

Ms [REDACTED]
Person with Management or Control
Canberra Childcare Pty Ltd ATF The Fyshwick Child Care Trust
RE: Artemis Early Learning Fyshwick

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Action RE NOT-40605787

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed Notification (NOT-40605787) relating to Artemis Early Learning Fyshwick, SE-40002132 (the Service), operated by Canberra Childcare Pty Ltd ATF The Fyshwick Child Care Trust, PR-00005814 (the Provider).
2. The Notification related to a former nominated supervisor's conduct towards children at the Service.
3. Web addresses to the *Education and Care Services National Law Act (ACT)* (the Law), and the *Education and Care Services National Regulations 2011* (the Regulations) are provided for your convenience at the end of this Decision.

Facts

4. On 9 December 2021, the Authority received a referral of reportable conduct information, authorised by section 863CA of the *Children and Young People Act 2018*.
5. Between 17 and 20 December 2021, the Authority exchanged emails with the Provider in relation to allegations of inappropriate conduct by an educator at the Service [REDACTED]. See Attachment A.
6. On 20 December 2021, the Authority received Notification (NOT-40665787) accompanied by investigation documents including disciplinary meeting minutes and unsigned accounts, outlining allegations that an educator employed at the Service, [REDACTED] on 5 October 2021, inappropriately disciplined her child and on 26 October 2021 inappropriately grabbed an unknown child and forced them to remain on their bed to rest, with the educator being subsequently terminated from her role. See Attachment B.
7. It is noted that [REDACTED] was appointed by the Provider as a nominated supervisor of the Service on 21 June 2021 and ceased that role on 5 November 2021.
8. The notification of cessation (NOT-40617227) was received by the Authority on 13 January 2022. See Attachment C.

Allegations

9. It is alleged that, the Provider failed to notify the Authority of a circumstance arising at the service that poses a risk to the health, safety and wellbeing of a child or children attending

the service, within seven days, as prescribed by Regulation 175(2)(c), in contravention of section 174 of the *Law*;

10. It is further alleged that the Provider failed to notify the Authority that a nominated supervisor had ceased to be employed by the Service and was removed from the role of nominated supervisor, within seven days, as prescribed by Regulation 174(2)(b), in contravention of section 173 of the *Law*.

Law

11. The following provisions of the *Law* were relevant to the assessment:

Section 173 of the *Law* – Offence to fail to notify certain circumstances to Regulatory Authority

- (2) An approved provider must notify the Regulatory Authority of the following in relation to an approved education and care service operated by the approved provider –
- (b) if a nominated supervisor of an approved education and care service –
- (i) ceases to be employed or engaged by the service;
 - (ii) is removed from the role of nominated supervisor; or
 - (iii) withdraws consent to the nomination.
- (5) A notice under subsection (2) must be provided within the relevant prescribed time to the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

Section 174 of the *Law* – Offence to fail to notify of certain information to Regulatory Authority.

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to each education and care service operated by the provider
- (c) Information in respect of any other prescribed matters.

Penalty: \$4000, 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 174(2)(b) – Time to notify certain circumstances to Regulatory Authority

For the purposes of section 173(5) of the *Law*, a notice must be provided –

- (b) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant event.

Regulation 175(2)(c) – Prescribed information to be notified to the Regulatory Authority.

For the purpose of section 174(2)(c) of the Law, the following matters are prescribed-

- (c) Any circumstance arising at the service that poses a risk to the health, safety or wellbeing of a child or children attending the service.

Regulation 176(2)(c) – Time to notify certain information to Regulatory Authority

(2) For the purposes of section 174(4) of the Law, a notice must be provided –

- (c) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

Reasons and Decision

12. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, that there is sufficient weight of evidence to substantiate the following contraventions of the *Law*:
 - a. That the Provider failed to notify the Authority of a circumstance arising at the service that poses a risk to the health, safety and wellbeing of a child or children attending the service, within seven days, as prescribed by Regulation 175(2)(c), in contravention of section 174 of the *Law*; and
 - b. That the Provider failed to notify the Authority that a nominated supervisor had ceased to be employed by the Service and was removed from the role of nominated supervisor, within seven days, as prescribed by Regulation 174(2)(b), in contravention of section 173 of the *Law*.
13. 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 the Provider in achieving compliance and improved outcomes for children.
14. In determining the appropriate action to take, the Regulatory Authority took the following matters into consideration:
 - a) Provider responsibilities under the *Law* if offences were engaged;
 - b) Prompt action taken by the Provider once becoming aware of the allegations; and
 - c) Investigations conducted by the Provider to resolve the allegations.
15. The Authority also considered the Service's compliance history and has determined not to initiate statutory action but instead to issue this Administrative Decision.
16. The lack of notification by the Provider within the prescribed time, in circumstances where the educator is known to be working directly with children at another service, has resulted in risk to children. It is essential that Providers notify the Authority of all required matters within the prescribed time so any such risk can be addressed through appropriate regulatory channels.

17. Regarding the substantiated offences under sections 173 and 174 of the *Law*, the Authority requires the Provider to produce evidence to demonstrate policy and procedures that inform accurate and timely notification of all prescribed circumstances and information, outlined under the *Law* and *Regulations*. Such evidence should be produced, within 14 days of receipt of this letter, to Senior Investigator Brian Cropper at Brian.Cropper@act.gov.au.
18. This decision will be recorded on the Service's file and may be considered in any future applications for approvals, amendments, or waivers. This decision may also be considered in determining any future regulatory action, should there be future similar breaches of the *Law* or *Regulations*.

Legislation

19. The *Law* and *Regulations* applies to you as a provider and any service you operate. 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>
20. 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>
21. Should you have any questions about this Decision please contact Senior Investigator Brian Cropper on Brian.Cropper@act.gov.au.

Yours Sincerely,



Jo Williams
Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

20 January 2022