

[REDACTED]  
Nominated Supervisor  
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). 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*.
2. 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).
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 notice.
4. Authorised Officers have obtained evidence from other sources and the Authority has determined that you, as Nominated Supervisor, have a case to answer regarding suspected offences. However, the Authority’s investigation is not complete until you have 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. Detailed instructions of how to respond appear at the end of this Notice.
5. If substantiated, the allegations may constitute offences under sections 165, 167 of the *Law*. 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.
6. 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**

7. 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; and

- b) Protection of children from harms and hazards (multiple).

### **Facts**

8. 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) [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.
9. 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*. Information received during the investigation provided reasonable grounds to suspect further additional offences under section 167 the *Law*.

### **Allegations**

10. 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, you, as the Nominated Supervisor, 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(2) of the *Law* and engaging a contravention of 167(2) of said *Law*.

#### **Allegation Two**

It is alleged that by 27 June 2023, you, as the Nominated Supervisor, 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(2) of the *Law*.

#### **Allegation Three**

It is alleged that by 27 June 2023, you, as the Nominated Supervisor, 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, in contravening section 167(2) of the *Law*.

### **Legislation Relevant to Allegations**

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

#### **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, in the case of an individual

\$50 000, in any other case.

**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.

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.

**First Set of grounds – Supervision and Protection from Harm**

**Allegation One**

12. It is alleged, that on 27 June 2023, you, as the Nominated Supervisor, 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(2) of the Law and engaging a contravention of 167(2) of said Law.

**Evidence relevant to Allegation One**

13. On 14 July 2023, the Provider furnished documents pursuant to a notice issued under section 215. Relevant documents include:
- a) Nominated Supervisor (NS) and Responsible person (RP) forms.
  - b) Working Directly with Children (WDWC) and Child Attendance Records.
  - c) Daily Headcount.
  - d) Relevant emails and Internal Investigation records.
  - e) Enrolment records.
  - f) Policy and Procedure.

Refer Attachment B for records relevant to the allegations.

14. 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:
- a) Map of Giralang School and a Distance Map.
  - b) WDWC records and NS/RP requirements.
  - c) Arrival and Departure Policy.
  - d) Runaway Policy 2014.
  - e) Supervision policy 2022.
  - f) Supervision map (undated).

Refer Attachment C for AO Statement and documents.

15. On 8 August 2023, the Provider furnished further documents pursuant to a supplementary 215 Notice issued 3 August 2023. Relevant documents include:

- a) Child attendance records (Sign in/out).
- b) Induction and personnel records.
- c) Further internal investigation documents.

Refer to Attachment D.

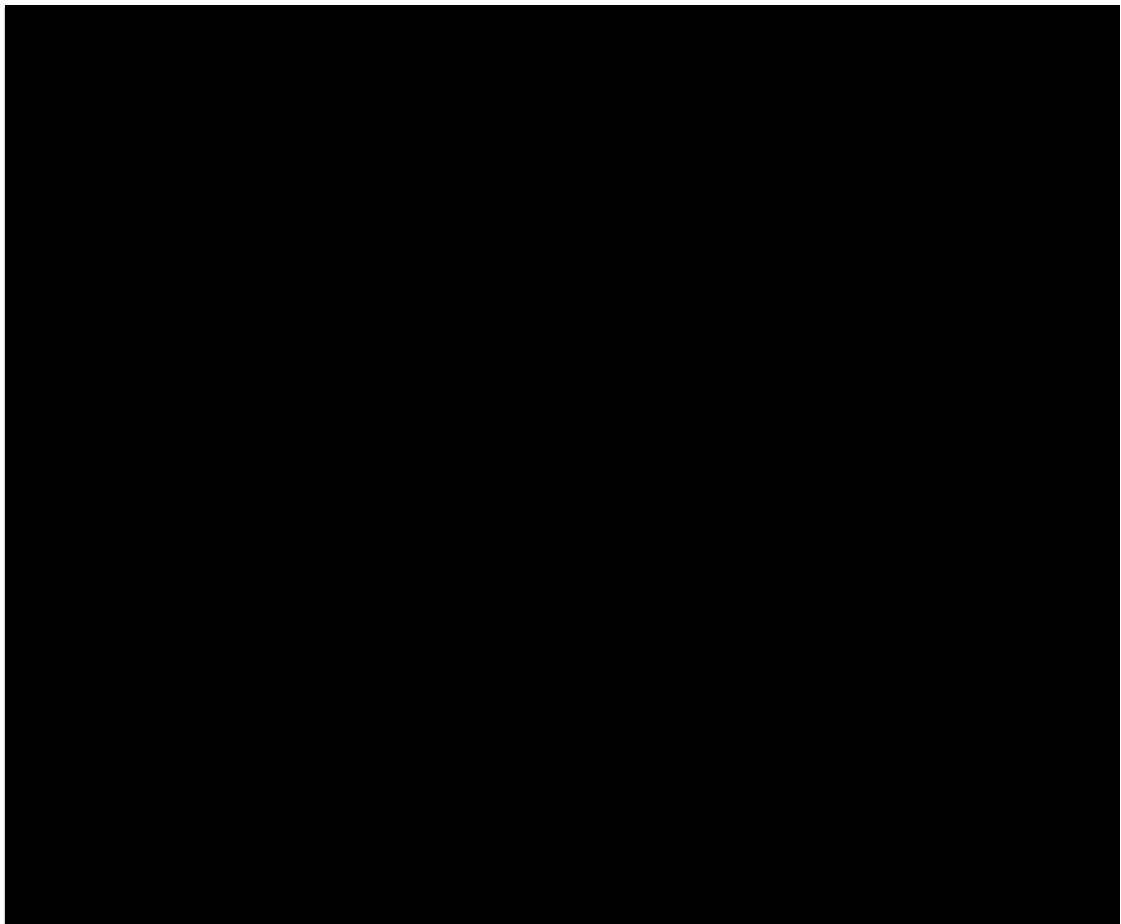
16. Supervision Policy dated March 2022 furnished by Provider at Attachment B appears to have been superseded by Supervision Policy, located at Service, amended May 2022 at Attachment C. It appears only two staff signed this amended policy.

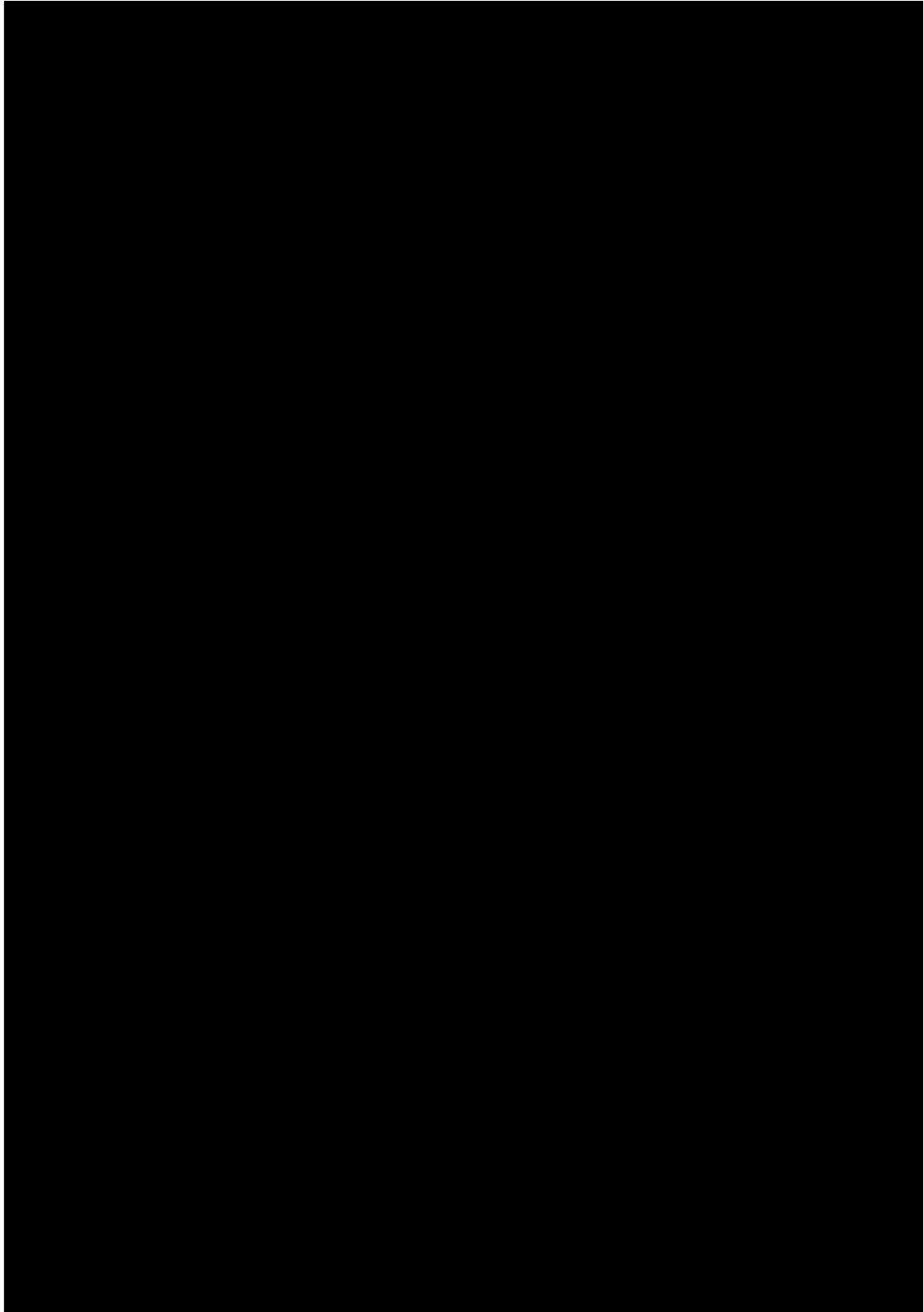
17. Provider furnished documents identify you as the Nominated Supervisor on 27 June 2023. Refer to Attachment B.

18. 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.

19. 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.

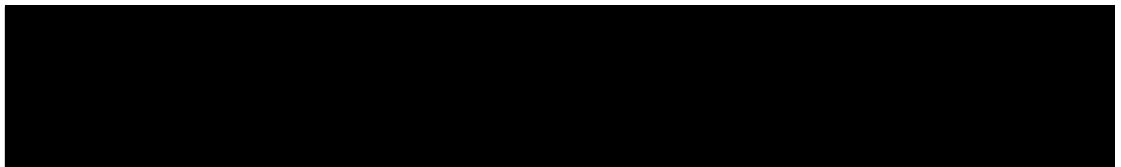
20. Relevant extracts from Witness A's statement include:

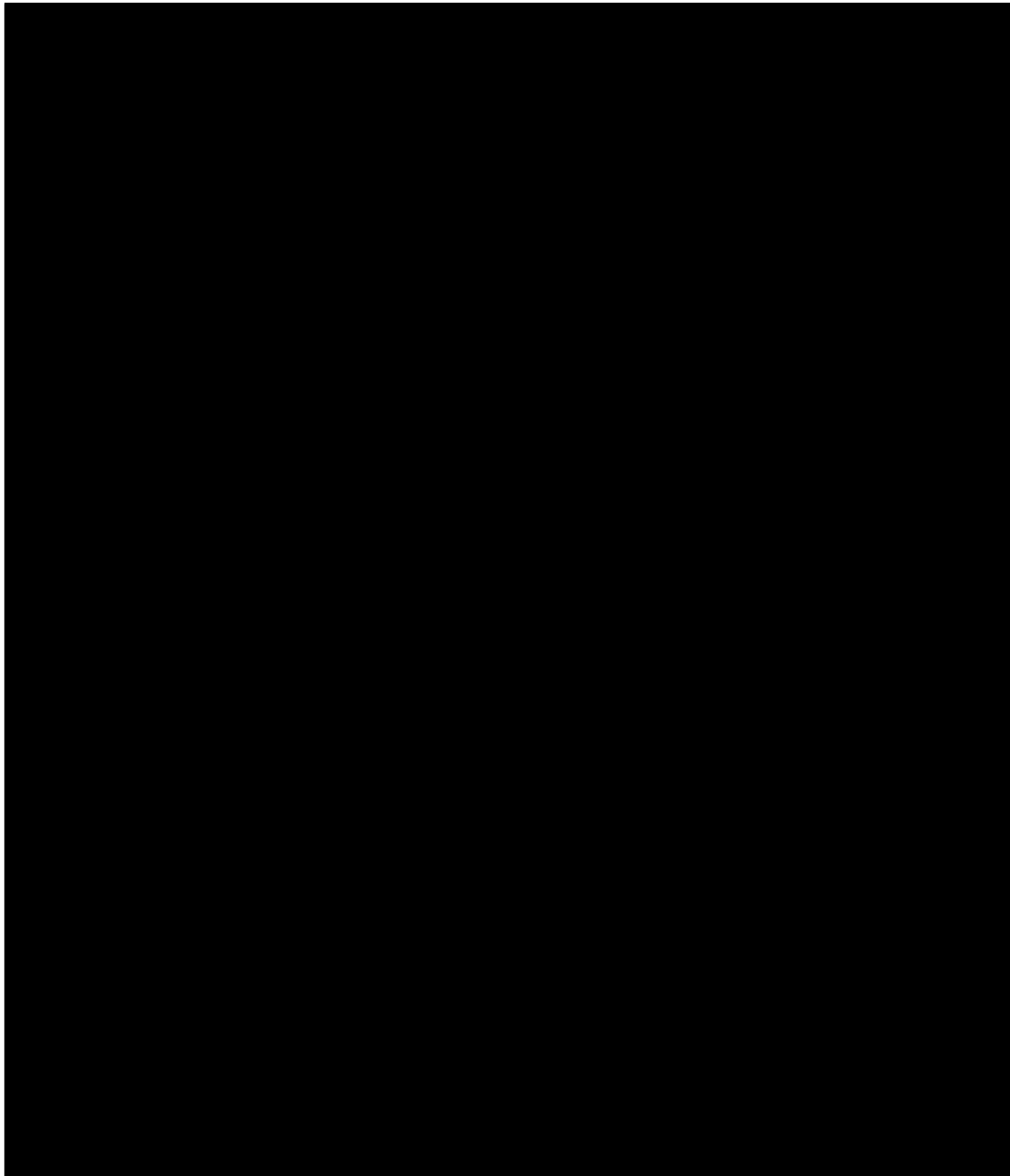




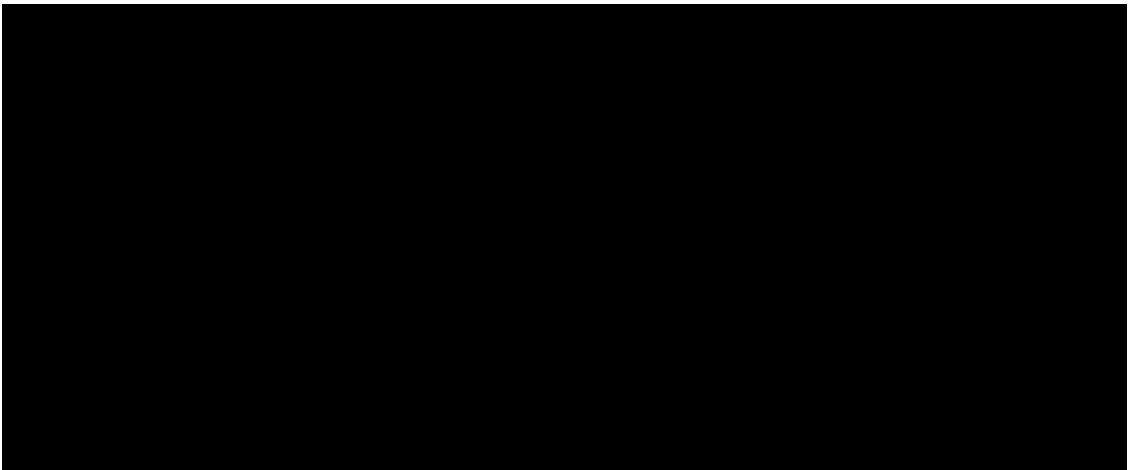
Refer Attachment E for direction of children map referred to in excerpts.

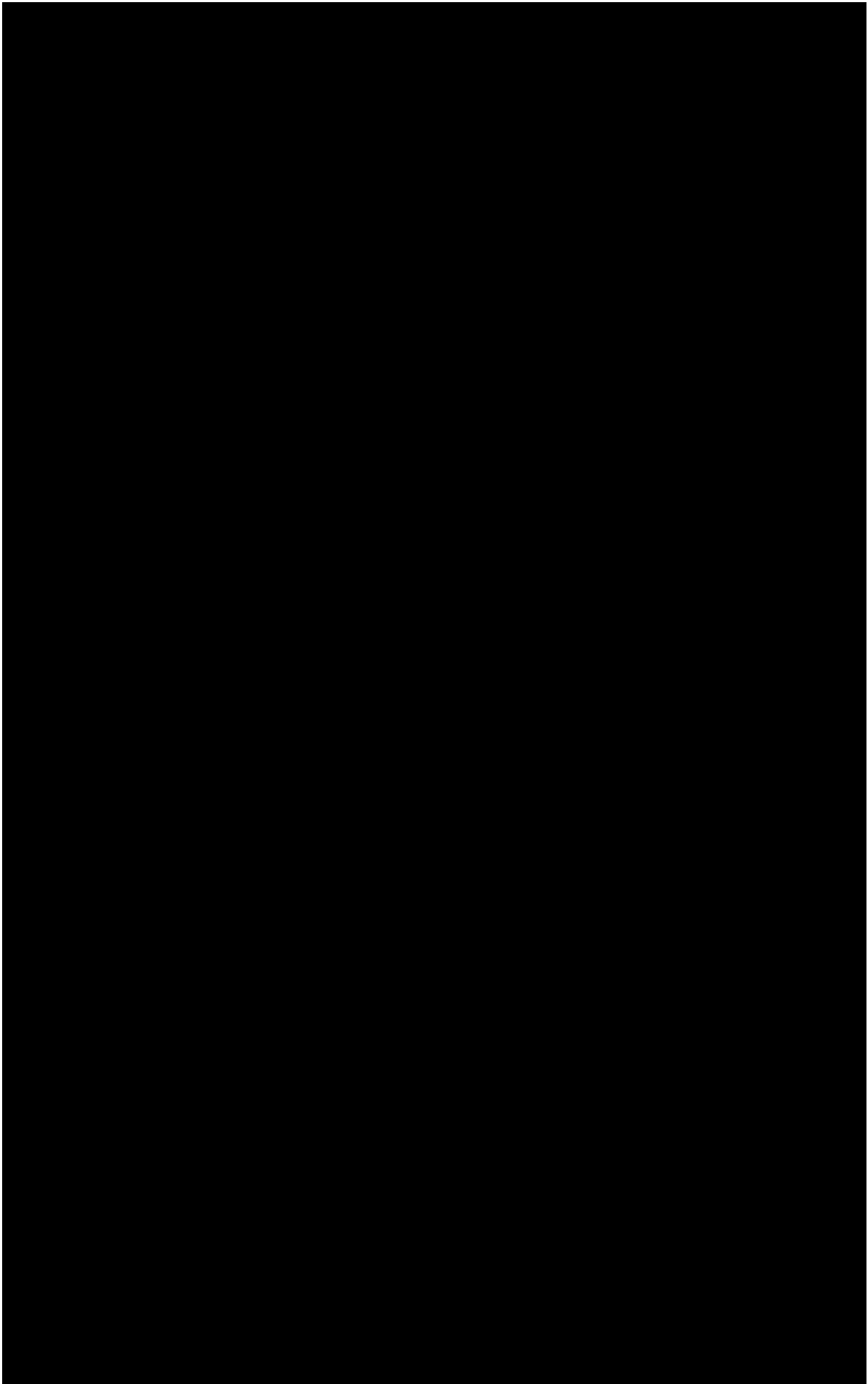
21. Relevant extracts from Witness B's statement include:

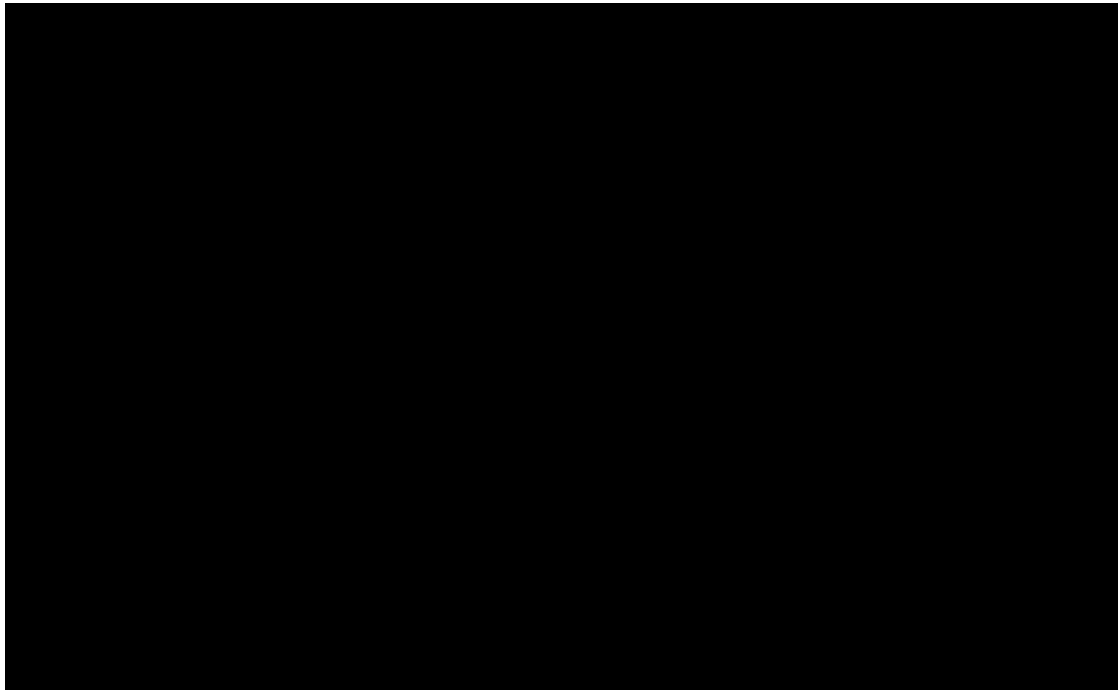




22. Relevant extracts from Witness C's statement include:







Refer to Attachment F for Screenshot and map.

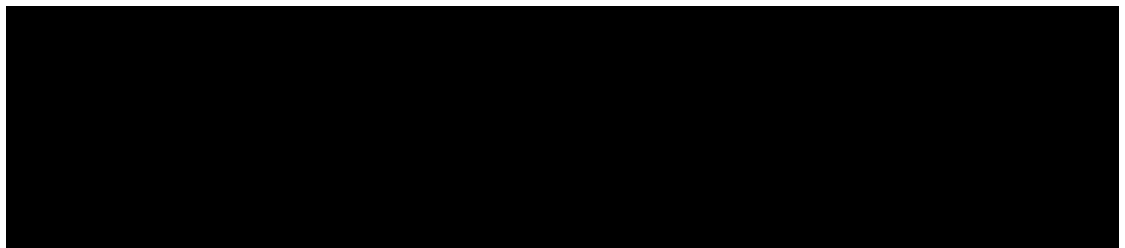
23. Evidence of educators in the outdoor space at the time of [redacted] and [redacted] leaving the Service indicate they had not seen the supervision maps prior to the day of the incident, although had previously read the Supervision Policy.

24. Relevant extracts from Provider record of interview (ROI) with educator, [redacted] on 17/07/2023 include:

- a) *Are you able to tell me how you think they were able to leave the service unnoticed? (map if needed).*
- b) *Lots of bushes all around building and playground and ways to go. It is believed they walked up path past handball court. There is no supervision in foyer area at service. No fences surrounding school at all. We think they entered through the doors but I cannot confirm that for sure as I didn't see.*
- c) *After situation happened, I reflected that we should have used walkie talkies and said to the staff inside which children were coming in and confirmed their arrival.*

Refer to Attachment D for ROI.

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





Refer to Attachment D for ROI.

26. 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 [redacted] past the entranceway and leaving the Service unsupervised around 4.30pm [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.
27. 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(2) engages an offence under section 167(2) of the *Law*.

Contraventions Support Allegations

28. Evidence gathered appears to support contraventions of section 165(2) and 167(2) of the *Law*.

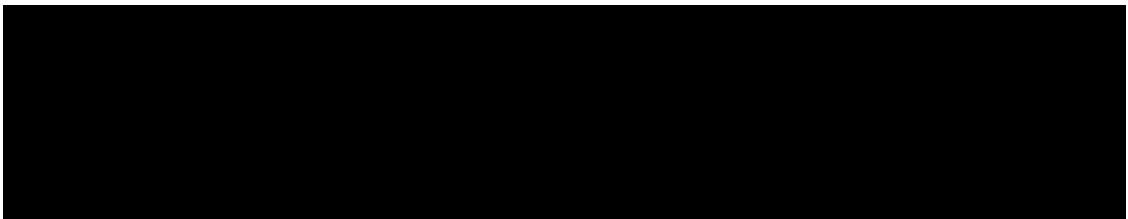
**Second set of grounds – Protection from harm**

**Allegation Two**

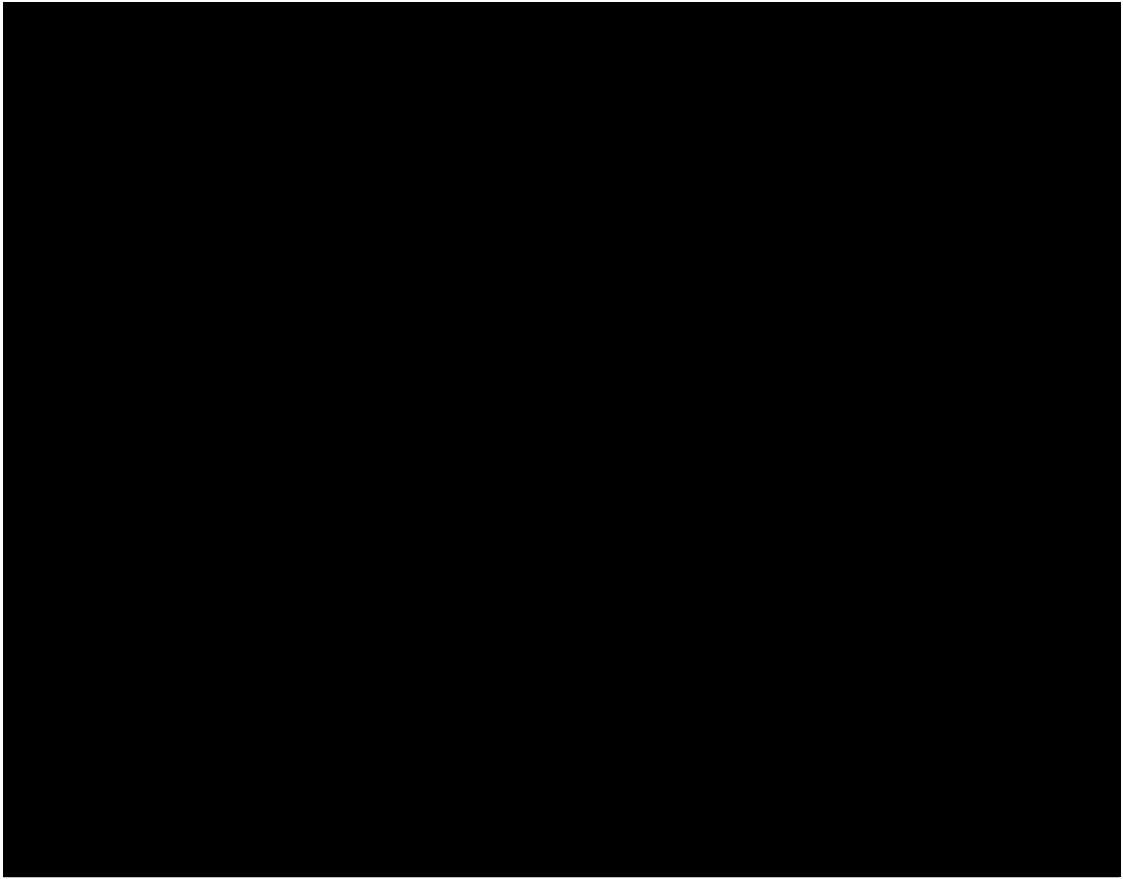
29. It is alleged that by 27 June 2023, you, as the Nominated Supervisor failed to ensure that every reasonable precaution was taken to protect children from harm and hazard likely to cause injury, in that an adequate risk assessment was not conducted regarding junior children, both preschool and kindergarten, being combined with older children in the senior children’s space, contravening section 167(2) of the *Law*.

Evidence Relevant to Allegation Two

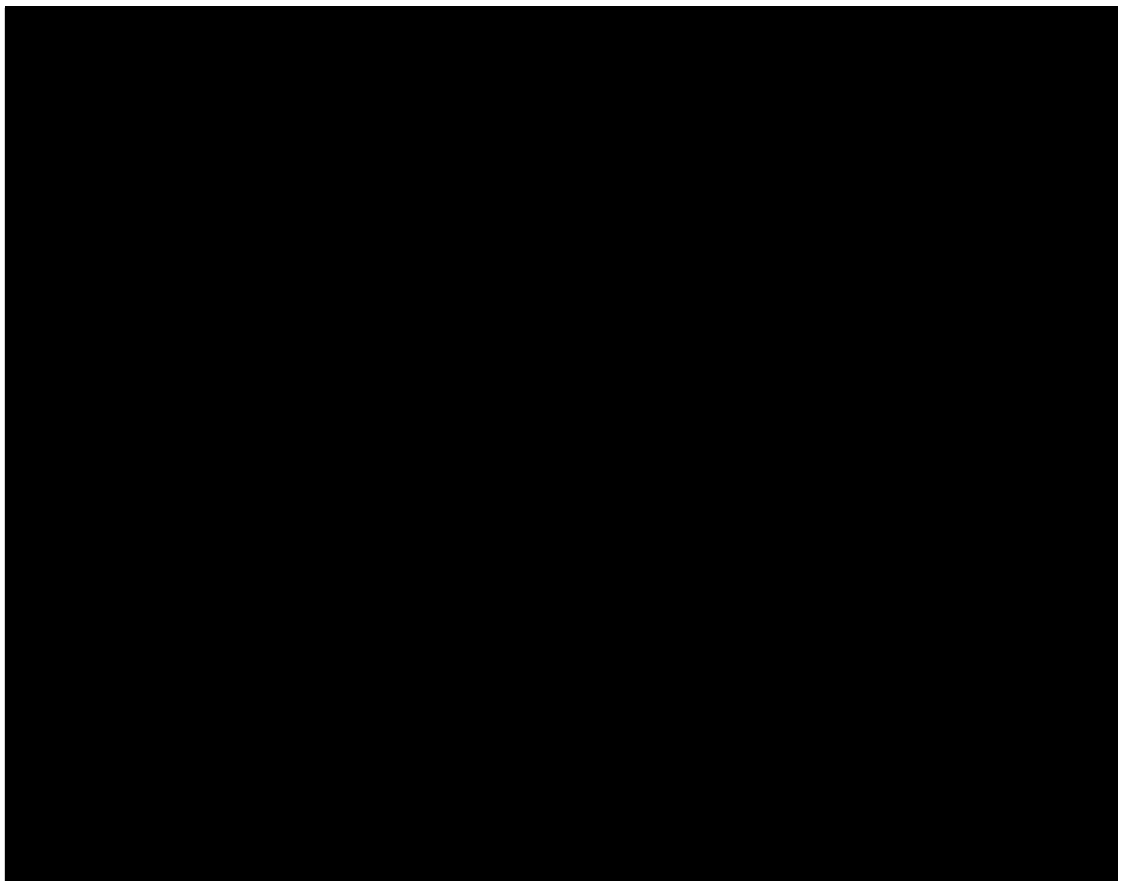
30. Excerpts from Witness A’s statement include:

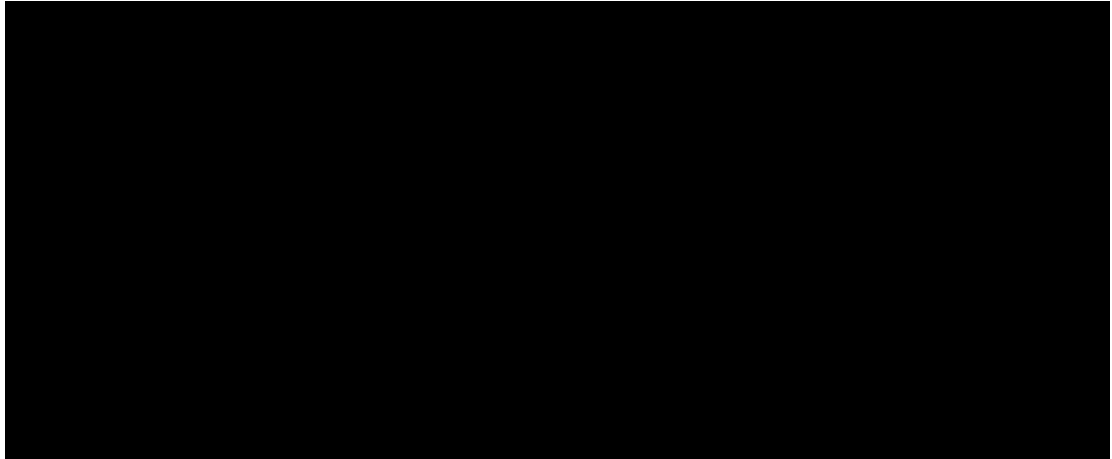


31. Excerpts from Witness D's statement include:



32. Excerpts from Witness E's statement include:





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

Refer Attachment B for Risk Assessment.

34. Furthermore, supervision maps of the service do not appear to have been updated since 09/09/21 inclusive of playground and canteen/courtyard spaces to reflect attendance of kindergarten and preschool children. Refer to Attachment B for Supervision maps.

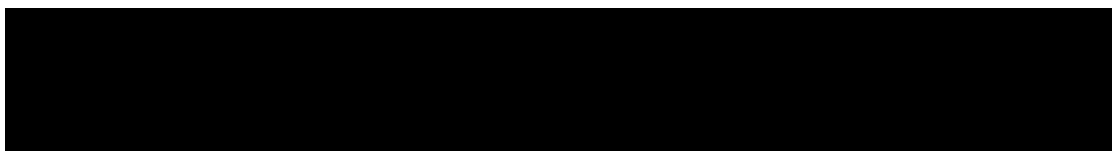
#### Contraventions Support Allegations

35. Evidence gathered appears to support contraventions of section 167(2) of the *Law*.

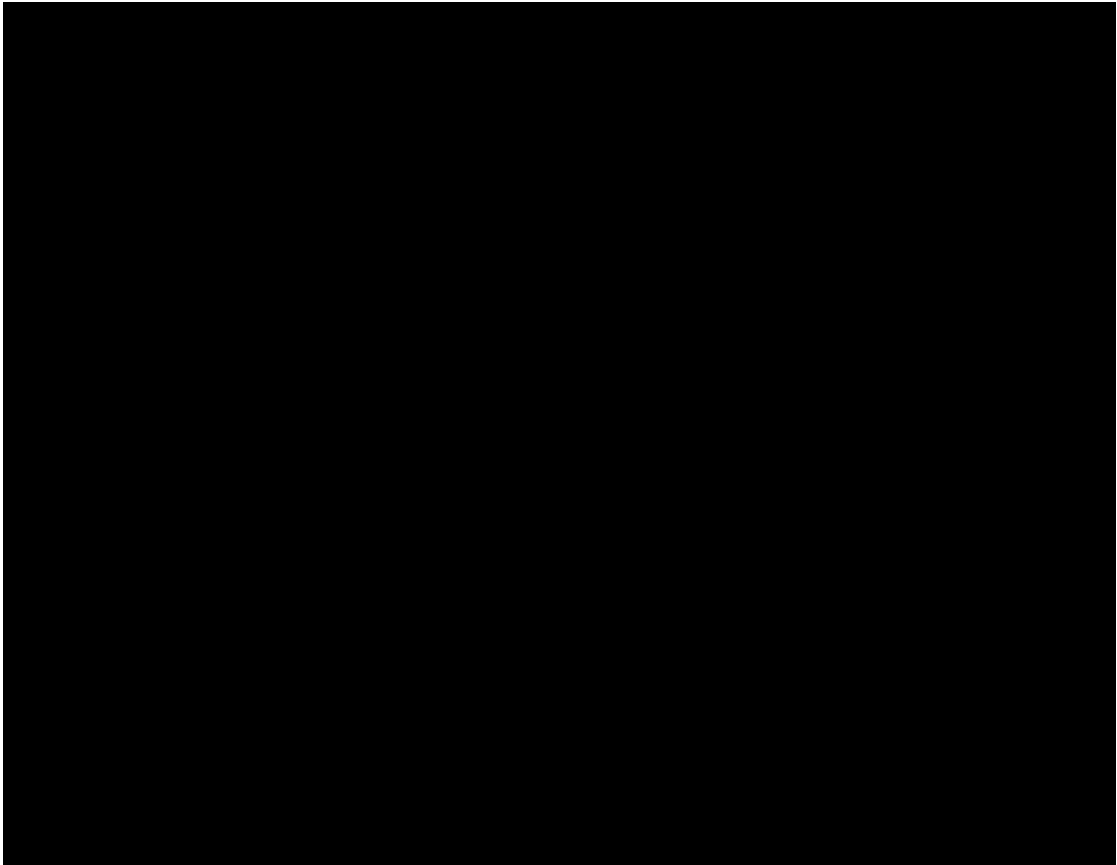
#### Allegation Three

36. It is alleged that by 27 June 2023, you, as the Nominated Supervisor, 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(2) of the *Law*.

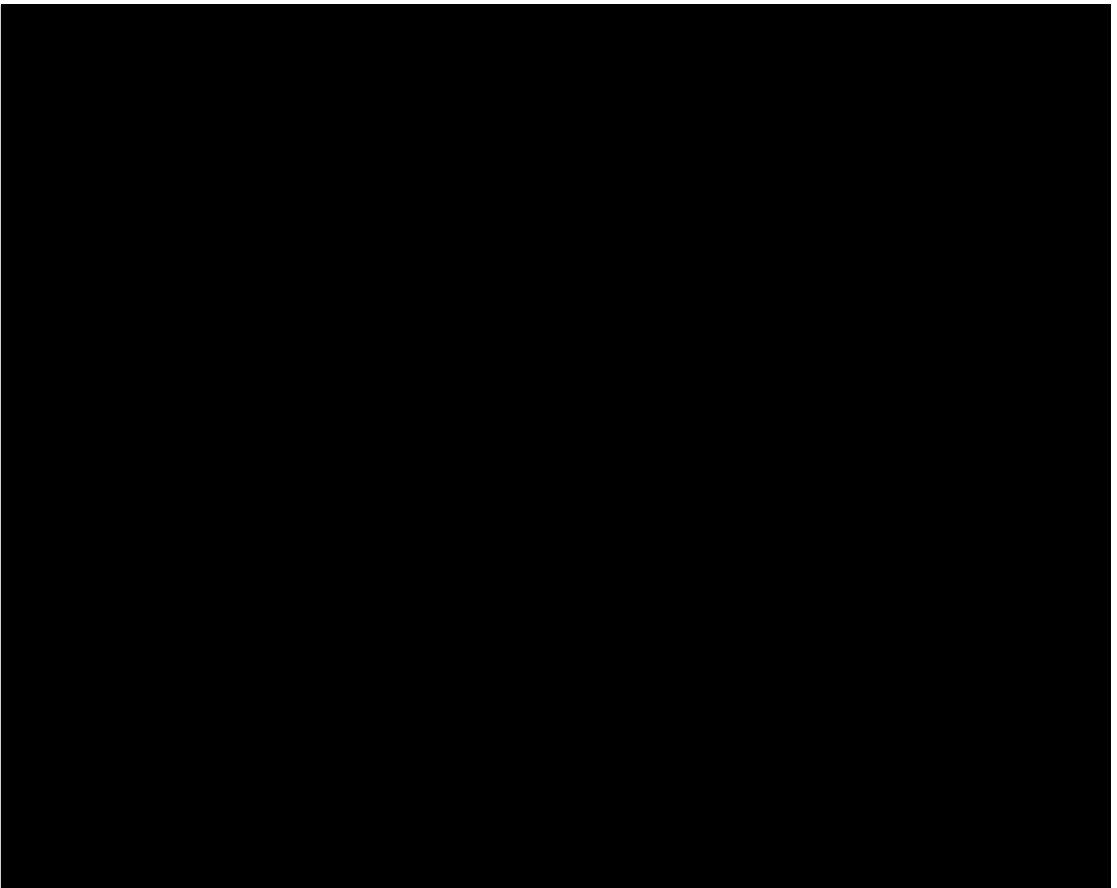
37. Relevant excerpts from Witness B's statement include:



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



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





40. 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]

41. 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*

<u><i>Department/Area</i></u>	<u><i>Responsibility</i></u>
<i>Y Canberra Region</i>	<i>Approved Provider</i>
<i>Nominated Supervisor</i>	<i>Is nominated by the Approved Provider to effectively supervise and manage an education and care service.</i>
<i>Responsible person in Day to Day charge</i>	<i>The allocated Person in Day to Day charge in the absence of the Nominated Supervisor.</i>
<i>Refer to <u>Attachment C</u> for policy.</i>	

42. 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.

***Fitness and Propriety as Nominated Supervisor***

43. Regulation 117C provides some guidance on minimum requirements for a nominated supervisor, being that they must:

- a) be over 18 years of age;

- b) have adequate knowledge and understanding of the provision of education and care to children; and
  - c) have the ability to effectively supervise and manage an education and care service.
44. The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the particular position and may change over time to meet social and political expectations. At minimum, fitness and propriety includes honesty, knowledge and ability.
45. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection of children from harm and hazards, and educational programs, with specific obligations contained in both the *Law* and the *Regulations*.
46. Accordingly, to be a fit and proper person to be appointed as nominated supervisor, the person must be honest, have a deep knowledge and understanding of the National Quality Framework (including compliance responsibilities). The nominated supervisor must also possess the ability to manage educators and any other staff, service premises, relationships with families and respond to children with medical and/or behavioural needs.
47. During the course of the investigation, there is no apparent evidence identifying that you had ensured adequate supervision of all children at all times and adequate governance of the Service, being a reasonable precaution to take to ensure children are protected from harm and any hazard, likely to cause injury. This evidence raises a concern about your ability to manage and supervise an education and care service.
48. The purpose of this Show Cause Notice is to provide you with an opportunity to respond to the evidence outlined above, and to specifically address the point of your fitness and propriety to be a nominated supervisor.

#### **Potential Compliance Action**

49. 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 and/or the Authority finds that you do not meet the fitness and propriety requirements to be a nominated supervisor. Potential compliance actions are under Part 7 of the *Law*, and include:
- a) Non-statutory action such as a formal caution letter;
  - b) Enforceable undertaking under section 179A of the *Law*; or
  - c) Prohibition from acting in a role as Nominated Supervisor.
50. Relevant legislation for enforceable undertakings and partial prohibition appears below.
51. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
52. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector as a whole. It may prevent you from being in a role as nominated supervisor if the Authority finds that you are not fit and proper, or it may place conditions on you being in

such a role if you are fit and proper but do not possess all the required skills and knowledge. It is not always permanent, and the partial prohibition must be cancelled by the Authority if it is satisfied that there is not a sufficient reason for the it to remain in force.

*Section 179A - Enforceable undertakings*

- (1) This section applies—
  - (a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law; or
  - (b) in the circumstances set out in section 27(a), 72(a) or 184(3).
- (2) If subsection (1)(a) applies, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.
- (3) If subsection (1)(b) applies in relation to the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions or refrain from taking certain actions in relation to the education and care service.
- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to an education and care service.
- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

*Section 182(3) - Grounds for issuing a prohibition notice*

- (3) The Regulatory Authority may give a prohibition notice to a person to –
  - (a) Prohibit the person from being a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
  - (b) Impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

**Right of response**

53. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice, in addition to the question of fitness and propriety. 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.

54. 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](mailto: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**

55. 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*.
56. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
57. 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.
58. The *Law* applies to you as a nominated supervisor and to any service you are engaged at. 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>.
59. 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>
60. Should you have any questions about this Show Cause Notice please contact Senior Investigator Brian Cropper on email [brian.cropper@act.gov.au](mailto: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