

Ms [REDACTED]
Person with Management or Control
Goodstart Early Learning Ltd
RE: Goodstart Early Learning ANU

Email [REDACTED]

Cc: [REDACTED]

Decision to Issue Administrative Letter

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 suspected offences at Goodstart Early Learning ANU SE-40009242 (the Service) operated by Goodstart Early Learning Ltd PR-00001129 (the Provider).
2. The Authority is satisfied that the Provider was not complying 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)* 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

3. On 9 December 2021, the Authority received a Notification (NOT-40602352) alleging a child had been held down and a stick inserted in the child’s ear by peers unwitnessed by educators. Refer copy of notification at Attachment A.
4. On 9 December 2021, a direct complaint was also received by the Authority regarding the same matter as notified by the Provider. The direct complaint alleged that a lack of supervision had resulted in injuries being sustained by a child, [REDACTED] and that these concerns had been raised with the Provider by the complainant.
5. Specifically, it was alleged that on 15 February 2021, the Provider failed to ensure that children were adequately supervised, at a time when a child, believed to be [REDACTED] suffered an injury to the eye and a delay in contacting parents.
6. It was also alleged that on 1 December 2021, the Provider failed to adequately supervise a child being educated and cared for by the Service, in a that the child, [REDACTED] suffered an unwitnessed injury from a stick being forced into her ear by peers.
7. Due to the seriousness of the allegations, and risk of harm to children when inadequately supervised, the Authority determined to investigate as allegations raised within the complaint supported a reasonable suspicion of three offences under the *Law*, these being –
 - a) Section 165 – offence related to inadequate supervision.

- b) Section 167 – offence relating to failure to take reasonable precautions to protect children from harm and hazard; and
 - c) Section 174 – offence relating to notifying the Regulatory Authority of prescribed matters.
8. Throughout the course of the investigation, the Authority obtained evidence from numerous sources, including prescribed records from the Provider and witness statements obtained under section 215 of the *Law*, and voluntary witness statements.

Law

9. The following provisions of the *Law and Regulations* were engaged by the investigation:

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

Section 174(2) of the Law – Offence to fail to notify certain information to 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;
 - (b) any complaints alleging –
 - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
 - (ii) that this Law has been contravened;
 - (c) information in respect of any other prescribed matters
- Penalty: \$4000, in the case of an individual.
 \$20 000, in any other case.
- (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) – Time to notify certain information to Regulatory Authority

For the purpose of section 174(4) of the *Law*, a notice must be provided:

- (a) in case of a notice under section 174(2)(a)-
 - (i) in the case of the death of a child, s soon as practicable but within 24 hours of the death, or at the time that the person becomes aware of the death; and
 - (ii) 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;

- (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident.

Regulation 12 – Meaning of serious incident

For the purposes of the definition of *serious incident* in section 5(1) of the Law, each of the following is prescribed as a serious incident:

- (b) 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;
- (c) any incident involving serious illness of a child occurring while that child is being educated and cared for by an education and care service for which the child attended, or ought reasonably to have attended, a hospital;

Decision and Reasons

10. Evidence gathered during the investigation did not substantiate, on balance of probabilities, that all elements of offences under sections 165 and 167 of the *Law* were not being met.
11. However, evidence gathered identified compliance was not being met in relation to notifying the Regulatory Authority of prescribed matters within prescribed timeframes, being -
- a) that by 4 December 2021, the Provider failed to notify the Authority of a complaint alleging that the *Law* had been contravened, allegation being that supervision was inadequate resulting in a child having a stick forced into her ear, unwitnessed, and requiring medical attention at a hospital, engaging a breach of section 174(2)(b) of the *Law*.
12. The Authority is also satisfied that, on the balance of probabilities, the Provider failed to notify the Authority of a complaint that the *Law* had been contravened, in that the complainant alleged supervision was inadequate, contributing to their child allegedly having a stick forced into her ear by peers requiring medical attention at a hospital, engaging a breach of section 174(2)(b) of the *Law*.
13. The Authority noted email communication on 3 December 2021 between the complainant and the Provider referring to supervision concerns with a response from the Provider on 8 December 2021 advising of supervision strategies implemented at the Service. The Authority acknowledges that the Provider did notify of the Incident on 9 December 2021. Refer copy of emails supporting a complaint had been made at Attachment B.
14. The Authority also acknowledges that in relation to the incident occurring 15 February 2021, it is the position of the Authority that where a child under the age of five suffers a laceration and bleed injury near the eye area, medical attention would reasonably have been recommended, or sought, in an urgent manner. The Authority would have expected a notification of Serious Incident would have been notified in this instance also and note that it was not.

15. 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*. 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.
16. Regarding the substantiated breach of s174(2) of the *Law*, and the subjective seriousness of the offence noting the incident was eventually notified on 9 December 2021, the Authority has decided that statutory compliance action is not required in this instance.
17. This decision is to remind the Provider of their obligations under the *Law* to ensure that notifiable matters outlined under the *Law*, are notified within regulated timeframes. In addition, this decision is to remind the Provider that the requirement to notify a complaint is at the point of the allegation being made, not after enquires may have been made and the Provider determines if there is substance or not to the allegations.
18. This decision has been recorded on your file and may be considered by the Authority in the event of further similar breaches. The Authority determines this investigation finalised and no further enquires will be undertaken regarding this matter unless new relevant information is received.

Legislation

19. 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>.
20. 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>
21. If you have any questions in relation to this letter, please contact Authorised Officer Brian Cropper on (02) 6207 1104 or by email at Brian.Cropper@act.gov.au.

Yours sincerely



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

28 June 2022