



M [REDACTED]
President of Association
Aranda Afters Association Incorporated
RE: Aranda Afters

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Action RE NOT-40594266

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed Notification (NOT-40594266) relating to the operation at Aranda After SE-00009641 (the Service), operated by Aranda Afters Association Incorporated PR-00005802 (the Provider).
2. The Notification related to a serious injury to child.
3. Web addresses to the *Education and Care Services National Law Act (ACT) (the Law)*, and the *Education and Care Services National Regulations 2011 (the Regulations)* are provided for your convenience at the end of this Decision.

Facts

4. On 16 November 2021, the Authority received a Notification and attachments from the Provider advising that on 1 November 2021 a child, believed to be [REDACTED] (7:6), was playing on rocks when he has fallen, landing on another rock. [REDACTED] reported he was unable to move his wrist of fingers after the fall.
5. The Notification further advised that [REDACTED] parents collected him and advised they were attending the hospital for medical attention. Refer Notification and documents at Attachment A.
6. Documents received from the provider included the following:
 - a. Incident Report
 - b. Service Notification
7. On 17 November, the Nominated Supervisor contacted the Authority and advised that a review of the reporting requirements to the Authority would be undertaken.

Law

8. The following provisions of the *Law* were relevant to the assessment:

Section 174(2)(a) and (4) of the Law – Offence to fail to notify certain information to the Regulatory Authority

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—
- (a) any serious incident at the approved education and care service
- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to—
- (a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates

Regulation 176(2)(a)(ii) – Time to notify certain information to Regulatory Authority

In case of a notice under section 174(2)(a) –

- i. in the case of any other serious incident, within 24 hours of the incident or the time that the person becomes aware of the incident.

Regulation 12(b) – meaning of *serious incident*

Any incident involving serious injury or trauma to a child occurring while that child is being educated and cared for by an education and care service-

- I. which a reasonable person would consider required urgent medical attention from a registered medical practitioner; or
- II. for which the child attended, or ought reasonably to have attended, a hospital

Reasons and Decision

9. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, that the Provider has failed to notify the Regulatory Authority of a serious incident that occurred while a child was being educated and care for by the Service, within the regulated prescribed timeframe of 24 hours.
10. The very nature of the Notification and accompanying documentation submitted by the Provider, supports the incident occurring 1 November 2021 as falling within scope of the definition of a serious incident, yet was not notified to the Authority until 16 November 2021, therefore engaging an offence under sections 174(4) of the *Law*.
11. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. The Authority has the flexibility to choose the most appropriate action to support the Provider in achieving compliance and improved outcomes for children.
12. When deciding what appropriate action to take, the Regulatory Authority took into consideration the following:

- a) there were no concerns raised by the Authority in regard to how the incident and injury were managed by educators of the Service on 1 November; and
 - b) the Provider's advice of 17 November 2021 that reporting processes are being reviewed to mitigate risk of similar non-compliance
13. In this circumstance, the Authority has also considered the Service's compliance history and determined not to initiate statutory action but instead to issue this Administrative Decision.
14. The Authority takes this opportunity to remind the Provider of its notification obligations and to ensure that all persons in management positions at services operated by the Provider are aware of those requirements, so as to facilitate compliant reporting.
15. This decision will be recorded on the Service's file and may be considered in any future applications for approvals, amendments, or waivers. This decision may also be considered in determining any future regulatory action, should there be future similar breaches of the *Law* or *Regulations*.

Legislation

16. The *Law* and *Regulations* 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>
17. 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>
18. Should you have any questions about this Decision please contact Senior Investigator Sheree Lockwood on sheree.lockwood@act.gov.au.

Yours Sincerely,



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

30 November 2021