



Ms [REDACTED]
Nominated Supervisor
YWCA Majura School Age Care

Email: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Potential Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance.
2. As you may be 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*.
3. Authorised Officers are currently investigating suspected offences at YWCA Majura School Age Care - SE-00009691 (the Service) operated by The Young Women's Christian Association of Canberra PR-00005876) (the Provider).
4. Suspected offences relate to allegations of inadequate supervision of a child being educated and cared for by the Service being missing and unaccounted for.
5. 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.
6. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge) and the Authority has determined there is sufficient evidence to support a case to answer regarding the suspected offences under the *Law*.
7. However, the Authority's investigation is not complete until the Provider has 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 as a person with management or Control of the Provider.
8. Detailed instructions of how to respond appear at the end of this Notice.
9. If substantiated, the allegation/s may constitute offences under sections 165 and 167 of the *Law* (or any combination of them). If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, it will need to consider whether compliance action is required.

10. Where any offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action with the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions that may be considered in this instance appear at the end of this Notice and may include:
 - a. The Authority issuing you with an official caution;
 - b. An Enforceable Undertaking pursuant to section 179A of the *Law*;
 - c. Prohibition from acting in a role as Nominated Supervisor (or conditions being imposed on being in that role) pursuant to section 182(3) of the *Law*.

Background

11. On 11 October 2022, the Authority received a notification from the Provider, of a parent complaint alleging her child, [REDACTED] (5:8) had left the Service unnoticed on 10 October 2022, crossed a road, attended nearby shops and returned, unnoticed by educators and staff. Refer Attachment A.
12. The following accompanied the notification to the Authority:
 - a) Child attendance records.
 - b) Working Directly with Children records.
 - c) Incident Report.
 - d) Educator and Nominated Supervisor statements.
 - e) Photo of a pedestrian crossing.
13. It was determined by the Authority that there were reasonable grounds to suspect that offences have, or may have, occurred at Service, and a decision was made to investigate suspected offences of sections 165 and 167 of the *Law*.
14. It was determined by the Authority that there were reasonable grounds to suspect that offences have, or may have, occurred at the Service and a decision was made to investigate suspected offences of inadequate supervision, and failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury.

Allegation – Sections 165 and 167 of the *Law*.

15. It is alleged that on 10 October 2022, you, as the Nominated Supervisor failed to ensure all children were adequately supervised at all times, in that a child, believed to be [REDACTED] (5:8), was missing and unaccounted between 4.15pm and 4.55pm, after leaving the Service, crossing a road, attending shops and returning, contravening section 165(2) of the *Law* and engaging section 167(2) of said *Law*.

Legislation Relevant to Allegation One

16. The following provisions of the *Law* and *Regulations* are relevant to the Allegation:

Section 165(2) of the *Law* – Offence to inadequately supervise children

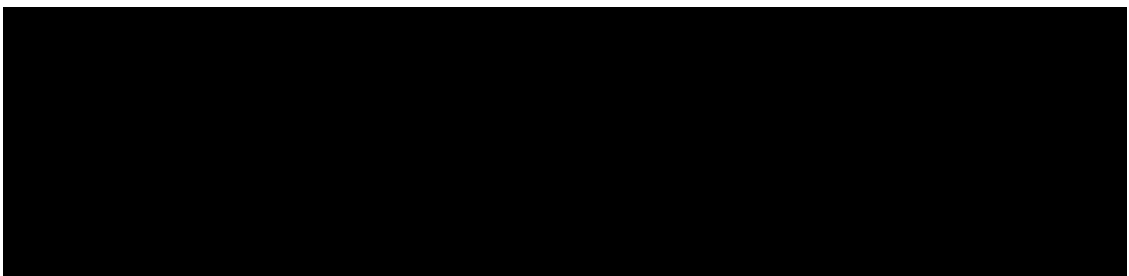
A nominated supervisor of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

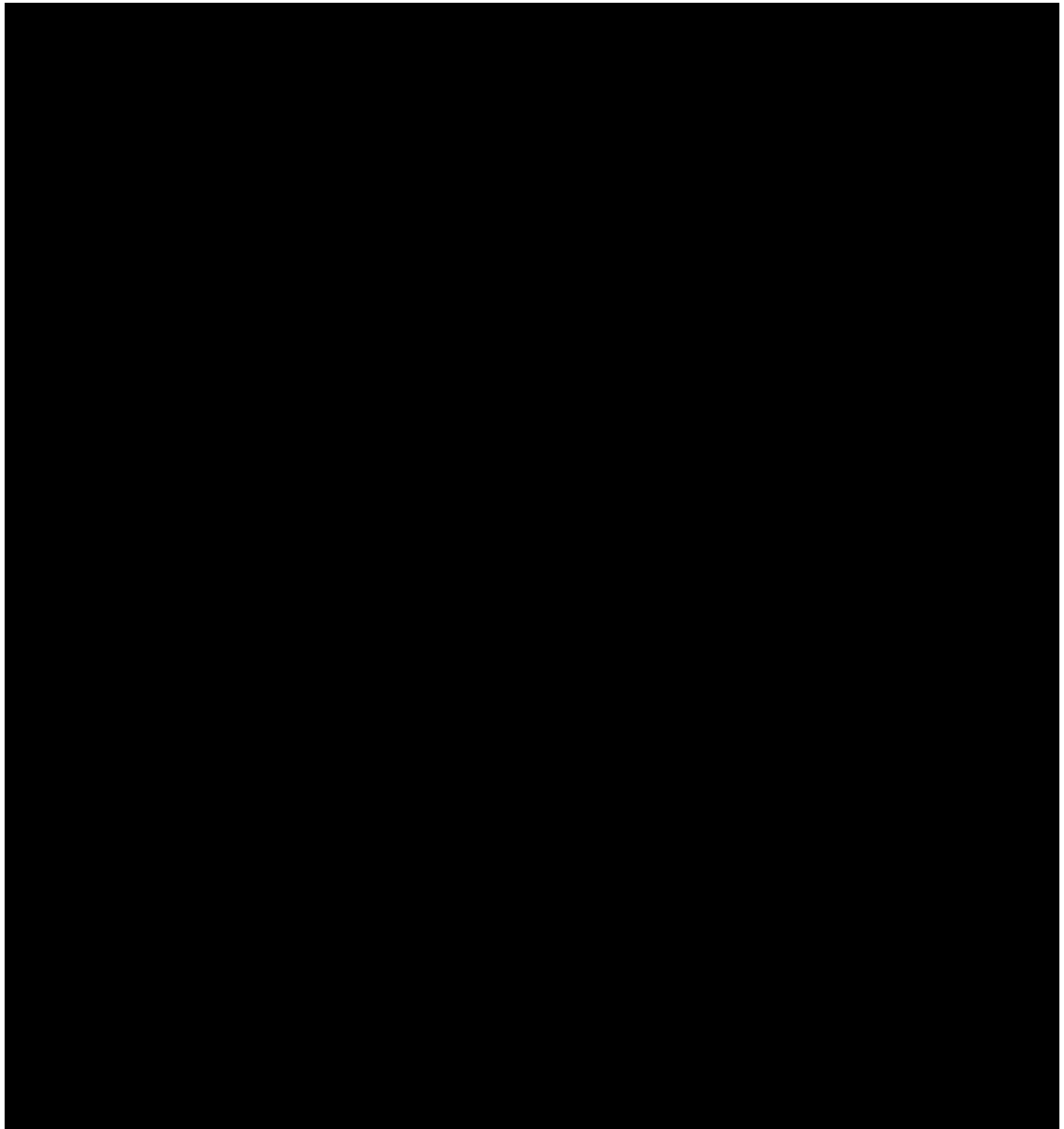
Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards

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.

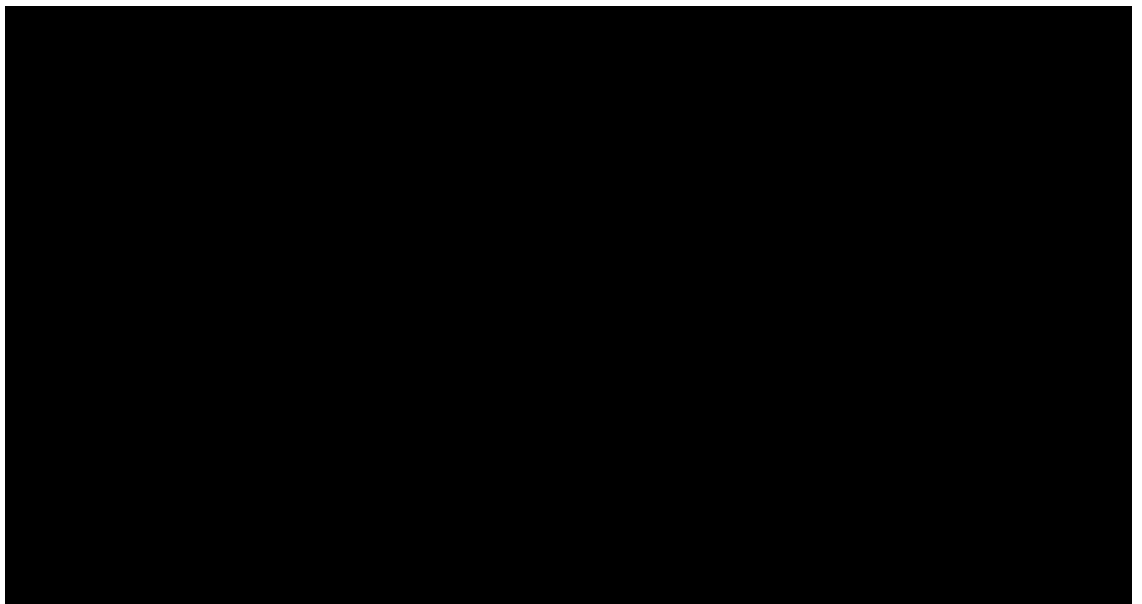
Evidence Relevant to the Allegation

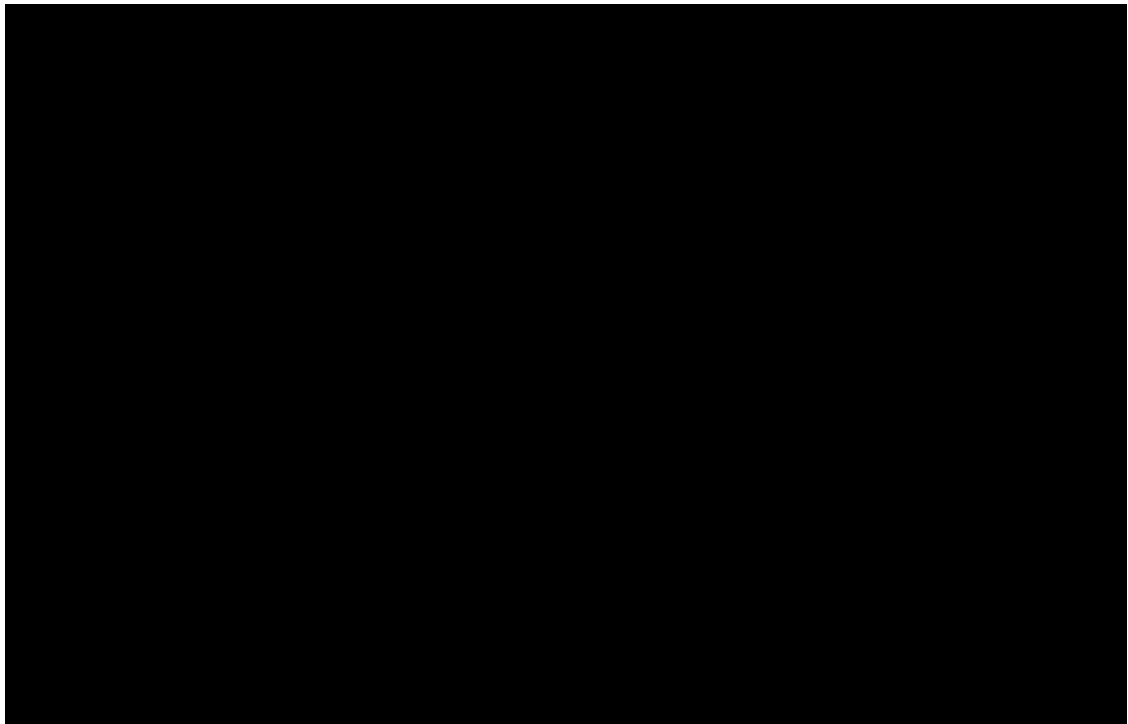
17. Documentation obtained furnished by the Provider upon request from the Authority, include an incident report outlining [REDACTED] attempted to leave the service and was directed back by a father of a peer and later attending the nearby shops unsupervised. Refer Attachment B.
18. Statements from educators to the Provider indicate that [REDACTED] was observed about 4.15pm and again at 4.55pm. There is no evidence he was seen by educators between those times. Refer Attachment C.
19. Working Directly with Children and Child Attendance records indicate there were sufficient staff working on 10 October 2022, inclusive of yourself between 3pm and 6pm. Refer Attachment D.
20. On 9 November 2022, Provider furnished information pursuant to a 215 Notice including copies of the Service's Supervision Policy and Procedure, and Risk strategies. Refer to Attachment F.
21. Records from the National Quality Authority ITs database indicate that you were a nominated supervisor for the Service at the time of the incident, having commenced in that role on 10 February 2020. Refer Attachment G.
22. During the investigation, the Authority obtained witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Please note that some witness statements were obtained utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.
23. Relevant extract from Witness A's statement include:





24. Extract from Witness B's statement include:





Contraventions Supported

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

Potential Compliance Action

26. 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.
27. Relevant legislation for enforceable undertakings and partial prohibition appears below.
28. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
29. 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 of the Law - 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) of the Law - 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

30. 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.

31. At Attachment H 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 or by post to:

Children's Education and Care Assurance
Attention Brian Cropper
GPO Box 158, Canberra ACT 2601.

Caution

32. 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*.
33. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
34. 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.
35. 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>.
36. 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>
37. Should you have any questions about this Show Cause Notice please contact Senior Investigator Brian Cropper on email Brian.Cropper@act.gov.au

Yours sincerely



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

14 February 2023