

[REDACTED]

Email: [REDACTED]

Dear Ms [REDACTED]

SHOW CAUSE NOTICE – PROPOSED COMPLIANCE ACTION

1. Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance, have recently investigated an allegation that you failed to take all reasonable precaution to protect children from harm and hazard on 31 July 2020 at YWCA Rosary School Age Care SE-00009738 (the Service) operated by The Young Women's Christian Association of Canberra PR-00005876 (the Provider).
2. 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.
3. I am considering compliance action based on a suspected contravention of the *Law* supported by evidence gathered during the investigation. As a delegate of the Authority, I am considering compliance action via a Formal Caution.

Grounds for issuing Show Cause Notice (the Notice)

4. The grounds for issuing this Notice arise from a Notification of Complaint submitted to the Authority on the 3 August 2020 by the Provider regarding your conduct as the Nominated Supervisor on the 31 July 2020.
5. The Complaint alleged that at about 5:00pm on Friday 31 July 2020 a child, enrolled at the Service was near a fence when an unknown male person asked her to put out her hand. The male person attempted to grab the child’s hand resulting in a scratch to her hand/arm. The child reported the incident to educators, of which you were aware, yet you did not perform a lockdown of the Service or inform relevant parties at the time – being the Provider, the associated school principal, the parents or ACT Policing. Refer to Attachment A.

6. Due to the risks posed to children when inaction is taken to protect them from possible predatory behaviours by strangers the Authority determined to investigate the allegation.
7. The consequent investigation into the matter indicates that you, as the Nominated Supervisor of the Service, did not ensure that every reasonable precaution was taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury, in contravention of section 167(2) of the *Law*.
8. During the course of the investigation the Authority conducted interviews with a number of witnesses and obtained relevant prescribed records and documents from the Provider.

Facts

Allegation of Failure to Protect

9. It is alleged that about 5pm on 31 July 2020, whilst engaged as the Nominated Supervisor of the Service, you were notified of an unknown male reaching through the Service fence, taking hold of and injuring a child at the Service and you failed to take every reasonable precaution to protect children from harm and hazard when you did not initiate a lockdown of the Service, or notify relevant parties of the alleged risk.

Evidence relevant to the Allegation

10. Documents obtained pursuant to a notice allowable under section 215 of the *Law* (215 Notice) from the Provider included, but was not limited to, the following:
 - a) Child attendance records for the 31 July 2020
 - b) Working directly with children records for the 31 July 2020
 - c) Nominated Supervisor records
 - d) Emergency Evacuation and Lock Down Policy No. C S 2.4
 - e) Meeting notes dated the 3 August 2020

Refer Attachment B for the relevant documentation, redacted where appropriate.

11. Relevant excerpts from Witness A's statement include:



12. Relevant excerpts from Witness B's statement include:

13. Excerpts of notes (provided at Attachment B) of a meeting between yourself and the Provider representative [REDACTED] on 3 August 2020:

- a) [REDACTED] stated that [REDACTED] spoke to a guy outside the fence, He asked her to put her hand out and said he would give her something. [REDACTED] put her hand out and he grabbed her hand and she pulled it away from him and she had a scratch and then he left.
- b) I asked where did this incident occurred (sic). [REDACTED] was down the bottom end of the oval on the Phillip Avenue side near the large green electricity box, she was on her own as she had had a tiff with her friends, after the incident [REDACTED] told her friends what had happened then they went and told the educator that was outside with them what had happened. I asked who was the educator that was outside with the children. [REDACTED] said it was [REDACTED].
- c) [REDACTED] then brought all the children inside and told [REDACTED] what had happened, [REDACTED] spoke to [REDACTED] and asked what had happened, [REDACTED] wasn't upset she was more worried that she would get in trouble because she was talking to someone outside the fence. I asked [REDACTED] about the scratch that [REDACTED] had she [REDACTED] said she only had a mark on her hand below her thumb there was no broken skin or blood.
- d) [REDACTED] spoke to the children and the educator that were outside to see if they had seen anyone, no one had seen anybody.
- e) Dad then arrived, [REDACTED] then spoke to dad and let him know what had happened he didn't seem too concerned but said [REDACTED] (mum) may have some questions. [REDACTED] told dad that she was investigating the situation and will let [REDACTED] the principal know.
- f) I asked why didn't you call anyone in the QSU or the police, [REDACTED] said she did intend calling us but after talking to dad she then thought she may have over reacted and didn't call anyone.
- g) [REDACTED] said she met with [REDACTED] this morning and let her know what had occurred. [REDACTED] told [REDACTED] that she had spoken to the mum and the police this morning.
- h) I asked had she filled in the incident report and [REDACTED] stated she had not done it yet.
- i) I said due to the seriousness of the incident and the lack of duty of care to the children she would be stood down until an investigation was had.
- j) [REDACTED] acknowledged that it was a serious incident however did not think someone outside the fence would be a threat, she believed their (sic) has been no training around this area..

Law

14. The evidence obtained by the Authority supports a contravention of the following section of the

Law:

Section 167 (2) of the Law – Offence relating to the 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 cared for by the service from harm and from any hazard likely to cause injury.

Potential Compliance Actions

15. Should the allegation be substantiated, the Authority is considering non statutory action such as a Formal Caution. A formal Caution will be retained on record with the Authority and may be utilised for consideration should further contraventions of the *Law* be identified in relation to you as an educator and Nominated Supervisor within the Childhood Education and Care Sector.

Right of response

16. You have a right to respond to the allegations set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.

17. 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 Authorised Officer Brian Cropper at 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

18. 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 course of the investigation are protected disclosures under section 296 of the *Law*.

19. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.

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

Legislation

21. The *Law* applies to you as an educator and a Nominated Supervisor within the Childhood Education and Care Sector. 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>.
22. 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>
23. Should you have any questions about this Show Cause Notice please contact Brian Cropper by telephone on (02) 620 71104 or email to brian.cropper@act.gov.au.

Yours sincerely,



Clare Brookes

Senior Director

Early Childhood Policy and Regulation

ACT Education Directorate

14 October 2020