



██████████
Person with Management or Control
Caerus Child Care Pty Ltd
RE: Springbank Rise by Busy Bees
Email: ██████████

Dear ██████████

Decision to issue Administrative Action RE: NOT-40671051

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40671051) relating to the operation of Springbank Rise by Busy Bees SE-40004390 (the Service), operated by Caerus Child Care Pty Ltd, PR-40003575 (the Provider) on 18 March 2022.
2. 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

3. On 18 March 2022, the Authority received a Notification of Incident (NOT-40671051) from the Provider advising a child, identified as ██████████, was offered a lunchtime meal that contained dairy powder in the sauce and ██████████ is intolerant to dairy, resulting in a reaction via regurgitation/vomiting. Refer Notification at Attachment A.
4. On 21 March 2022, the Authority sought additional information from the Provider, which was received on 22 March 2022. Refer email correspondence and response cover letter (identifying submitted additional information via appendix's A through J) at Attachment B.

Law

5. 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 or illness.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Reasons and Decision

6. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, that on 18 March 2022, the Provider has failed to ensure reasonable precautions to protect ██████████ from any harm and from hazard likely to cause illness.

7. The Authority is satisfied that this failure contributed to [REDACTED] being served a known allergen, without kitchen staff or educators being aware of what was being served to [REDACTED] prior to ingestion and resulting in an allergic reaction. The very nature of the Notification and accompanying documentation submitted by the Provider, support the offence under sections 167(1) of the *Law* being substantiated.
8. However, the Authority acknowledges the actions taken by the Provider to mitigate risks of a similar incident occurring, as well as having appropriate medical action and condition plans being in place and having educators review all current relevant policies and procedures.
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 the Provider in achieving compliance and improved outcomes for children.
10. In this circumstance, the Authority has also considered the Service's compliance history and the age and potential risks associated to the child in this matter and determined not to initiate statutory action but instead to issue this Administrative Decision as acknowledgement of the substantiated offence – no further response is required by the Provider in this instance.
11. 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 similar breaches of the *Law* or *Regulations*.

Legislation

12. 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>
13. 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>
14. Should you have any questions about this Decision please contact me at email janine.fairburn@act.gov.au.

[REDACTED]

Janine Fairburn
Assistant Director
Children's Education and Care Assurance
ACT Education Directorate
08 April 2022