

Ms [REDACTED]
Person with Management or Control
ACT Education Directorate
RE: Ngunnawal Primary School – Preschool Unit

Email: [REDACTED]

Dear Ms [REDACTED]

Administrative Decision RE: NOT-40511630

1. As you may be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed a Notification of Incident (NOT-40511630) relating to an injury sustained by a child at Ngunnawal Primary School – Preschool Unit SE- 00011214 (the Service) operated by the ACT Education Directorate PR- 00006465 (the Provider).
2. The Authority is satisfied that the Provider has contravened provisions of the *Education and Care Services National Law (ACT)* (the Law).
3. Web addresses to the Law and the *Education and Care Services National Regulations 2011* (the Regulations) are provided for your convenience at the end of this letter.

Facts

4. On 17 February 2021, the Authority received a Notification of Incident (NOT-40511630) and associated documentation advising that, on 9 February 2021, a child at the Service was found crying whilst laying down on their tummy; arms outstretched. The child was reportedly asked numerous times what was wrong and to point to where it hurt. Refer Attachment A.
5. Included in this Notification was a copy of the Medical Incident Form (Incident# 27177) which stated, amongst other things, that, on 10 February 2021, the Provider was made aware by the parent that medical attention was sought and that a hair line fracture to the child’s right wrist was detected. Refer Attachment B.

Law

6. As a result of its assessment and in considering the Provider supplied documentation accompanying the Notification, the Authority found evidence to support non-compliance with the following provisions of the Law:

Section 174(2) of the Law - Offence to fail to notify certain information to the Regulatory Authority

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

Penalty: \$4 000, in the case of an individual

\$20 000, in any other case.

Regulation 12(b) of the Regulations – Meaning of a 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

Regulation 176(2) of the Regulations - Time to notify certain information to Regulatory Authority

For the purposes of section 174(4) of the Law, a notice must be provided—

- (a) in the case of a notice under section 174(2)(a)—

- (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;

Reasons

7. Having considered the evidence furnished by the Provider with the Notification, the Authority is satisfied that the Provider has failed to comply with the *Law*.
8. The Authority is satisfied that the Provider was made aware by the parent that medical attention was sought and that a hair line fracture to the child's right wrist was detected on 10 February. Notification to the Authority of this serious incident did not occur within 24 hours of the Provider becoming aware, but rather seven days later, in contravention of section 174(2) of the *Law*.


Decision

9. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. Many of these options allow the Authority to publish details of substantiated non-compliance.
10. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. On this occasion, the Authority has determined to issue you with this Administrative Action rather than impose any statutory compliance actions.
11. In determining whether to issue the Provider with an Administrative Action, the Authority took the following into consideration:

- a) The injury sustained by the child as a result of the incident on 9 February 2021 appears to have been appropriately managed by the Service on the day; and
 - b) The compliance history of the Service.
12. Regarding the substantiated offence under section 174(2) of the *Law*, the Authority is satisfied that the issuing of this Administrative Action acknowledging the contravention is the most appropriate action in this set of circumstances, and, therefore no further action is required.
 13. However, the Provider is reminded of their obligation to notify of all prescribed matters outlined under the *Law* and *Regulations*, and that these matters are notified within prescribed timeframes every time.
 14. This Decision will be recorded on your Service 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 similar breaches of the *Law* or *Regulations* be found.

Legislation

15. 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>.
16. 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>
17. If you have any questions in relation to this letter, please contact me by email at Janine.fairburn@act.gov.au.



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

5 March 2021