

Ms [REDACTED]
Person with Management or Control
Community Services # 1 Incorporated
RE: Narrabundah Children's Cottage

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Administrative Action – NOT-40556338

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 carried out inquiries into a notification of circumstances posing a risk to health, safety or wellbeing at Narrabundah Children's Cottage SE-00009816 (the Service) operated by Community Services #1 Incorporated PR-00005865 (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 14 July 2021, the Authority received a Notification of Incident (NOT-40556338) and associated documents, advising that, on 13 July 2021, a child ([REDACTED] aged 2.5, Wombats room) who was known to be at risk of anaphylaxis to dairy, was accidentally given an item containing ricotta.
5. On 15 July 2021, the Authority requested additional documents, which were provided. Refer Attachment A for the notification and all documents relevant to NOT-40556338
6. The notification indicated that children in Wombats room were eating lunch when an educator ([REDACTED] walked in to find [REDACTED] eating a spinach and ricotta triangle, in the presence of two additional educators. [REDACTED] mother was notified, and she was monitored with one-to-one observation with no observable reaction until collection by her mother at 5:10pm.
7. The Provider advised that action taken to minimise future risk is ensuring that educators are aware of the risk assessment in place for medical conditions and implementing more allergy charts on the food service trolley.

Law

8. As a result of its assessment of the Notification, the Authority found evidence to support non-compliance with the following provision of the *Law*:

Section 167(1) of the *Law* - Offence to inadequately supervise children

The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared 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.

Reasons

9. Having considered the documentation produced by the Provider with NOT-40556338, the Authority is satisfied that an offence under section 167(1) of the *Law* is substantiated on the balance of probabilities.
10. The Authority is concerned that there appears to be a risk minimisation and communication plan relating to risk of anaphylaxis which requires review of [REDACTED] meals and ensuring that she does not taste food from peers which contains allergens, especially dairy.
11. The plan also states that educators should not bring any foods containing allergens into the centre. [REDACTED] plan states that she is at risk of anaphylaxis by eating or coming into contact with dairy, egg, coconut yoghurt or cashew nuts. The Service is nut and egg free, but not free of other triggers.
12. The Authority is further concerned that there may be lack of adequate distinction between allergy and anaphylaxis, and that the plan does not contain a photograph, so it is unclear how any casual or new educators are made aware of children with anaphylaxis. It seems that only one educator in Wombats room has signed off on the medical plans for [REDACTED]

Decision

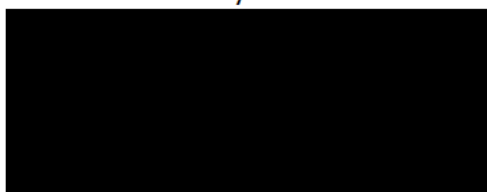
13. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. Many of these options allow the Authority to publish details of substantiated non-compliance.
14. The Authority has the flexibility to choose the most appropriate action to support you 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.
15. In determining whether to issue the Provider with an Administrative Action, the Authority took the following into consideration:
 - a) The Notification of Incident was submitted within the prescribed timeframe;
 - b) Lack of previous similar notified incidents at the Service; and
 - c) Steps are being taken to address the incident.

16. Regarding the substantiated offence under section 167(1) of the *Law*, the Authority requires the Provider to produce evidence demonstrating the steps mentioned in NOT-40556338, inclusive of evidence of awareness of educators of the “Risk Assessment – Medical Conditions”, together with evidence demonstrating how educators are made aware of specific children’s medical management plans, including distinction between allergy and anaphylaxis, risk minimisation plans and communication plans.
17. Relevant documentation should be directed, within 14 days of receipt of this letter, to Tanya Masterman, Senior Investigator on tanya.masterman@act.gov.au.
18. 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 breaches of the *Law* or *Regulations* be found.

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 Tanya Masterman by email at tanya.masterman@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Children’s Education and Care Assurance
Early Childhood Support and Regulation
ACT Education Directorate

29 July 2021