

Ms [REDACTED]
Nominated Supervisor
Aranda Afters

Email [REDACTED]

Dear Ms [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 unsupervised children leaving, and returning to, Aranda Afters SE-00009641 (the Service) operated by Aranda Afters Association Incorporated PR-00005802 (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 24 May 2023, the Authority received a notification from the Provider advising that two children alleged they were threatened away from the Service by an unknown male. Refer to 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 20 July 2023, because of evidence gathered throughout the investigation supporting 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 23 May 2023, 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 August 20223 you emailed the Authority your response to the SCN, inclusive of attachments A-G, within the agreed timeframe. Refer copy of response (minus attachments) at [Attachment C](#).

Allegation

10. It is alleged that on 23 May 2023, you, as Nominated Supervisor, failed to ensure that all children being educated and cared for by the Service were adequately supervised at all times, in that, children believed to be, [REDACTED] (aged 8:8) and [REDACTED] (aged 8:6), left, and returned, to the service unsupervised and unnoticed, contravening section 165(2) of the *Law* and engaging a further contravention of 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. witness statements obtained under section 215 of the *Law*, with relevant extracts also provided in the SCN.
 - c. CCTV video evidence.
14. In your written response, you accept the evidence and admit the children left the service, however, submit that every reasonable precaution had been taken to protect children and that you did not contravene s167(2) of the *Law*.
15. Furthermore, you submit that if a contravention of the *Law* is substantiated, no compliance action is required due to actions, implemented and ongoing, undertaken by you to mitigate risk of a recurrence of the incident, inclusive of annexures and point by point responses.

16. 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. 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) of the *Law*.
17. It is imperative that any person working in the early education and care sector, who accept the responsibilities of a nominated supervisor, are fully aware of their responsibilities and obligations, regardless of performing other roles, duties or when absent from the Service.

Obligations upon Regulatory Authority, Providers, Services and Nominated Supervisors

18. 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; ...'
19. 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.
20. 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*.
21. 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*.
22. 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

23. 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 23 May 2023, in contravention of section 165(2) of the *Law*;
and

- 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 23 May 2023, in contravention of section 167(2) of the *Law*.
24. Considering the evidence, the objectives and guiding principles of the *Law*, the fact that you have no previous compliance history, and your immediate, and ongoing, 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

25. 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>.
26. 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>
27. If you have any questions relating to this letter, please contact Senior investigator Brian Cropper on telephone (02) 6207 1104 or by way of email at brian.cropper@act.gov.au.

Yours sincerely



Vittorio Colosimo
Acting Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support

3 October 2023