

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

Email: [REDACTED]

Dear [REDACTED]

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 investigated suspected non-compliances relating to the operation of Garran Primary School – Preschool Unit SE-00011190 (the Service), operated by ACT Education Directorate PR-00006465 (the Provider) on 8 June 2022.
2. The Authority has now concluded its investigation and is satisfied that the Provider has not complied with sections of the *Education and Care Services National Law Act (ACT)* (the Law) in this instance.
3. Web addresses to 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

4. On 8 June 2022, the Authority received notification of an incident from the Provider, advising that on 8 June 2022 a child was left at the Service, alone and unsupervised, when the Preschool attended the school sports carnival. Refer copy of notification at Attachment A.
5. 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 of the Law.
6. On 31 August 2022, resulting from the investigation, a Show Cause Notice (the Notice) was sent to the Provider. Refer copy of the Notice (minus attachments A-J due to size – can be provided again upon request) at Attachment B.
7. The Notice outlined the grounds for issue, allegations of contravention of the Law, and evidence being relied on by the Authority as supporting the allegations. Allegations raised for response were as follows:

Allegation One

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

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*.

8. On 27 September 2022, a response to the Notice was received from the Provider via email. The response included a covering letter with attachments in a single PDF file. Refer Copy of the Response at Attachment C.

Law

9. The following provisions of the *Law* 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.

Obligations upon Regulatory Authority, Providers and Services

10. 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".
11. 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.*

12. 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.*
13. 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*.
14. 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.
15. 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.
16. 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

17. The Authority is satisfied that, on 8 June 2022, the Provider has contravened the *Law*.
18. The Authority is satisfied that, on balance of probabilities, 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*.
19. The Authority is satisfied that, 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*.

20. The Authority noted that the Provider's response to the Notice indicated actions advised of to mitigate risk of a similar incident occurring. These actions appeared to be in their infancy of implementation, and at a higher level than just at the Service level.
21. The Authority also took into consideration the Nominated Supervisors response to the Notice for same matter and noted that there was more supportive evidence that supported the ongoing actions and rectifications occurring at the Service since the incident of 8 June 2022.
22. However, the Authority is satisfied that this does not mitigate the fact that a preschool child was unsupervised, and unnoticed as missing for two hours on the day of the carnival, and that educators in charge of care of children were not aware of risk assessment in place.
23. The risk to the child at the time of the incident was high, consequences could have been catastrophic with a child left alone for that length of time unsupervised. The Authority noted evidence supporting the ongoing psychological impact had on the child as a result of the incident.
24. Considering the evidence, the Provider's response to the Notice, and compliance history of the Service, I have determined that issuing a Compliance Notice would be appropriate and in the best interests of children.
25. The Compliance Notice is Attachment D 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 D.**
26. This evidence should be submitted to the Authority to Assistant Director, Janine Fairburn, at janine.fairburn@act.gov.au, or by post to:

Janine Fairburn, Assistant Director
Children's Education and Care Assurance
PO Box 158, CANBERRA ACT 2601

Appeal Rights

27. 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).
28. 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

29. 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>.
30. 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>
31. Should you have any questions about this Decision, or the attached Compliance Notice please contact me at jo.williams@act.gov.au.

Yours Sincerely



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

21 November 2022