



[REDACTED]
Person with Management and Control
FEL Child Care Centres 4 Pty Ltd
RE: Busy Bees at The Park

Email: [REDACTED]
Cc: [REDACTED]

Dear [REDACTED]

Decision to issue Administrative Action

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Complaint (NOT-40530146) 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).
2. The Notification related to a parent complaint received by the Provider on 25 and 27 March 2021, alleging that the centre manager had inappropriately interacted with a child enrolled at the Service.
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 letter.

Facts

4. On 16 April 2021, the Authority received NOT-40530146 from the Provider, advising of a parent complaint received by the Provider on 25 and 27 March 2021, alleging that the acting service manager had inappropriately interacted with a child enrolled at the Service. Refer Attachment A.
5. It was noted that notification by the Provider occurred after the Authority raised that they had become aware of the matter directly and sought clarification as to whether the Provider was aware that the complaint had been sent to another Services mailbox. Refer relevant email correspondence at Attachment B.
6. Additional documentation and information were requested by the Authority in relation to the Provider's internal investigation of the matter, with the Provider submitting an Outcome Report on 30 April 2021. Refer Attachment C.

Law

7. The facts as outlined in the Notification and additional Provider submitted information engaged the following:

Section 166(1) of the *Law* - Offence to use inappropriate discipline

The approved provider of an education and care service must ensure that no child being educated and cared for by the service is subjected to—

- (b) any discipline that is unreasonable in the circumstances.

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.

Regulation 155 – Interactions with children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that –

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

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 an approved education and care service operated by the approved provider—
 - (b) any complaints alleging—
 - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
 - (ii) that this Law has been contravened;
- (3) A notice under subsection (1) must be in writing and be provided within the relevant prescribed time to the Regulatory Authority that granted the provider approval.
- (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)(b) – Time to notify certain information to Regulatory Authority

In case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident

Decision

8. The Authority has considered all the information supplied by the Provider and is satisfied that there is insufficient evidence to ground a reasonable suspicion of an offence under section 166 or 167 of the *Law* in this instance.
9. However, the Authority is satisfied that the Provider did not notify the Authority of a complaint alleging that the *Law* had been contravened within the prescribed timeframe of 24 hours, which engages a contravention of section 174(4) of the *Law*.
10. The parent complaint received by the Provider alleged that the Service manager had yelled at their child for the child not putting their shoes on, and then aggressively shoved the child towards their shoes – constituting an allegation that the *Law*, specifically section 166, had been contravened.
11. Under the *Law*, discipline is interpreted as any strategy employed by an educator with the intention of changing a child’s behaviour. Discipline that is inappropriate includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child, such as (but not restricted to) yelling, using threatening or humiliating language, isolating, or shaming children.
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. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue this Administrative Decision to address the non-compliance.
13. This decision is intended to bring to your attention the need to ensure that all notifiable incidents, complaints, and circumstances, as outlined under the *Law* and *Regulations* are notified by the Provider within the regulated timeframes.
14. The substantiated contraventions have been recorded on your Service file and may be considered by the Authority in any future applications for approvals, amendments, or waivers. They may also be considered in determining the action to be taken, should further breaches of the *Law* or *Regulations* be substantiated.

Legislation

15. The *Law* 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>.
16. 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>
17. Should you have any questions about 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