

Ms [REDACTED]
Nominated Supervisor
RE: Teddybears Childcare Centre Macarthur

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, recently investigated suspected offences at Teddybears Childcare Centre Macarthur, SE-40002200 (the Service) operated by Teddybears Childcare Centre Pty Ltd, PR-00005870, (the Provider).
2. The Authority is satisfied that you, whilst in the capacity of Nominated Supervisor, have contravened provisions of the *Education and Care Services National Law (ACT) (the Law)*.
3. Web addresses to the 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 6 October 2020, the Authority received a Notification of Incident from the Provider advising that a one-year-old child, known to be [REDACTED], had fallen from a highchair. Refer Attachment A.
5. Due to the high risk of children being exposed to harms and hazards when inadequately supervised and inadequately restrained in highchairs, the Authority determined to investigate.
6. On 22 February 2021, because of evidence gathered throughout the investigation that supported contraventions of the *Law*, the Authority sent you a Show Cause Notice (the Notice). Refer copy of the Notice (minus attachments due to size) at Attachment B.
7. The Notice outlined the grounds for issue, and the evidence relied on by the Authority supporting the allegation that, on 6 October 2020, you, in the capacity of Nominated Supervisor, contravened sections 165(2) and 167(2) of the *Law*.
8. In addition, the Notice also outlined the compliance actions being considered by the Authority should the allegation be substantiated.

9. On 29 March 2021, noting that an extension for your response to the Notice was agreed to by the Authority, you submitted a response to the Notice to the Authority. Refer copy of your response at Attachment C.

Law

10. The following provisions of the *Law* were engaged by the investigation and this Decision:

Section 165(2) 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.

Section 167(2) of the Law - Offence relating to protection of children from harm and hazards

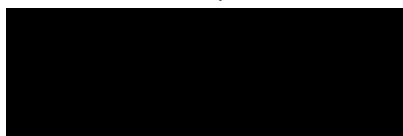
The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury.

Reasons

11. The Authority is satisfied, after careful consideration of your response to the Notice, and all available evidence, that on the balance of probabilities, there is sufficient evidence to substantiate contraventions of section 165(2) and 167(2) of the *Law* namely-
- I. That on 6 October 2020, you, as the Nominated Supervisor, failed to ensure adequate supervision resulting in a child falling from a highchair to the floor of the Service, in contravention of section 165(2) of the *Law*.
 - II. That on the 6 October 2020, you, as the Nominated Supervisor, failed to ensure reasonable precautions were taken to protect a child from harm and hazard likely to cause injury due to being inadequately secured in a highchair which resulted in the child falling to the floor of the Service, in contravention of section 167(2).
12. The very nature of the Notification of Incident supports the contraventions, and evidence gathered as part of the Authority's investigation, corroborate the circumstances resulting in the contraventions.
13. Furthermore, the Authority is satisfied that educators were also performing related tasks at the time of the incident and that [REDACTED] was knowingly unrestrained in the highchair. It is noted that this child suffered no ill effects from the fall.
14. The Authority, also noted in the response to the Show Cause Notice, your timely response in replacing non-compliant highchairs and amendment of policy, procedure, and protocol to mitigate risk of a similar incident occurring in the future.
15. Furthermore, the Authority has also taken into consideration that the *Law* has a protective role, and the Authority must consider the rights of children and best practice.

16. The Authority has decided, on this occasion, not to engage the proposed actions of an Enforceable Undertaking or Prohibition, but instead to issue you this Caution. This Decision is a reminder of your obligations as a Nominated Supervisor to the health and well-being of all children while being educated and cared for at the Service.
17. The Authority has also taken into consideration that people and entities that choose and consent to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case you have chosen and consented to participate in the education and care of children as a Nominated Supervisor and have a responsibility to comply with the standards required by the *Law* at the very least.
18. When choosing to participate in the education and care sector by employment as a Nominated Supervisor, you are obligated to ensure that the conduct of educators and Services, meet the professional standards expected under the *Law*.
19. This Decision will be recorded on our files and may be taken into consideration if any new evidence is received that warrants further investigation into this matter, or if any other matters involving your conduct with children are notified to the Authority in the future.
20. The National Law is made up of an Act and Regulations which can be viewed at:
<http://www.acecqa.gov.au/national-law> and
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
21. Should you have any questions about this Decision please contact Senior Investigator Brian Cropper on telephone (02) 6207 1104 or email brian.cropper@act.gov.au.

Yours Sincerely



Clare Brookes
Senior Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

11 May 2021