

[REDACTED]
Person with Management or Control
ACT Education Directorate
RE: Weetangera Primary School – Preschool Unit.

Email: [REDACTED]

Dear [REDACTED]

Decision to issue Administrative Action RE: NOT-40507663

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment into Notification (NOT-40507663) advising that a circumstance had arisen that posed a risk to the health, safety or wellbeing of a child or children at Weetangera Primary School-Preschool Unit SE-00011233 (the Service), operated by ACT Education Directorate PR-00006465 (the Provider).
2. The Notification advised that the circumstance that posed a risk to the health, safety or wellbeing of children arose when four children attended the back of the playground and consumed red berries hanging from a tree branch.
3. Web addresses to the *Education and Care Services Law (ACT)* (the Law) and the *Education and Care Services National Regulations 2011* (the Regulation) are provided for your convenience at the end of this decision.

Facts

4. On the 4 February 2021, the Authority received a Notification (NOT-40507663) identifying that on the 2 February 2021, four children being educated and cared for by the Service attended the rear of the playground in and around some trees and consumed red berries from a tree branch unseen by educators. Refer Attachment A

Law

Section 165 of the Law - Offence to inadequately supervise children

- (1) The approved provider of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Section 167 of the Law – Offence relating to protection of children from harm and hazards

- (1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from hazard likely to cause injury.

Reasons

5. Upon considering all evidence for assessment, inclusive of Provider supplied information, the Authority is not satisfied, on the balance of probabilities, that there is sufficient evidence to either substantiate, or raise reasonable suspicion, of an offence under section 165 of the Law in this instance.

6. However, the Authority is satisfied that the Notification identifies that the Provider has failed to ensure that every reasonable precaution is taken to protect children from harm and hazard in that berry flowering trees were not suitably pruned or determined as appropriate within a preschool play space prior to the new school year, engaging a contravention of section 167 of the *Law*.
7. In deciding if compliance action should be taken, the Authority has considered all relevant information supplied by the Provider regarding the Provider's management of the incident and proposed mitigation of the hazard to prevent reoccurrence.

Decision

8. In consideration of all relevant information, the Authority has determined not to initiate statutory compliance action regarding the substantiated offence of section 167(1) of the *Law*.
9. However, the Authority requests the Provider submit to the Authority, evidence to demonstrate that a risk assessment has been conducted and strategies/actions undertaken to ensure that outdoor areas utilised by preschool children are safe and secure.
10. This evidence should be submitted to the Authority by close of business 14 days from the date of receipt of this letter. Information can be sent by email to me at janine.fairburn@act.gov.au, or by post to:

Janine Fairburn, Assistant Director
Children's Education and Care Assurance
PO Box 158, CANBERRA ACT 2601

11. The *Law* applies to you as an approved provider, and any approved service that the approved provider operates.
12. 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>.
13. 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>
14. This Decision will be recorded on your Service 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 breaches of the *Law* or *Regulations* be found.
15. If you have any queries regarding this Decision, please contact me at janine.fairburn@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

12 February 2021