



Ms [REDACTED]
Person with Management and Control
ACT Education Directorate
RE: Gilmore Primary School – Preschool Unit

Email: [REDACTED]@act.gov.au
[REDACTED]@act.gov.au

Dear Ms [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. The ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated suspected offences under the *Education and Care Services National Law (ACT)* (the *Law*) relating to Gilmore Primary School – Preschool Unit SE-00011191 (the *Service*), operated by the ACT Education Directorate PR-00006465 (the *Provider*).
2. 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.
3. I am considering compliance action based on suspected contraventions of the *Law* indicated by evidence obtained during an investigation resulting from information obtained in a notification of incident submitted by the *Provider*. This notice offers you the opportunity to respond to the allegations prior to any determination being made.
4. As a delegate of the Authority, I am considering compliance action under Part 7 of the *Law*, including a compliance notice or non-statutory action.

Grounds for issuing Show Cause for Compliance Action

5. The Authority is considering compliance action based on evidence obtained during the investigation that supports contraventions of the *Law*. Specifically, the evidence suggests one set of grounds that support offences under the *Law*, being failure to notify the Authority of prescribed matters.

Background

6. On 1 April 2021, the *Provider* notified the Authority of an incident involving a student [REDACTED] who had become escalated, engaged in aggressive physical contact towards another student, and been suspended (NOT-40526126). Refer Attachment A for documentation relevant to the notification.
7. Information uploaded with NOT-40526126 indicated that previous notifiable incidents may have taken place.

8. The Authority determined to investigate suspected offences of failure to notify prescribed matters to the Regulatory Authority.

First set of grounds –Failure to Notify Prescribed Matters

Allegation

9. It is alleged that the Provider has failed to notify the Regulatory Authority of seven prescribed matters between 1 February 2021 and 31 March 2021, being circumstances arising at the Service which pose a risk to the health, safety and wellbeing of children, in contravention of section 174(2) of the *Law*.

Legislation Relevant to Allegation

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

Section 174 of the *Law* - Offence to fail to notify certain information to Regulatory Authority

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider-

- (c) information in respect of any other prescribed matters.

Penalty: \$4000, in the case of an individual
\$20 000, in any other case

- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to –

- (a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

Regulation 175 – Prescribed information to be notified to Regulatory Authority

- (2) For the purposes of section 174(2)(c) of the *Law*, the following matters are prescribed:

- (c) any circumstance arising at the service that poses a risk to the health, safety or wellbeing of a child or children attending the service.

Regulation 176 – Time to notify certain information to the Regulatory Authority

- (2) For the purposes of section 174(4) of the *Law*, a notice must be provided-

- (c) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

Evidence Relevant to Allegation

11. On 15 April 2021, a notice, allowable under section 215 of the *Law*, was issued to the Provider, requiring production of documents to the Authority by 23 April 2021. The documents were produced within the required time.
12. Documents produced by the Provider included all records of incidents regarding ██████████ between 1 February 2021 and 1 April 2021 (the day of suspension). Records were analysed by the Authority, such analysis indicating that, of the 18 recorded incidents, eight were notifiable as circumstances arising at the Service that posed a risk to the health, safety or wellbeing of a child or children attending the Service.
13. Refer Attachment B for Analysis Table, with records relating to notifiable Incidents B, C, E, I, J, M and P attached and marked accordingly.
14. Of the eight notifiable incidents, Incident R was the only one notified to the Authority (NOT-40526126), being the incident, which resulted in suspension of ██████████
15. Two of the eight notifiable incidents (Incidents E and I) were potentially notifiable as “*serious incidents*” (missing or unaccounted for children), but there was insufficient evidence to make that determination on the balance of probabilities. Accordingly, they have been treated as being notifiable as circumstances posing a risk.
16. Additionally, Incident F may have been notifiable as a circumstance posing a risk but there was insufficient weight of evidence to make that determination, so it has not been included.

Contraventions Supported by Allegation

17. Evidence gathered appears to support a contravention of section 174(2) of the *Law*.

Proposed Compliance Action

18. The Authority is proposing compliance action under Part 7 of the *Law*, should the Authority find that the Allegations is substantiated on the balance of probabilities. Potential compliance actions include:
 - a. A Compliance Notice under section 177 of the *Law*;
 - b. Non-statutory action.

Right of response

19. You have a right to respond to the allegation set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority’s consideration in deciding if a compliance action should be taken.
20. At Attachment C 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 tanya.masterman@act.gov.au or by post to

Children's Education and Care Assurance
Attention Tanya Masterman
GPO Box 158
Canberra ACT 2601.

Caution

21. Please be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
22. The *Law* applies to you as a provider and any service you operate. 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>.
23. 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>
24. Should you have any questions about this Show Cause Notice please contact Senior Investigator Tanya Masterman email tanya.masterman@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director
Education and Care Regulation and Support
ACT Education Directorate

15 June 2021