

Ms [REDACTED]  
Nominated Supervisor  
Young Mens Christian Association of Canberra Inc  
RE: YMCA Gungahlin Early Learning Centre

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 the operation of YMCA Gungahlin Early Learning Centre SE-40003109 (the Service) operated by Young Mens Christian Association of Canberra Inc PR-00005888 (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 13 December 2022, the Authority received a notification from the Provider advising that, on 12 December 2022, a parent had entered the Service with 3 children that were found in the exit airlock unsupervised.
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 4 May 2023 and 24 May 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 A.
7. The SCN outlined the grounds for issue, and the evidence relied on by the Authority supporting the allegation that, 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 30 May 2023 you emailed the Authority your response to the SCN within the required timeframe. Refer to a copy of your response (minus attachments) at [Attachment B](#).

### **Allegation**

10. It is alleged that, between 9.30am and 10.07am on 12 December 2022, you, as the Nominated Supervisor, failed to ensure children being cared for were adequately supervised at all times. Three children, were found outside by a parent, stuck in between two gates known as the exit airlock in contravention of s165(2) of the *Law*.
11. It is alleged that, by failing to adequately supervise the three children between 9.30am and 10.07am on 12 December 2022, you, as the Nominated Supervisor, has failed to take reasonable steps to protect children from harms and hazards likely to cause injury or illness, in contravention of s167(2) of the *Law*.

### **Law**

12. 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.

Penalty: \$10 000

#### **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**

13. The Authority's records indicated that you were the nominated supervisor of the Service at the relevant time.
14. 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 obtain under section 215 of the *Law*.
15. In your written response, you advised as nominated supervision that you acknowledge and recognise the gravity of the allegations.

16. You provided the supervision policy and QA quality support plan and acknowledged that the risk mitigation measures implemented proved to be inadequate on the day. As such, you provide a number of documents and evidence of measures put in place after the incident had occurred to mitigate the risk of a similar incident occurring in the future.
17. Under section 165(2) of the *Law*, it is a nominated supervisor's responsibility to ensure that children being educated and cared for by the service are adequately supervised at all times that that children are in the care of the service.
18. Under section 167(2) of the *Law*, it is a nominated supervisor's responsibility to ensure that every possible precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.
19. 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*

20. 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; ...'*
21. 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.
22. 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.
23. 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*.
24. 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**

25. 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) engaging s167(2) of the *Law* namely-
  - a. Failing to 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, in contravention of section s165(2) of the *Law*.
  - 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, in contravention of section 167(2) of the *Law*.
26. Considering the evidence, the objectives and guiding principles of the *Law*, the fact that you have no previous compliance history, and your actions taken to mitigate risk of re-occurrence of the incident, the Authority has decided to issue this Caution rather than statutory compliance action.
27. This Decision serves a reminder to you as a Nominated Supervisor of your obligations under the Law to ensure that all reasonable precautions are taken to ensure adequate supervision of children and that every reasonable precaution is taken to protect children when being educated and cared for. If there are any substantiated offences of a similar nature in the future the Regulatory Authority may consider further regulatory action to ensure compliance.
28. 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 supervision of children, and in their roles of educating and caring for children.
29. 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**

30. 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>.
31. 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>
32. If you have any questions relating to this letter, please contact Senior investigator Vittorio Colosimo by way of email at [Vittorio.Colosimo@act.gov.au](mailto:Vittorio.Colosimo@act.gov.au).

Yours sincerely



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

4 July 2023