

██████████  
Person with Management or Control  
ACT Education Directorate  
RE: Lyons Early Childhood School Preschool Unit

Email: ██████████@act.gov.au  
██████████@act.gov.au

Dear ██████████

### **Decision to issue Administrative Action**

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently carried out inquiries into a direct complaint concerning Lyons Early Childhood School Preschool Unit SE-00011807 (the Service), operated by ACT Education Directorate PR-00006465 (the Provider).
2. Web addresses to the *Education and Care Services National Law (ACT) (the Law)* and the *Education and Care Services National Regulations 2011 (the Regulations)* are provided for your convenience at the end of this Decision.

### **Facts**

3. On 25 July 2021, the Authority received a direct complaint regarding education and care of a child, ██████████, who was enrolled in Karoeban 2 room on Thursdays, Fridays, and alternate Wednesdays. At the time of the complaint, ██████████ had last attended school on 27 June 2021.
4. The complaint related to interactions with another child, ██████████ who is enrolled in Karoeban 1 room. ██████████ attended the Service on complementary days to ██████████ and attended Lyons Early Learning Centre (operated by Woden Community Service Incorporated) on the days that ██████████ was attending Karoeban 2.
5. The Authority notes that ██████████ and ██████████ did not attend the Service on the same day. The complaint alleged that ██████████ was being “bullied” by ██████████ whilst being educated and cared for by the Service (noting that the Service and Lyons Early Learning Centre operate from shared premises). It was stated that ██████████ ██████████ was such that he was unable to attend the Service.
6. Additional information was sought from the complainant, which included an email chain of correspondence regarding ██████████ enrolment, ██████████ and the concerns raised. Refer Attachment A for a copy of the email chain.
7. Additional information was sought from the Provider on 4 August 2021 and received on 6 August 2021.

8. Information obtained indicated that [REDACTED] is a child with [REDACTED] who requires [REDACTED] to access and participate in education. The following documents were provided:
- a. Email from Principal [REDACTED] to the Authority providing some context to the documents, including that [REDACTED] had been enrolled at the Service in Term 2, after a referral from the NSET Support at Preschool Team;
  - b. Student Education and Impact Report (SEIR) 2021 for [REDACTED]
  - c. Individual Learning Plan (unsigned) for [REDACTED], with a commencement date of March 2021 and review date of July/August 2021;
  - d. Positive Behaviour Support Plan for [REDACTED];
  - e. Email of 14 July 2021 (in response to email of 27 June 2021) from [REDACTED] to [REDACTED] parents;
  - f. Email of 14 July 2021 from [REDACTED] parent to [REDACTED]
  - g. “Students with a Disability: Meeting their Educational Needs Procedure”;
  - h. Interactions with Children Policy;
  - i. Email of 5 August 2021 from Deputy Principal [REDACTED] regarding support of [REDACTED];
  - j. Case Management Meeting invitation for 24 May 2021 regarding [REDACTED] and two other children;

Refer Attachment B for Authority’s request and the Provider’s response.

### **Law and Regulations**

9. Relevant sections of the *Law and Regulations* are:

#### **Section 167(1) – Offence relating to protection of children from harm and hazards**

- (1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

Penalty:           \$10 000, in the case of an individual  
                      \$50 000, in any other case

#### **Section 174 – 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-
- (a) any serious incident at the approved education and care service;
  - (b) any complaints alleging –
    - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
    - (ii) that this Law has been contravened.

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

### **Regulation 176 – Time to notify certain information to Regulatory Authority**

- (2) For the purposes of section 174(4) of the Law, a notice must be provided –
- (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident.

### **Reasons**

10. The Authority notes from documentation obtained that, on 27 June 2021 and 14 July 2021, concerns were raised with the Provider regarding the support strategies in place for [REDACTED]. In particular, the email of 14 July 2021 constituted a complaint that the Provider had failed to implement appropriate strategies to ensure [REDACTED] safety whilst attending the Service, such as access to a safe space. This constitutes a “complaint that the *Law* was contravened”, being a complaint of failure to take reasonable precautions to protect [REDACTED] from harm whilst being educated and cared for the Service, in contravention of section 167 of the *Law*. “Harm” includes psychological or emotional harm as well as physical harm.
11. The Authority requested copies of any learning or support plans in place for [REDACTED] with evidence of implementation and communication to staff. No Individual Learning Plan for [REDACTED] was produced (only plans for [REDACTED]), so the Authority can only proceed on the basis that no plan was in place for [REDACTED]. It is noted that any student accessing support under the ACT Disability Criteria or who is supported with additional resources or services must have a current ILP. Additionally, it appears that the Student Education and Impact Report (SEIR) may not accurately reflect [REDACTED] [REDACTED] as outlined in the emails in Attachment A to this Decision.
12. According to the SEIR, 1:1 supports have been implemented at all times, [REDACTED] requires [REDACTED]  
[REDACTED]  
[REDACTED] The SEIR refers to an “Attachment A”, which was not produced and so the Authority must proceed on the basis that it does not exist. According to the documentation provided, there was no plan in place for [REDACTED] to formalise support strategies utilised whilst being educated and cared for by the Service, such as access to a safe space. Such a plan is a reasonable precaution to protect children from harm and from hazards likely to cause injury.

### **Decision**

13. After consideration of all documentation submitted, the Authority is satisfied on the balance of probabilities that there is sufficient evidence to substantiate the following offences:
- a. a contravention of section 167(1) of the *Law*, being a failure to take reasonable precautions to protect a child from harm and from hazards likely to cause injury; and
- b. a contravention of section 174 of the *Law*, being a failure to notify the Authority of a complaint that the *Law* was contravened.
14. After careful consideration of all relevant information, the Authority has determined not to initiate statutory compliance action regarding the substantiated contraventions of sections 167 and 174, but, rather, issue this Administrative Action to address the non-compliance.

15. This Decision is intended to bring to your attention the need to ensure that the Provider meets its notification obligations under the *Law* at all times.
16. With regards to the substantiated offence under section 167(1), the Authority requires the Provider to review inclusion and support strategies in place for [REDACTED], to document them in compliance with policy and procedure, and to communicate them to all staff who will be educating and caring for [REDACTED]. Noting restrictions that are currently in place due to COVID-19, the Authority requires an update on progress within 14 days from the date of this Decision, for further review.
17. All documentation should be submitted via email to Assistant Director Janine Fairburn on [Janine.Fairburn@act.gov.au](mailto:Janine.Fairburn@act.gov.au).
18. This Decision will be recorded on your Service file and may also be considered in any future applications for approvals, amendments, or waivers. It may also be considered in determining the action to be taken, should further breaches of the *Law* or *Regulations* be found.

### **Legislation**

19. The *Law* applies to you as an approved provider and any approved service that the Provider operates.
20. 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>.
21. 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>
22. If you have any queries regarding this Decision, please contact Assistant Director Janine Fairburn at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).

Yours sincerely



Clare Brookes  
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Children's Education and Care Assurance  
Education and Care Regulation and Support  
ACT Education Directorate

31 August 2021