

Mr [REDACTED]  
Nominated Supervisor  
YWCA Majura School Age Care  
Email: [REDACTED]@homemail.com.au

Dear Mr [REDACTED]

**Decision to Issue Formal Caution**

1. As you are aware, the ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance (CECA), investigated suspected offences relating to an unsupervised child leaving, and returning to, YWCA Majura School Age Care - SE-00009691 (the Service) operated by The Young Women's Christian Association of Canberra PR-00005876) (the Provider).
2. The Authority is satisfied that you, whilst in the capacity as the Nominated Supervisor of the Service, have contravened provisions of the *Education and Care Services National Law (ACT)* (the Law).
3. 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 decision.

**Facts**

4. On 11 October 2022, the Authority received a notification from the Provider, of a parent complaint alleging her child, [REDACTED] (5:8) had left the Service unnoticed on 10 October 2022, crossed a road, attended nearby shops and returned unnoticed by educators and staff. Refer Attachment A.
5. Due to the risk of harm and hazards to children, likely to cause injury resulting from inadequate supervision, the Authority determined to investigate.
6. On 14 February 2023, because of evidence gathered throughout the investigation that supported contraventions of the Law, the Authority sent you a Show Cause Notice (SCN). Refer copy of the Notice (minus attachments) at Attachment B.
7. The SCN outlined the grounds for issue, and the evidence relied on by the Authority supporting the allegation that, on 10 October 2022, you, in the capacity of Nominated Supervisor, contravened section 165(2) of the Law, giving rise to a contravention of Section 167(2) of said Law.
8. In addition, the SCN outlined the compliance actions being considered by the Authority should the allegation be substantiated.

9. On 3 March 2022, you emailed the Authority your response to the SCN within the agreed timeframe. Refer copy of response (minus attachments) at Attachment C.

**Allegation**

10. It is alleged that on 10 October 2022, you, as the Nominated Supervisor failed to ensure all children were adequately supervised at all times, in that a child, believed to be [REDACTED] (5:8), was missing and unaccounted between 4.15pm and 4.55pm, after leaving the Service, crossing a road, attending shops and returning, contravening section 165(2) of the *Law* and engaging section 167(2) of said *Law*.

**Law**

11. The following provisions of the Law were engaged by the investigation and Decision.

**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.

**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.

**Evidence and Submission**

12. The Authority's records indicated that you were the nominated supervisor of the Service at the relevant time.
13. Evidence gathered relevant to the allegation consisted of:
- a. prescribed records furnished by the Provider pursuant to a notice issued under section 215 of the *Law*.
  - b. voluntary witness statement with relevant extracts from a parent provided in the SCN.
  - c. Witness statements obtained under section 215 of the *Law*, with relevant extracts also provided in the SCN.
14. In your written response, you advised that supervision plans were being followed on the day, the playscape is not fenced with a sufficient staffing ratio.

15. You did not expressly admit or deny the allegation or produce any evidence to refute the allegation as put forward in the SCN, rather, the information provided was by way of mitigation and explanation.
16. The Authority contends that for supervision levels to be deemed adequate under the *Law*, minimum regulated ratio levels may need to exceed the number prescribed, to meet the emotional, developmental, and physiological needs of all children being educated and cared for by the Service.
17. Under section 165(2) of the *Law*, it is a nominated supervisor's responsibility to ensure adequate supervision of all children being educated and cared for by the Service. It is an offence of strict liability. Ensuring adequate supervision of children is also a reasonable precaution to protect children from harm and from hazards likely to cause injury, so a failure to ensure adequate supervision engages an offence under section 167(2).
18. It is imperative that any person working in the early education and care sector, who accept the responsibilities of a nominated supervisor, are aware of their responsibilities and obligations.

*Obligations upon Regulatory Authority, Providers, Services and Nominated Supervisors*

19. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. Relevant to this decision is the objective at section 3(2)(a), namely  
*'To ensure the safety, health and wellbeing of children attending education and care services; ...'*
20. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:
  - (a) that the rights and best interests of the child are paramount; ...
  - (f) that best practice is expected in the provision of education and care services.
21. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
  - (c) to monitor and enforce compliance with this *Law*;
  - (d) to receive and investigate complaints arising under this *Law*.
22. The *Law* works to protect a particularly vulnerable part of our society — children — when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.

23. A key object of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.

#### **Decision**

24. After careful consideration of your response and all available evidence, the Authority is satisfied that, on the balance of probabilities, there is sufficient evidence to substantiate a contravention of section 165(2) of the *Law*, giving rise to a further contravention of 167(2) of said *Law* namely-

- a. Failing to ensure adequate supervision of all children being educated and cared for by the Service on 10 October 2022, in contravention of section 165(2) of the *Law*; and giving rise to
- b. Failing to take every reasonable precaution to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury on 10 October 2022, in contravention of section 167(2) of the *Law*.

25. Considering the evidence, the objectives and guiding principles of the *Law*, the fact that you have no previous compliance history, and your immediate actions taken to mitigate risk of re-occurrence of the incident, the Authority has decided to issue this Caution rather than statutory compliance action.

#### **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 relating to this letter, please contact Senior investigator Brian Cropper on telephone (02) 620 71104 or by way of email at [brian.cropper@act.gov.au](mailto:brian.cropper@act.gov.au).

Yours sincerely

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

18 April 2023