



██████████
Person with Management and Control
Forrest School P&C Association Incorporated
RE: Forrest Out of School Hours Care

Email ██████████

Dear ██████████

Decision to issue Administrative Action RE NOT-40651948

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed Notification of Serious Incident (NOT-40651948) relating to the operation at Forrest Out of School Hours Care SE-00009675 (the Service), operated by Forrest School P&C Association Incorporated PR-00005832 (the Provider).
2. The Notification related to a serious injury to child occurring 11 February 2022.
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 22 February 2022, the Authority received a Notification of Serious Incident (NOT-40651948), with attached incident report from the Provider. The Notification advised that on 11 February 2022 a child, believed to be ██████████ (8:6), struck her head on corner of cubby house suffering laceration and bleed injury to her head. ██████████ was given a blanket as she began shivering, displaying signs of shock. Refer NOT-40651948 at Attachment A.
5. On 23 February 2022, additional information was requested by the Authority, specifically relating to the lateness of the notification, with response from the Service's Assistant Director received same day. Refer correspondence at Attachment B.

Law

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

Section 174(2)(a) 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—
 - (a) any serious incident at the approved education and care service

- (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 176(2)(a)(ii) – Time to notify certain information to Regulatory Authority

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

- i. 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.

Regulation 12(b) – meaning of *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

Reasons and Decision

7. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, that the Provider has failed to notify the Regulatory Authority of a serious incident that occurred while a child was being educated and care for by the Service, within the regulated prescribed timeframe of 24 hours.
8. The very nature of the Notification and accompanying documentation submitted by the Provider, supports the incident occurring 11 February 2022 as falling within scope of the definition of a serious incident, yet was not notified to the Authority until 22 February 2022, therefore engaging an offence under sections 174(4) of the *Law*.
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. When deciding what appropriate action to take, the Regulatory Authority took into consideration the following:
 - a) there were no concerns raised by the Authority in regard to how the incident and injury were managed by educators of the Service on 11 February 2022; and
 - b) the Provider’s advice of 23 February 2022 that reporting processes had been reaffirmed by the Nominated Supervisor to mitigate risk of similar non-compliance

11. In this circumstance, the Authority has also considered the Service's compliance history and determined not to initiate statutory action but instead to issue this Administrative Decision.
12. The Authority takes this opportunity to remind the Provider of its notification obligations and to ensure that all persons in management positions at services operated by the Provider are aware of those requirements, to facilitate compliant reporting.
13. 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

14. 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>
15. 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>
16. Should you have any questions about this Decision please contact myself at 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

2 March 2022