

[REDACTED]

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 supervision offences at Duffy OSHC SE-00009668 (the Service) operated by Woden Community Service Inc. PR-00005883 (the Provider).
2. The Authority is satisfied that you, whilst in the capacity as Assistant Co-ordinator and Responsible Person at the Service, did allow a child to enter and play in your personal vehicle.

**Facts**

3. On 10 March 2023, the Authority received Notification from the Provider, advising that on 22 February 2023, a child, believed to be [REDACTED] (10 old), was in your personal vehicle in the carpark of the Service and that you were lighting your cigarette lighter, allowing the child to blow it out. Refer to Attachment A.
4. On 21 June 2023, because of evidence gathered throughout the investigation that supported concerns regarding risk to children from your decisions and actions, the Authority sent you a Show Cause Notice (SCN). Refer copy of the Notice (minus attachments) at Attachment B.
5. The SCN outlined the grounds for issue, and the evidence relied on by the Authority supporting concerns regarding your actions and decision in allowing [REDACTED] to enter and remain in your personal vehicle. The SCN outlined potential compliance action being considered.
6. On 4 June 20223 you emailed the Authority your response to the SCN within the agreed timeframe. Refer copy of response (minus attachments) at Attachment C.

**Submission**

7. In your written response, you advised that you felt uncomfortable performing the role coordinator and responsible person in charge on 22 February 2023.
8. You expressed that you were new to the role, there was no ill intent toward [REDACTED] and undertook the course of action as a redirection strategy. You admit to allowing him to enter

your vehicle with you and play in your vehicle, which included blowing out a lit cigarette lighter you were holding. Furthermore, that you fully understand your decision was irresponsible and regret your actions in that situation.

9. It is imperative that any person working in the early education and care sector, who accept the responsibilities of a responsible person, centre coordinator or assistant coordinator, are fully aware of their responsibilities and obligations under the *Law*.

#### Obligations upon Regulatory Authority

10. 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; ...'*

11. 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.

12. 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*.

13. 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*.

14. 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

15. 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 the following:

- a) You were the responsible person in charge of the Service on 22 February 2023.
- b) You decided to allow [REDACTED] into and play in your personal car as a redirection strategy.

- c) You ignited a cigarette lighter and allowed him to blow it out.
- d) There was no ill-will toward [REDACTED]
- e) This strategy used by you on this day relating to [REDACTED] was inappropriate in the circumstances.
16. Considering all evidence, the objectives and guiding principles of the *Law*, the fact that you had little experience in the role, no previous compliance history, admission to errors of judgements and regret, the Authority has decided to issue this Caution rather than statutory compliance action.
17. This Decision is issued as a reminder that as a person engaged in education and care of children at an approved service, and accepting roles of responsibility within a service, makes you inherently accountable for the decisions you may make regarding the safety, education, and care of all children. The decisions you make should be in accordance with the expectations of the *National Law*.

#### **Legislation**

18. 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>.
19. 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>
20. 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



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

24 July 2023