



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

Email: [REDACTED]

Dear M [REDACTED]

**Decision to issue Administrative Action RE NOT-40596934**

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-40596934) relating to the operation of Goodstart Early Learning Kambah, SE-00009784 (the Service), operated by Goodstart Early Learning Ltd, PR-00001129 (the Provider).
2. The Notification related to a child being provided with a food contrary to the Medical Conditions Management Plan in place for the 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 24 November 2021, the Authority received a Notification and attachments from the Provider advising of a parent complaint lodged with the Service.
5. This complaint related to her child, believed to be [REDACTED] (3:11 old), being provided with a meal containing quinoa contrary to the medical management plan that was in place. [REDACTED] suffers from [REDACTED] and subsequently related later to the quinoa. Refer Notification and documents at Attachment A.
6. On 24 November 2021, the Authority sought additional information from the Provider, which was received via NQA ITS on 25 November 2021. This documentation included:
  - a. Reg 90 Documents
  - b. Food Allergy Policy
  - c. Food and Nutrition Policy
7. It was noted in the body of the email received 25 November 2021, that the Provider advised of a follow up phone call with the complainant where it was identified that a new chef had started with the Service in October, and further strategies to manage [REDACTED] food requirements were discussed. Refer Attachment B.

8. On 3 December 2021, the Authority received correspondence from the Provider advising of the outcome of NOT-40596934. Outlined in the attached document was a number of strategies being undertaken by the Service to mitigate risk of a similar incident occurring. Refer Attachment C.

### **Law**

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

#### **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.

#### **Section 174(2)(c) 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—

(c) information in respect of any other prescribed matters

(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 175(2)(c) – Prescribed information to be notified to Regulatory Authority**

For the purposes of section 174(2)(c) of the *Law*, the following matters are prescribed –

(c) any circumstance arising at the service that poses a risk to the health, safety or wellbeing of a child or children attending the service.

#### **Regulation 176(2)(c) – Time to notify certain information to Regulatory Authority**

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

(c) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

### **Reasons and Decision**

10. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, that on 10 November 2021, [REDACTED] was provided with food contrary to his medical management, and therefore, the Provider has

failed to take reasonable precautions to protect said child, from any harm and from hazard likely to cause injury.

11. The very nature of the Notification and accompanying documentation submitted by the Provider, support the offence under section 167(1) of the *Law* being substantiated. Additionally, the fact that a known allergen, outlined in the child's medical management plan was prepared and served to the child, with indication that a new chef may have been unaware of the child's dietary needs further satisfies the Authority of the contravention.
12. It was noted that within the document titled '*Kambah additional information*' submitted on 24 November 2021, reference was made to email correspondence on 11 November 2021 between the Service and the child's parent, where it was identified that [REDACTED] had been provided with Quinoa on the 10 November 2021 and was subsequently having a reaction.
13. The Authority considers that this email correspondence by the Provider, falls within scope of a prescribed matter, yet was not notified to the Authority, therefore engaging an offence under sections 174(4) of the *Law*.
14. 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.
15. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue this Administrative Decision, taking into consideration actions already undertaken by the Provider in response to the parent's complaint.
16. Regarding the substantiated offences under section 167 of the *Law*, the Authority requires evidence demonstrating how the Provider is monitoring and ensuring educators and staff (including the chef) are aware of, and follow, the policy and procedure and medical management plans in place to manage food restrictions
17. Evidence should be produced, within 14 days of receipt of this letter, to myself at [Janine.Fairburn@act.gov.au](mailto:Janine.Fairburn@act.gov.au).
18. 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 breaches of the *Law* or *Regulations*.

### **Legislation**

19. 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>

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. Should you have any questions about this Decision please contact me at

[Janine.Fairburn@act.gov.au](mailto:Janine.Fairburn@act.gov.au).

Yours Sincerely,



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

7 December 2021