

[REDACTED]  
Nominated Supervisor  
Edge Early Learning Charnwood  
Email: [REDACTED]

Dear [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 inadequate supervision at Edge Early Learning Charnwood SE-40014603 (the Service) operated by Edge Early Learning ACT Pty Ltd PR-40029018 (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 21 September 2022<sup>11</sup> October 2022, the Authority received a notification from the Provider, of a child, known to be [REDACTED] (3 years), suffered a serious injury, going unnoticed for forty minutes. Refer **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 14 February 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 B**.
7. The SCN outlined the grounds for issue, and the evidence relied on by the Authority supporting the allegation that, on 21 September 2022, 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 1 March 2023, you emailed the Authority a response to the SCN within the agreed timeframe. Refer copy of response (minus attachments) at **Attachment C**.

### **Allegation**

10. It is alleged that on 21 September 2022, you, as the Nominated Supervisor failed to ensure that all children were adequately supervised at all times, contributing to a child, believed to be [REDACTED], suffering an unwitnessed significant head injury and was not assisted or noticed by educators for approximately 40 minutes, in contravening section 165(2) of the *Law* and giving rise to 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 statement obtained under section 215 of the *Law*, with relevant extracts also provided in the SCN.
  - c. Ratio Analysis.
  - d. CCTV timeline.
  - e. Incident report.
  - f. Internal investigation documents.
14. In your written response, you acknowledged the non-compliance on 21 September 2022, conducted an internal investigation and implemented strategies to mitigate risk of reoccurrence.

15. 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. It is an offence of strict liability. 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).

*Obligations upon Regulatory Authority, Providers, Services and Nominated Supervisors*

16. 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; ...'*

17. 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.

18. 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*.

19. 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*.

20. 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**

21. 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 supervise all children being educated and cared for by the Service on 21 September 2022, in contravention of section 165(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 21 September 2022, in contravention of section 167(2) of the Law.
22. Considering the evidence, the objectives and guiding principles of the *Law*, the fact that you have no previous compliance history, and your immediate actions to investigate and mitigate risk of re-occurrence of the incident, the Authority has decided to issue this Caution rather than statutory compliance action.
23. This Decision serves a reminder to you as a Nominated Supervisor of your obligations under the *Law* to ensure that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children at all times. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
24. In addition, this is a reminder that 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 the operation of the Service, and in their roles of educating and caring for children.
25. 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**

26. 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>.
27. 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>
28. If you have any questions relating to this letter, please contact Senior investigator Brian Cropper on telephone (02) 620 71104 or by way of email at [brian.cropper@act.gov.au](mailto:brian.cropper@act.gov.au).

Yours sincerely



Assistant Director  
Children's Education and Care Assurance  
Education and Care Regulation and Support  
30 March 2023