



Ms [REDACTED]  
Person with Management or Control  
G8 Education Ltd  
RE: Blinky Bill Early Childhood Centre

Email: [REDACTED]

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 regarding Blinky Bill Early Childhood Centre SE-00009751 (the *Service*) whilst 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 the *Provider* has a case to answer regarding suspected offences. However, the investigation is not complete until the *Provider* has 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. 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

7. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas:
  - a. Inappropriate discipline, and
  - b. Protection from harms and hazards.

### Facts

8. On 22 November 2023, the Authority received a notification of parent complaint (NOT-40926672) from the Provider, advising of an allegation that Centre Director [REDACTED] [REDACTED] had inappropriately interacted with a child [REDACTED] on 17 December 2023. Refer Attachment A.
9. Accompanying the notification were supporting documents including complaint email and Centre Directors version of events. Refer Attachment B.
10. 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 emails

Refer Attachment C for relevant documents (CCTV video supplied upon request).

11. Due to the risk of harms and hazards likely to cause injury if children are subject to inappropriately interactions amounting to discipline, the Authority determined to investigate, engaging suspected offences under sections 166 and 167 of the *Law*.

### Allegations

#### Allegation One

12. It is alleged that on 17 November 2023, the Provider failed to ensure that that no child being educated and cared for by the Service is subjected to conduct amounting to inappropriate discipline, unreasonable in the circumstances, in that a child, believed to be [REDACTED] was yelled at, cornered, shamed and restrained by the Centre Director, [REDACTED] [REDACTED] contravening section 166(1) of the *Law* and engaging a further contravention of section 167(1) of said *Law*.

#### Allegation Two

13. It is alleged that on 17 November 2023, the Provider, failed to ensure that Child Attendance records and Working Directly with Children records were maintained accurately, as required by Regulation 151 and 158, in breach of *Regulation 177(2)*.

### Legislation Relevant to the Allegations

14. The following provisions of the *Law* are relevant to the Allegation:

### **Section 166(1) of the Law - Offence to use inappropriate discipline**

The Approved Provider of an education and care service must ensure that no child being educated and cared for by a service is subjected to-

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

Penalty: \$11 400, in the case of an individual

\$57 400, in any other case.

### **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: \$11 400, in the case of an individual

\$57 400, in any other case.

### **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 158 Children's attendance record to be kept by approved provider**

- (1) The approved provider of an education and care service must ensure that a record of attendance is kept for the service that—
  - (a) records the full name of each child attending the service; and
  - (b) records the date and time each child arrives and departs; and
  - (c) is signed by one of the following persons at the time that the child arrives and departs—
    - (i). the person who delivers the child to the education and care service premises or collects the child from the education and care service premises;
    - (ii). a nominated supervisor or an educator.

### **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;
  - (k) a children's attendance record as set out in regulation 158;
- (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: \$2200.

### **Regulation 13 Meaning of working directly with children**

For the purposes of these Regulations a person is working directly with children at a given time if at that time the person—

- (a) is physically present with the children; and
- (b) is directly engaged in providing education and care to the children.

Evidence relevant to the Allegation One

15. 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

16. It appears from CCTV video footage, proximity to the door between 8:46:44 and 8:49:04 was a possible hazard to child, [REDACTED] and others.
17. [REDACTED] was re-directed away from the door by an educator as parents, children and Ms [REDACTED] entered, between 8:49:04 and 8:49:16. [REDACTED] is resisting, striking out at educators attempting to engage with him.
18. After re-direction, he, [REDACTED] is now approximately two to three metres from the door, with adults and children in between.
19. At 8:49:56 Ms [REDACTED] indicates toward the outdoor space with [REDACTED] appearing to refuse Ms [REDACTED] guidance. Ms [REDACTED] approaches [REDACTED] and speaks with him and use finger gestures.
20. At 8:50:03, Ms [REDACTED] attempts to take hold of [REDACTED] who resists by flailing his arms and avoids Ms [REDACTED] grasp. As she takes hold of [REDACTED] he continues to resist by kicking out and swinging his hands. She lifts [REDACTED] by the arms and carries him outside the view of the camera during which he continues to struggle and slaps Ms [REDACTED] on the head. Most children are watching.
21. By 8:50:57, [REDACTED] has returned through the preschool room to the door, apparently after being released by Ms [REDACTED]
22. At 8:52:10, an educator is at the door with [REDACTED] attempting to engage. A staff member enters. Ms [REDACTED] is approximately two to three metres away. It appears [REDACTED] lashes out at the educator trying to engage with him, at which time Ms [REDACTED] quickly approaches, and, using further finger gestures, appears to chastise [REDACTED]
23. At 8:52:37 Ms [REDACTED] enters the room and removes her son, [REDACTED]

Refer to CCTV extract screenshots at Attachment E.

24. Relevant extracts from Provider policies noted by Ms [REDACTED] at induction 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 Positive Interactions and Child Protection Statement at [Attachment D](#).

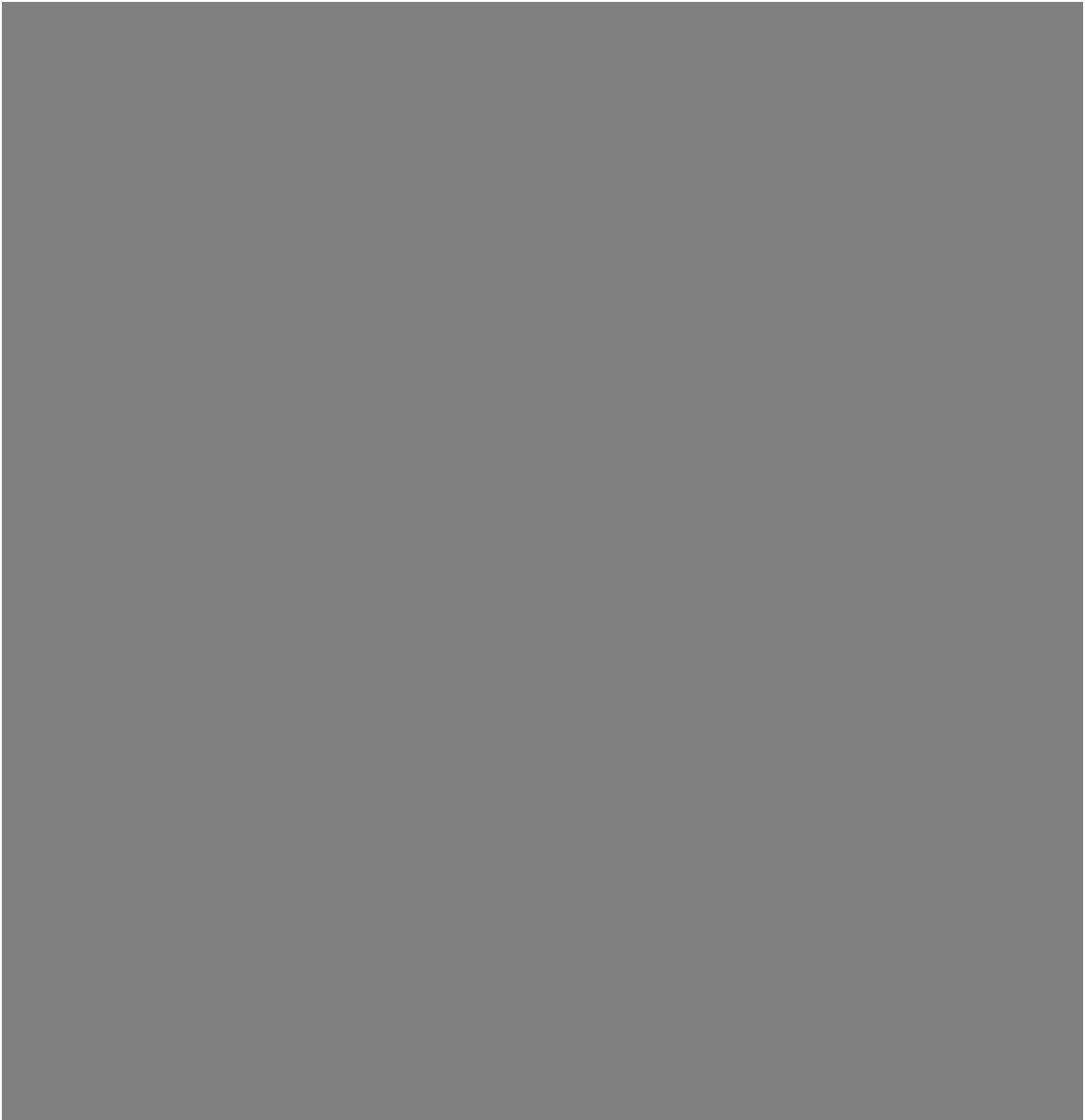
25. Relevant extracts from Ms [REDACTED] interview with the Provider include the following:





Refer to Ms [redacted] interview at Attachment D.

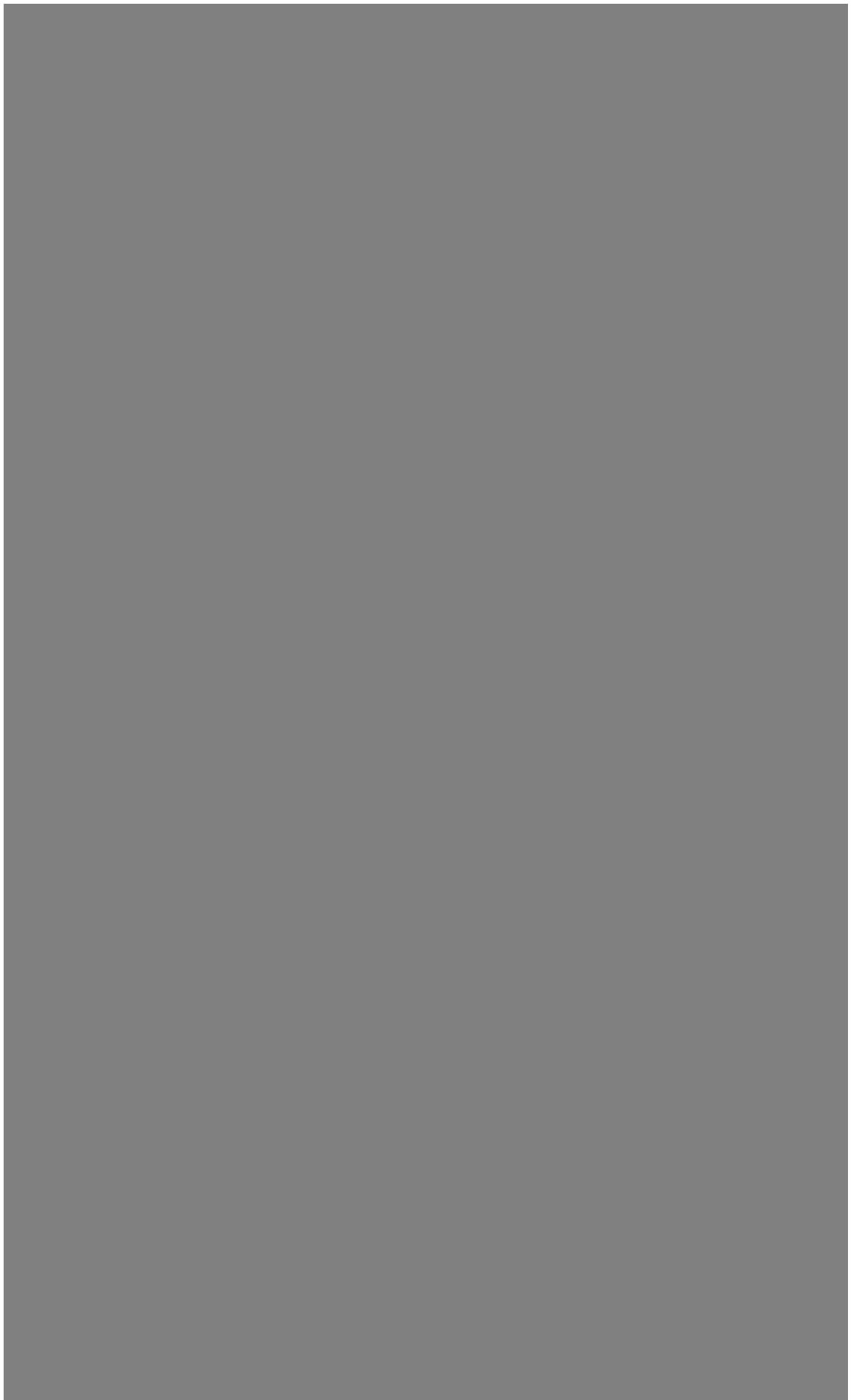
26. During the investigation, the Authority obtained a witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the specific circumstances surrounding the alleged offences, the witness is identifiable from the content of their evidence.
27. 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.
28. Relevant extracts from Witness A's statement include:



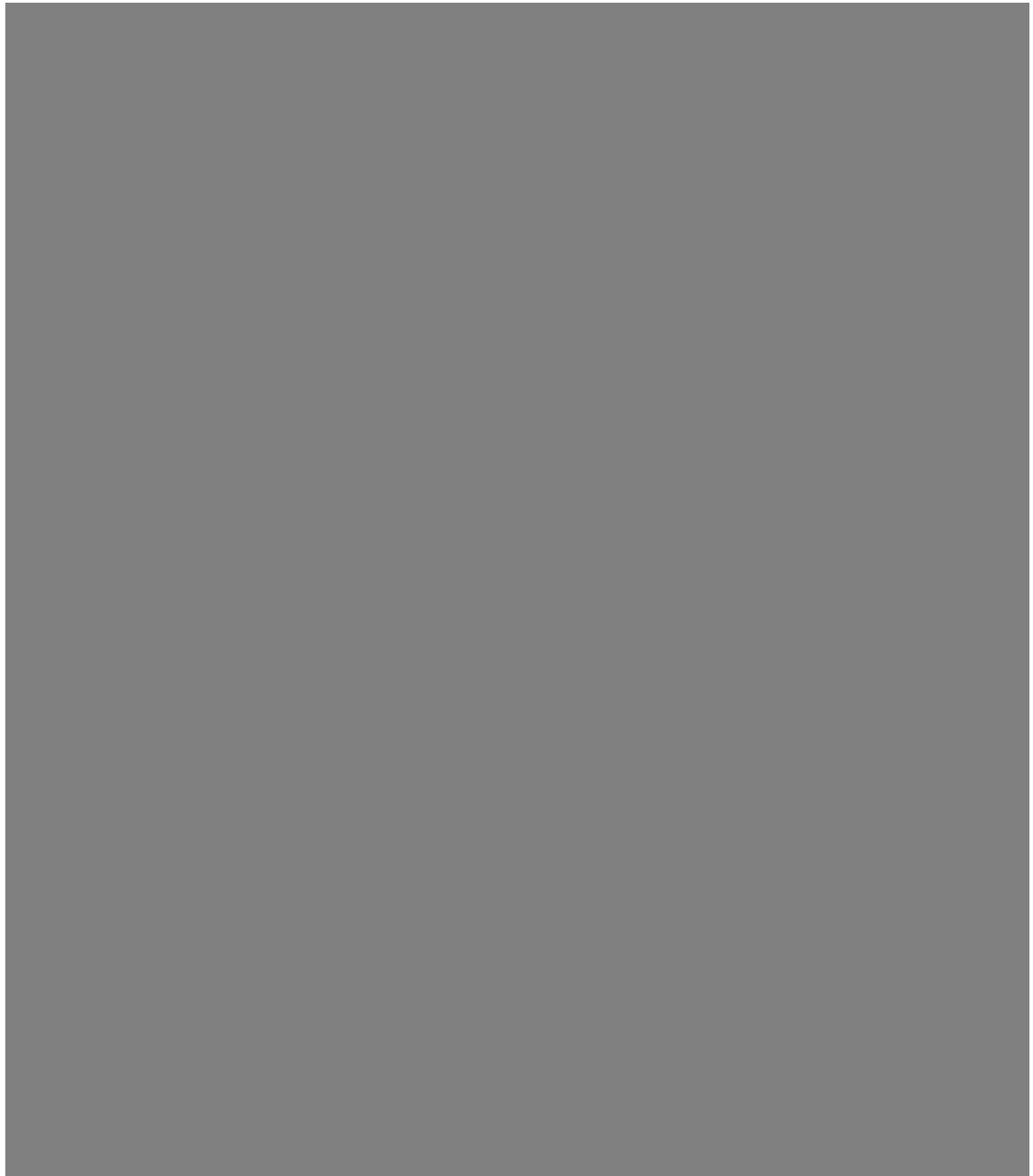


29. Relevant extracts from Witness B statement include:





30. Relevant extracts from Witness C include the following:



Contraventions supported by evidence.

31. Evidence gathered appears to support that [REDACTED] was subjected to inappropriate interactions amounting to discipline, inclusive of a restrictive practice, unreasonable in the circumstances, contravening section 166(1) of the *Law*, and giving rise to a contravention of 167(1) of said *Law*.
32. Ensuring that no child is subjected to corporal punishment, or discipline unreasonable in the circumstances, is viewed as being a reasonable precaution to take to protect children from harm likely to cause injury.

Evidence relevant to Allegation Two

33. Child attendance records furnished by the Provider indicate that [REDACTED] was not recorded as attending the Service on 17 November 2023. Refer Child Attendance at Attachment D.
34. WDWC records for Preschool room on 17 November 2023, identify that at 8am, four educators were signed into the preschool room. Also signed into the room from 8am to 9.35am was Nominated Supervisor and Responsible Person, [REDACTED] Refer Attachment D for WDWC records.

CCTV Video

35. CCTV video footage furnished by the Provider commences at 8:20:00. Ms [REDACTED] opens the door to the preschool room at 8:20:53 and removes an educator. Ms [REDACTED] appears to re-enter her office across the corridor. The educator returns to the room via the kitchen at 8:24:18.
36. The complainant, Ms [REDACTED] enters the room with her son [REDACTED] at 8:24:27.
37. Ms [REDACTED] re-enters the preschool room at 8:25:17 and engages in paperwork. She exits the preschool room at 8:26:08.
38. Ms [REDACTED] again enters the preschool 8:26:43 and leaves at 8:26:57. Ms [REDACTED] does not engage with children during the short visits to the preschool room and does not return to the room for 23 minutes at 8:49:15 to engage with [REDACTED] Ms [REDACTED] does not appear to be engaged in working directly with children as recorded in the WDWC record.
39. Relevant extracts from email of Ms [REDACTED] dated 22 November 2023, furnished by the Provider include the following:





Refer Email of Ms [REDACTED] dated 22/11/2023 at Attachment B.

40. Relevant extracts from Witness B include:



41. Relevant extracts from Witness C include:



Contraventions supported by evidence.

42. Evidence gathered appears to support that WDWC and Child Attendance records were not kept accurately in compliance with *Regulations* 151 and 158, breaching *Regulation* 177(2).
43. Ensuring that records are accurately kept in relation to child attendance and times educators are educating and caring for children, is viewed as being a reasonable precaution to take in protecting children from harm and hazard, likely to cause injury.

**Potential Compliance Action**

44. 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 an offence is substantiated. Potential compliance actions include:
  - a. Non-statutory Administration Action (similar to a caution) with no further action;
  - b. Non-statutory Administrative Action with measures to be taken and evidence produced; or
  - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*.
  - d. Imposing of Conditions on the Service’s approval under section 51 of the *Law*.
  - e. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.
  - f. Cancellation of the service approval under section 79 of the *Law*.
45. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.
46. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.

**Right of response**

47. As mentioned previously, this is the Provider’s opportunity to respond to the allegations and evidence set out in this Notice. 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.
48. 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 [Brian.Cropper@act.gov.au](mailto: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**

49. I am informing you that the excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.
50. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
51. 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.
52. 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>.
53. 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>.
54. Should you have any questions about this Show Cause Notice please contact Brian Cropper on [Brian.Cropper@act.gov.au](mailto: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