



Ms [REDACTED]
Person with Management or Control
The Young Women's Christian Association of Canberra
RE: YWCA Majura 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.
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 (ACT) (the Law)*, together with receiving and investigating complaints arising under the *Law*.
3. Authorised Officers are currently investigating suspected offences at YWCA Majura School Age Care - SE-00009691 (the Service) operated by The Young Women's Christian Association of Canberra PR-00005876) (the Provider).
4. Suspected offences relate to allegations of inadequate supervision of a child being educated and cared for by the Service resulting in the child being missing and unaccounted for on 10 October 2022.
5. 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.
6. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge) and the Authority has determined there is sufficient evidence to support a case to answer regarding the suspected offences under the *Law*.
7. However, the Authority's 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 as a person with management or Control of the Provider.
8. Detailed instructions of how to respond appear at the end of this Notice.
9. If substantiated, the allegation/s may constitute offences under sections 165 and 167 of the *Law* (or any combination of them). If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, it will need to consider whether compliance action is required. All such determinations are made via the Authority's case management processes, involving a dedicated case management committee.

10. Where any offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action with the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions that may be considered in this instance appear at the end of this Notice.

Grounds for issuing Show Cause Notice

11. The evidence obtained during the investigation to date supports offences under the *Law* within the area of supervision and protection of harm.

Background to Investigation

12. On 11 October 2022, the Authority received a notification from the Provider, of a parent complaint alleging her child, [REDACTED] (5years) had left the Service unnoticed, crossed a road, attended nearby shops and returned again to the Service, unnoticed by educators and staff. Refer Attachment A.
13. The following documents accompanied the notification to the Authority:
 - a) Child attendance records and Working Directly with Children records.
 - b) Incident Report and Education and Nominated Supervisor statements.
 - c) Photo of a pedestrian crossing.
14. It was determined by the Authority that there were reasonable grounds to suspect that offences have, or may have, occurred at Service, and a decision was made to investigate suspected offences of sections 165 and 167 of the *Law*.

Allegation – Sections 165 and 167 of the Law

15. It is alleged that on 10 October 2022, the Provider failed to ensure all children were adequately supervised at all times, in that a child, believed to be [REDACTED], was missing and unaccounted for between 4.15pm and 4.55pm, after leaving the Service, crossing a road, attending shops and returning back to the Service unnoticed, contravening section 165(1) of the *Law* and engaging section 167(1) of said *Law*.

Legislation 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.

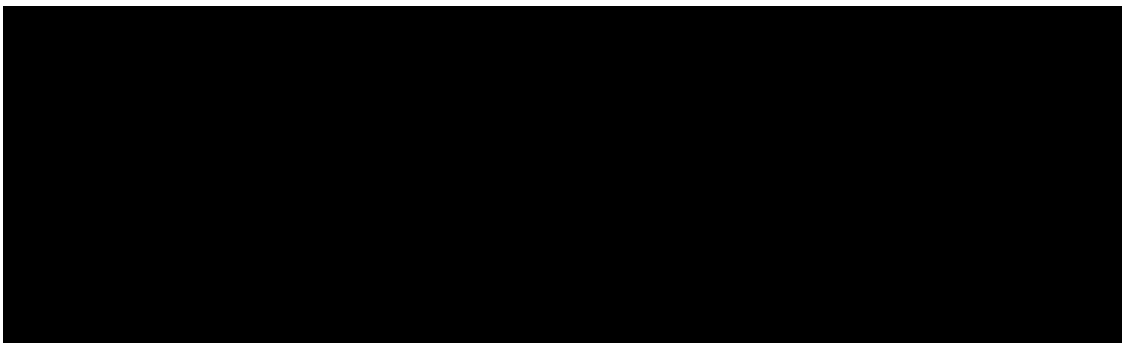
Section 167(1) of the Law - Offence relating to protection of children from harm and hazards

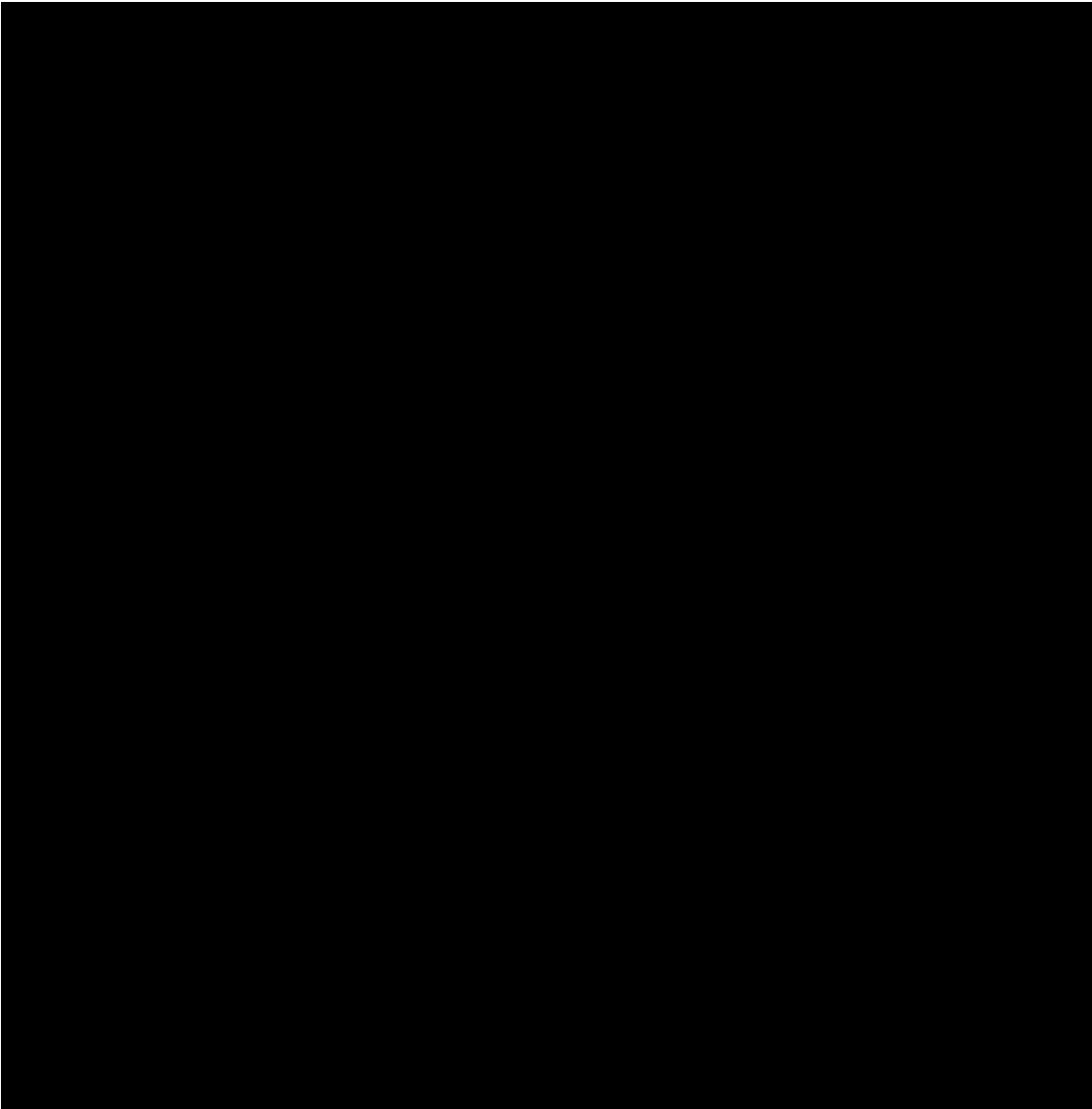
The Approved Provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury.

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

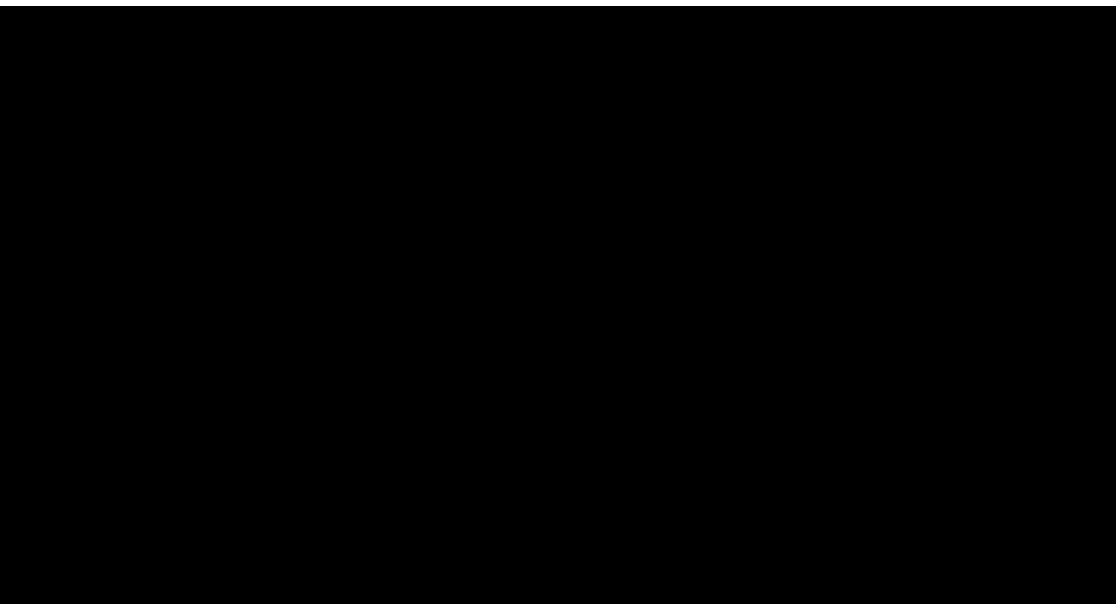
Evidence Relevant to the Allegation

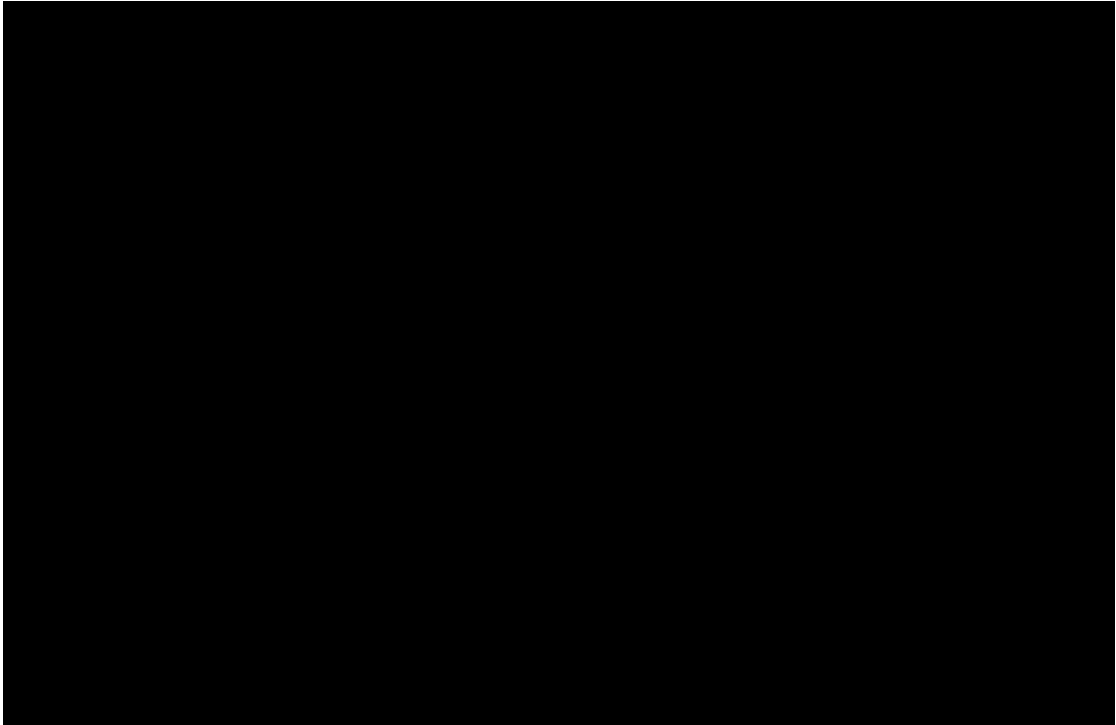
16. Documentation furnished by the Provider upon request from the Authority, include an incident report outlining [REDACTED] attempted to leave the service and was directed back by a father of a peer and later attending the nearby shops unsupervised. Refer Attachment B.
17. Statements from educators obtained by the Provider indicate that [REDACTED] was observed about 4.15pm and again at 4.55pm. There is no evidence he was seen by educators in between those times. Refer Attachment C.
18. Working Directly with Children and Child Attendance records indicate there were sufficient staff working on 10 October 2022. Refer Attachment D.
19. As part of the investigation a measurement of the distance from the playscape to the Watson shops indicate approximately 230 metres with an assumption [REDACTED] used the crossing. Refer to Attachment E.
20. On 9 November 2022, Provider furnished information pursuant to a 215 Notice including copies of the Services Supervision Policy and Procedure and Risk strategies. Refer relevant documents at Attachment F
21. The Authority acknowledges the strategies undertaken by the Provider to mitigate risk of reoccurrence of a child leaving the Service unsupervised.
22. During the investigation, the Authority obtained witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Please note that some witness statements were obtained utilising powers under section 215 of the Law, imposing obligations to attend and provide evidence.
23. Relevant extract from Witness A's statement include:





24. Extract from Witness B's statement include:





Contravention supported by the Allegation

25. Evidence gathered appears to support a contravention of sections 165(1) and 167(1) of the *Law*.

Potential Compliance Action

26. 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;
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*; or
 - d. Conditions on Service Approval under section 55 of the *Law*.
27. 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.
28. 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. Alternatively (or additionally), the Authority may place a condition on the Service Approval to address the specific non-compliance identified as a result of the investigation.

Right of response

29. As mentioned previously, this letter 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.
30. At Attachment G 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
GPO Box 158, Canberra ACT 2601.

Caution

31. 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*.
32. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
33. 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.
34. 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>.
35. 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>
36. Should you have any questions about this Show Cause Notice please contact Senior Investigator Brian Cropper via email at Brian.Cropper@act.gov.au

Yours sincerely



Jo Williams

Director

Education and Care Regulation and Support

14 February 2023