

Mr [REDACTED]
Person with Management or Control
Anglicare NSW South NSW West and ACT
RE: Anglicare at Southern Cross ECS

Email: [REDACTED]

Dear Mr [REDACTED]

Decision to Issue Administrative Action RE: NOT-40665257

1. As you are 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-40665257) relating to Anglicare at Southern Cross ECS SE-00011292 (the Service) operated by Anglicare NSW South NSW West and ACT PR-00005801 (the Provider).
2. The notified incident advised of the Provider identifying that an educator was not actively working towards a qualification yet was still engaged in the provision of education and care at the Service.
3. The Authority is satisfied that the Provider has not complied with provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) in this instance. Web addresses for the *Law* and the *Regulations* are provided for your convenience at the end of this decision.

Facts

4. On 10 March 2022, the Authority received a Notification of Incident (NOT-40665257) from the Provider advising that, on 9 March 2022, the Provider had identified that an educator, known to be [REDACTED] was not actively working towards a Certificate III Early Childhood qualification yet was still engaged in the provision of education and care at the Service. Refer relevant records at Attachment A.
5. The Notification further advised that [REDACTED] had commenced employment at the Service on 16 April 2021 as a casual assistant educator, commencing permanent part time on 22 February 2022 yet was not, and had not been, studying an approved qualification to be engaged as working directly with children since 16 April 2021.
6. Additionally, the Notification advised that due to the identified qualification issues, the Provider has reverted [REDACTED] to a casual contract with the Provider's Outside School Hours Program, where her qualifications meet minimum regulated requirements for employment.

Law

7. Provisions of the *Law* relevant to the notification assessment are:

Section 169(2) of the *Law* - Offence relating to staffing arrangements

An approved provider of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Regulation 126 – Centre based services – general educator qualifications

(1) The qualification requirements for educators at a centre-based service educating and caring for children preschool age or under are as follows—

(a) at least 50 per cent of the educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved diploma level education and care qualification; and

(b) all other educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved certificate III level education and care qualification.

(1A) The qualification requirements in subregulation (1)(b) do not apply to an educator if the educator has been employed by an approved provider on a probationary basis for not more than 3 months, at one or more centre-based services operated by the approved provider.

Reasons

8. After carefully considering all information submitted via the NOT-40665257, the Authority is satisfied that the Provider was in contravention of section 169(2) of the *Law* in this instance.
9. The Authority is satisfied on balance of probabilities that the Provider, by not ensuring at regular intervals during ██████████ employment since 16 April 2021 that she was actively engaged and working towards an approved Certificate III education and care qualification, as required by *Regulation 126*, engages the substantiated offence under section 169(2) of the *Law*.
10. The very nature of the Notification, admissions made within the notification and accompanying documentation submitted by the Provider, supports the contravention being substantiated.

11. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps advised of being taken by the Provider to mitigate risk of a similar oversight, the Authority has decided to issue this administrative action rather than statutory compliance actions.
12. In addressing non-compliance with section 169(2) of the *Law*, the Provider is requested to submit evidence demonstrating the following:
 - (a) All current educators employed by the Provider, across each service that it operates, have been confirmed as meeting qualification requirements under the *Law* and *Regulations*.
 - (b) The Provider has implemented a process and communicated this process to all staff delegated to oversee qualification compliance, to ensure that at all times that educators are educating and caring for children, the educators' qualifications meet the requirements of the *Law* and *Regulations* in regard to the educator's role/position of employment.
 - (c) The Provider has a policy and/or procedure in place to ensure that staffing arrangements and rostering, for the purpose of meeting minimum regulated ratio levels and adequate supervision of children, relies on assurances that educators have obtained, or are actively working towards the required qualification for their role.
13. Requested information outlined in paragraph 12 can be submitted to me at Janine.fairburn@act.gov.au. The Authority requests this to occur within 14 days of receipt of this decision.
14. Furthermore, this decision is to remind the Provider that minimum regulated requirements relating to qualifications for educators are in place to ensure that children receive best outcomes when engaged in education and care – socially, physically, mentally, and emotionally. Regular oversight of educator qualifications by the Provider is required to not only meet the expectations under the *Law*, but also by the Authority to ensure that children are protected, and quality education and care is always provided.
15. This Decision will be recorded on the Service's 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 associated *Regulations* be found.

Legislation

16. 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>.

17. 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>

18. If you have any questions in relation to this Decision, please contact me by email 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

28 March 2022