ACT Government
Education

Mr [redacted]
Person with Management or Control
ACT Education Directorate
RE: Ngunnawal Primary School – Preschool Unit

Email: [redacted]

Dear Mr [redacted]

Decision to issue Compliance Notice

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA). 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).*

2. As you are aware, the Authority has recently assessed a notification of incident that a child (5:0), while attending Ngunnawal Primary School – Preschool Unit SE-00011214 (the Service) operated by ACT Education Directorate PR-00006465 (the Provider),was climbing a triangle ladder rope when a peer stood on the rung that their hand was on, causing a portion of their finger to be dismembered.

3. The Authority is satisfied that the Provider 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 4 November 2024, the Authority received a notification of incident from the Service, advising that a child known as [redacted] had a part of their finger severed on the playground (this was detailed within the incident report provided).

5. On 18 November 2024, the Authority was provided further information from the Provider upon request.

6. On 1 December 2024, the Authority was provided further information from the Provider upon request.

7. Due to the risk of harm to children when not reasonably protected from harm and from any hazard likely to cause injury, the Authority determined to issue a Show Cause Notice.

8. On 20 December 2024, the Authority issued the Provider with a Show Cause Notice (the Notice). The Notice included evidence being relied on by the Authority for decision making and advice as to proposed compliance actions being considered if the allegation, and engaged offence under the Law, were substantiated.

9. All further information submitted by the Provider mentioned in points 5 and 6 are listed on pages 2 and 3 of the Notice.

   Refer Attachment A for a copy of the Notice (minus attachments).

10. The allegations put to you in the Notice was as follows:

    > On 4 November 2024, the Provider did not ensure that every reasonable precaution was taken to protect children being educated and cared for by the service from harm or hazard likely to cause injury in that, a child known to be [redacted] had a part of their finger dismembered, contravening section 167(1) of the *Law*.

11. On 13 February 2025, you responded by via email to the Notice, by the due date.

    Refer Attachment B for a copy of the Notice (minus attachments).

Law

12. Provisions of the *Law* relevant to the matters raised in the Notice include the following:

    Section 167(1) of the Law - Offence relating to protection of children from harm and hazards.

    > (1) 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: $11 400, in the case of an individual
    > $57 400, in any other case.

Obligations upon Regulatory Authority

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 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.

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.

Reasons and Decision

19. The Authority has considered all evidence gathered via the assessment process, inclusive of the Provider's response to the Notice, and is satisfied on the balance of probabilities, all allegations are proven, therefore substantiating contraventions of section 167(1) of the *Law.*

20. The Education and Care Services National Law and National Regulations require that an approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

21. The Notice response from the Provider raises additional concerns of inadequate supervision in Attachment 1.H – Ngunnawal Preschool playground mud map indicating supervision of students at the relevant time, 4 November 2024, as a placement student was supervising at the time and not an educator. Placement students are not responsible and are not to be included in ratios or supervision plans as they are not educators under the *Law*. It is noted that the placement student was the only adult on that side of the playground as identified in the supervision map. This fails to ensure every reasonable precaution is taken to protect children from harm and from any hazard likely to cause injury.

22. Additional documentation submitted from the Provider in Attachment 1.B Climbing Frame Documentation (various) of the Notice response also notes that comparable similar equipment is for domestic purposes, contains warning to ensure children are supervised at all times and has maximum weight limits on them. As noted above, placement students are not educators and are not included to be included in ratios or supervision plans, and there was no risk assessment in place for this piece of equipment to ensure educators

were aware of weight limits or specific requirements. This fails to ensure every reasonable precaution is taken to protect children from harm and from any hazard likely to cause injury.

23. Attachments 1.C, 1.D and 1.E of the Notice response did not identify the piece of equipment involved in the incident being included of the safety checks conducted, or that equipment is suitable in the setting. This fails to ensure every reasonable precaution is taken to protect children from harm and from any hazard likely to cause injury.

24. Furthermore, I am satisfied insufficient reasonable precaution was taken to protect children from harms or any hazards likely to cause injury, in that a child, [redacted] suffered a severe injury to their hand in that a portion of their finder was dismembered. As such, I am satisfied that you have contravened section 167(1) of the *Law*.

25. The Authority acknowledges supportive documents submitted by the Provider to mitigating risk to children from a reoccurrence of a similar incident.

26. The Provider's obligation under section 167 of the *Law* is positively and strongly framed – the Provider must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

27. People and entities that choose to participate in regulated activities have legal responsibility and an obligation to accept the consequences of that responsibility. In this case the Provider chose and consented to participating in the education and care of children and has a responsibility to comply with the standard of care under the *Law*.

28. 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.

29. 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: $6 800, in the case of an individual
$34 400, in any other case.

30. The Compliance Notice is provided at Attachment C 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 C.**

Review Rights

31. 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.

32. 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

33. 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

34. 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

35. Should you have any questions about this Decision or Compliance Notice, please contact Authorised Officer Vittorio Colosimo via email at Vittorio.Colosimo@act.gov.au.

Yours sincerely,

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

25 March 2025