



Mr [REDACTED]
Person with Management and Control
Canberra Grammar School
RE: Canberra Grammar School Northside Pre-Kindergarten

Email: [REDACTED]
Cc: [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. 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 assessed a Notification of Incident (NOT-40833020) relating to Canberra Grammar School Northside Pre-Kindergarten SE-00009656 (the Service), operated by Canberra Grammar School, PR-00005816 (the Provider), which engaged suspected offences of the *Law* being contravened.
3. The Regulatory 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 10 March 2023, the Authority received Notification of Incident (NOT-40833020) from the Provider. The notification advised that a child, known to be [REDACTED] (aged 4 years), was left on a minibus, and subsequently locked inside the bus on 9 March 2023. Refer NOT-40833020 at Attachment A.
5. Additional information was requested from the Provider, which was responded to on 14 and 15 March 2023. Refer correspondence at Attachment B.
6. Information submitted by the Provider in response the Authority's request included:
 - a) CCTV Footage identifying the child locked in the minibus, and subsequent release;
 - b) Educator and Child attendance records for 9 March 2023;
 - c) Excursion risk assessment (Attachment C);
 - d) Incident reports, records of conversations and meetings (Attachment D).

Law

7. Provisions of the *Law* relevant to the notification assessment engaged the following:

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.

Regulation 101 –Conduct of risk assessment for excursion

(1) A risk assessment for an excursion must—

- (a) identify and assess risks that the excursion may pose to the safety, health or wellbeing of any child being taken on the excursion; and
- (b) specify how the identified risks will be managed and minimised.

(2) Without limiting subregulation (1), a risk assessment must consider—

- (a) the proposed route and destination for the excursion; and
- (b) any water hazards; and
- (c) any risks associated with water-based activities; and
- (d) if the excursion involves transporting children—
 - i. the means of transport; and
 - ii. any requirements for seatbelts or safety restraints under a law of each jurisdiction in which the children are being transported; and
 - iii. the process for entering and exiting—
 - (A) the education and care service premises; and
 - (B) the pick-up location or destination (as required); and
 - iv. procedures for embarking and disembarking the means of transport, including how each child is to be accounted for on embarking and disembarking; and
- (e) the number of adults and children involved in the excursion; and
- (f) given the risks posed by the excursion, the number of educators or other responsible adults that is appropriate to provide supervision and whether any adults with specialised skills are required; and

Example—Specialised skills could include life-saving skills.

- (g) the proposed activities; and
- (h) the proposed duration of the excursion; and
- (i) the items that should be taken on the excursion.

Example—

A mobile phone and a list of emergency contact numbers for children on the excursion.

Obligations upon Regulatory Authority, Providers and Services

8. 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".
9. 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.*
10. 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.*
11. 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*.
12. 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.
13. 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

14. The Authority has considered all the information supplied by the Provider and is satisfied that, on balance of probabilities, the Provider has not complied with sections 165(1), 167(1) of the *Law* and breached *Regulation 101*.
15. The Authority is satisfied that, on 9 March 2023, the Provider did not ensure that all children being educated and cared for by the Service were adequately supervised at all times, in contravention of section 165(1) of the *Law*.
16. The Authority is satisfied that, in regard to the risk assessment relied on for the excursion occurring on 9 March 2023, the Provider has not included all required information. Information relating to procedures for embarking and disembarking the means of transport, including how each child is to be accounted for on embarking and disembarking were omitted; in breach of *Regulation 101(2)(d)(iii) and (iv)*.
17. The Authority is satisfied that as the Provider did not ensure risk assessment met the requirements of *Regulation 101*, and by not always ensuring adequate supervision there has

been a contravention of the *Law*. The Provider has not ensured that every reasonable precaution was taken to protect children attending the Service, specifically the excursion on 9 March 2023, from harm and hazard likely to cause injury or illness, in contravention of 167(1) of the *Law*.

18. The very nature of the incident as notified, and corroborating evidence via CCTV and Provider records of the incident and risk assessment supports [REDACTED] was locked on the bus, and unaccounted for, between 1:15pm and 2:05pm, supporting the offences under the *Law* being substantiated.
19. In addition, the Authority is satisfied that in this instance, having the excursion organiser also being required to be the bus driver and break coverage on 9 March 2023 contributed to [REDACTED] not being noticed as asleep and still on the bus upon arrival to the Campbell campus or again at arrival at the Red Hill campus.
20. All children must always have adequate supervision, and this supervision is a key precaution to protect children from harm and hazards. In relation to excursions, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children and educators alike.
21. These staffing and supervision levels may need to be adapted to ensure that educators can react accordingly to any emerging or unexpected risks relating to the environment, children's needs and time delays whilst still maintaining full accountability and safety of all children.
22. Considering all the evidence obtained, the level of seriousness of the contraventions, the length of time that the child was unaccounted for when on the bus, and the Service's previous compliance history, I have decided that that issuing a Compliance Notice is appropriate and in the best interests of children.
23. 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.

24. The Compliance Notice is Attachment E to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions.

25. You must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment E.**

Review Rights

26. 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).
27. 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

28. The Education and Care Services National 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>.
29. 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>
30. Should you have any questions about this Decision or Compliance Notice please contact Authorised Officer Janine Fairburn via email at janine.fairburn@act.gov.au.

Yours Sincerely



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

22 March 2023