

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

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

Dear ██████████

### Decision to Issue Compliance Notice

1. As you may be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed a Notification of Incident (NOT-40468424) relating to the operation of Garran Primary School – Preschool Unit SE-00011190 (the Service), operated by ACT Education Directorate PR-00006465 (the Provider).
2. The Notification related to an enrolled child at the Service being released to an unauthorised person/entity on 26 August 2020.
3. Web addresses to the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations 2011* (the Regulations) are provided for your convenience at the end of this Notice.

### Facts

4. On 2 September 2020, the Authority received NOT-40468424 (the Notification) from the Provider advising that, on 26 August 2020, a preschool child, known to be ██████████ was released out of care from the preschool to an unauthorised person on the day, being a staff member of Garran Outside School Hours service.
5. The Authority was aware of the incident, as the service that the child should have been released to, being Woden Valley Childcare Centre, notified the Authority. The Authority made enquiries with the Provider as it was identified that the incident had not been notified to the Authority, and subsequently the Provider notified the incident.
6. The Authority considered all the information supplied by the Provider and was satisfied that the failure to ensure that ██████████ was released to an authorised staff member of Woden Valley Childcare Centre, constituted a failure to take reasonable precautions to

protect children from harm and from hazards likely to cause injury, in contravention of section 167(1) of the *Law*.

7. On 15 September 2020, the Authority issued the Provider an Administrative Decision requiring a response by 22 September 2020 to demonstrate that strategies advised of by the Provider to mitigate risk of a similar incident had been actioned. These strategies were outlined in paragraph 8 of the Administrative Decision.
8. Paragraph 8 of the Administrative Decision required evidence to demonstrate the following Provider advised actions:
  - a) The preschool team and the Deputy Principle have spoken about making sure that they follow all preschool procedures, in particular the process of releasing students to After School Care (ASC) when requested by them.
  - b) That the Service will also go back over the drop off and pick up procedures at their team meeting and remind parents that if pick up circumstances change throughout the day then both ASC and preschool should be informed.
  - c) That procedures included not releasing students unless staff see the updated electronic version of their roll or an official printed version of the same document, and that word of mouth and handwritten names on a piece of paper are not acceptable and that staff must remind ASC staff to check their lists thoroughly before they leave so that 2 trips are not necessary as this can cause confusion.
  - d) That the Service now has a suitable plan in place to ensure ASC handovers are accurate and that the preschool staff do not release children to them without comprehensive proof that this is the correct thing to do.

Refer copy of Administrative Decision at [Attachment A](#).

9. On 28 September 2020, the Authority contacted the Provider to enquire as to a response to the Administrative Decision as no response had been received. The Provider responded stating that they had 'overlooked' the request for evidence as outlined in paragraph 11 of the Decision. In response, the Authority agreed to an extension for response by the Provider to be by 10am on 14 October 2020.
10. On 15 October 2020, the Authority again contacted the Provider to enquire as to a response to the Administrative Decision as no response had been received. The Authority advised the Provider that if a response was not received by close of business 16 October 2020, the Authority may consider issuing statutory compliance action in relation to the matter.
11. On Saturday 17 October 2020 at 5:27pm, a response to the Administrative Decision, containing two meeting minutes, was submitted by the Provider and was received by the Authority on Monday 19 October 2020. Refer to all email correspondence and Provider response at [Attachment B](#).

## Law

12. The following provision of the *Law* is relevant to the facts as outlined in the Administrative Decision:

### **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.

### **Obligations upon Regulatory Authority, Providers and Services**

13. The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. Relevant to this decision is the objective at section 3(2)(a), namely:  
*"to ensure the safety, health and wellbeing of children attending education and care services"*.
14. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have particular application in this instance, being:  
*(a) that the rights and best interests of the child are paramount; ...*  
*(f) that best practice is expected in the provision of education and care services.*
15. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:  
*(c) to monitor and enforce compliance with this law;*  
*(d) to receive and investigate complaints arising under this law.*
16. The *Law* works to protect a particularly vulnerable group in our society – children – when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
17. A key objective of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.
18. The *Law* is predominantly a protective law and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.
19. The Authority is empowered to issue a compliance notice under section 177 of the *Law*

### Section 177 of the *Law*– Compliance notices

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this *Law*.
- (2) The Regulatory Authority may give the approved provider a notice (a ***compliance notice***) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.  
Penalty: \$6 000, in the case of an individual  
\$30 000, in any other case.

### Decision

20. I am satisfied that the Provider has contravened section 167(1) of the *Law*. I am further satisfied that the submission of two meeting minutes on 17 October 2020 as response to demonstrating paragraph 8 of the Administrative Decision did not satisfy the Authority that appropriate actions have been implemented or effectively communicated to mitigate risk of a similar incident of a child being released to an unauthorised person occurring.
21. Considering the evidence, the Provider’s initial response, and a failure to satisfy the Administrative Decision, I have determined that issuing a Compliance Notice would be appropriate and in the best interests of children.
22. The Compliance Notice is Attachment C to this decision letter. The Provider is required to take steps directed in the Notice to comply with the relevant provisions. The Provider must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment C**.

### Appeal Rights

23. A decision to issue a compliance notice is a ***reviewable decision*** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).
24. An application for review may be made by completing the form AR01 Application for Internal Review of Reviewable Decision which can be obtained from the ACECQA website.

### Legislation

25. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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>.
26. The National Law is made up of an Act and Regulations which can be viewed at:
  - <http://www.acecqa.gov.au/national-law>, and
  - <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
27. Should you have any questions about this Decision or the attached Compliance Notice please contact Assistant Director, Janine Fairburn at [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au).

Yours Sincerely



Clare Brookes  
Senior Director  
Children's Education and Care Assurance  
Early Childhood Policy and Regulation  
ACT Education Directorate

9 November 2020