

[REDACTED]
Person with Management or Control
Young Mens Christian Association of Canberra Inc
RE: YMCA Giralang After School Care

Email: [REDACTED]

Dear [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance (CECA).
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* (the *Law*). One of the Authority’s roles is to investigate suspected offences under the *Law*.
3. Authorised Officers are currently investigating multiple suspected offences at YMCA Giralang After School Care SE-00009716 (the *Service*) operated by Young Mens Christian Association of Canberra Inc PR-00005888 (the *Provider*).
4. 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.
5. Authorised Officers have obtained evidence from other sources, and the Authority has determined that the Provider has a case to answer regarding suspected offences. 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.
6. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
7. If substantiated, the allegations may constitute offences under sections 165 and 167 of the *Law* and *Regulation 177*. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities (or any combination of them) it will need to consider whether compliance action is required.
8. Where offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Further details regarding potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

9. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas:
 - a. Supervision and protection of children from harms and hazards;
 - b. Protection of children from harms and hazards (multiple); and
 - c. Record-keeping.

Facts

10. On 28 June 2023, the Authority received a notification (NOT-40872942) and incident report from the Provider advising that on 27 June 2023, two children, [REDACTED] (5:2) and [REDACTED] (4:10), had left the Service unnoticed, and were unaccounted for between 30 to 60 minutes. The notification advised that the children were subsequently located at home. Refer NOT-40872942 at Attachment A.
11. Due to the risk of harms and hazards likely to cause injury if children are inadequately supervised, the Authority determined to investigate suspected offences under section 165 and 167 of the *Law*.
12. Information received during the investigation provided reasonable grounds to suspect further additional offences under section 167 the *Law* and *Regulation 177*.

Allegations

13. The following allegations of breaches to the *Law* and *Regulations* are raised by evidence obtained via the investigation process:

Allegation One

It is alleged, that on 27 June 2023, the Provider, failed to ensure that all children being educated and cared for by the Service were adequately supervised, in that children [REDACTED] (5:2) and [REDACTED] (4:10), were able to leave the Service unnoticed, and were unaccounted for approximately 30-40 minutes, contravening section 165(1) of the *Law* and engaging a contravention of 167(1) of said *Law*.

Allegation Two

It is alleged that by 27 June 2023, the Provider failed to ensure that every reasonable precaution was taken to protect children from harm and hazard likely to cause injury, in that an adequate risk assessment was not conducted regarding junior children, both preschool and kindergarten, being combined with older children in the senior children's space, contravening section 167(1) of the *Law*.

Allegation Three

It is alleged that by 27 June 2023, the Provider, failed to ensure that every reasonable precaution was taken to protect children from harm and hazard likely to cause injury, in that a person was not adequately authorised and informed of being in day-to-day charge of the Service, in compliance with *Regulation 117A*, contravening section 167(1) of the *Law*.

Allegation Four

That on 27 June 2023, the Provider failed to take reasonable steps to ensure prescribed records were accurate, in that Child Attendance Records were not maintained in compliance with *Regulation 158*, breaching *Regulation 177(2)*.

Legislation Relevant to Allegations

14. The following provisions of the *Law* are relevant to Allegations One, Two, Three and Four:

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.

Regulation 117A - Placing a person in day-to-day charge

For the purposes of the definition of a person in day-to-day charge in section 5(1) of the *Law*, a person is in day-to-day charge of an education and care service if—

- (a) the person is placed in day-to-day charge by the approved provider or a nominated supervisor of the education and care service; and
- (b) the person consents to the placement in writing.

Regulation 158(1) – Children’s attendance record to kept by provider

The approved provider of an education and care service must ensure that a record of attendance is kept for the service that-

- (a) Records the full name of each child attending the service; and
- (b) Records the date and time each child arrives and departs; and
- (c) Is signed by one of the following persons at the time that the child arrives and departs-
 - (i). The person who delivers the child to the education and care service premises or collects the child from the education and care service premises;
 - (ii). A nominated supervisor or an educator.

Regulation 177 – Prescribed enrolment and other documents to be kept by provider.

- (1) For the purposes of section 175(1) of the *Law*, the following documents are prescribed in relation to each education and care service operated by the approved provider –
 - (k) A children’s attendance records as set out in regulation 158;
- (2) The approved provider of the education and care service must take all reasonable steps to ensure the documents referred to in sub regulation (1) are accurate.

Penalty: \$2000

First Set of grounds – Supervision and Protection from Harm

Allegation One

15. It is alleged, that on 27 June 2023, the Provider, failed to ensure that all children being educated and cared for by the Service were adequately supervised, in that children [REDACTED] (5:2) and [REDACTED] (4:10), were able to leave the Service unnoticed, and were unaccounted for approximately 30-40 minutes, contravening section 165(1) of the *Law* and engaging a contravention of 167 (1) of said *Law*.

Evidence relevant to Allegation One

16. On 14 July 2023, the Provider furnished documents pursuant to a notice, issued under section 215 of the *Law* (215 Notice) on 7 July 2023. Relevant documents submitted included:
- Nominated Supervisor (NS) and Responsible person (RP) forms.
 - Working Directly with Children (WDWC) and Child Attendance Records.
 - Daily Headcount.
 - Relevant emails and Internal Investigation records.
 - Enrolment records.
 - Policy and Procedure.

Refer Attachment B for records relevant to the allegations.

17. On 4 August 2023, Authorised Officers conducted an unannounced visit to the Service pursuant to section 199 of the *Law*, where copies of documents were taken. Relevant documents include:
- Map of Giralang School and a Distance Map.
 - WDWC records and NS/RP requirements.
 - Arrival and Departure Policy.
 - Runaway Policy 2014.
 - Supervision policy 2022.
 - Supervision map (undated).

Refer Attachment C for AO Statement and documents.

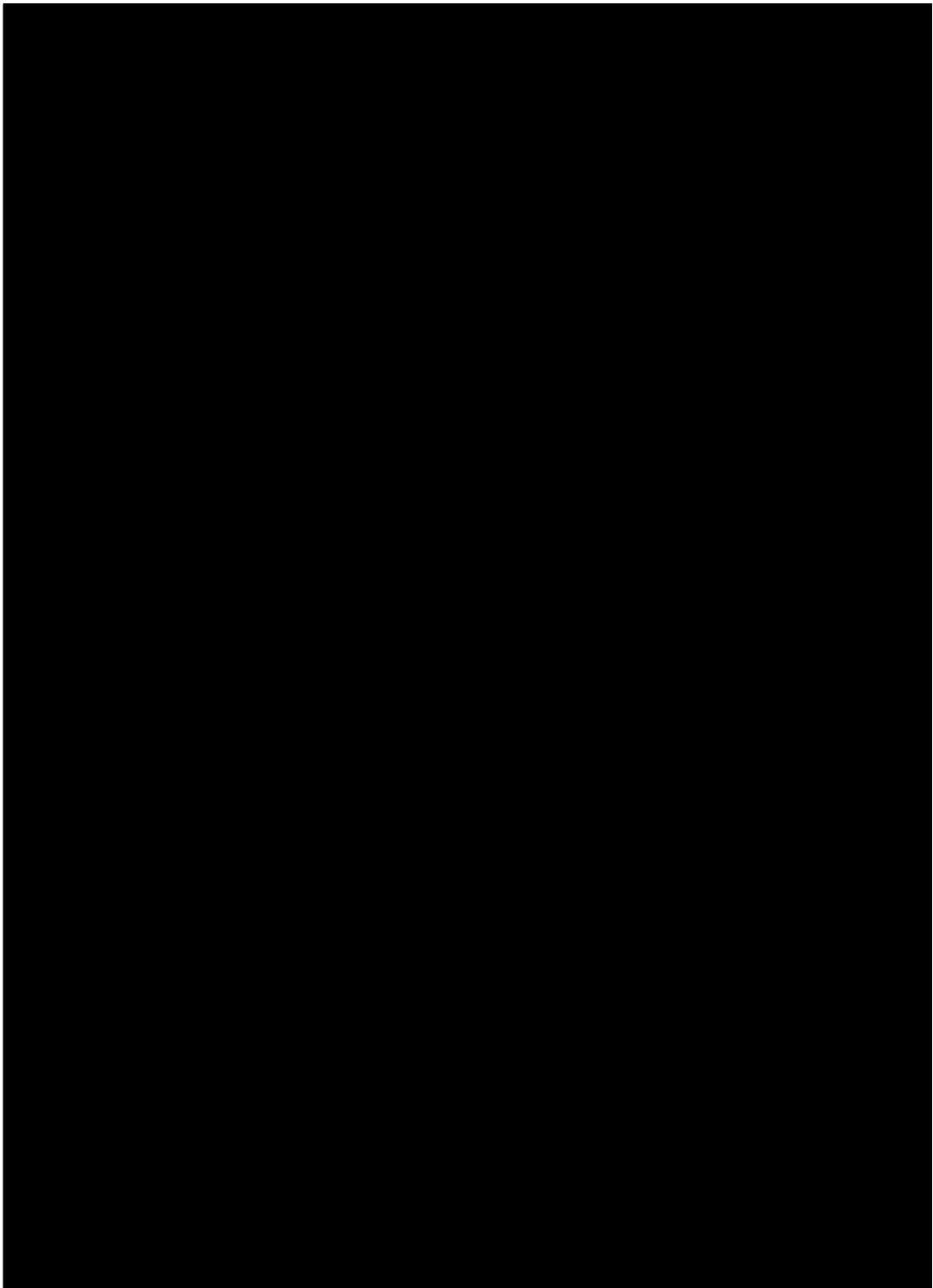
18. On 8 August 2023, the Provider furnished further documents pursuant to a supplementary 215 Notice issued 3 August 2023. Relevant documents include:
- Child attendance records (Sign in/out).
 - Induction and personnel records.
 - Further internal investigation documents.

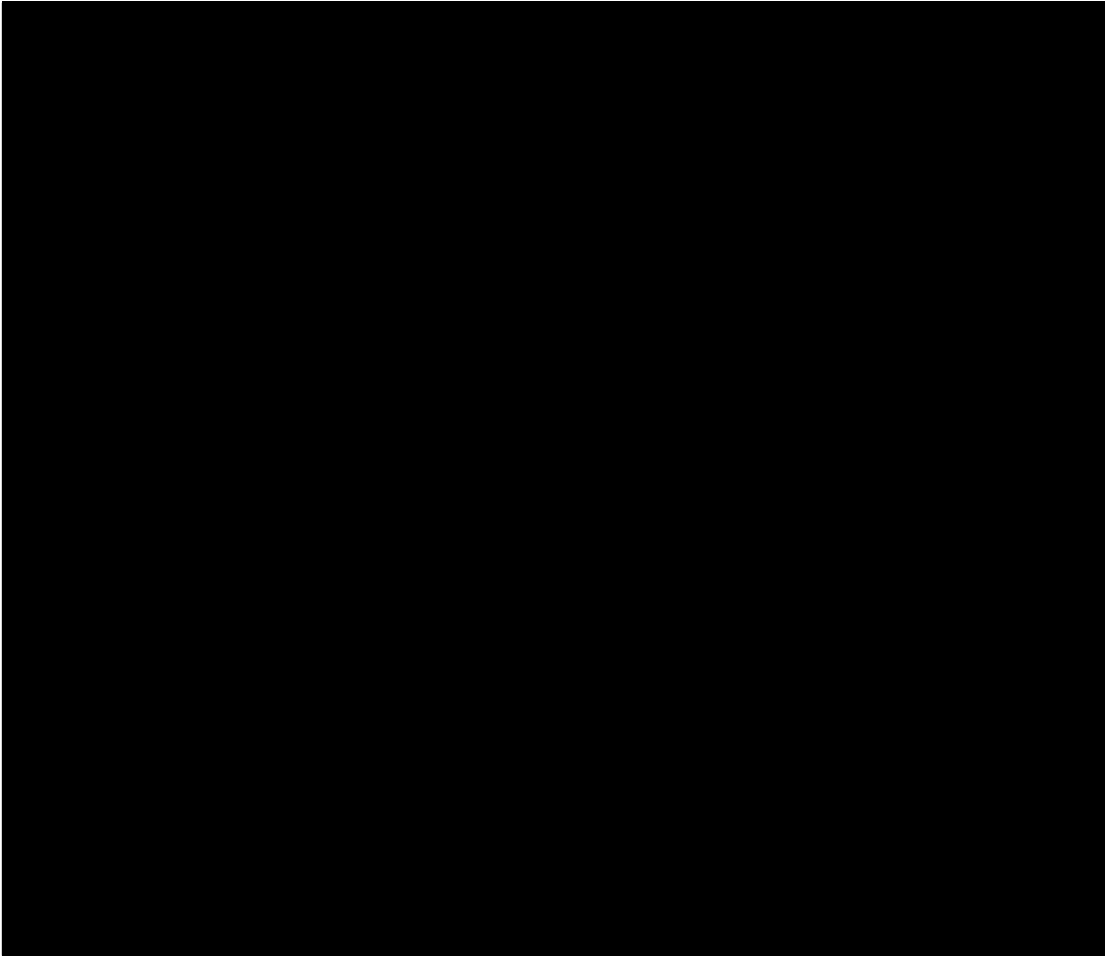
Refer to Attachment D.

19. Supervision Policy dated March 2022 furnished by Provider at Attachment B appears to have been superseded by Supervision Policy, located at Service, amended May 2022 at Attachment C. It appears only two staff signed this amended policy.
20. During the investigation, the Authority obtained witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the

specific circumstances surrounding the alleged offences, witnesses are identifiable from the content of their evidence.

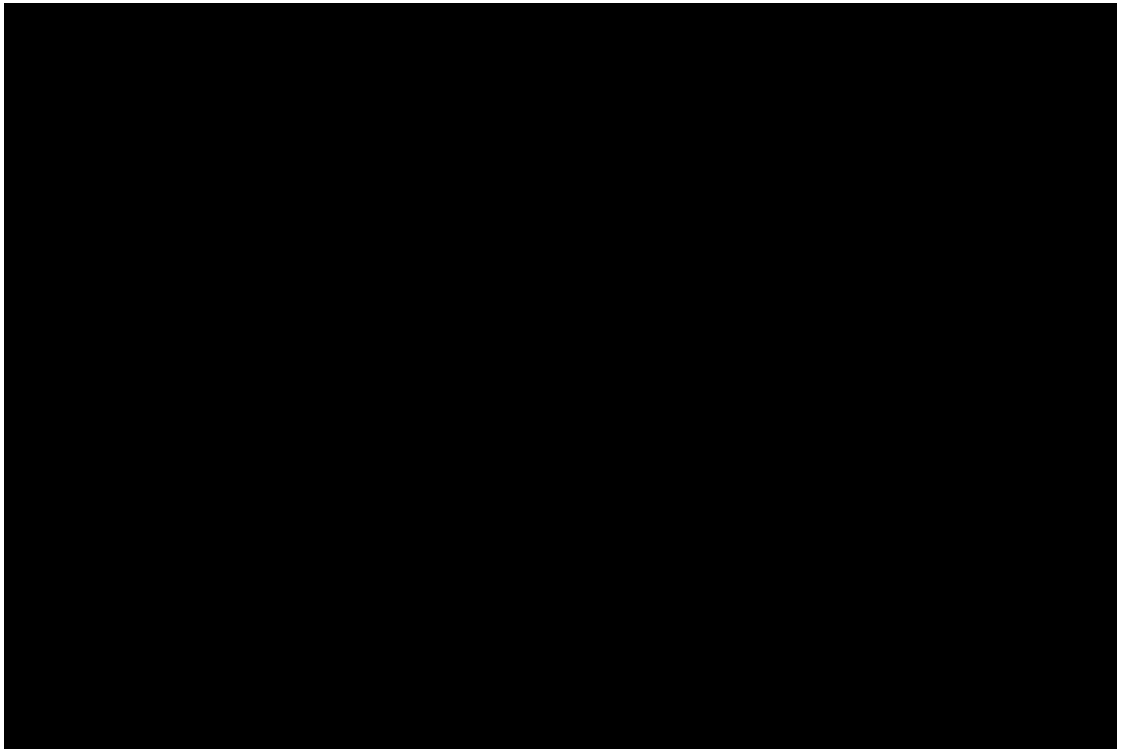
21. Please note that educator witness statements were obtained utilising powers under section 215 of the *Law*, imposing an obligation to attend before the Authority and provide relevant evidence under questioning by an Authorised Officer. It is an offence to fail to comply.
22. Relevant extracts from Witness A's statement include:





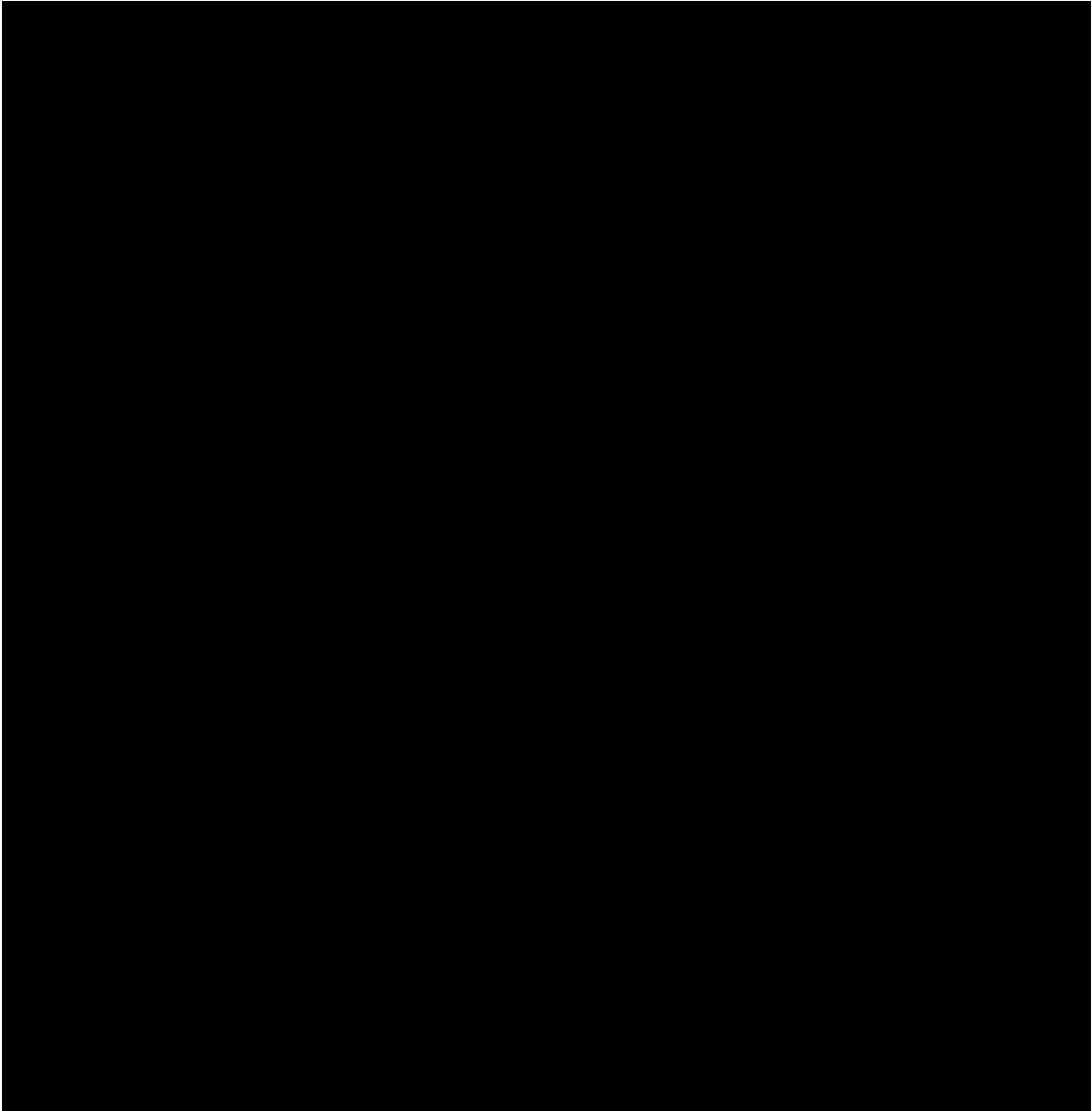
Refer Attachment E for direction of children map referred to in excerpts.

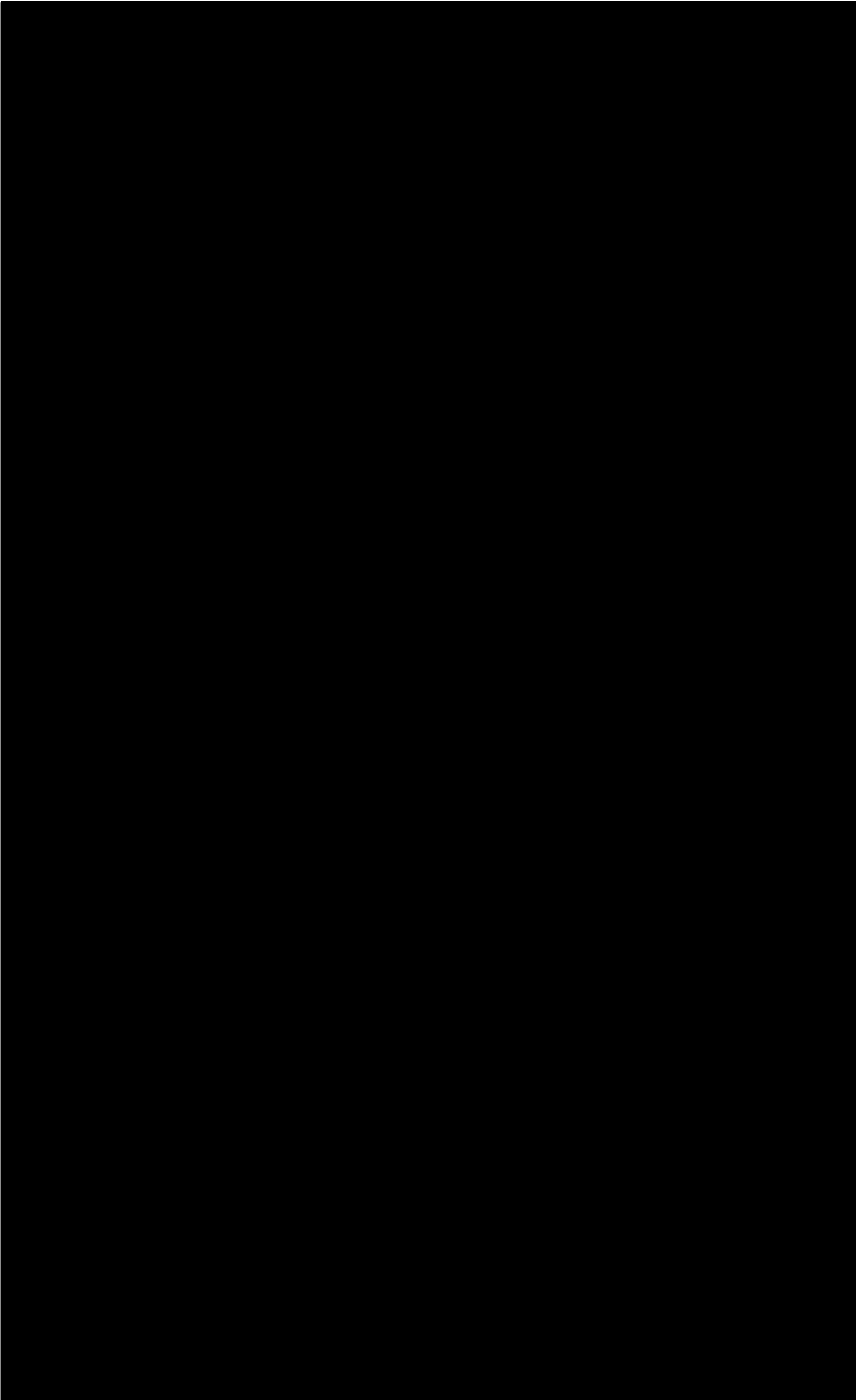
23. Relevant extracts from Witness B's statement include:





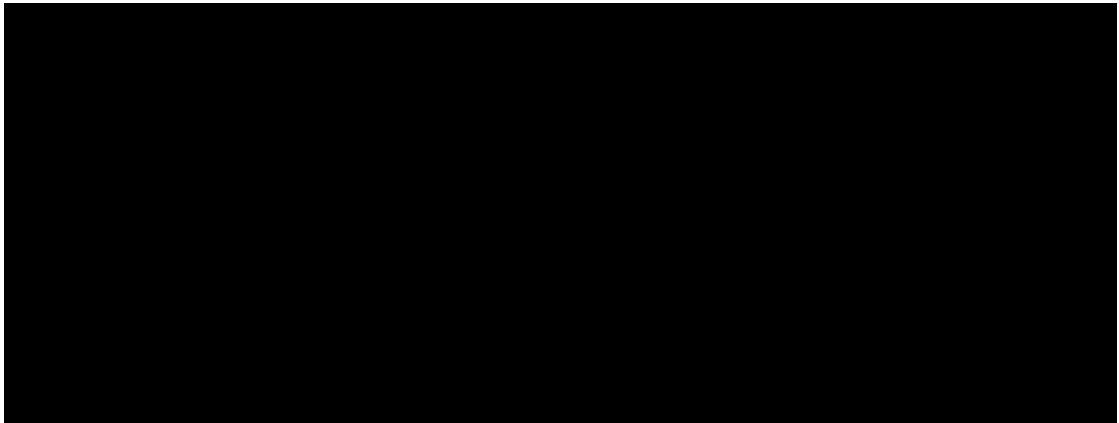
24. Relevant extracts from Witness C's statement include:





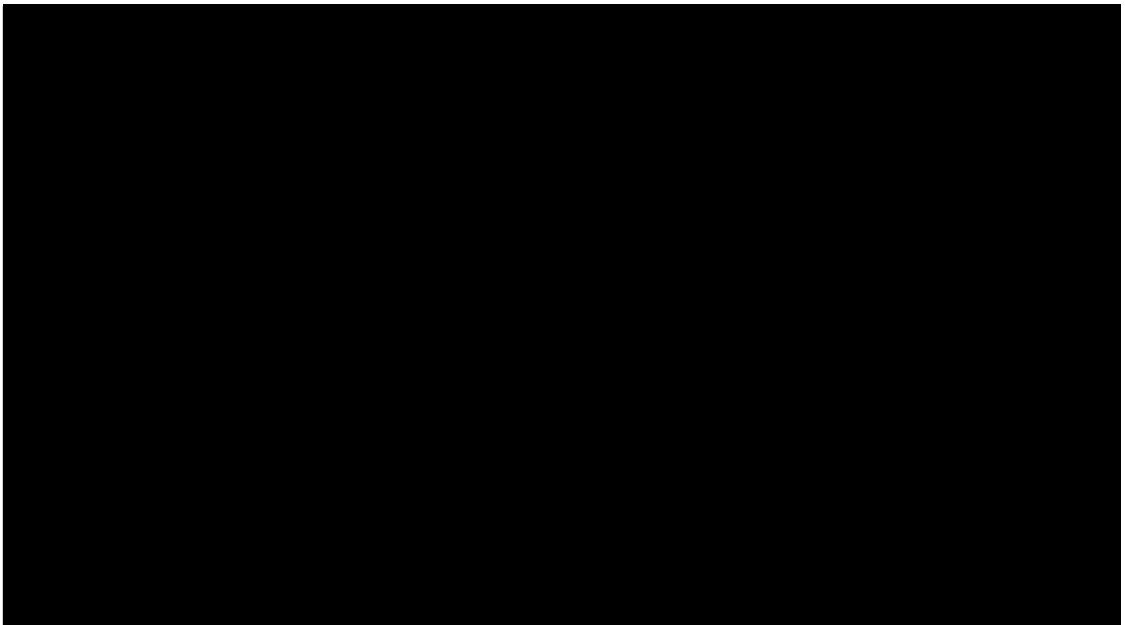
Refer to [Attachment F](#) for Screenshot and map.

25. Evidence of educators in the outdoor space at the time of [redacted] and [redacted] leaving the Service indicate that had not seen the supervision maps prior to the day of the incident, although had previously read the Supervision Policy.
26. Relevant extracts from Provider record of interview (ROI) with educator, [redacted] on 17/07/2023 include:



Refer to [Attachment D](#) for copy of ROI with [redacted].

27. Relevant extracts from Provider ROI with [redacted] on 27/07/2023 include:



Refer to [Attachment D](#) for copy of ROI with Mr [redacted].

28. Evidence of witnesses, attachments, and prescribed records, support the children [redacted] and [redacted] being unobserved while appearing to return to the hall from the rear outdoor space, walking past the entranceway and leaving the Service unsupervised around 4.30pm.

29. Evidence indicates that [REDACTED] and [REDACTED] continued onto residential streets and then, via bushland pathways, more than 1.1 kilometres, to the home of [REDACTED]. An absence of between 30 – 40 minutes. Refer Attachment C for distance map.
30. The Authority’s view is that adequate supervision is a reasonable precaution to take in protecting children from harm and from hazards likely to cause injury. Accordingly, a suspected contravention of section 165(1) engages an offence under section 167(1) of the *Law*.

Contraventions Support Allegations

31. Evidence gathered appears to support contraventions of section 165(1) and 167(1) of the *Law*.

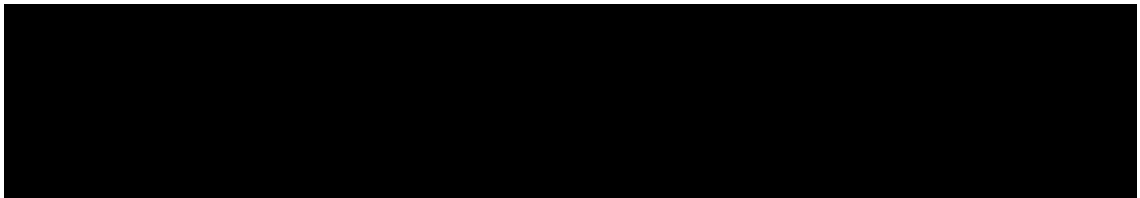
Second set of grounds – Protection from harm

Allegation Two

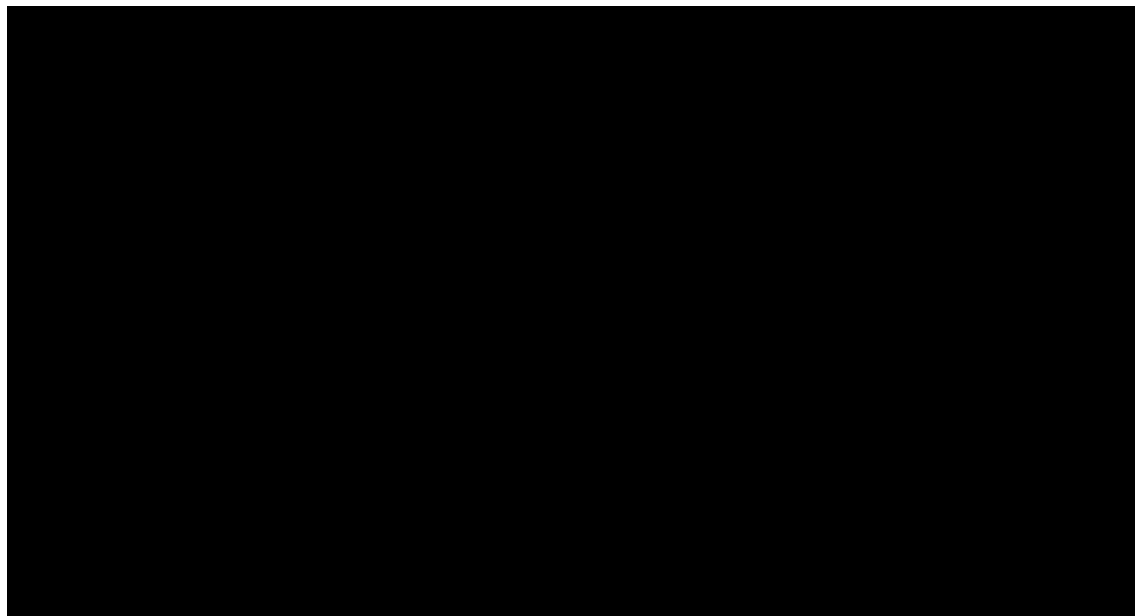
32. It is alleged that by 27 June 2023, the Provider failed to ensure that every reasonable precaution was taken to protect children from harm and hazard likely to cause injury, in that an adequate risk assessment was not conducted regarding junior children, both preschool and kindergarten, being combined with older children in the senior children’s space, contravening section 167(1) of the *Law*.

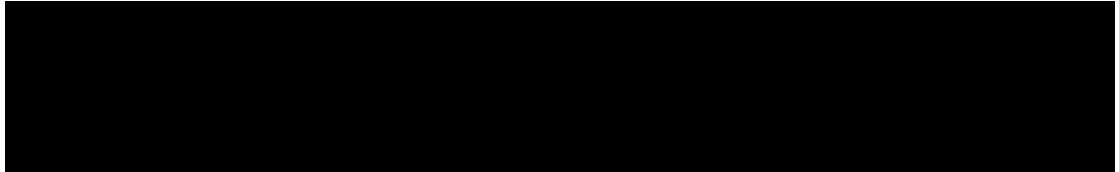
Evidence Relevant to Allegation Two

33. Excerpts from Witness A’s statement include:

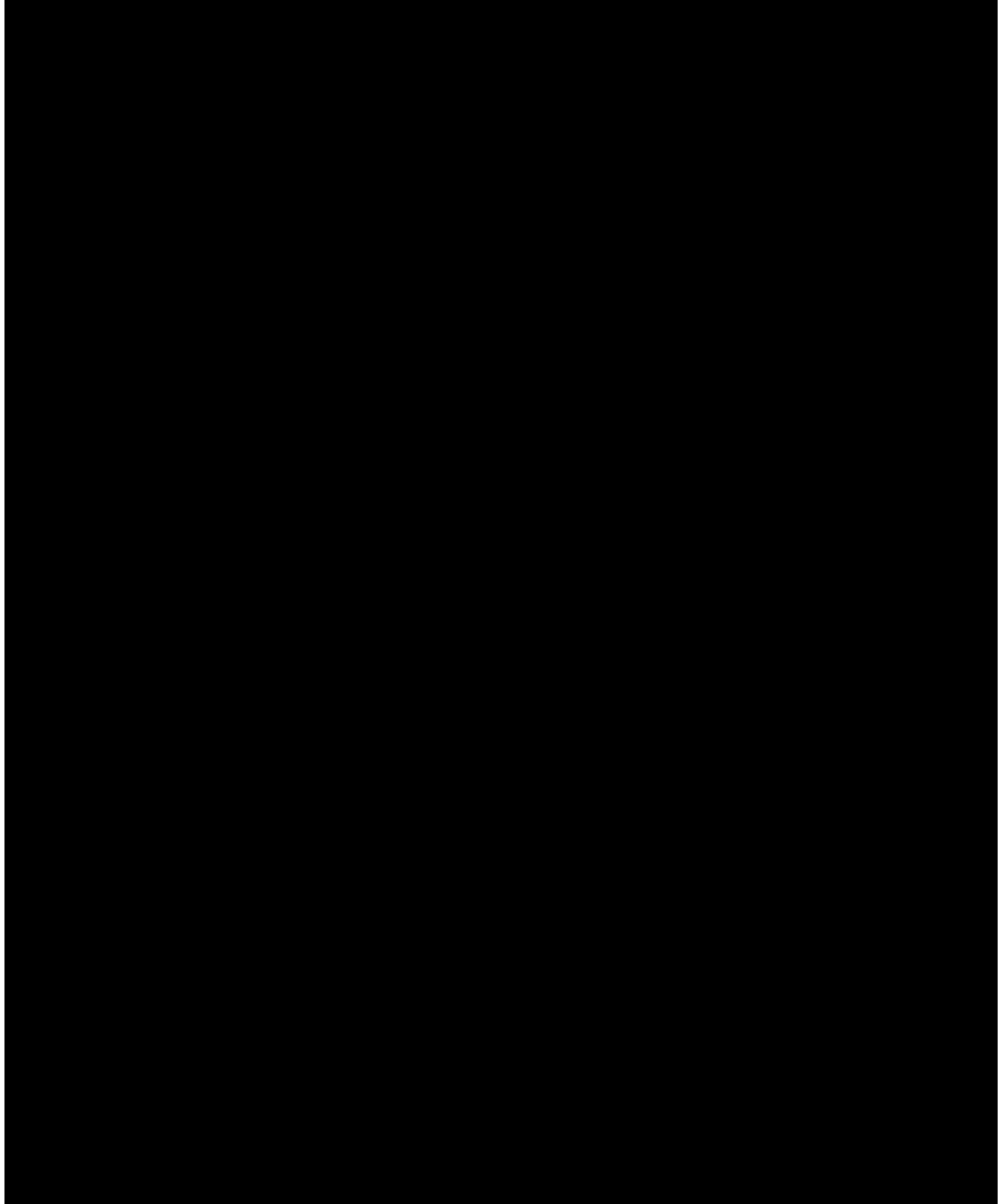


34. Excerpts from Witness D’s statement include:





35. Excerpts from Witness E's statement include:



36. Documents furnished to the Authority by the Provider pursuant to a 215 Notice include a risk assessment of the Service dated 01/09/2022. The assessment appears not to cover the following:

- a. *Combining of kindergarten and preschool children into the senior area.*
- b. *Transition of children, including preschool children, across the service.*

- c. Transition of children, including preschool children, between the hall and outdoor play equipment and space.*
- d. Age appropriateness of outdoor playground equipment for preschool and kindergarten children.*
- e. Assessment of boundaries including unfenced boundaries.*
- f. Non-service children utilising service play equipment or service spaces.*
- g. Use of sashes to identify service children.*

Refer Attachment B for Risk Assessment.

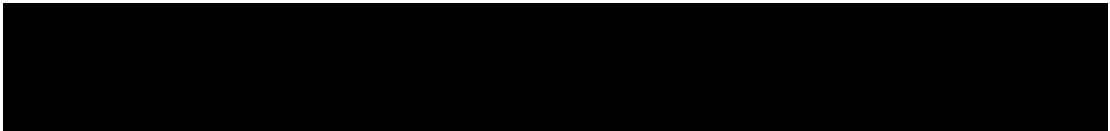
37. Furthermore, supervision maps of the service do not appear to have been updated since 9 September 2021 inclusive of playground and canteen/courtyard spaces to reflect attendance of kindergarten and preschool children. Refer to Attachment B for Supervision maps.

Contraventions Support Allegations

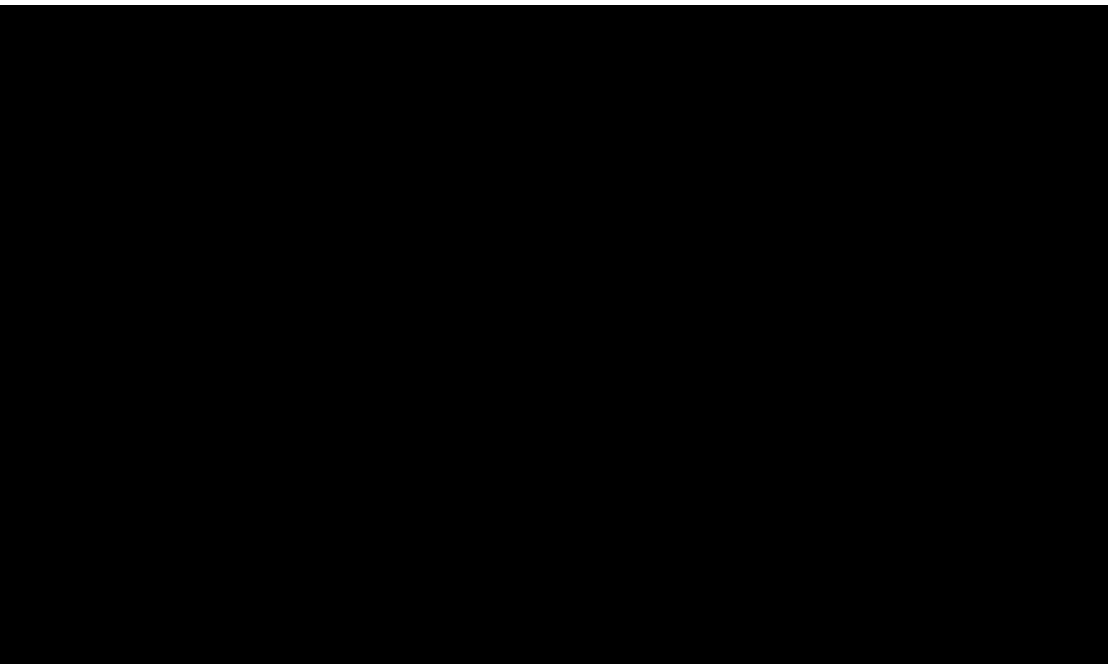
38. Evidence gathered appears to support contraventions of section 167(1) of the *Law*.

Allegation Three

39. It is alleged that by 27 June 2023, the Provider, failed to ensure that every reasonable precaution was taken to protect children from harm and hazard likely to cause injury, in that a person was not adequately authorised and informed of being in day-to-day charge of the Service, in compliance with Regulation 117A, contravening section 167(1) of the *Law*.
40. Relevant excerpts from Witness B's statement include:

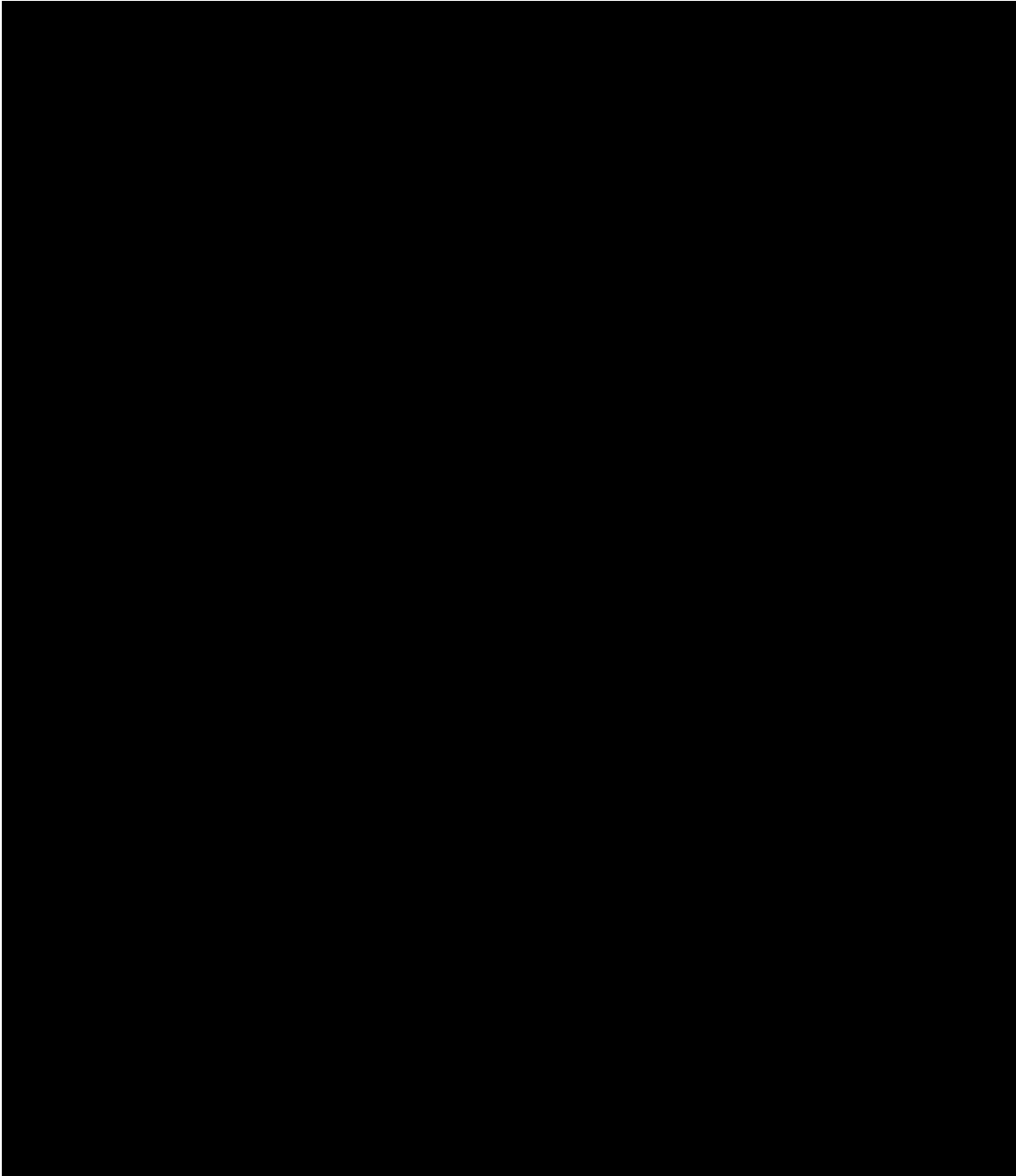


41. Relevant extracts from Witness D's statement include:





42. Relevant extracts from Witness E's statement include:



43. Documents furnished by the Provider indicate that by 27 June 2023, [REDACTED] although employed as a coordinator, had not agreed in writing, to be in day-to-day charge, or Nominated Supervisor, of the Service. It is noted that Nominated Supervisor forms were not signed until 11 July 2023. Refer to Attachment D for Nominated Supervisor Documents [REDACTED].
44. Extracts from the Nominated Supervisor and Responsible Person policy (Amended Feb 2021), located during the unannounced visit at the Service include the following:

a) *The responsible person is:*

- *The approved provider or a person with management or control*
- *A nominated supervisor*
- *A person in day-to-day charge of the service*

b) *Roles and Responsibilities*

Department/Area

Y Canberra Region

Nominated Supervisor

Responsible person in

Day to Day charge

Responsibility

Approved Provider

Is nominated by the Approved Provider to effectively supervise and manage an education and care service.

The allocated Person in Day to Day charge in the absence of the Nominated Supervisor.

Refer to Attachment C for policy.

45. Working directly with children records for 27 June 2023, identify [REDACTED] as the Nominated Supervisor and [REDACTED] as the Responsible Person present at the Service. [REDACTED] however, is unable to effectively supervise or manage the Service as she is under the mistaken belief that, [REDACTED], consented and had commenced as the Provider's Nominated Supervisor. Refer to Attachment C for WDWC forms and Attachment D for [REDACTED] NS forms.

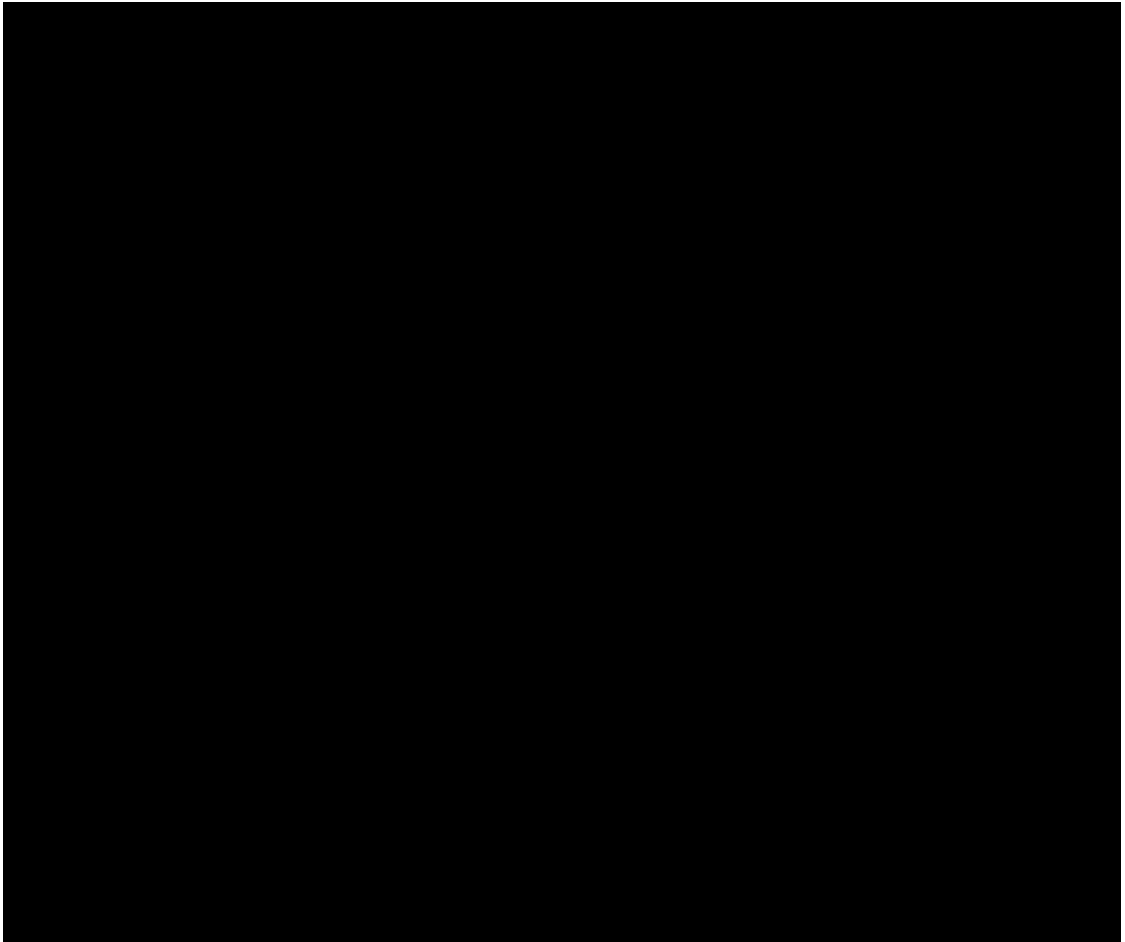
Third set of grounds - Inaccurate Records

Allegation Four

46. That on 27 June 2023, the Provider failed to take reasonable steps to ensure prescribed record were accurate, in that Child Attendance Records were not maintained in compliance with *Regulation 158*, breaching *Regulation 177(2)*.

Evidence relevant to Allegation Four

47. Included with the Notification on 28 June 2023, was an incident report identified 35 children were accepted into the Service on 27 June 2023. Refer to Attachment A for incident report.
48. On 14 July 2023, in response to the 215 Notice the Provider furnished child attendance records identifying 36 children present at the Service on 27 June 2023 conflicting with a headcount conducted at 3pm identifying 34 children present. Refer to Attachment B for child attendance records and headcount.
49. Further, child attendance documents furnished by the Provider on 8 August 2023 pursuant to a supplementary 215 Notice, support the headcount and identify 34 children present at the Service on 27 June 2023. It is noted that one child's standard absence was not completed until the following day and that all children were signed in by an absent Nominated Supervisor, Ms [REDACTED] Refer Attachment D for supplementary Child Attendance records.
50. Relevant excerpts from Witness E statement include:



51. Documents furnished by the Provider include the Y Canberra Region Arrival and Departure policy (refer copy at Attachment B) and includes the following relevant extract:

(a) Y People and Parents / Guardians will record the arrival and departure of participants using QK Enrol / KIOSK. This will include...

- *full name of each participant attending*
- *arrival and departure times*
- *digital signature of the person who delivers and collects the participant or the nominated supervisor or Y Person*

52. Evidence indicates that child attendance records were completed by persons other than the Nominated Supervisor using her access code, which does not accurately identify who signed the children in on 27 June 2023

Contraventions Supported Allegations

53. Evidence gathered appears to support breaches of *Regulations* 158 and 177(2).

Potential Compliance Action

54. 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 the offence is substantiated. Potential compliance actions include:

- a. Non-statutory Administration Action (similar to a caution) with either no further action or with measures to be taken and evidence produced to demonstrate.
 - b. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*.
 - c. Imposing of Conditions on the Service's approval under section 51 of the *Law*.
 - d. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.
 - e. Cancellation of the service approval under section 79 of the *Law*.
55. 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.
56. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.
57. 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.

Right of response

58. As mentioned previously, this is the Provider's 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.
59. 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

60. I am informing you that the excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.

61. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
62. 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.
63. 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>.
64. 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>
65. Should you have any questions about this Show Cause Notice please contact Brian Cropper on Brian.Cropper@act.gov.au.

Yours Sincerely



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care, Regulation and Support

13 September 2023