

Ms [REDACTED]  
Person with Management and Control  
FEL Child Care Centres 4 Pty Ltd  
T/A Busy Bees at The Park

Email: [REDACTED]

Cc: [REDACTED]

Dear Ms [REDACTED]

**Administrative Decision RE: NOT-40470336**

1. Authorised Officer's from 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-40470336) relating to the operation of Busy Bees at The Park SE-00009849 (the Service), operated by FEL Child Care Centres 4 Pty Ltd PR-40004076 (the Provider) on 3 September 2020.
2. The Authority is satisfied that the Provider has contravened section 167(1) 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 letter.

**Facts**

4. On 9 September 2020, the Authority received a Notification of Complaint (NOT-40470336) from the Provider. The notification alleged that a child, known to be [REDACTED] (aged one year), was left in a full and soiled nappy on 3 September 2020, with it appearing that the child had not had a nappy change on that day. Refer Notification at Attachment A.
5. During its assessment of the Notification, the Authority obtained additional information from the Provider, via email from Area Manager [REDACTED] on 16 September 2020. This information included:
  - a. Staff witness statements; and
  - b. A record of conversation between the Service manager and the complainant.
6. On 24 September 2020, the Authority received an update to the internal investigation being undertaken by the Provider. Refer all email correspondence at Attachment B.

**Law**

7. As a result of its assessment, the Authority found evidence to support non-compliance with the following provision 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.

Penalty: \$10 000, in the case of an individual

\$50 000, in any other case.

**Reasons**

8. Having considered the evidence gathered for the purpose of assessment from the Provider; I am satisfied that the Provider has failed to comply with the *Law*.
9. I am satisfied that section 167(1) of the *Law* was contravened on 3 September 2020. Section 167 of the *Law* was engaged by educator accounts and by documentation obtained from the Provider.
10. Information gathered engaged the obligation that the Provider must ensure that every reasonable precaution was taken to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury, in contravention of section 167 of the *Law*.
11. Information gathered identifies that educators at the Service appeared to have been remiss in following appropriate policy and procedure, which resulted in a one-year old child's nappy being overlooked for changing for a whole day.

**Decision**

12. 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 you to achieve compliance and improve outcomes for children. On this occasion, the Authority has determined to issue you with this Administrative Decision rather than impose any statutory compliance actions.
13. In determining to issue the Provider with an Administrative Decision, the Authority took the following into consideration:
  - a) The Provider acted quickly to the allegation and investigated the matter appropriately;
  - b) The Provider has advised of strategies implemented to mitigate risk of a similar oversight by educators in children's toileting; and
  - c) The child appears not to have sustained any significant injury or illness because of not having their nappy changed on 3 September 2020.
14. In regard to the substantiated offences under section 167(1) of the *Law*, the Authority requests that the Provider, within 14 days of receipt of this Decision, submit evidence to demonstrate the following:
  - a) Policies and practices relating to toileting of children have been reviewed, implemented and communicated with staff at the Service to ensure that risk of a similar incident is mitigated; and
  - b) Copy of the Provider's internal investigation into the matter, inclusive of findings and outcomes.
15. Evidence to demonstrate the above can be forwarded to Authorised Officer, Janine Fairburn, 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

16. This letter 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**

17. 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>.

18. 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>

19. If you have any questions in relation to this letter, please contact Authorised Officer Janine Fairburn on (02) 6205 4390 or by email at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).

Yours sincerely



Clare Brookes  
Senior Director  
Early Childhood Policy and Regulation  
ACT Education Directorate

9 October 2020

