

Ms [REDACTED]  
Nominated Supervisor  
Curtin Primary School - Curtin North Preschool Unit

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 offences relating to unsupervised children leaving and being returned to Curtin Primary School - Curtin North Preschool Unit SE-00011179 (the Service) operated by ACT Education Directorate PR-00006465 (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 8 May 2022, the Authority received a notification from the Provider advising two children, ([REDACTED] ([REDACTED] aged 4:11 and [REDACTED] aged 4:4), were unaccounted for a period of 10 to 30 minutes, after scaling the rear fence and leaving the Service, unnoticed by educators. [REDACTED] and [REDACTED] were later located and returned by members of the public. 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 7 August 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 and by 8 May 2023, you, in the capacity of Nominated Supervisor, contravened section 165(2) and 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 4 September 2023, your response to the SCN was emailed the Authority within the agreed timeframe. Refer copy of response (minus attachments) at [Attachment C](#).

#### **Allegation One**

10. It is alleged that on 8 May 2023, the Nominated Supervisor failed to ensure that all children being educated and care for by the service, were adequately supervised at all times, in that children, believed to be [REDACTED] (4:11) and [REDACTED] (4:4), exited the service by climbing bushes and exiting over a rear fence, unsupervised and unnoticed, later located by a members of the public approximately one kilometer away and returned, contravening section 165(2) of the *Law*, engaging a contravention of 167(2) of said *Law*.

#### **Allegation Two**

11. It is alleged that by the 8 May 2023, the Nominated Supervisor failed to ensure that every reasonable precaution was taken to protect children from harm and any form of hazard, in that, risk assessment failed to highlight and enact the maintenance of bushes in proximity to the rear fence, facilitating two children, believed to be [REDACTED] (4:11) and [REDACTED] (4:4), in scaling the fence and leaving the Service unnoticed by educators, in contravention of Section 167(2) of the *Law*.

#### **Law**

12. 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**

13. The Authority's records indicated that you were the Nominated Supervisor of the Service at the relevant time and note that you were absent on the date of the incident.
14. 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. Voluntary witness statement with relevant extracts provided in the SCN.

- c. Witness statements obtained under section 215 of the *Law*, with relevant extracts also provided in the SCN.
15. In your written response, you refer to attachments outlining actions undertaken since the incident, to mitigate risk to children of a reoccurrence.
  16. You did not expressly admit or deny the allegations or produce any evidence to refute the allegations as put forward in the SCN, rather, you did not contest the occurrence of the incident as outlined in the notification. Information you provided was by way of mitigation, explanation and subsequent actions undertaken.
  17. The Authority contends that for supervision levels to be deemed adequate under the *Law*, minimum regulated ratio levels may need to exceed the number prescribed, to meet the emotional, developmental, and physiological needs of all children being educated and cared for by the Service.
  18. Under section 165(2) and 167(2) of the *Law*, it is a nominated supervisor's responsibility to ensure adequate supervision of all children at all times, and ensure every reasonable precaution is taken to protect children from harm and hazard likely to cause injury, for children being educated and cared for by the Service. These offences are of strict liability.
  19. 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).
  20. It is imperative that any person working in the early education and care sector, who accept the responsibilities of a Nominated Supervisor, are fully aware of their responsibilities and obligations.

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

21. 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; ...'*
22. 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.

23. 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.

24. 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*.

25. 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**

26. 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) and 167(2) of said *Law* namely-

- a. Failing to ensure adequate supervision of all children being educated and cared for by the Service on 8 May 2023, in contravention of section 165(2) of the *Law*, and giving rise to a contravention of 167(2) of said *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 by 8 May 2023, in contravention of section 167(2) of the *Law*.

27. Considering the evidence, the objectives and guiding principles of the *Law*, the fact that you have no previous compliance history, and your immediate actions taken to mitigate risk of re-occurrence of the incident, the Authority has decided to issue this Caution rather than statutory compliance action.

#### **Legislation**

28. 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>.

29. 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>

30. 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



Jo Williams  
Director  
Children's Education and Care Assurance  
Education and Care Regulation and Support  
6 October 2023