

9. On 20 July 2023 and 27 July 2023, the Provider submitted further additional information to the Authority. This information included documentation on the Risk Minimisation Plan for [REDACTED] and an Allergy Management Plan and a Report for NOT-40875442. Refer relevant correspondence and copy of the Report at Attachment D.

Law

10. Provision of the *Law* relevant to the assessment of the notifications are:

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.

Obligations upon Regulatory Authority

11. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. 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; ...'
12. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:
- (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.
13. 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*.
14. The *Law* works to protect a particularly vulnerable part of 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*.
15. A key object 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.

Decision

16. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to ground an offence under section 167 of the *Law*.

17. In relation to section 167 of the *Law*, the Authority is satisfied that, on the balance of probabilities, the Provider failed to ensure all reasonable precautions were undertaken to protect children, by not ensuring there was clear communication around all parties being aware of the child's allergens on 5 July 2023.
18. 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 you to achieve compliance and improve outcomes for children.
19. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the demonstrated steps taken by the Provider to mitigate risk of a similar incident, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliances.
20. This Decision serves as a reminder that, as a Provider, it is imperative to ensure that nominated supervisors and all staff are aware of, and fully understand, the dietary requirements for all children attending the Service with known allergens.
21. This Decision will be recorded on the Service's file and may be considered in any future applications for approvals, amendments, or waivers. It may also be considered in determining the action to be taken, should further breaches of the Law or associated Regulations be found.

Legislation

22. 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> .
23. 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>.
24. Should you have any questions about this Decision please contact me at
Janine.Fairburn@act.gov.au.

Yours Sincerely,



Janine Fairburn - Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support
18 August 2023