

- i) Copy of educator signed acknowledgements, dated 28/07/2023, that they have read and have a thorough understanding of the Junior Yard Supervision Plan and Wooden Fort Risk Assessment; and
- j) the Wooden Fort junior yard risk assessment (Attachment E).

Law

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

Section 165(1) of the *Law* - Offence to inadequately supervise children

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.

Penalty: \$10 000, in the case of an individual.
\$50 000, in any other case.

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.

Obligations upon Regulatory Authority

- 8. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. Relevant to this decision is the objective at section 3(2)(a), namely - *'To ensure the safety, health and wellbeing of children attending education and care services; ...'*
- 9. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:
 - (a) that the rights and best interests of the child are paramount; ...
 - (f) that best practice is expected in the provision of education and care services.
- 10. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
 - (c) to monitor and enforce compliance with this *Law*;
 - (d) to receive and investigate complaints arising under this *Law*.
- 11. The *Law* works to protect a particularly vulnerable part of our society — children — when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.

12. A key object of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.

Decision

13. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to ground an offence under section 165 and 167 of the *Law*.

14. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider failed to ensure that all children were adequately supervised, as the mud map (Attachment C) did not indicate an educator was not adequately supervising or supporting a child of ██████ age in utilising the fort.

15. In relation to section 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider failed to ensure all reasonable precautions were undertaken to protect children, by not ensuring infant children were adequately supervised or supported in utilising the fort.

16. The Provider's risk assessment (Attachment E) clearly states that *"Educators are to always maintain active supervision. Team leaders will monitor educators around this area and direct educators to areas of supervision if required. Communication regarding moving between areas will be maintained so there's always an educator supervising at the wooden fort when there are children playing in this area. Educators will encourage 'Adventurous Play', supporting and assisting younger children when climbing up and down the platforms and when coming down the slide."*

17. The description of the incident and information provided does not support that this was occurring, which the Authority is satisfied has contributed to the injury sustained by ██████ This further supports the substantiation of the offences as outlined above.

18. 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.

19. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the demonstrated 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 to address the non-compliances.

20. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children and educators alike. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.

21. 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 breaches of the Law or associated Regulations be found.

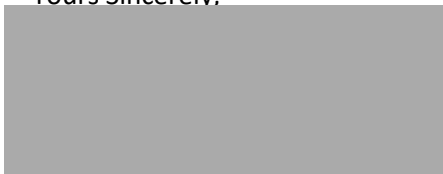
Legislation

22. The *Law* 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> .

23. 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>.

24. Should you have any questions about this Decision please contact Authorised Officer Janine Fairburn at Janine.Fairburn@act.gov.au.

Yours Sincerely,



Janine Fairburn - Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support

18 August 2023