

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

Email [REDACTED]

Dear Mr [REDACTED]

**Decision to Issue Administrative Action RE: NOT-40666234**

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 Complaint (NOT-40666234) relating to Anglicare at Franklin ECS SE-00014231 (the Service) operated by Anglicare NSW South NSW West and ACT PR-00005801 (the Provider).
2. The notified complaint raised to the Provider by [REDACTED], alleged that a serious incident has or was occurring.
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 11 March 2022, the Authority received a Notification of Complaint (NOT-40666234) from the Provider advising that, on 2 February 2022, the Provider had received a verbal complaint from the father of [REDACTED] (aged 4years), alleging inadequate toileting facilities were compromising his son's wellbeing, and that an educator's management of toileting put his child in distress. In addition to the Notification, a copy of email correspondence was attached and an incident report for 2 February 2022. Refer relevant records at Attachment A.
5. The Authority noted that email correspondence identified liaison between the complainant and the Provider between 2 February 2022 and 10 March 2022.
6. On 11 March 2022, the Regulatory Authority requested additional information from the Provider, which was submitted on 15 March 2022. Refer relevant correspondence at Attachment B.
7. Documents submitted in response to the Authority's request included:
  - a) Phone Conversation record of 11 March 2022; and
  - b) [REDACTED] account of toilet incident with [REDACTED] on 2 February 2022.

## Law

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

### **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-40666234, the Authority is satisfied that the Provider was in contravention of section 174(4) of the *Law* in this instance.
10. The Authority is satisfied that the Provider, received a complaint on 2 February 2022 from [REDACTED] father, [REDACTED], which was followed up in detail via email on 9 February 2022, alleging that reasonable precautions had not been taken to protect [REDACTED] from harm in regard to toileting arrangements and toileting support. 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*.

11. Additional information attached to the Notification, being email correspondence between [REDACTED] and [REDACTED] supports concerns were raised on 2 and 9 February 2022, with initial responses back to the complainant on 2, 4 February 2022, yet the complaint was not notified to the Authority until 11 March 2022 – outside of the regulated 24-hour timeframe for notification.
12. 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.
13. In information submitted by the Provider, it is noted that the following was advised via email from Ms [REDACTED] regarding late notification of the complaint:

*“At the time of the incident, I did not believe the law had been contravened, after my conversation with Mr [REDACTED] the following day I believed the interaction with the staff member to be a miscommunication in the ‘heat of the moment’ and the only concern to be around the actual toilet itself as at the time of our conversation, he had dismissed the issue with the staff. I did not see the email from Mr [REDACTED] on the 9<sup>th</sup> February as I was unwell with covid and away from work. It wasn’t until I saw his email last week that I noted his complaint against the staff member and made the decision to report to CECA.”*
14. 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, who are delegated to perform notification of prescribed matters to the Authority on the Provider’s behalf, are aware of those requirements, to facilitate compliant reporting as required under the *Law*.
15. The Authority also strongly encourages the Provider to ensure that there is a process in place to ensure, in the Service Director’s or Nominated Supervisor’s absence, there are other persons delegated to receive, respond to and report incidents and complaints that are notifiable under the *Law* to the Authority to ensure compliance.
16. 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**

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 Decision, please contact me by email at [Janine.Fairburn@act.gov.au](mailto: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

5 April 2022