

Ms [REDACTED]
Person with Management or Control
Camp Australia Pty Limited

Email: [REDACTED]
[REDACTED]

Dear Ms [REDACTED]

Decision to Issue Compliance Notice and Impose Condition on Service Approvals

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated a Direct Complaint, and Notifications of Incidents and Complaints, alleging that the safety, health and wellbeing of children was compromised due to inadequately qualified educators at the following Services operated by Camp Australia Proprietary Limited PR-00002539 (the Provider):
 - i. Camp Australia - St John the Apostle Primary School OSHC (SE-40008497) (St John the Apostle);
 - ii. Camp Australia - Covenant Christian College OSHC (SE-40011723) (Covenant Christian College);
 - iii. Camp Australia - Arawang Primary School OSHC (SE-40003187) (Arawang Primary School); and
 - iv. Camp Australia - St Jude’s Primary School OSHC (SE-40016130) (St Jude’s Primary School).
(collectively ‘the Services’)
2. I am satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) and the *Education and Care Services National Regulations* (the *Regulations*).
3. Web addresses for the *Law* and the *Regulations* are provided for your convenience at the end of this notice.

Background Facts

4. On 23 January 2020, the Authority received a complaint alleging three of the Provider’s approved services within the ACT were operating without appropriately qualified educators, being Arawang Primary School, St John the Apostle and Covenant Christian College.

5. The Authority determined to investigate suspected offences of inadequate staffing and supervision, and failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury.
6. On 18 February 2020, notices allowable under section 215 of the *Law* (section 215 Notice), were issued to the Provider requiring production of prescribed documents relevant to Arawang Primary School, St John the Apostle and Covenant Christian College.
7. On 13 March 2020, the Provider responded to the section 215 Notices with the requested documents. Due to the volume of that material, it has not been included, however, can be provided upon request.
8. The Authority noted that there are no nationally consistent qualification requirements for educators at centre-based services educating and caring for school age children (e.g. outside school hours care services). Refer [Attachment A](#) for a copy of the ACT qualification requirements.
9. Evidence gathered during the investigation included documentation from the Provider produced under section 215 of the *Law*, together with numerous witness statements.
10. On its face, such evidence supported the following allegations and three sets of grounds for each service that engaged offences under the *Law* relating to, amongst other things, staffing and protecting children from harm or hazard.

First Set of Grounds – Staffing Qualifications

- a. Allegation One – It was alleged that from 20 January 2020 to 24 January 2020 (inclusive), and on 12 February 2020, the Provider, failed to ensure the required number of generally qualified educators, and failed to ensure there were sufficient first qualified educators educating and caring for children at Covenant Christian College in contravention of section 169(2) of the *Law*.
- b. Allegation Two – It was alleged that on 28 February 2020 and 20 March 2020, the Provider failed to ensure the required number of generally qualified educators educating and caring for children at St Jude’s Primary School, in contravention of section 169(2) of the *Law*.
- c. Allegation Three – It was alleged that, from 20 January 2020 to 24 January 2020 (inclusive), on 12 February 2020, and on 12 March 2020, the Provider, failed to ensure there were sufficient first qualified educators educating and caring for children at Arawang Primary School in contravention of section 169(2) of the *Law*.
- d. Allegation Four – It was alleged that, from 20 January 2020 to 24 January 2020 (inclusive), on 19 February 2020, and on 16 March 2020, the Provider failed to

ensure there were sufficient first qualified educators educating and caring for children at St John the Apostle, in contravention of section 169(2) of the *Law*.

Second Set of Grounds – Staffing Numbers

- e. Allegation Five – It was alleged that, on 20 January 2020 and on 12 February 2020, the Provider, failed to ensure adequate staffing at all times children were being educated and cared for at Arawang Primary School, in contravention of section 169(1) of the *Law*, engaging further offences under sections 165(1) and 167(1) of the *Law*.
- f. Allegation Six – It was alleged that, on 20 January 2020, the Provider, failed to ensure adequate staffing during all times children were being educated and cared for at St John the Apostle, in contravention of section 169(1) of the *Law*, engaging further offences under sections 165(1) and 167(1) of the *Law*.

Third Set of Grounds – Unauthorised Collection

- g. Allegation Seven – It was alleged that, on 12 March 2020, a child [REDACTED] being educated and cared for by Arawang Primary School was released to a person other than an authorised nominee, who was permitted to sign the child out under his parent’s name, which engages offences under section 167(1) of the *Law*.
 - h. Allegation Eight – It was alleged that the Provider, by not complying with sections 165(1), 167(1), 169(1), 169(2) – as alleged in the first and second set of grounds, has failed to comply with the statutory conditions that the Services are being operated in a way that –
 - Ensures the safety, health and wellbeing of children being educated and cared for by the service; and
 - Meets the educational and developmental needs of the children being educated and cared for by the service;In contravention of section 51(8) and engaging a further offence under section 19(4) of the *Law*.
11. On 15 June 2020, a Show Cause Notice (the Notice) was sent to the Provider by email. Refer [Attachment B](#). Due to size, attachments to the Notice have not been included with this Decision.
 12. The Notice outlined the evidence obtained during the investigation and included provisions of the *Law* and *Regulations*.
 13. The Notice advised that the Authority was considering compliance action based on evidence that contraventions of the *Law* were identified during the Authority’s investigation.

14. The three grounds related to staffing arrangements, educator qualifications, a failure to follow policies and procedures, a failure to protect children from harm and from hazards, and, a failure to comply with the Provider and Service approval(s).
15. The Provider's response to the Notice (Response) was received on 23 July 2020, within the permitted time. Refer Attachment C. Due to size, attachments to the Response have not been included with this Decision, however, were considered by the Authority in making this Decision.

Law and Regulations

Legislative Provisions Relevant to Allegations One through Six

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.

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 cared for by the service from harm and from any hazard likely to cause injury.

Section 169(1) of the Law - Offence relating to staffing arrangements

An approved provider of an education and care service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Section 169(2) of the Law – Offence relating to staffing arrangements

An approved provider of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations.

Regulation 123 – Educator to child ratios – centre-based services

- (1) The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios-
 - (a) for children from birth to 24 months of age – 1 educator to 4 children;
 - (b) for children over 24 months and less than 36 months of age – 1 educator to 5 children;
 - (c) for children aged 36 months of age or over (not including children over preschool age) – 1 educator to 11 children;
 - (d) for children over preschool age, 1 educator to 15 children.

- (2) If children being educated and cared for at a centre-based service are of mixed ages the minimum number of educators for the children must meet the requirements of subregulation (1) at all times.

Regulation 260 - Educator to child ratio—children over preschool age—centre-based services

- (1) This regulation applies in place of regulation 123(1)(d).
- (2) The educator to child ratio for children over preschool age at a centre-based service is 1 educator to 11 children.

Regulation 126 - Centre-based services—general educator qualifications

- (1) The qualification requirements for educators at a centre-based service educating and caring for children preschool age or under are as follows—
- (a) at least 50 per cent of the educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved diploma level education and care qualification; and
 - (b) all other educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved certificate III level education and care qualification.
- (1A) The qualification requirements in subregulation (1)(b) do not apply to an educator if the educator has been employed by an approved provider on a probationary basis for not more than 3 months, at one or more centre-based services operated by the approved provider.
- (2) The qualification requirements for educators at a centre-based service educating and caring for children over preschool age in a jurisdiction are the qualification requirements (if any) set out in Chapter 7 for that jurisdiction.

Regulation 261 - General qualifications for educators—children over preschool age—centre-based services

- (1) For the purposes of regulation 126(2), the qualification requirement for educators at a centre-based service educating and caring for children over preschool age is at least 1 qualified educator for every 33 children.
- (2) If a qualified educator is absent from a centre-based service for not more than 2 weeks, the service may meet the requirement under subregulation (1) by providing that—
- (a) the qualified educator to child ratio is met by an educator other than a qualified educator; and
 - (b) at least 1 qualified educator is on duty at all times that children are in attendance at the service premises.

- (3) If a qualified educator resigns, the service may meet the requirement under subregulation (1) for up to 4 weeks after the resignation by providing that—
- (a) the qualified educator to child ratio is met by an educator other than a qualified educator; and
 - (b) at least 1 qualified educator is on duty at all times that children are in attendance at the service premises.
- (4) During school holidays and on pupil free days a centre-based service may meet the requirement under subregulation (1) by providing the relevant number of full-time equivalent qualified educator positions if—
- (a) at least 1 qualified educator is on duty at all times that children are in attendance at the service premises outside the hours of the full-time equivalent positions; and
 - (b) the educator to child ratio is met by the educator referred to in paragraph (a) and educators other than qualified educators outside the hours of the full-time equivalent positions.
- (5) In this regulation qualified educator means an educator who is qualified in accordance with regulation 262.

Regulation 262 - Required qualifications to be a qualified educator for children over preschool age

- (1) The first educator required to meet the qualified educator to child ratio for children over preschool age must—
- (a) hold a qualification that is [published under regulation 137\(2\)](#) in the list of approved qualifications for the first qualified educator working with children over preschool age for the Australian Capital Territory; or
 - (b) comply with the following—
 - (i) be enrolled in a course for a qualification that is included in the list referred to in paragraph (a); and
 - (ii) be able to demonstrate that he or she is continuing to study for that qualification; and
 - (iii) be approved by the Regulatory Authority to work as a qualified educator for children over preschool age.
- (2) All other educators required to meet the qualified educator to child ratio must—
- (a) hold any qualification that is included in the list referred to in subregulation (1)(a); or
 - (b) hold a qualification that is published under regulation 137(2) in the list of approved qualifications for the second and subsequent qualified educators working with children over preschool age for the Australian Capital Territory.

Legislative Provisions Relevant to Allegation Seven

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 cared for by the service from harm and from any hazard likely to cause injury.

Section 170(5) of the Law – offence relating to unauthorised persons on education and care service premises

Authorised nominee, in relation to a child, means a person who has been given permission by a parent or family member of the child to collect the child from the education and care service or the family day care educator.

Regulation 99 - Children leaving the education and care service premises

- (1) The approved provider of an education and care service must ensure that a child who is being educated and cared for by the education and care service does not leave the education and care service premises except in accordance with subregulation (4).

- (4) The child may only leave the relevant premises if the child—
 - (a) is given into the care of—
 - (i) a parent of the child; or
 - (ii) an authorised nominee named in the child’s enrolment record; or
 - (iii) a person authorised by a parent or authorised nominee named in the child’s enrolment record to collect the child from the premises; or
 - (b) leaves the premises in accordance with the written authorisation of the child’s parent or authorised nominee named in the child’s enrolment record; or
 - (c) is taken on an excursion in accordance with this Division; or
 - (d) is given into the care of a person or taken outside the premises—
 - (i) because the child requires medical, hospital or ambulance care or treatment;
or
 - (ii) because of another emergency.

- (5) In this regulation parent does not include a parent who is prohibited by a court order from having contact with the child.

Regulation 168 - Education and care service must have policies and procedures

- (1) The approved provider of an education and care service must ensure that the service has in place policies and procedures in relation to the matters set out in subregulation (2).

Note. These may include policies and procedures prepared by the approved provider in accordance with an education law of the participating jurisdiction.

- (2) Policies and procedures are required in relation to the following—
- (f) delivery of children to, and collection of children from, education and care service premises, including procedures complying with regulation 99;

Regulation 170(1) - Policies and procedures to be followed

The approved provider of a centre-based service must take reasonable steps to ensure that nominated supervisors and staff members of, and volunteers at, the service follow the policies and procedures required under regulation 168.

Regulation 177 -Prescribed enrolment and other documents to be kept by approved provider

- (1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider—
- (k) a children’s attendance record as set out in regulation 158;
- (2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

Legislative Provisions Relevant to Allegation Eight

Section 51 of the Law – Conditions on service approval

- (1) A service approval is granted subject to the condition that the education and care service is operated in a way that –
- a) Ensures the safety, health and wellbeing of children being educated and cared for by the service; and
 - b) Meets the educational and developmental needs of the children being educated and cared for by the service.
- (5) A service approval is granted subject to any other conditions prescribed in the national regulations or imposed by –
- a) This Law; or
 - b) The Regulatory Authority
- (8) An approved provider must comply with the conditions of a service approval held by the approved provider.

Section 19 of the Law – Conditions on provider approval

- (1) A provider approval may be granted subject to any conditions that are prescribed in the national regulations or that are determined by the Regulatory Authority.
- (2) Without limiting subsection (1), a provider approval is subject to the condition that the approved provider must comply with this Law.

- (3) A condition of a provider approval applies to the provider as the operator of any education and care service or associated children's service, unless the condition expressly provides otherwise.
- (4) An approved provider must comply with the conditions of the provider approval.

Consideration of Provider's response to the Notice

General

16. By way of general comment in the Response, the Provider stated the following:

- a. *Camp Australia acknowledges that it must comply with the qualification requirements in the ACT. However, Camp Australia, and other providers in the ACT, have had ongoing difficulties in recruiting and maintaining suitably qualified staff within the ACT. Camp Australia has continued to take steps to recruit and train appropriate staff ... for its ACT services. However, these measures have been impacted in recent months by the bushfires and, more recently, the COVID-19 pandemic*

Allegation One – Failure to have generally qualified educators – Covenant Christian College - Unsubstantiated

17. In relation to Allegation One, the Authority accepts that on 24 December 2019, the Authority granted to the Covenant Christian College Service a temporary waiver from the requirements of regulation 126 of the *Regulations*. This meant the service was allowed to operate without a suitably qualified educator in the role of first qualified in attendance at the service. This temporary waiver was due to expire on 19 June 2020.

Allegation Two – Failure to have generally qualified educators – St Jude's Primary School – Substantiated

18. In relation to Allegation Two, the Authority notes the Provider's concession in that,

- a. *Camp Australia was within ratio on 28 February 2020 as there were 68 children present with 7 educators at the St Jude's Service. Camp Australia had 2 qualified educators present at the service but was unable to have a third qualified educator on site due to other services in the ACT also requiring support with educators who were not available for shifts that day. Camp Australia self-reported this incident on 2 March 2020 (NOT-40420656).*
- b. *On 20 March 2020, the regular co-ordinator at the St Jude's Service was unable to work the morning session due to health issues and a direction from her doctor. Unfortunately, two other educators who met the qualification requirements were also unavailable to attend on short notice. The St Jude's Service was within the child*

to staff ratio. Camp Australia self-reported this incident on the same day, 20 March 2020 (NOT-40426225).

19. The mitigating circumstances submitted by the Provider were considered when determining appropriate compliance action.

Allegation Three - Failure to have generally qualified educators – Arawang Primary School – Substantiated

20. In relation to Allegation Three, the Authority notes the Provider's concession in that,
- a. *Camp Australia admits that it failed to have sufficient first qualified educators present during the sessions of care on 20 January 2020 – 24 January 2020, 12 February 2020 and 12 March 2020.*
 - b. *Camp Australia notes that it self-reported the non-compliance on 12 February 2020 when the rostered educator cancelled their shift on the morning of 12 February 2020 due to a family emergency and a second qualified educator was unable to be found on short notice.*
21. The mitigating circumstances submitted by the Provider were considered when determining appropriate compliance action.

Allegation Four - Failure to have generally qualified educators – St John the Apostle – Substantiated

22. In relation to Allegation Four, the Authority notes the Provider's concession in that,
- a. *Camp Australia admits that it failed to have sufficient first qualified educator present at certain times during the sessions of care on 20 January 2020 – 24 January 2020, 19 February 2020 and 16 March 2020.*
23. The mitigating circumstances submitted by the Provider were considered when determining appropriate compliance action.

Allegation Five – Failure to have sufficient number of educators – Arawang Primary School– Partially Substantiated

24. In relation to Allegation Five, the Authority notes the Provider's partial concession in that:
- a. 20 January 2020 - Substantiated
Camp Australia admits that it was out of ratio on 20 January 2020, but states that it was only for 9 minutes (between 4:30 – 4:39).
 - b. 12 February 2020 – Unsubstantiated
Camp Australia denies that it was out of ratio on 12 February 2020:

- (a) between 3 – 3:30, there were 69 children in attendance (one child is included on the attendance roll twice) with 7 educators; and*
- (b) between 3:30 – 4, there were 67 children in attendance with 7 educators*

25. The mitigating circumstances submitted by the Provider were considered in determining appropriate compliance action.

Allegation Six - Failure to have sufficient number of educators – St John the Apostle – Unsubstantiated

26. The Authority notes a document not furnished by the Provider when requested pursuant to section 215 Notice has now been provided as part of the Show Cause Notice Response. The Authority notes the Provider's information in that,

- a. Camp Australia denies that it was out of ratio on 20 January 2020 at the service, as the service had 14 children in attendance with 2 educators between the hours of 1:30 and 3:45.*
- b. ██████████ was in attendance as co-ordinator on 20 January 2020. However, as a result of an error when providing records in response to the section 215 notice, this information was not provided to the Regulatory Authority. Camp Australia apologises for the confusion caused and encloses these documents.*

27. Upon reviewing the material not previously before the Authority, the Authority is satisfied this record refutes Allegation Six.

Allegation Seven – Unauthorised collection of a child – Arawang PS OSHC – Substantiated

28. In relation to Allegation Seven (unauthorised collection of a child – Arawang PS OSHC), the Authority notes the Provider's following admission and explanation:

- a. Camp Australia admits that this occurred. ██████████ mother sent a text message to the mother of another child at the service, authorising that person to collect ██████████ from the service at the same time that this other mother was collecting her own child. The other mother attended to collect her child and showed the text message to ██████████ ██████████ an educator at the service. Based on the text message and the fact that she knew the mother who had attended the service to collect her child and ██████████ ██████████ allowed her to take ██████████ from the service. ██████████ also allowed the other mother to sign out ██████████ under the name of ██████████ parent.*

29. The Authority does not accept the Provider's submission that because a person is known to an education and care service, that such a circumstance reduces the risk of harm and or of hazards to a child being collected by someone other than an authorised nominee. Parental authorisation on a child enrolment form is in place to ensure only authorised nominees are permitted to collect a child from an education and care service. Allowing a child to be collected from an education and care service by a person other than an

authorised nominee, or in any circumstance not authorised by the *Law*, creates a risk of harm and of hazard to that child.

30. The Authority further notes here that there has been no evidence furnished by the Provider to establish that [REDACTED] mother sent a text message to the other child's mother authorising the collection of [REDACTED]. If such a text message exists, as appears to be asserted by the Provider's response, it should have been supplied to the Authority for further consideration.
31. The Authority further notes that it was, in fact, [REDACTED] father who sent the messages referred to in the Show Cause Notice. This further supports the failure to take steps to ensure that the collection of [REDACTED] was authorised, further supporting the risk of harm and of hazards to that child.

Allegation Eight – Failure to ensure safety, health and wellbeing of children – Substantiated

32. The Authority notes the Provider's denial of Allegation Eight, and in particular,
 - a. *While Camp Australia admits there have been limited incidents of non-compliance with section 169(2) (i.e. the qualification requirement) and regulation 170(1) (i.e. requirement to follow policies) at the above services, it denies that this leads to the conclusion that Camp Australia did not operate the services in a manner that ensured the safety, health and wellbeing of the children at the services or that the children's educational and developmental needs of the children were not met. The Regulatory Authority has not provided any evidence of any harm or injuries that are said to have resulted from these incidents of non-compliance. In addition, the Regulatory Authority has not provided evidence that proves that any children's educational and developmental needs were not met for the relatively short period of time at each of the relevant services where the qualification requirements were not met.*
33. A guiding principle of the national education and care services quality framework (NQF) is that the rights and best interests of the child are paramount. The NQF aims to raise quality and encourage continuous improvement and consistency in children's education and care services.
34. Section 167 of the *Law* does not require that harm or hazard be actually realised. A failure to take a reasonable precaution (i.e. risk mitigation) is all that is required to be established for the offence to be substantiated on the balance of probabilities.
35. In relation to the Provider's submission that there is no evidence that any child's educational and developmental needs were not met, the Authority notes the objectives and guiding principles of the *Law* (contained within section 3(2)(b)) are there to improve the educational and developmental outcomes for children attending education and care services. In failing to ensure staff are appropriately qualified and that there are adequate

numbers of staff to meet the prescribed minimum, The Provider has not ensured that children's development needs are met.

36. Compliance with the *Law* is the minimum standard required to be achieved to ensure that children's educational and developmental needs are met. Additionally, the requirements of paragraphs (a) and (b) in section 51(1) are cumulative. Failing to ensure staff are appropriately qualified and that there are adequate numbers of staff to meet the prescribed minimum, and releasing a child to a person other than an authorised nominee is not ensuring the safety, health and wellbeing of the children being educated and cared for by the Service.
37. Section 19(4) of the *Law* requires that an approved provider must comply with the conditions of the provider approval, which include complying with the *Law*. This requirement is absolute. As conceded in the allegations that have been substantiated, the Provider has failed to comply with this requirement.
38. Similarly, section 51(8) of the *Law* requires that an approved provider must comply with the conditions of a service approval held by the approved provider. This requirement is also absolute. Again, as conceded in the allegations that have been substantiated, the Provider has failed to comply with this requirement.
39. Whilst the allegations contained in the Show Cause Notice were particularised to specific dates, times and events in order to afford the Provider with sufficient detail to formulate a response, the commonalities amongst the four Services are also a relevant consideration. In this, the Provider conceded a more systemic workforce planning issue within the ACT was a factor in play and should be considered by the Authority, namely,
 - a. *Within Camp Australia, all rosters are prepared by the Work Force Planning team. Unfortunately, whilst Work Force Planning ensured that child to staff ratios were met, the Work Force Planning team was not able to identify suitably qualified educators to work in the period 20 January 2020 – 24 January 2020 at the 3 services. Once this issue was identified, the Work Force Planning team should have escalated the issue to the Regional Manager or the General Manager so that appropriate solutions could have been considered, including bringing in suitably qualified staff from South Australia, reducing bookings or cancelling sessions of care if qualified staff could not be found. However, this did not occur.*
 - b. *In addition to this lack of escalation by the Work Force Planning team, it has since been identified that the internal dashboard that was used by Camp Australia management to monitor roster compliance in the ACT during the vacation period incorrectly stated on the above dates that a service was compliant on the basis that qualified educators were present all day rather than only for their particular shifts. That is, the internal dashboard did not take into account that there were separate shifts for the Holiday Club program. Accordingly, the Senior Management of Camp Australia did not knowingly allow the breaches to occur.*

40. Considering all the evidence and the totality of the Provider's response to the Show Cause Notice, the Authority is satisfied, on the balance of probabilities, that Allegation Eight is made out.

Obligations upon Regulatory Authority

41. 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".

42. 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.

43. 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*.
44. 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.
45. 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.

Compliance History

46. In determining appropriate compliance action, I have considered the compliance history of the Provider's four services in the ACT relating to this Decision.
47. The compliance history considered is Attachment D to this Decision. This identifies a history of non-compliance issues which previous enforcement action has failed to address.

Decision

48. Considering the evidence obtained in the investigation, the Response to the Notice, the Provider's compliance history in the ACT, and the objectives and guiding principles of the

Law, I have determined that issuing a compliance notice and imposing a condition on the Service's Approvals would be appropriate and in the best interests of children.

49. The Authority is empowered to issue a compliance notice under section 177 of the *Law*.

177 – 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.

50. The compliance notice is Attachment E to this Decision letter. You are required to take the steps directed in the Notice to comply with the relevant provisions.

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

52. The Authority is empowered to amend a service approval under section 55 of the *Law*.

55 – Amendment of service approval by Regulatory Authority

- (1) The Regulatory Authority may amend a service approval at any time without an application from the approved provider.
- (2) Without limiting subsection (1), an amendment may vary a condition of the service approval or impose a new condition on the service approval.
- (3) The Regulatory Authority must give written notice of the amendment to the approved provider.
- (4) An amendment under this section has effect:
 - (a) 14 days after the Regulatory Authority gives notice of the amendment under subsection (3); or
 - (b) If another period is specified by the Regulatory Authority, at the end of that period.
- (5) The Regulatory Authority must amend a service approval to the extent that it relates to an associated children's service in accordance with any direction by the children's services regulator if that direction is given in accordance with the children's services law of this jurisdiction.

53. The Service Approvals for Camp Australia - St John the Apostle Primary School OSHC (SE-40008497), Camp Australia - Covenant Christian College OSHC (SE-40011723), Camp Australia - Arawang Primary School OSHC (SE-40003187), and Camp Australia - St Jude's

Primary School OSHC (SE-40016130) are hereby amended by imposing the following condition:

Camp Australia - St John the Apostle Primary School OSHC

“For each day on which the Service is educating and caring for children, the Provider must roster at least one additional educator for every 1 to 57 children booked in to attend the Service on that same day. These educators must be in excess of the educators required to meet the minimum number prescribed by Regulation 123 (including provision of cover for all breaks or other times an educator is not working directly with children as defined by Regulation 13).

Camp Australia – Covenant Christian College OSHC

“For each day on which the Service is educating and caring for children, the Provider must roster one additional educator, for every 1 to 28 children booked in to attend the Service on that same day, in excess of the educators required to meet the minimum number prescribed by Regulation 123 (including provision of cover for all breaks or other times an educator is not working directly with children as defined by Regulation 13).

Camp Australia – Arawang Primary School OSHC

“For each day on which the Service is educating and caring for children, the Provider must roster one additional educator, for every 1 to 66 children booked in to attend the Service on that same day, who is in excess of the educators required to meet the minimum number prescribed by Regulation 123 (including provision of cover for all breaks or other times an educator is not working directly with children as defined by Regulation 13).

Camp Australia – St Jude’s Primary School OSHC

“For each day on which the Service is educating and caring for children, the Provider must roster one additional educator, for every 1 to 66 children booked in to attend the Service on that same day who is in excess of the educators required to meet the minimum number prescribed by Regulation 123 (including provision of cover for all breaks or other times an educator is not working directly with children as defined by Regulation 13).

54. These conditions are to minimise the risk that unexpected absences will continue to result in insufficient staffing levels and inadequately qualified educators being at the Services. The condition comes into effect fourteen (14) days from the date of receipt of this Decision.
55. Amended Service Approvals for Camp Australia - St John the Apostle Primary School OSHC (SE-40008497), Camp Australia - Covenant Christian College OSHC (SE-40011723), Camp Australia - Arawang Primary School OSHC (SE-40003187), and Camp Australia - St Jude’s Primary School OSHC (SE-40016130) is Attachment F to this Decision.

56. The Authority will also be increasing its auditing of the Services to ensure compliance is appropriately monitored, to ensure the health, safety and wellbeing of children being educated and cared for.

Rights of Review

57. A decision to issue a compliance notice and a decision to impose a condition on a service approval are *reviewable decisions* as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of these decisions or either of them. 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).
58. 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

59. The *Law* applies to you as a provider and any service you operate. The *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>.
60. The *Law* and Regulations can be viewed at:
<http://www.acecqa.gov.au/national-law>, and
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
61. Should you have any questions about this Decision, the Condition, or the Compliance Notice please contact Senior Investigator, Jeffrey Beaver, on telephone (02) 6207 3917 or email jeffrey.beaver@act.gov.au.

Yours Sincerely



Clare Brookes
Senior Director
Children's Education and Care Assurance
Early Childhood Regulation
ACT Education Directorate

24 September 2020