

Ms [REDACTED]
Person with Management or Control
ACT Education Directorate
RE: Palmerston District Primary School – Preschool Unit

Email: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated complaints alleging that the *Education and Care Services National Law (ACT)* (the Law) was contravened at Palmerston District Primary School – Preschool Unit SE-00011217 (the Service), operated by 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. This show cause notice offers you the opportunity to respond to the allegations prior to any determination being made. If any or all of the allegations are substantiated, I will be considering compliance action based on suspected contraventions of the Law and the Regulations regarding failure to take reasonable precautions to protect children from harm and from hazards likely to cause injury, and failure to notify prescribed circumstances to the Authority.
4. As a delegate of the Authority, I would be considering compliance action under Part 7 of the Law.

Grounds for issuing Show Cause for Compliance Action

5. On 15 February 2021, the Provider notified the Authority by phone of a complaint regarding conduct of an educator towards children. On 17 February 2021, the Provider formally notified the Authority via the NQAITS Portal of the complaint that an educator at the Service had interacted inappropriately with multiple children on 8, 9 and 10 February 2021 (NOT-40511420). Refer Attachment A for a copy of the notification and follow-up documents and emails with the Authority.
6. For the purposes of prescribed time limits with respect to notification of complaints, the notification by phone is sufficient.
7. Due to the risk of harm to children caused by inappropriate interactions, the Authority conducted an investigation.

8. The Authority is considering compliance action based on evidence gathered which indicates that there have been contraventions of the *Law* and *Regulations*. Specifically, the evidence obtained during the investigation suggests two sets of grounds which engage offences under the *Law*.
9. The first set of grounds relates to reasonable precautions to protect a child from harm. The second set of grounds relates to failure to notify the Authority of prescribed circumstances.

First set of grounds –Protection from Harm

Allegation One

10. It is alleged that, between 8 and 10 February 2021 (inclusive), the Provider failed to take reasonable precautions to protect children being educated and cared for by the Service) from harm or hazard likely to cause injury in that it failed to ensure that interactions between educator [REDACTED] and multiple children met the requirements of Regulation 155, in contravention of section 167(1) of the *Law*.

Legislative Provisions Relevant to Allegation One

Section 167(1) of the *Law* - Offence relating to protection of children from harm and hazards

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.

Regulation 155 – Interactions with children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that –

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

Evidence Relevant to Allegation One

11. On 23 February 2021, a notice, allowable under section 215 of the *Law*, was issued to the Provider requiring production of documents by 2 March 2021. Documents were not produced within the prescribed time, nor was an extension requested until the notice was followed up.
12. A partial response was received on 10 March 2021, which was followed up by the Authority. The Provider then obtained the required prescribed documents and produced them on 12 March 2021.

- [Redacted]
- [Redacted]
- [Redacted]

18. Relevant extracts from Witness B are:

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

19. Relevant extracts from Witness C are:

- [Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

22. The allegations in [REDACTED] statement were assessed with regards to compliance with Regulation 155. Refer Attachment E for analysis table.

23. Staff records produced by the Provider support that [REDACTED] [REDACTED] has been employed at the Service since 29 November 2017, indicating that the matters alleged may be consistent with embedded accepted practice at the Service.

Contravention Supported by Allegation One

24. Evidence gathered relevant to Allegation One includes witness statements and documentation provided under 215 Notice.

25. Evidence gathered relevant to Allegation One appears to support the following contravention of the Law by the Provider:

- a. That, between 8 and 10 February 2021 (inclusive), the Provider failed to take reasonable precautions to protect children being educated and cared for by the Service from harm or hazard

likely to cause injury in that it failed to ensure that interactions between educator [REDACTED] and multiple children met the requirements of Regulation 155, in contravention of section 167(1) of the *Law*.

Allegation Two

26. It is alleged that between 1 February 2021 and 1 April 2021 (inclusive), the Provider failed to take reasonable precautions to protect children from harm and hazards in that insufficient strategies were implemented in relation to support of [REDACTED] [REDACTED] (enrolled in Class PSP), resulting in multiple circumstances posing a risk to the health, safety and wellbeing of children, particularly [REDACTED] [REDACTED] (enrolled in Class PSP), in contravention of section 167(1) of the *National Law*.

Legislative Provisions Relevant to Allegation Two

Section 167(1) of the *Law* - Offence relating to protection of children from harm and hazards

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.

Evidence Relevant to Allegation Two

15. Due to information received during the course of the investigation which indicated further suspected offences, on 28 May 2021, a supplementary notice, allowable under section 215 of the *Law* (Supplementary 215 Notice), was issued to the Provider requiring production of documents by 11 June 2021. Documents were produced to the Authority on 4 June 2021.
16. The documents requested included specific documentation regarding [REDACTED] [REDACTED]. The documents included:
- a) a behaviour log recording brief descriptions of incidents (Refer Attachment F);
 - b) three incident reports regarding an illness and two minor accidental injuries to [REDACTED] [REDACTED];
 - c) one SAS report regarding an incident of 31 March 2021 in which a toy was thrown at a staff member;
 - d) An ILP and Positive Behaviour Support plan which appeared to be finalised on 1 April 2021 (Attachment G);
17. On 15 June 2021, clarification was requested regarding the response to the Supplementary 215 Notice, which was received on 16 June 2021. That email clarified that no reports existed for the incidents outlined in the behaviour log. Refer Attachment H.
27. Relevant statement extracts from witnesses are included below, with irrelevant or personal information redacted where appropriate.
28. Relevant extracts from Witness A are:

█ [REDACTED]

29. Relevant extracts from Witness B are:

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

30. Relevant extracts from Witness C are:

[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- (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 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 Three

- 35. Relevant documents gathered during the investigation included a behaviour log, the above witness extracts relating to incidents involving [REDACTED] [REDACTED] and confirmation that no incident reports existed for the matters recorded in the behaviour log.
- 36. Examination of the Authority’s records confirms no incidents relating to the education and care of [REDACTED] [REDACTED] by the Service have been notified to the Authority.
- 37. The incidents outlined in the behaviour log have been analysed with respect to notification requirements. Refer Attachment G for a copy of the analysis.

Contravention Supported by Allegation Three

- 38. Evidence gathered relevant to Allegation Three appears to support a failure to notify certain information to the Authority, in contravention of section 174(2) of the *Law*.
- 39. It is alleged that, in contravention of section 174 of the *Law*, the Provider has failed to notify prescribed matters to the Regulatory Authority, being circumstances arising at the Service between 1 February 2021 and 17 March 2021 (inclusive), that posed a risk to the health, safety or wellbeing of a child or children attending the Service.

Proposed Compliance Action

- 40. The Authority is proposing compliance action under Parts 3 or Part 7 of the *Law*, should the Authority find that any or all of the Allegations are substantiated on the balance of probabilities. Potential compliance actions include:
 - a. A Compliance Notice under section 177 of the *Law*; or
 - b. Non-statutory action.

Right of response

- 29. You have a right to respond to the allegations 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. Should you require additional time within which to respond, a formal application for extension should be directed to the contact officer.

30. At Attachment J 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 at 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

31. I am informing you that statements and excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are **protected disclosures** under section 296 of the *Law*.
32. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
33. 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.
34. 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>.
35. 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>
36. Should you have any questions about this Show Cause Notice please contact Tanya Masterman on telephone (02) 6205 2012 or email tanya.masterman@act.gov.au

Yours Sincerely



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

11 August 2021