



7. The Authority communicated with [REDACTED] parent, who provided the Authority with additional photographs of [REDACTED] on day of and after 29 November 2022, as well as email correspondence between themselves and the Provider's compliance manager, Mr [REDACTED] [REDACTED] between 30 November 2022 and 6 December 2022. Refer relevant records at Attachment F.

### **Law**

8. The following provisions of the *Law* are relevant to the assessment of NOT-40799016:

#### **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.

### **Reasons**

9. After carefully considering evidence gathered throughout the assessment, the Authority finds contraventions of section 165(1), and engaging section 167(1) of the *Law* against the Provider have been substantiated in this instance, specific to 29 November 2022.
10. In relation to section 165 and 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider has not ensured adequate supervision at all times, which contributed to [REDACTED] being unnoticed by educators asleep in the sun.
11. The Authority is satisfied that, on 29 November 2022, the Provider failed to ensure adequate supervision of all children being educated and cared for in that, [REDACTED] was not noticed as being asleep outdoors for a length of time contributing to suspected heatstroke to occur, in contravention of section 165(1) of the *Law*
12. The Authority is satisfied that, on 29 November 2022, the Provider failed to ensure all reasonable steps were taken to protect [REDACTED] from harm and hazard likely to cause injury or illness, due to [REDACTED] being left asleep outdoors for a length of time. This in turn contributing to suspected heatstroke and distress by the child, rather than being moved to an appropriate sheltered space for sleep or assessment to determine if child was unwell, in contravention of section 167(1) of the *Law*.
13. The very nature of the incident, admissions within the Providers investigation of the matter, and subsequent actions undertaken to mitigate risk of a similar incident occurring further supports the contraventions being determined.

14. 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.
15. 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 at all times. 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.
16. 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.
17. Unless new relevant information is received the Authority determines this matter now closed.

**Legislation**

18. 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>.
19. 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>
20. If you have any questions in relation to this Decision, please contact me by email at  
[jo.williams@act.gov.au](mailto:jo.williams@act.gov.au).

Yours sincerely,



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

10 February 2023