



Mr
Ms
Ms
Mr

Persons with Management or Control
ACT Education Directorate

RE: North Ainslie Primary School - Preschool Unit
Kaleen Primary School - Preschool Unit
Yarralumla Primary School - Montessori School
Yarralumla Primary School – Preschool Unit
Curtin Primary School - Curtin North Preschool Unit
Curtin Primary School - Curtin South Preschool Unit
Fraser Primary School – Preschool Unit
Charles Weston School – Coombs Preschool Unit
Isabella Plains Early Childhood School Preschool Unit
Palmerston District Primary School – Preschool Unit
Lyons Early Childhood School Preschool Unit
Hawker Primary School – Preschool Unit

Email:

Dear Mr [REDACTED] Ms [REDACTED] Ms [REDACTED] and Mr [REDACTED]

Decision to Issue Compliance Notice

1. 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 (the Law)*. One of the Authority's roles is to monitor compliance with the *Law* and the *Regulations*.
2. The Authority has reviewed notifications from below listed services (various) operated by the ACT Education Directorate (the Provider) PR-00006465, regarding unqualified staff utilised due to absences, giving rise to a failure of Provider to ensure that each educator educating and caring for children meets the qualification requirements relevant to the educator's role as prescribed by the national regulations. This in turn, raises a failure of the Provider to ensure they are taking all reasonable precautions, to ensure children are protected from harm and hazard, likely to cause injury. Services include:
 - (a) North Ainslie Primary School - Preschool Unit SE-00011216
 - (b) Kaleen Primary School - Preschool Unit SE-00011202
 - (c) Yarralumla Primary School - Montessori School SE-00011235
 - (d) Yarralumla Primary School - Preschool Unit SE-00011236

- (e) Curtin Primary School - Curtin North Preschool Unit SE-00011179
- (f) Curtin Primary School - Curtin South Preschool Unit SE-00011180
- (g) Fraser Primary School – Preschool Unit SE-00011189
- (h) Charles Weston School – Coombs Preschool Unit SE-40005869
- (i) Isabella Plains Early Childhood School Preschool Unit SE-00011806
- (j) Palmerston District Primary School – Preschool Unit SE-00011217
- (k) Lyons Early Childhood School Preschool Unit SE-00011807
- (l) Hawker Primary School – Preschool Unit SE-00011199

3. The Authority is satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*). Web addresses to the *Law* and the associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

North Ainslie Primary School - Preschool Unit

- 4. On 11 March 2025, the Authority received notification ([NOT-00133192](#)) from the Provider advising that due to staff absences, an unqualified Learning Support Assistant (LSA) was placed in the preschool to cover lunch breaks.
- 5. On 12 March 2025, the Authority received notification ([NOT-00134129](#)) from the Provider advising that due to staff absences, an unqualified LSA was placed in the preschool to cover lunch breaks.
- 6. On 9 May 2025, the Authority received notification ([NOT-00154016](#)) from the Provider advising that due to staff absences, an unqualified LSA was placed in the preschool to cover lunch breaks.

Curtin Primary School – Curtin South Preschool Unit

- 7. On 31 March 2025 the Authority received notification ([NOT-00141254](#)) from the Provider advising that due to staff absences, an unqualified LSA was placed in the preschool to cover a lunch break.
- 8. On 10 April 2025 the Authority received notification ([NOT-00145019](#)) from the Provider advising on 8 April 2025, due to staff absences, an unqualified LSA was placed in the preschool to cover a lunch break.
- 9. On 10 April 2025 the Authority received notification ([NOT-00145265](#)) from the Provider advising that due to staff absences, an unqualified LSA was placed in the preschool from 1:30pm to 2:45pm.
- 10. On 20 June 2025 the Authority received notification ([NOT-00169074](#)) from the Provider advising on 19 June 2025, due to staff absences throughout the school, an unqualified LSA was placed in the preschool to cover lunch breaks.

Curtin Primary School – Curtin North Preschool Unit.

11. On 31 March 2025 the Authority received notification ([NOT-00141252](#)) from the Provider advising that due to staff absences, an unqualified LSA was placed in the preschool to cover lunch breaks.

Kaleen Primary School – Preschool Unit

12. On 11 March 2025 the Authority received notification ([NOT-00133223](#)) from the Provider advising that on 7 March 2025 due to staff absences, lunch breaks were covered by an unqualified LSA in the Preschool.

13. On 10 April 2025 the Authority received notification ([NOT-00145014](#)) from the Provider advising that on 4 April 2025 due to staff absences, an unqualified LSA was placed in the Preschool.

Yarralumla Primary School – Montessori School

14. On 11 March 2025 the Authority received notification ([NOT-00133214](#)) from Provider advising that due to staff absences, an unqualified LSA was placed in the Preschool.

Yarralumla Primary School – Preschool Unit

15. On 20 March 2025 the Authority received notification ([NOT-00137169](#)) from Provider advising that on 17 March 2025 due to staff absences, an unqualified LSA was placed in the Preschool.

Fraser Primary School – Preschool Unit

16. On 2 May 2025 the Authority received notification ([NOT-00151589](#)) from the Provider advising that on 2 May 2025 due to staff absences throughout the school, an unqualified LSA was placed in the Preschool.

17. On 20 May 2025 the Authority received notification ([NOT-00157731](#)) from the Provider advising that on 19 May 2025, due to staff absences throughout the school, an unqualified LSA was placed in the Preschool.

Charles Weston School – Coombs Preschool Unit

18. On 23 May 2025 the Authority received notification ([NOT-00159070](#)) from the Provider advising that on 22 May 2025, due to staff absences, an unqualified LSA was placed in the preschool to cover a lunch break.

Isabella Plains Early Childhood School Preschool Unit

19. On 16 May 2025 the Authority received notification ([NOT-00156235](#)) from the Provider advising that due to staff absences, an unqualified LSA was placed in the preschool to cover a lunch break.

Palmerston District Primary School – Preschool Unit

20. On 26 May 2025 the Authority received notification ([NOT-00160123](#)) from the Provider advising that due to staff absences an unqualified LSA was placed in the Preschool.

21. On 26 June 2025 the Authority received notification (NOT-00170949) from the Provider advising that on the 25 June 2025, due to staff absences, an unqualified LSA was placed in the Preschool.

Lyons Early Childhood School Preschool Unit

22. On 3 June 2025 the Authority received notification (NOT-00163207) from the Provider advising that on 30 May 2025, due to staff absences, an unqualified LSA was placed in the preschool to cover a lunch break.

Hawker Primary School – Preschool Unit

23. On 27 May 2025 the Authority received notification (NOT-00160699) from the Provider advising that due to staff absences, an unqualified LSA was placed in the preschool to cover a lunch break.
24. On 29 May 2025 the Authority received notification (NOT-00161352) from the Provider advising that on 28 May 2025 due to staff absences, including no qualified educator, unqualified educator and LSA's were placed in the preschool unit.
25. Due to the nature of the notifications, the Authority determined that contraventions of 169(2) and 167(1) were applicable in each instance.

Law

26. Refer **Attachment A** for provision of the *Law* relevant to the Notifications and Decision.

Obligations upon Regulatory Authority

27. 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*".
28. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific 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.
29. 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.
30. 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*.

31. 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.
32. 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.

Reasons and Decision

33. The Authority has considered all notifications information and is satisfied on the balance of probabilities, there is sufficient weight of evidence to support contraventions of sections 169(2) and 167(1) of the *Law* in each instance.
34. From frequency of Notifications and increasing length of time children in the Services are being supervised by unqualified staff, the Authority has concluded the Provider has failed to ensured compliance with the *Law* regarding qualifications requirements for educators within the Services, giving rise to a failure to ensure all reasonable precautions are taken to protect children from harm and hazard likely to cause injury.
35. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children.
36. People and entities that choose to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case, as an approved provider, you chose and consented to participating in the education and care of children and have a responsibility to comply with the standard of care under the *Law*.
37. Considering the information submitted by the Provider, the level of seriousness of the contravention, and the objectives and guiding principles of the *Law*, the Authority has decided that issuing a Compliance Notice is appropriate and in the best interests of children.
38. The Authority is empowered to issue a compliance notice under section 177 of the *Law*. The Compliance Notice is provided at **Attachment B** to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions. You must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment B**.
39. Continued non-compliance may result in additional measures being taken such as reduction in children able to attend the service, suspension and or cancellation of the Service approval.

Review Rights

40. 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).

41. 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

42. The *Law* applies to you as an approved 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>.
43. 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>
44. Should you have any questions about this decision please contact Authorised Officer Vittorio Colosimo via email vittorio.colosimo@act.gov.au.

Yours sincerely



Vittorio Colosimo
A/g Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support

30 June 2025