

Ms [REDACTED]
Person with Management or Control
The Young Women's Christian Association of Canberra
RE: YWCA Richardson School Age Care

Email: [REDACTED]

Dear Ms [REDACTED]

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 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*.
2. As you may be aware, the Authority is currently investigating suspected offences at YWCA Richardson School Age Care SE-40009747 (the Service) operated by The Young Women's Christian Association of Canberra PR-00005876) (the Provider).
3. Investigation of suspected offences is related to allegations that a child (6years), attending the Service, was dragged along the floor by two older boys and suffered injuries, which the parent was not informed of on 30 June 2022.
4. 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.
5. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge) and the Authority has determined that there is sufficient evidence to support a case to answer regarding suspected offences under the *Law*. However, the Authority's investigation is not complete until you have had an opportunity to respond to the allegation/s and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
6. Detailed instructions of how to respond appear at the end of this Notice.
7. If substantiated, the allegation/s may constitute offences under sections 165, 167, 174 and 170 of the *Law* (or any combination). If, after considering all available evidence, the Authority finds any offences are substantiated, it will need to consider whether compliance action is required.
8. 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 actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

9. The evidence obtained during the investigation to date supports offences under the *Law* within the following area –
 - a) Supervision and Protection of children from harms and hazards likely to cause injury;
 - b) Failure to notify Regulatory Authority of a prescribed matter; and
 - c) Unauthorised persons being allowed to remain on premises.

Allegations relating to Law

10. The evidence obtained during the investigation raise the following allegations of offences under the *Law* –

Allegation One

11. It is alleged that, on 30 June 2022, the Provider failed to ensure that all children were adequately supervised at all times, in that a child, believed to be [REDACTED] suffered significant abrasions to his back as a result of an unchallenged game, contravening section 165(1) of the *Law* and giving rise to a contravention of section 167(1) of the *Law*.

Allegation Two

12. It is alleged that by 4 July 2022, the Provider failed to notify the Authority within 24 hours of a received complaint that the *Law* had been contravened, in that, a complaint was received by the Provider alleging inadequate supervision, contravening section 174(2)(b) of the *Law*.

Allegation Three

13. It is alleged that, on 30 June 2022, the Provider failed to ensure that unauthorised persons did not remain on the Service premises while children were being educated and cared for, contravening section 170(2) of the *Law*.

Allegation Four

14. It is alleged that, that between 20 June 2022 and 1 July 2022 inclusive, the Provider failed to take reasonable steps to ensure the responsible person in day-to-day charge had adequate qualifications, knowledge, understanding and ability to effectively protect children from harm and hazard likely to cause injury through the supervision and management an education and care service, contravening section 167(1) of the *Law*.

Background

15. On 2 July 2022, the Authority received a complaint alleging that inadequate supervision on 30 June 2022 had resulted in an enrolled child being dragged across carpet by older children, unchallenged by educators, resulting in the child sustaining significant carpet burns to his back and requiring medical attention.

16. It was determined by the Authority that there were reasonable grounds to suspect that offences have, or may have, occurred at the Service and a decision was made to investigate suspected offences under sections 165 and 167 of the *Law*.
17. As lines of enquiry were being undertaken by the Authority, additional suspected approved provider offences under section 174, 170 and 167 arose.

Allegation One

18. It is alleged that, on 30 June 2022, the Provider failed to ensure that all children were adequately supervised at all times, in that a child, believed to be [REDACTED] suffered significant abrasions to his back as a result of an unchallenged game, contravening section 165 of the *Law* and also giving rise to a contravention of section 167(1) of the *Law*.

Legislation Relevant to Allegation One

19. The following provisions of the *Law* and *Regulations* are relevant to Allegation One:

Section 165(1) of the Law - Offence to inadequately supervise children

The Approved Provider of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: \$10 000, in the case of an individual
\$50 000, 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: \$10 000, in the case of an individual
\$50 000, in any other case.

Evidence Relevant to Allegation One

20. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Refer records of all documents submitted at Attachment A.
21. Relevant evidence to this allegation submitted by the Provider included:
 - a) Educator Working Directly with Children Records and Child Attendance records for 30 June 2022, indicating seven children in attendance for the before school program and two educators. Refer Attachment B
 - b) Copies of emails between Ms [REDACTED] and the Provider, and Provider enquiries into the matter. Refer Attachment C
 - c) Copy of incident report for [REDACTED]. Refer Attachment D
 - d) Copies of policy, procedures and supervision plan. Refer Attachment E
 - e) Nominated Supervisor, responsible person and staff records, identifying [REDACTED] [REDACTED] as the Services Nominated Supervisor and [REDACTED] as educator and responsible person onsite on 30 June 2022. Refer Attachments B and F

22. The Provider also submitted, in response to the Authority's request of 19 August 2022, qualification and training records for two staff, [REDACTED] and [REDACTED]. Refer Attachment G
23. As part of the investigation, the Authority obtained a statement from the original complainant and witnesses, relevant excerpts from which are included below.
24. Please note that all witness statements were obtained exercising powers under section 215 of the *Law*. To clarify, all witnesses were compelled by notice to attend before Authorised Officers and provide evidence. Failure to comply is an offence under the *Law*, as is obstructing or hindering the Authority's investigation.
25. Relevant extracts from Complainant 's statement is:
- a) *9.14am on 30 June 2022, I received a phone call from Richardson Primary School in relation [REDACTED] being in the sick bay. I spoke with the school nurse. The school nurse advised me that [REDACTED] had gone to a teacher, I believe his kindy teacher [REDACTED] [REDACTED] who had identified that [REDACTED] had a sore back so took him to the sick bay. When at sick bay the teacher and the nurse pulled his shirt up and noticed the wounds on his back.*
 - b) *The nurse advised me that [REDACTED] was crying and appeared in significant pain and discomfort. I think the nurse went to the Service and asked for an incident report. I do not believe that there was one there.*
 - c) *Between 4pm and 4:30pm I went and picked [REDACTED] up from After School Care. As I had called ahead to let them know that I was coming, I was waiting out the front for them to bring [REDACTED] out to me. A girl came out, I believe an educator, and told me that [REDACTED] wouldn't come out and so could I come in and get him. I went in and found [REDACTED] hiding under a table. When I walked in, [REDACTED] saw me and stayed under the table saying that he didn't want to leave. I got on my knees and convinced him to come out from under the table. [REDACTED] wanted to finish colouring in.*
 - d) *While [REDACTED] was finishing up some colouring in, I sat down with [REDACTED] at one of the tables. I asked [REDACTED] about the incident form and what had happened that morning. [REDACTED] said that she wasn't really sure, she hadn't seen it yet or spoken to the educators.*
 - e) *[REDACTED] asked [REDACTED] what had happened, and [REDACTED] stated that an older boy had dragged him on the carpet. [REDACTED] asked [REDACTED] if he told a teacher – [REDACTED] said that there weren't any teachers and he was on the ground screaming but no one helped.*
 - f) *[REDACTED] and I left the Service after being there for about 15 or 20 minutes. [REDACTED] appeared ok to me at this stage, he wasn't displaying signs of discomfort, pain or upset.*
 - g) *Later that afternoon/evening, about 6pm or 6:30pm I went to give [REDACTED] a shower. This is when I first saw the wounds on his back. [REDACTED] still had the wound pads on so I removed them. Once removed I noticed how nasty the carpet burn was and how big it was. It was bright red and appeared weepy. [REDACTED] attempted to have a shower, but it stung him too much and he was in obvious pain so we didn't complete the shower.*

h) *On 1 July 2022, because of injury to [REDACTED] back, I sought medical treatment from a GP... I had to get special creams and wound pads to support the healing of [REDACTED] wounds. I took another photo of [REDACTED] back.*

Refer Attachment H for photos of injury submitted to the Authority.

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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Evidence Relevant to Allegation Two

29. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Refer relevant evidence to this allegation at Attachment C.
30. As mentioned, additional evidence was obtained during the investigation from the complainant and witnesses, utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.
31. Relevant extracts from Complainant 's statement is:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

32. A review of ACECQA NQA ITs records by the Authority failed to identify any Notification from the Provider to the Authority in relation to this complaint.

Contravention supported by Allegation Two

33. Evidence gathered appears to support a contravention of section 174 of the *Law*.

Allegation Three

34. It is alleged that that on 30 June 2022, the Provider failed to ensure that unauthorised persons did not remain on the Service premises while children were being educated and cared for, contravening section 170(2) of the *Law*.

Legislation Relevant to Allegation Three

Section 170 – unauthorised persons on education and care service premises

- (1) This section applies to an education and care service operating in a participating jurisdiction that has a working with children law.
- (2) The approved provider of the education and care service must ensure that a person does not remain at the education and care service premises while children are being educated and cared for at the premises, unless-
- (a) The person is an authorised person-

- (b) The person is under the direct supervision of an educator or other staff member of the service.

Penalty: \$1000, in the case of an individual
\$5000, in any other case.

(5) In this section- *authorised person* means a person who is-

- (a) A person who is holds a current working with children check or working with children card;
- (e) A person who is permitted under the working directly with children law of this jurisdiction to remain at the education and care service premises without holding a working with children check or a working with children card.

Evidence Relevant to Allegation Three

- 35. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Refer relevant evidence to this allegation at Attachment C.
- 36. As mentioned, additional evidence was obtained during the investigation from the complainant and witnesses, utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.
- 37. Relevant extracts from Witness A 's statement is:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Contravention supported by Allegation Three

- 38. Evidence gathered appears to support a contravention of section 170 of the *Law*.

Allegation Four

- 39. It is alleged that, that between 20 June 2022 and 1 July 2022 inclusive, the Provider failed to take reasonable steps to ensure the responsible person in day-to-day charge had adequate qualifications, knowledge, understanding and ability to effectively protect children from harm and hazard likely to cause injury through the supervision and management an education and care service, contravening section 167(1) of the *Law*.

Legislation Relevant to Allegation Four

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: \$10 000, in the case of an individual
\$50 000, in any other case.

Evidence Relevant to Allegation Four

40. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Refer relevant evidence to this allegation at Attachments E, F and G.
41. Evidence relevant to this allegation includes:
 - (a) Copies of submitted training and qualifications for [REDACTED]
 - (b) Copy of Responsible Person Form for [REDACTED]
 - (c) Copy of signed Supervision Plan.
42. As mentioned, additional evidence was obtained during the investigation from the complainant and witnesses, utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.
43. Relevant extracts from Witness A's statement is:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

[Redacted text block]

[Redacted text block]

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■ [REDACTED]

Contravention supported by Allegation Four

44. Evidence gathered appears to support a contravention of section 167 of the *Law*.

Potential Compliance Action

45. 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. 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. Conditions on Service Approval under section 55 of the *Law*.
46. 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. A compliance notice requires specific steps to be undertaken by the Provider to demonstrate to the Authority how compliance with the *Law* and *Regulations* will be achieved and maintained. It is tailored in each circumstance to address the specific non-compliance identified as a result of the investigation.
47. In your response, you may wish to make suggestions as to how this can be demonstrated. The Authority is not bound by any suggestions but will consider them as part of the Authority's case management process.

Right of response

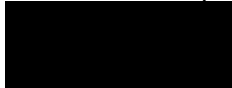
48. As mentioned previously, this notice is your opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
49. At Attachment I 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
Attention Brian Cropper

Caution

50. 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*.
51. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
52. 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.
53. The *Law* applies to you as an approved provider and to any service the approved provider operates. 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>.
54. 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>
55. Should you have any questions about this Show Cause Notice please contact Authorised Officer Brian Cropper via email at brian.cropper@act.gov.au

Yours sincerely



Jo Williams
Director
Education and Care Regulation and Support
ACT Education Directorate

12 September 2022