

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-40691870

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-40691870) 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 Provider advised in the notification that a child with a known egg allergy had been given noodles containing egg product.
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 *Education and Care Services National Regulations (the Regulations)* are provided for your convenience at the end of this decision.

Facts

4. On 13 April 2022, the Authority received a Notification (NOT-40691870) from the Provider advising that on that date, a child, [REDACTED] (4:3) who suffers from an egg allergy, had been given noodles containing egg product as a result of meal roster error and failure to provide an alternative meal as per practice.
5. Furthermore, the Provider also advised that a medical minimisation plan had not been completed and that only an action plan existed. Refer Attachment A.
6. On 19 April 2022, the Regulatory Authority received additional information and documentation from the Provider in response to a request on the 14 April 2022. Refer relevant correspondence at Attachment B.
7. Documents submitted in response to the Authority's request included:
 - a) [REDACTED] Medical Risk Minimisation plan;
 - b) Alternate Wednesday Tracker;
 - c) Term 2 Menu -Revised with allergies; and
 - d) Individual allergy and medical information list.

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.

Reasons

9. The Authority has carefully considered all information supplied by the Provider and is satisfied on the balance of probabilities that, on 13 April 2022, the Provider failed to take all reasonable steps to ensure that a child, [REDACTED], was given a meal that did not contain egg product, to which he has a known allergy.
10. The evidence and information submitted by the Provider supports offences under section 167(1) of the *Law*.
11. 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 you this Administrative Decision.
12. In determining this action, the Authority noted and considered the following:
- a) Immediate steps taken to follow the Medical Action plan;
 - b) Steps taken to create medical minimization plan;
 - c) [REDACTED] reaction to the allergen.
13. 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 action.
14. The Authority takes this opportunity to remind the Provider of its obligations to ensure that medical minimisation plans are in effect for all children at the Service who have medical conditions, as required under the *Law* and *Regulations*.
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 similar 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 Authorised Officer Brian Cropper at Brian.Cropper@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director
Children's Education and Care Assurance
Education and Care, Regulation and Support
ACT Education Directorate
19 May 2022