

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-40658260

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-40658260) 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 a family's concerns relating to an enrolled child, known as [REDACTED]
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 1 March 2022, the Authority received a Notification of Incident (NOT-40658260) from the Provider advising that, on 28 February 2022, the Provider had received a complaint from the family of [REDACTED], alleging inadequate toileting, sleep arrangements and lack of knowledge of the child's [REDACTED]. In addition to the Notification, a copy of email correspondence was attached. Refer relevant records at Attachment A.
5. The Notification further advised that [REDACTED] parents were required to seek medical intervention from a GP in relation to [REDACTED] developing a rash from inadequate toileting. In addition, it is noted that attached email correspondence indicates that the complaint was originally sent on 21 February 2022, and initially responded to 22 February 2022.
6. On 2 March 2022, the Regulatory Authority requested additional information from the Provider, which was submitted on 4 March 2022. Refer relevant correspondence at Attachment B.
7. Documents submitted in response to the Authority's request included:
 - a) Dealing with Medical Conditions ECEC Policy
 - b) Enrolment and Orientation ECEC Policy

- c) Risk Minimisation Plan – [REDACTED] - 2022
- d) Nappy Change Procedure 2022
- e) Nappy Change Policy & Procedure 2022

Law

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

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.

Section 174 of *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—

- (a) any serious incident at the approved education and care service;
- (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;
- (c) information in respect of any other prescribed matters.

Penalty: \$4 000, in the case of an individual
\$20 000, in any other case.

- (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) – Time to notify certain information to Regulatory Authority

- (2) For the purposes of section 174(4) of the Law, a notice must be provided—
- (a) in the case of a notice under section 174(2)(a)—
 - (ii) in the case of any other serious incident, within 24 hours of the incident or the time that the person becomes aware of the incident.
 - (b) 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.

Reasons

9. After carefully considering all information submitted via the NOT-40658260, the Authority is satisfied that the Provider was in contravention of section 167(1) and 174(4) of the *Law* in this instance.
10. The Authority is satisfied on balance of probabilities that the Provider, by not ensuring the medical management plan was formalised at time of enrolment, and providing inadequate support for toileting, has not ensured all reasonable precautions have been taken to protect children, specifically [REDACTED] in this instance, from harm and hazard likely to cause injury, engaging the substantiated offence under section 167(1) of the *Law*.
11. The very nature of the Notification and accompanying documentation submitted by the Provider, supports that a [REDACTED] management plan was not finalised or formalised at [REDACTED] enrolment, therefore associated risks and management of her [REDACTED] could not be communicated effectively to the educators responsible for her care.
12. The Authority is satisfied that the Provider, received a complaint on 21 February 2022 from [REDACTED] [REDACTED] family, alleging that reasonable precautions had not been taken to protect [REDACTED] in regard to toileting and medical management of [REDACTED]. This complaint alleging that the *Law* had been contravened was not notified to the Authority within 24 hours of receipt, in contravention of section 174(4) of the *Law*.
13. Additional information attached to the Notification, being email correspondence between [REDACTED] [REDACTED] parent and [REDACTED] identifies concerns were raised on 21 February 2022, with initial response back on 22 February 2022, yet the complaint was not notified to the Authority until 1 March 2022 – outside of the regulated 24-hour timeframe for notification.
14. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps taken by the Provider to mitigate risk of a similar incident, the Authority has decided to issue this administrative action rather than statutory compliance actions.
15. In information submitted by the Provider, it is noted that the following actions were undertaken to mitigate risk of a similar incident included:
 - a) Finalising [REDACTED] medical management plan.
 - b) Providing email communication to staff members reminding them to be greet parents at pick up time.
 - c) Communicating with educators to ensure they are aware of the Nappy Change/Toileting Training Policy & Procedure.
16. The Authority takes this opportunity to remind the Provider of its notification obligations and to ensure that all persons in management positions at services operated by the Provider are aware of those requirements, to facilitate compliant reporting as required under the *Law*.

17. 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 similar breaches of the *Law* or associated *Regulations* be found.

Legislation

18. 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>.

19. 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>

20. 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