

Ms [REDACTED]  
Person with Management and Control  
Caerus Early Learning Pty Ltd  
RE: Coombs Early Learning

Email: [REDACTED]

Dear Ms [REDACTED]

**Decision to Issue Administrative Action RE: NOT-40516689**

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 assessed a Notification of Incident (NOT-40516689) advising that a serious incident had occurred at Coombs Early Learning SE-40010858 (the Service), operated by Caerus Early Learning Pty Ltd PR-40013119 (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 Decision.

**Facts**

4. On 5 March 2021, the Authority received a Notification of Incident (NOT-40516689) and associated documents, advising that on 22 February 2021, a child, known to be [REDACTED] (aged three years), sustained an injury to the ear after an unwitnessed incident suspected to be because of tripping on the obstacle course which was advised to [REDACTED] grandmother the following day after bruising of the ear was queried. Refer notification and additional information at [Attachment A](#).
5. Additionally, the notification advised that the grandmother of [REDACTED] advised the Educational Leader of the Service on 2 March 2021 that [REDACTED] was taken to the walk-in clinic on Wednesday 24 February 2021, and the doctor instructed and gave them a referral to take [REDACTED] to the Woden paediatric emergency.
6. The notification further advised that the Provider became aware on 5 March 2021, that the injury was diagnosed by a specialist as being a fracture to the ear lobe.
7. On 9 March 2021, the Authority requested further information the Service, being child and educator attendance records for 22 February 2021 and evidence demonstrating that a

review of supervision protocols has occurred, with any changes implemented and communicated to staff, to mitigate risk of similar incidents occurring.

8. On 11 March 2021, the Provider forwarded the following in response to the request:
  - a) Working Directly with Children Logs for the 22.02.2021 for the whole service;
  - b) Attendance record for the 22.02.2021 for the whole service; and
  - c) Meeting minutes recorded and signed by educators from the 10.03.2021, noting that this was also verbally discussed on Friday 5th and Tuesday 9th March 2021.

## Law

9. As a result of its assessment and in considering the Provider's information furnished with the Notification, the Authority found evidence to support non-compliance with the following provisions of the *Law*:

### **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.

### **Section 174 of the *Law* - Offence to fail to notify certain information to Regulatory Authority**

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to the approved education and care service operated by the approved provider –
  - a) of 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)** provides that in the case of a serious incident, other than death of a child, notification of a serious incident must be within 24 hrs of the incident or the time that the person becomes aware of the incident.

**Regulation 12(b)** provides that the definition of a serious incident includes any incident involving serious injury or trauma to a child 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 a child attended, or ought reasonably to have attended, a hospital.

## Reasons

10. Upon considering all information submitted by the Provider for assessment, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under sections 167 and 174 of the *Law*.

11. The Authority is satisfied that the Provider has not notified of a serious incident within the prescribed timeframe of 24 hours as required by Regulation 176(2)(a)(ii), which engages a contravention of section 174(2)(a) of the *Law*.
12. Evidence supports that the incident occurred on 22 February 2021, the Educational Leader was aware on 2 March 2021 that the child had been attended to by a doctor and referred to the Woden paediatric emergency, yet notification to the Authority of the serious incident should have occurred within 24 hours (on 3 March 2021). However, notification did not occur until 5 March 2021, outside of regulated timeframes outlined in *Regulation 176(2)(a)(ii)*.
13. The Authority is satisfied reasonable precautions via ensuring educators were directly supervising children on the obstacle course, and by educators not contacting the [REDACTED] parent to advise of the injury sustained on the day, has contributed to [REDACTED] sustaining an injury unnoticed by educators, and the parent not being aware of an injury on the day to determine if more urgent medical attention was required considering that this was an injury pertaining to the head, engaging an offence of section 167 of the *Law*.
14. 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.
15. 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.
16. In determining to issue the Provider with an Administrative Action, the Authority took the Services previous compliance record into consideration.
17. Regarding the substantiated offence under section 167(1) of the *Law*, the Authority requests that the Provider, within 14 days of receipt of this Decision, submit the following evidence:
  - a) Implemented strategies to mitigate risk of similar occurrences of unwitnessed incidents;
  - b) Risk assessment and supervision plans for all outdoor learning environments at the Service; and
  - c) Evidence to demonstrate that educators are aware of, and understand, the requirements for ensuring parents are advised of injuries or illness sustained by child whilst in attendance at the Service within a timely manner.
18. Evidence to demonstrate the above can be forwarded to me at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au), or alternatively via post at:

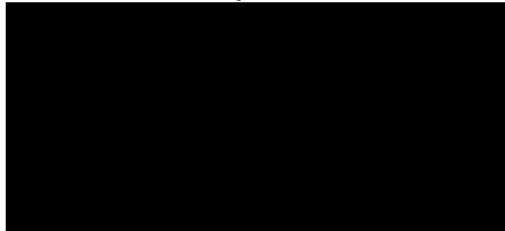
Attention: Janine Fairburn  
Children's Education and Care Assurance  
Early Childhood Policy and Regulation  
ACT Education Directorate  
PO Box 158, Canberra City 2601

19. Regarding the substantiated offence under section 174(4) of the *Law*, the Authority reminds the Provider of their obligations in relation to notifying certain information to the Authority, as outlined under sections 173 and 174 of the *Law*. Please ensure that the Provider is aware of, and understands the requirements of notification under the *Law*, and that policy and procedure support this and communicate this to any staff delegated to notify the Authority on behalf of the Provider.
20. This Decision will be recorded on the 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

21. 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>.
22. 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>
23. If you have any questions in relation to this letter, please contact me by email at [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au).

Yours sincerely



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

30 March 2021