

██████████
Person with Management or Control
ACT Education Directorate
RE: Garran Primary School – Preschool Unit

Email: ██████████

Dear ██████████

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. As you are 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 (ACT) (the Law)*, together with receiving and investigating complaints arising under the *Law*.
2. Authorised Officers are currently investigating suspected offences occurring at Garran Primary School – Preschool Unit SE-00011190 (the Service) operated by ACT Education Directorate PR-00006465 (the Provider).
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 notice.
4. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge) and the Authority has determined that the Provider has a case to answer regarding suspected offences.
5. However, the Authority’s investigation is not complete until the Provider has had an opportunity to respond to the allegation/s and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the allegation/s may constitute offences under sections 165 and 167 of the *Law*. 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.
7. If any offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

8. The evidence obtained during the investigation to date supports offences under the *Law* within the following area - Supervision and protection from harms.

Background

9. On 8 June 2022, CECA received notification of an incident from the Provider, advising that on 8 June 2022 a preschool child was left at the service when the Preschool class attended the school sports carnival. Additional information was requested from the Provider by the Authority which was submitted 10 June 2022. Refer Attachment A for all documentation relevant to the notification.
10. It was determined by the Authority that there were reasonable grounds to suspect that offences had, or may have, occurred at the Service, and a decision was made to investigate suspected offences under sections 165 and 167.

Allegation One

11. It is alleged that, on 8 June 2022, the Provider failed to ensure adequate supervision of a preschool child, known to be [REDACTED] (4yrs), resulting in said child being left alone in a preschool room for two hours whilst educators and rest of class attended a sports carnival offsite, in contravention of s165(1) of *Law*.

Allegation Two

12. It is alleged that, on 8 June 2022, the Provider failed to ensure all reasonable precautions were undertaken to protect children, by not ensuring adequate supervision of all children, and allowing an excursion to be undertaken without all educators being aware of the risk assessment in place or being aware of the children who were to be in their care, in contravention of section 167(1) of the *Law*.

Legislation Relevant to Allegations One and Two

13. The following provisions of the *Law* and *Regulations* are relevant to the Allegations:

Section 165(1) of the *Law* - Offence to inadequately supervise children

The Approved Provider 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.

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

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 care 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 One and Two

14. On 21 June 2022, the Provider was advised of the investigation. A notice for production of documents, allowable under section 215 of the *Law*, was issued. A response by the provider was received on 28 June 2022.
15. Records produced by the Provider indicated that:
 - a. the Service was educating and caring for children on 8 June 2022.
 - b. ██████████ was a child enrolled at the Service and attending on 8 June 2022.
 - c. A school sports carnival was held on 8 June 2022, which the preschool class attended between 9:30am and 11:30am offsite from the Service.
 - d. ██████████ was not accounted for at time of departure from the Service at 9:30am and was subsequently located at the service upon return of educators and children to the service at 11:30am within the classroom unsupervised.

Refer relevant email correspondence and incident report at Attachment B.

16. On 4 July 2022, the provider forwarded to the Authority additional information, being a copy of a “sorry story” created for ██████████. Refer copy at Attachment C.
17. On 6 July 2022, the Authority received notification of a complaint from the Provider, notifying of a complaint received from ██████████ parents. Additional information was requested from the Provider by the Authority which was submitted 8 July 2022. Refer Attachment D for all documentation relevant to the notification.
18. Between 6 July 2022 and 19 July 2022, email correspondence was forwarded to the Provider to confirm and clarify elements of the s215 Notice that appeared unmet. Refer email chain at Attachment E.
19. Information received via the s215 response submitted by the Provider included the following:
 - a) Children’s attendance records, Working Directly with Children records, and Responsible person records.
 - b) Email correspondence outlining meetings and enquiry between the Provider, Service, the relevant family and educators regarding the incident of 8 June 2022.
 - c) Educator details and contact information.
 - d) Relevant incident reports, and associated policies and procedures.

Refer relevant documents at Attachment F.

20. During the investigation, the Authority obtained witness statements, relevant extracts from which appear below, with personal information redacted where appropriate.

Due to the specific circumstances surrounding the alleged offences, witnesses are identifiable from the content of their evidence. Please note that all witness statements were obtained utilising powers under section 215 of the *Law*, imposing an obligation to attend before the

[Redacted text block 1]

[Redacted text block 2]

[Redacted text block 3]

[Redacted text block 4]

[Redacted text block 5]

[Redacted text block 6]

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[Redacted text block 8]

[Redacted text block 9]

[Redacted text block 10]

[Redacted text block 11]

[Redacted text block 12]

[Redacted]

Refer Attachment G for copy of Risk assessment and map referred to in Witness A's statement.

22. Relevant extracts from Witness B's statement are:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

[Redacted]

[REDACTED]
[REDACTED]

Refer Attachment I for copy of Risk assessment and map referred to in Witness C's statement.

Contraventions Supported by Allegation One and Two

24. Evidence gathered appears to support contraventions of sections 165(1) and 167(1) of the *Law*.

Potential Compliance Action

25. 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. Potential compliance actions include:
- e. Non-statutory Administration Action (similar to a caution) with no further action;
 - f. Non-statutory Administrative Action with measures to be taken and evidence produced;
or
 - g. A Compliance Notice under section 177 of the *Law*.
 - h. Conditions on Service Approval under section 55 of the *Law*.
26. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.

Right of response

27. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice. 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.
28. 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 to janine.fairburn@act.gov.au or by post to:

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

Caution

29. I am informing you that the excerpts of statements of witnesses 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*.

30. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
31. 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.
32. 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>.
33. 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>
34. Should you have any questions about this Show Cause Notice please contact Authorised Officer Janine Fairburn via email janine.fairburn@act.gov.au.

Yours sincerely



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

31 August 2022