

[REDACTED]  
Nominated Supervisor  
ACT Education Directorate  
RE: Garran Primary School – Preschool Unit  
Email: [REDACTED]@ed.act.edu.au

Dear [REDACTED]

### Decision to Issue Caution Letter

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance. 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. As you are aware, the Authority has recently investigated matters regarding Garran Primary School – Preschool Unit SE-00011190 (the Service) operated by ACT Education Directorate PR-00006465 (the Provider), which engaged suspected offences being contravened.
3. The Authority is satisfied that you, as the Nominated Supervisor, was not complying with the provisions of the *Law* in respect to this matter. Web addresses to the *Law* and associated *Regulations* are provided for your convenience at the end of this Decision.

#### Facts

4. On 31 August 2022, the Authority sent you, as the Nominated Supervisor, a Show Cause Notice (the Notice) advising that the Authority had determined there was sufficient evidence to support a case to answer for the Nominated Supervisor regarding suspected offences under the *Law*.
5. The Notice outlined the grounds for issue, relevant evidence supporting suspected contraventions of *Law*, and potential compliance actions being considered if allegations were substantiated. Refer copy of Notice (minus attachments due to size, noting they can be produced on request) at Attachment A.
6. The Notice advised that evidence obtained during the investigation supported allegations of offences under the *Law* as follows:

#### Allegation One

It is alleged that, on 8 June 2022, you, as the Nominated Supervisor of the Service, 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(2) of *Law*.

#### Allegation Two

It is alleged that, on 8 June 2022, you, as the Nominated Supervisor of the Service, 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(2) of the *Law*.

7. On 27 September 2022, a response to the Notice was received. Refer copy Response at Attachment B.

#### **Law**

8. Provisions of the *Law* relevant to the investigation engaged the following:

#### Legislation Relevant to Allegations One and Two

##### **Section 165(2) of the *Law* – Offence to inadequately supervise children**

A nominated supervisor 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

##### **Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards**

A nominated supervisor 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

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

9. 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"*.
10. 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.*
11. 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.*

12. 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*.
13. 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.
14. 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**

15. The Authority is satisfied that, on 8 June 2022, you as the Nominated Supervisor, has contravened the *Law*.
16. The Authority is satisfied that, on balance of probabilities, you have 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(2) of *Law*.
17. The Authority is satisfied that, you have 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(2) of the *Law*.
18. The Authority noted that your response to the Notice included evidence that supported the ongoing actions and rectifications occurring at the Service since the incident of 8 June 2022.
19. 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.
20. 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.
21. Regarding the concerns raised relating to your fitness and propriety as a Nominated Supervisor, the Authority is satisfied that evidence submitted mitigates these concerns.

22. Considering the evidence obtained and the level of seriousness of the contraventions, I have decided that that issuing you a Caution is appropriate and in the best interests of children in making this decision.
23. This Decision serves a reminder to you as a Nominated Supervisor of your obligations under the *Law* to ensure that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children at all times. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
24. In addition, this is a reminder that as a Nominated Supervisor, it is imperative to ensure that educators, at all times, are aware of and understand the policies, procedures, risk assessments and expectations of yourself and the Provider in relation to the operation of the Service, and in their roles of educating and caring for children.
25. Details of this decision will be recorded and may be considered should any further similar non-compliances be identified moving forward regarding your role as a Nominated Supervisor.

#### **Legislation**

26. The Education and Care Services National Law applies to you as a Nominated Supervisor and any service you are employed with. 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>.
27. 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>
28. Should you have any questions about this Decision please contact me via email at [jo.williams@act.gov.au](mailto: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