

Ms [REDACTED]
Person with Management or Control
LP Childcare Management Pty Ltd
RE: Little Penguins Early Learning Centre

Email: [REDACTED]@[littlepenguins.net.au](mailto:[REDACTED]@littlepenguins.net.au)

Dear Ms [REDACTED]

Decision to issue Administrative Action RE: 40532123

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment into a Notification of Complaint (NOT-40532123) relating to the operation of Little Penguins Early Learning Centre SE-40011068 (the Service), operated by LP Childcare Management Pty Ltd PR-40018855 (the Provider).
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 letter.

Facts

3. On 23 April 2021, the Authority received a Notification of Complaint (NOT-40532123) from the Provider advising that, on 22 April 2021, a parent of an enrolled child, known to be [REDACTED] (aged three years), made a complaint to the Provider alleging that a serious incident had occurred at the Service involving [REDACTED] and the father of another child enrolled at the Service. Refer notification at Attachment A.
4. Additional relevant documentation was also submitted with the notification, and included:
 - a) Follow up email to [REDACTED] dad;
 - b) Statements – [REDACTED], [REDACTED] and [REDACTED] (Staff);
 - c) [REDACTED] email complaint and memo to staff of 23 March 2021; and
 - d) Room Leaders follow up phone call.
5. On 23 April 2021, additional information was requested from the Provider in relation to NOT-40532123, with a response received 28 April 2021. Information submitted from the Provider included the following:
 - a) Completed record of incident/injury for [REDACTED] and
 - b) Relevant CCTV footage.

Refer email correspondence at Attachment B.

6. The same complainant raised subsequent additional concerns with the Authority, relating to an incident involving [REDACTED] on 27 April 2021. The complainant alleged that the Provider had not taken reasonable precautions to ensure that they were notified of an incident involving [REDACTED]

hitting his neck on a metal bus frame, therefore preventing any consideration of possible medical attention being sought at the time that the injury was sustained.

7. On 13 May 2021, the Authority made further enquiries relating to these additional concerns with the Provider, requesting additional information. Additional information was submitted by the Provider on 14 May 2021. Refer relevant email correspondence at [Attachment C](#).

Law

8. Applicable sections of *Law* relevant to the notification are as follows:

Section 167 of the Law – Offence relating to protection of children from harm and hazards

- (1) 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 hazard likely to cause injury.

Reasons and Decision

9. Upon considering all evidence for assessment, inclusive of Provider supplied information, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under section 167 of the *Law* in this instance.
10. The Authority was satisfied that, in this instance, reasonable precautions were not taken to prevent the parent, known to be ██████████ dad - ██████████ from interacting physically with other children enrolled at the Service, which could have likely led to injury to a child.
11. Furthermore, the fact that the educator in the room was aware that was occurring and did not appear to take any steps to stop the interactions as they begun indicates that they were not aware of or were able to manage and address the risks that the physical interaction may have posed.
12. In relation to the allegations relating to the incident occurring 27 April 2021 (Attachment D), the Authority did not determine a contravention of *Law* being engaged by the Provider or Nominated Supervisor in this instance.
13. In deciding if compliance action should be taken, the Authority has considered all relevant information supplied by the Provider regarding the Provider's management of the incident, and additional information to demonstrate proactive risk mitigation strategies undertaken in reflection of the incident.
14. The Authority took into consideration that although the educator present in the room did not act in relation to the interactions, when advised, the Room Leader did address the interactions with the parent. The Authority also took into consideration the quick response of the Provider to address any potential failings and ensure that educators and families were aware of and understood the Provider's expectations in relation to parents interacting with other enrolled children at the Service.
15. In consideration of all relevant information, the Authority has determined not to initiate statutory compliance action regarding the substantiated contravention of section 167(1) of the *Law*, but rather issue this Administrative decision to address the non-compliance, with no additional action required.

16. This Decision is intended to bring to your attention the need to ensure that the Provider meets its obligations under the *Law*, in particular the obligation to ensure every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury.
17. 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.
18. Please be aware that complainant has been advised of the outcome of the Authority's assessment of these matters.

Legislation

19. The *Law* applies to you as an approved provider and any approved service that the Provider operates.
20. 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>.
21. 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>
22. If you have any queries regarding 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
ACT Education Directorate

4 June 2021