

Ms [REDACTED]
Person with Management and Control
ACT Education Directorate
RE: Mt Rogers Primary School - Melba Preschool Unit

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Action RE: NOT-40921619

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40921619) relating to Mt Rogers Primary School - Melba Preschool Unit SE-00011210 (the Service) operated by ACT Education Directorate PR-00006465 (the Provider).
2. The notification advised of an incident whereby a 5-year-old child, known as [REDACTED], suffered a foot injury after stepping on a plank with exposed nails when attending the Service on 8 November 2023.
3. The Authority is satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) in this instance. Web addresses to the *Law* and the *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 9 November 2023, a notification of incident (NOT-40921619) was submitted to the Authority by the Provider advising that on 8 November 2023, 5-year-old child, known as [REDACTED], suffered a foot injury after stepping on a plank with exposed nails when attending the Service. Refer copy of the NOT-40921619 at Attachment A.
5. On 17 November 2023, the Provider, upon request, submitted additional documents in relation to NOT-40921619. Refer Attachment B.

Law

6. The Notification engaged the following provisions of the *Law*:

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.

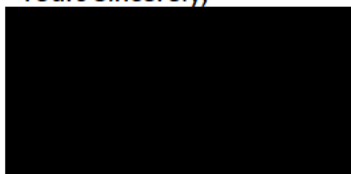
Decision

7. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to support an offence under section 167 of the *Law* in this instance.
8. In relation to section 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure that every reasonable precaution was taken, by way of ensuring that the outdoor checklist was completed on 8 November 2023 prior to children accessing the outdoor environment, which could have prevented the incident from occurring.
9. 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.
10. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the 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.
11. 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

12. 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> . 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>.
13. 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

15 December 2023