



[REDACTED]  
Nominated Supervisor  
ACT Education Directorate  
RE: Garran Primary School – Preschool Unit

Email: [REDACTED]

Dear [REDACTED]

**Show Cause Notice – Potential Compliance Action (Including Prohibition)**

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance. 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 investigate suspected offences under the *Law*.
2. Authorised Officers are currently investigating suspected offences occurring at Garran Primary School – Preschool Unit SE-00011190 (the Service) operated by ACT Education Directorate PR-00006465 (the Provider).
3. The Authority’s records indicate that you are currently, and were, the nominated supervisor at the time relevant to the Authority’s investigation.
4. Web addresses to the *Law* and the *Education and Care Services National Regulations (the Regulations)* are provided for your convenience at the end of this notice.
5. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge) and the Authority has determined that you as Nominated Supervisor have a case to answer regarding suspected offences. However, the Authority’s investigation is not complete until you have had an opportunity to respond to the allegation/s and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
6. Detailed instructions of how to respond appear at the end of this Notice.
7. If substantiated, the allegation/s may constitute offences under sections 165 or 167 of the *Law* (or any combination of them). If, after considering all available evidence, the Authority finds any offences are substantiated, it will need to consider whether compliance action is required.
8. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions appear at the end of this Notice.

### **Grounds for issuing Show Cause Notice**

9. The evidence obtained during the investigation to date supports offences under the *Law* within the following area - Supervision and protection from harms.

### **Background**

10. On 8 June 2022, CECA received notification of an incident from the Provider, advising that on 8 June 2022 a preschool child was left at the service when the Preschool class attended the school sports carnival. Additional information was requested from the Provider by the Authority which was submitted 10 June 2022. Refer Attachment A for all documentation relevant to the notification.
11. It was determined by the Authority that there were reasonable grounds to suspect that offences had, or may have, occurred at the Service, and a decision was made to investigate suspected offences under sections 165 and 167.

### **Allegations**

#### **Allegation One**

12. 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**

13. 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*.

#### **Legislation Relevant to Allegations One and Two**

14. The following provisions of the *Law* and *Regulations* are relevant to the Allegations:

##### **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

### Evidence Relevant to Allegation One and Two

15. On 21 June 2022, the Provider was advised of the investigation and a notice for production of documents, allowable under section 215 of the *Law*, was issued. A response was received on 28 June 2022. Records produced by the Provider indicated that:
  - a. the Service was educating and caring for children on 8 June 2022.
  - b. ██████████ was a child enrolled at the Service and attending on 8 June 2022.
  - c. A school sports carnival was held on 8 June 2022, which the preschool class attended between 9:30am and 11:30am offsite from the Service.
  - d. ██████████ was not accounted for at time of departure from the Service at 9:30am and was subsequently located at the service two hours later upon return of educators and children to the service within the classroom unsupervised.

Refer relevant email correspondence and incident report at Attachment B.

16. On 4 July 2022, the Provider forwarded additional information to the Authority, being a copy of a “sorry story” created for ██████████. Refer copy at Attachment C.
17. On 6 July 2022, the Authority received notification of a complaint from the Provider, notifying of a complaint received from ██████████ parents. Additional information was requested from the Provider by the Authority which was submitted 8 July 2022. Refer Attachment D for all documentation relevant to the notification.
18. Between 6 July 2022 and 19 July 2022, email correspondence was forwarded to the Provider to confirm and clarify elements of the s215 Notice that appeared unmet. Information received via the s215 response submitted by the Provider included the following:
  - a) Children’s attendance records, Working Directly with Children records, and Responsible person records.
  - b) Email correspondence outlining meetings and enquiry between the Provider, Service, the relevant family and educators regarding the incident of 8 June 2022.
  - c) Educator details and contact information.
  - d) Relevant incident reports, and associated policies and procedures.

Refer relevant documents at Attachment E.

19. During the investigation, the Authority obtained witness statements, relevant extracts from which appear below, with personal information redacted where appropriate.

Due to the specific circumstances surrounding the alleged offences, witnesses are identifiable from the content of their evidence. Please note that all witness statements were obtained utilising powers under section 215 of the *Law*, imposing an obligation to attend before the Authority and provide relevant evidence under questioning by an Authorised Officer. It is an offence to fail to comply.

20. Relevant extracts from Witness A's statement are:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

Refer Attachment F for copy of Risk Assessment and Map referred to in Witness A's statement.

21. Relevant extracts from Witness B's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





[Redacted]

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

Refer Attachment H for copy of Risk Assessment and Map referred to in Witness C's statement.

Contraventions Supported by Allegation One and Two

23. Evidence gathered appears to support contraventions of sections 165(2) and 167(2) of the *Law*.

**Fitness and Propriety as Nominated Supervisor**

- 24. Regulation 117C provides some guidance on minimum requirements for a nominated supervisor, being that they must:
  - a. be over 18 years of age;
  - b. have adequate knowledge and understanding of the provision of education and care to children; and
  - c. have the ability to effectively supervise and manage an education and care service.
- 25. The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the particular position and may change over time to meet social and political expectations. At minimum, fitness and propriety includes honesty, knowledge and ability.
- 26. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection from harm and hazards, and educational programs. Specific obligations are contained in both the *Law* and the *Regulations*.
- 27. Accordingly, to be a fit and proper person to be appointed as nominated supervisor, the person must be honest, have a deep knowledge and understanding of the National Quality Framework (including compliance responsibilities), and possess the ability to manage educators and any other staff, service premises and relationships with families.
- 28. During the course of the investigation, evidence gathered indicated inadequate supervision of children being educated and cared for by the Service, appearing to be contributed to by factors relating to educator communications and assessments of risk.
- 29. This evidence raises a concern about your ability to manage and supervise an education and care service.

30. The purpose of this Show Cause Notice is to provide you with an opportunity to respond to the evidence outlined above, and to specifically address the point of your fitness and propriety to be a nominated supervisor.

**Potential Compliance Action**

31. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions, if any offences are substantiated and/or the Authority finds that you do not meet the fitness and propriety requirements to be a nominated supervisor. Potential compliance actions are under Part 7 of the *Law*, and include:
- a. Non-statutory action such as a formal caution letter;
  - b. Enforceable undertaking under section 179A of the *Law*; or
  - c. Prohibition from acting in a role as Nominated Supervisor.
32. Relevant legislation for enforceable undertakings and partial prohibition appears below.
33. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, or advising the Authority of any proposed change in employment.
34. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector as a whole. It may prevent you from being in a role as nominated supervisor if the Authority finds that you are not fit and proper, or it may place conditions on you being in such a role if you are fit and proper but do not possess all the required skills and knowledge. It is not always permanent, and the partial prohibition must be cancelled by the Authority if it is satisfied that there is not a sufficient reason for the it to remain in force.

**Section 179A - Enforceable undertakings**

- (1) This section applies—
  - (a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law; or
  - (b) in the circumstances set out in section 27(a), 72(a) or 184(3).
- (2) If subsection (1)(a) applies, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.
- (3) If subsection (1)(b) applies in relation to the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the education and care service.

- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to an education and care service.
- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

### **Section 182(3) - Grounds for issuing a prohibition notice**

- (3) The Regulatory Authority may give a prohibition notice to a person to –
  - (a) Prohibit the person from being a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
  - (b) Impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

### **Right of response**

35. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice, in addition to the question of fitness and propriety.
36. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
37. At Attachment I to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Please direct your written submission via email to [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au) or by post to

Children's Education and Care Assurance  
Attention Janine Fairburn  
GPO Box 158, Canberra ACT 2601.

### **Caution**

38. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation are **protected disclosures** under section 296 of the *Law*.

39. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
40. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
41. The *Law* applies to you as a nominated supervisor and to any service you are engaged at. 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>.
42. 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>
43. Should you have any questions about this Show Cause Notice please contact Authorised Officer Janine Fairburn via email at [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au).

Yours sincerely



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

31 August 2022