

██████████  
Person with Management or Control  
The Burgmann Anglican School  
RE: Burgmann Anglican School Early Learning Centre

Email: ██████████ [burgmann.act.edu.au](mailto:██████████@burgmann.act.edu.au)

Dear ██████████,

**Decision to Issue Administrative Action RE: NOT-40679276**

1. As you may be 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-40679276) relating to Burgmann Anglican School Early Learning Centre SE-40016077 (the Service) operated by The Burgmann Anglican School PR-00005811 (the Provider).
2. The notified complaint advised of a family’s concerns relating to an enrolled child, known as ██████████
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 30 March 2022, the Authority received a Notification of Complaint (NOT-40679276) from the Provider advising that, on 25 March 2022, the Provider had received a complaint from the father of ██████████ alleging that ██████████ was being attacked and bullied, and was concerned about the safety of his daughter, supervision, and duty of care.
5. The Notification indicated that these concerns were raised because of a biting incident occurring 24 March 2022. In addition, the Notification advised a meeting with the father was being organised for either 31 March 2022 or 1 April 2022 to discuss his concerns and strategies put in place to support ██████████ Refer relevant records at Attachment A.
6. On 30 March 2022, the Regulatory Authority requested additional information from the Provider, which was submitted on 1 April 2022 via email and uploading of documents via ACECQA NQAITS. Refer relevant correspondence at Attachment B.
7. Documents submitted in response to the Authority’s request included:
  - a) Policies and Procedures Manual;
  - b) Potential Emergencies Risk Assessment;

- c) Behaviour Support Plan for [REDACTED] dated 14/02/2022;
- d) Parent Meeting minutes 31032022 and email correspondence; and
- e) Internal Incident/Injury/Trauma and Illness Record 24032022.

### **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) – 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-40679276, the Authority is satisfied that the Provider has contravened section 174(2) of the *Law* in this instance.
10. The Authority is satisfied that the Provider, received a complaint on 25 March 2022 from [REDACTED], alleging inadequate supervision and that reasonable precautions had not been taken to protect [REDACTED] in regard to biting by another child. This complaint alleging that the *Law* had been contravened was not notified to the Authority within 24 hours of receipt, pursuant to section

174(4) of the *Law and Regulation* 176(2)(b), engaging a contravention of section 174(2) of the *Law*.

11. The Notification identifies concerns were raised verbally on Friday 25 March 2022, with the Nominated Supervisor responding by way of organising a face-to-face meeting upon the complainants return to Canberra, yet the complaint was not notified to the Authority until Wednesday 30 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. 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*.
14. 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**

15. 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. 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  
20 April 2022