

Ms [REDACTED]  
Nominated Supervisor  
The Young Women's Christian Association of Canberra Ltd  
RE: YWCA Richardson School Age Care

Email: [REDACTED]@gmail.com

Dear Ms [REDACTED]

### Decision to issue Caution Letter

1. As you are aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated 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).
2. The Authority determined that there was sufficient evidence to support a case to answer for you, as the Nominated Supervisor regarding suspected offences under the *Law*. However, the Authority's final determinations was not made until you had an opportunity to respond to the allegations and evidence obtained by the Authority. This is the reason a Show Cause Notice (Notice) was sent to the Provider.
3. I am satisfied that you, as the Nominated Supervisor was not complying with the provisions of the *Education and Care Services National Law (ACT) Act 2011* (the *Law*) and the *Education and Care Services National Regulations* (the *Regulations*).
4. Web addresses to the *Law* and the *Regulations* are provided for your convenience at the end of this notice.

### Facts

5. On 12 September 2022, the Authority issued you, in the capacity as the Nominated Supervisor of the Service, a Show Cause Notice (the Notice). Refer copy of the Notice (minus attachments due to size) at Attachment A. Please note that attachments can be provided again upon request.
6. The Notice outlined the grounds for issue, relevant evidence and raised the following allegations for response:

### Allegation One

It is alleged that, on 30 June 2022, the Nominated Supervisor 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(2) of the *Law* and giving rise to a contravention of section 167(2) of the *Law*.

### Allegation Two

It is alleged that, on 30 June 2022, the Nominated Supervisor failed to ensure that unauthorised persons did not remain on the Service premises while children were being educated and cared for, contravening section 170(3) of the *Law*.

### Allegation Three

It is alleged that, that between 20 June 2022 and 1 July 2022 inclusive, the Nominated Supervisor 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(2) of the *Law*.

7. A response to the Notice from you was received on 6 October 2022. Refer copy of the received response at Attachment B.

### Law

8. The investigation and Notice engaged the following provisions of the *Law*:

#### **Section 165(2) of the Law - Offence to inadequately supervise children**

A nominated supervisor 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

#### **Section 167(2) of the Law - Offence relating to 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 care for by the service from harm and from any hazard likely to cause injury.

Penalty: \$10 000, in the case of an individual

#### **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.
- (3) A nominated supervisor 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

- (5) In this section- **authorised person** means a person who is-
  - (a) A person who holds a current working with children check or working with children card;

- (b) 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.

### **Reasons**

9. Having considered the evidence collected during the investigation, including your response to the Notice, the Authority is satisfied that you, in the capacity of Nominated Supervisor, has failed to comply with section 167(2) of the *Law*.
10. In relation to Allegation One, the Authority is not satisfied, on balance of probabilities, that you 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(2) of the *Law* and also giving rise to a contravention of section 167(2) of the *Law*.
11. In relation to Allegation Two, the Authority is not satisfied, on balance of probabilities, that you failed to ensure that unauthorised persons did not remain on the Service premises while children were being educated and cared for, contravening section 170(3) of the *Law*.
12. In relation to Allegation Three, the Authority is satisfied that between 20 June 2022 and 1 July 2022 inclusive, you, as Nominated Supervisor, 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*.
13. In response to this allegation, you are acknowledged as refuting the allegation on the basis that the Responsible Person in question, being [REDACTED] is:
- a) a first qualified educator due to working directly with children since 2019;
  - b) is studying a nursing degree at university since 2018;
  - c) signed a Responsible Person form, has advised they are aware of their responsibilities and duties as a Responsible Person, and has held similar roles at other services operated by the Provider; and
  - d) does hold a first aid qualification, is also trained in anaphylaxis and asthma management training, and has also completed regular mandatory reporting training;
  - e) due to the educator's nursing studies at university, they have extensive knowledge on applying first aid and CPR, and mandatory reporting. They have been formally and extensively trained to provide first aid to patients, including children of all ages, in varying circumstances, scenarios and environments; and
  - f) the educator now also holds a first aid qualification in an education and care setting.
14. Evidence obtained from Witness A, who identifies as being the Responsible Person for the last two weeks before the end of the school term at the Service, supports that inadequate induction was provided to them to ensure that they were aware of children's behaviours or medical needs specific to the Service.

15. Witness A also stated that although they had undertaken certain first aid training, during the time that they were the Responsible Person, they had not done the CPR component of their first aid course.
16. Evidence obtained via Witness A's statement supports that aside from reading Supervision and Incident, injury, trauma and illness policies in 2019, there appeared no further action by Witness A or by you as the Nominated Supervisor to ensure that they were aware of and understood current policies prior to being Responsible Person at the Service.
17. The fact that on 30 June 2022 [REDACTED] was supervising children, and observed the game being played on the carpeted area in the shared hallway yet did not call the enrolled child back to the hall supports that Mr [REDACTED] did not understand the intent of 'shared spaces' at the school whilst the Service was operating. This lack of knowledge, understanding of the Service, and subsequent inaction in relation to the game has contributed to the incident occurring.
18. The Authority understands that the school toilets are a shared approved space between the Service (located/operated from the hall), and that the carpeted hallway is also a 'shared space' for the purpose of children moving from the hall to the toilets – the carpeted hallway is not a designated playspace of the Service for enrolled children and unenrolled children to liaise.
19. The Authority is satisfied that if you had ensured that Mr [REDACTED] as the Responsible Person, had been made aware of the intent of use of the different spaces approved for the Service, and had ensured that Mr [REDACTED] was experienced enough to have foreseen the risks involved with the game being undertaken in an area not approved for regular play, the injury to the child could have been prevented.
20. In deciding if a compliance action should be taken, I have considered the fact that the Provider has provided evidence of improvement strategies, implemented as a result of the incident occurring 30 June 2022.

### **Decision**

21. Considering all the evidence, the objectives and guiding principles of the *Law*, and the compliance history of the Service, I have decided to issue this Caution to address the non-compliance substantiated, rather than to issue a Prohibition Notice or Enforceable Undertaking.
22. This Decision serves a reminder to you as a Nominated Supervisor of your obligations under the *Law* to ensure that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children at all times. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
23. Staffing levels are also expected to take into consideration the experience levels of educators, and their understanding of how to educate and care for children.

24. In addition, this is a reminder that as a Nominated Supervisor, it is imperative to ensure that educators, at all times, are aware of and understand the policies, procedures and expectations of yourself and the Provider in relation to the operation of the Service, and in their roles of educating and caring for children.
25. Details of this decision will be recorded and may be considered should any further similar non-compliances be identified moving forward regarding your role as a Nominated Supervisor.

**Legislation**

26. 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>.
27. 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>
28. If you have any questions about the Decision or Notice, please contact at Authorised Officer Vittorio Colosimo at [Vittorio.colosimo@act.gov.au](mailto:Vittorio.colosimo@act.gov.au).

Yours sincerely



Jo Williams  
Director  
Education and Care, Regulation and Support  
Children's Education and Care Assurance  
ACT Education Directorate

28 November 2022