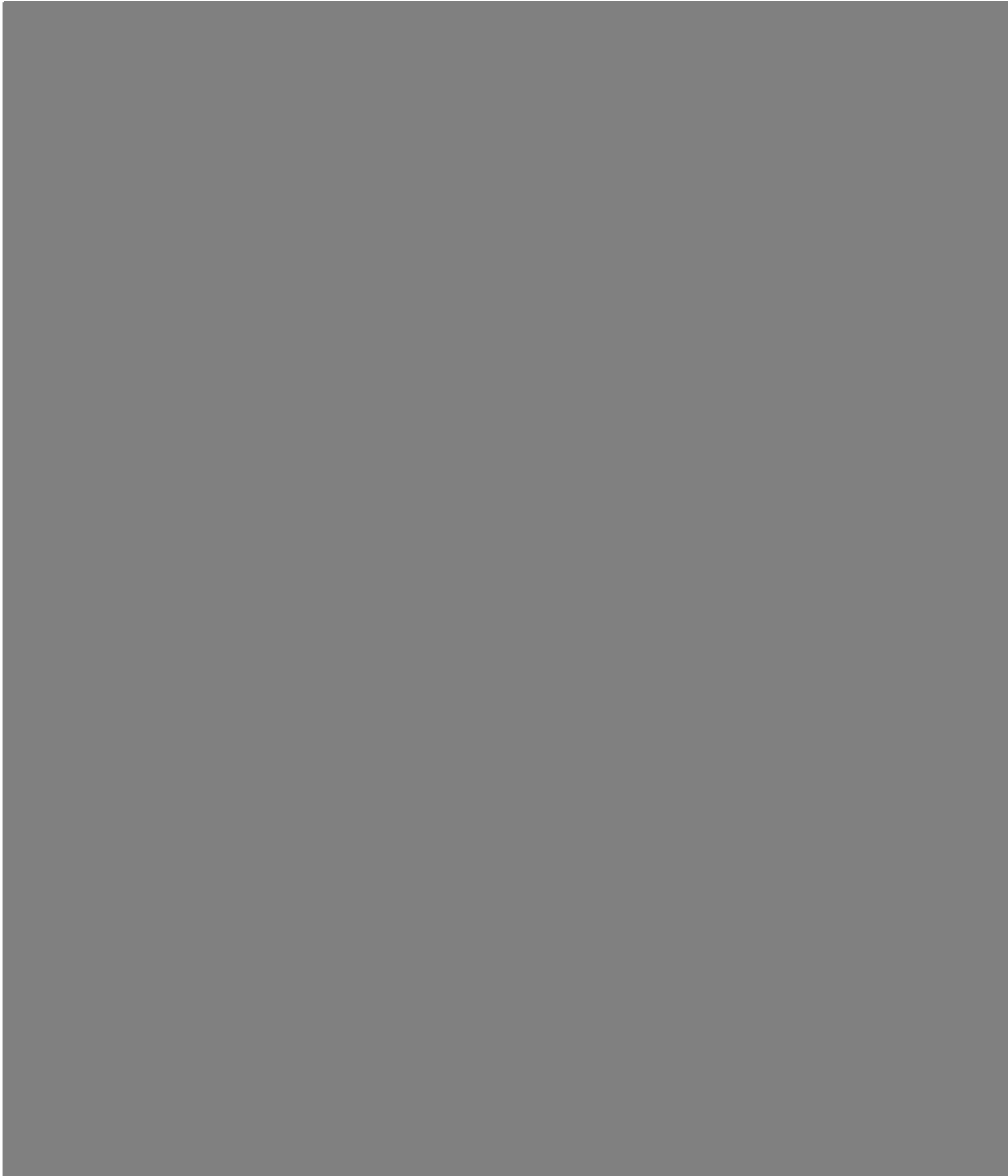
11. The Authority notes that within the record of interview with the Provider you state the following:

- a. [redacted] was dysregulated and trying to leave the Service.
- b. That you took [redacted] to your personal vehicle as a redirection strategy.
- c. You were alone in the vehicle with [redacted]
- d. You ignited a lighter and showed it to [redacted]
- e. You allowed [redacted] sit and play in the driver's seat of the vehicle.

12. 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.

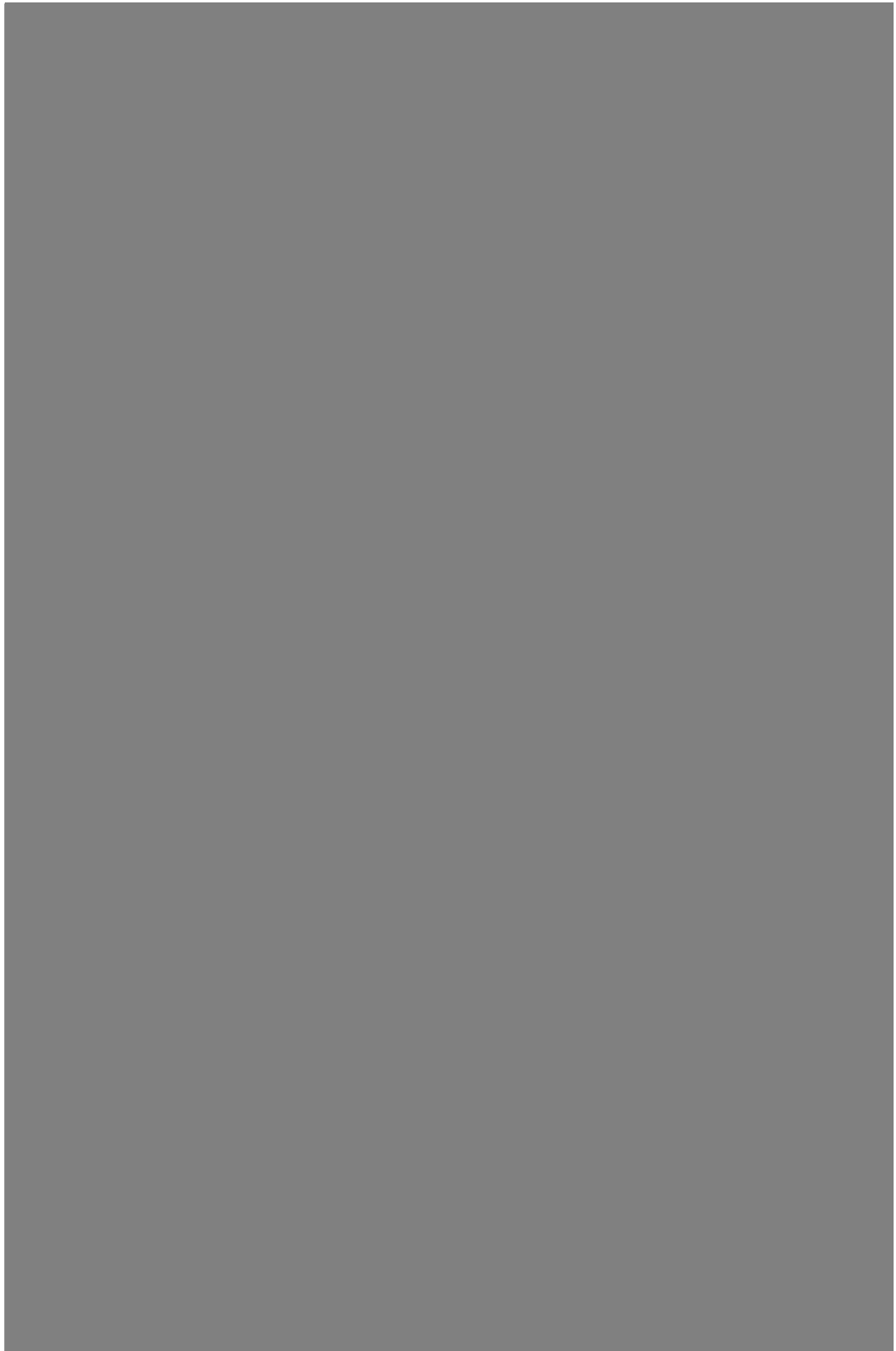
13. Relevant extracts from Witness A's statement are:





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





15. If, after considering all available evidence, the Authority finds there is a risk to children, 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.

### **Potential Compliance Action**

16. 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 allegations are substantiated and/or the Authority finds that you do not meet the fitness and propriety requirements to potentially 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 Notice pursuant to sections 182 and 183 of the *Law*.
17. Relevant legislation for enforceable undertakings and prohibition are as follows:.

#### **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
- (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.

### **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.

**Right of response**

18. As mentioned previously, 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.
19. 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. Please direct your written submission via email to [brian.cropper@act.gov.au](mailto:brian.cropper@act.gov.au) or by post to:

Children's Education and Care Assurance  
Attention Brian Cropper  
GPO Box 158, Canberra ACT 2601.

**Caution**

20. 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*.
21. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
22. 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.
23. 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>.
24. 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>
25. Should you have any questions about this Show Cause Notice please contact Senior Investigator Brian Cropper on email [brian.cropper@act.gov.au](mailto:brian.cropper@act.gov.au).

Yours sincerely



Jo Williams  
Director – Regulatory Operations  
Director Children's Education and Care Assurance  
Education and Care Regulation and Support

21 June 2023