

Person with Management or Control
LP Childcare Management Pty Ltd
RE: Ducklings Early Education

Email: [REDACTED]

Dear [REDACTED]

Decision to issue Administrative Action RE: 40515535

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 Incident (NOT-40515535) advising that a serious incident had occurred at Ducklings Early Education SE-40014603 (the Service), operated by LP Childcare Management Pty Ltd PR-00002539 (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 2 March 2021, the Authority received a Notification of Incident (NOT-40515535) from the Provider advising that, on 1 March 2021, a [REDACTED] child known to be [REDACTED] [REDACTED] sustained a head injury whilst in attendance at the Service because of throwing a metal bar in the air. Refer notification at Attachment A
4. On 3 March 2021, additional information was requested from the Provider in relation to NOT-40515535, with a response received back 10 March 2021. Information submitted from the Provider included the following:
 - a) Completed injury form for [REDACTED] [REDACTED]
 - b) Dot points to a meeting had with [REDACTED] [REDACTED]
 - c) Photographs of relevant outdoor areas; and
 - d) Copy of loose parts play risk assessment.

Law

5. 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

6. 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.
7. The Authority was satisfied that, in this instance, reasonable precautions were not taken to prevent the child from obtaining a metal pole from beside a shed, throw that metal pole into the air and ultimately cause injury. Furthermore, the fact that the educator closest to [REDACTED] whilst this was occurring did not appear to take any steps to stop [REDACTED] from throwing the metal pole in air.
8. 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.
9. 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.
10. 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.
11. 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

12. The *Law* applies to you as an approved provider and any approved service that the Provider operates.
13. 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>.
14. 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>
15. If you have any queries regarding this Decision, please contact me at janine.fairburn@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate
13 April 2021