

Ms [REDACTED]
Person with Management or Control
Montessori Standard Pty Ltd
RE: Eucalyptus Montessori

Email: [REDACTED]@montessori.org.au
[REDACTED]@eucalyptusmontessori.com.au

Dear Ms [REDACTED]

Decision to issue Administrative Action RE: NOT-40872775

1. As you may be aware, Authorised Officers from Children's Education and Care Assurance, also known as the ACT Regulatory Authority (the Authority), recently conducted inquiries related to a Notification of Incident relating to Eucalyptus Montessori SE-40009730 (the Service), operated by Montessori Standard Pty Ltd, PR-40008971 (the Provider).
2. NOT-40872775 advised of a three-year-old child sustaining a fractured risk because of an unwitnessed incident occurring at the Service on 26 June 2023.
3. The Authority is satisfied that the Provider was not complying with the provisions of the *Education and Care Services National Law (ACT) (the Law)* and the *Education and Care Services National Regulations (the Regulation)* in respect to the operation of the Service on 26 June 2023.

Facts

4. On 27 June 2023, the Authority received an email from the Service advising that a serious incident had occurred at the Service. Refer email at Attachment A.
5. On 28 June 2023, the Authority received a Notification of Incident (NOT-40872775) and associated attachments from the Provider. This Notification reported that on 26 June 2023, a child known to be [REDACTED] (3 years old) sustaining a fractured risk because of an unwitnessed incident.
6. The Notification further advised that [REDACTED] father notified the Provider of the incident on 27 June 2023 via an initial phone call and then follow up email. No educators were aware of the incident or injury prior to [REDACTED] collection from the centre on 26 June 2023.
7. The notification advised that CCTV footage was available in relation to the incident. Refer copy of NOT-40872775 at Attachment B.
8. On 5 July 2023, additional information, via CCTV Footage was requested by RA and submitted by Provider. CCTV footage identified that the child sustained the injury when playing in the outdoor environment. [REDACTED] was viewed jumping from a retaining wall, unchallenged by educators, with friends.

Law

9. The following provisions of the *Law* are relevant to the assessment of the notification:

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 hazard

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 any hazard likely to cause injury.

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

Reasons

10. Upon considering all evidence for assessment via Provider supplied information, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under section 165 of the *Law* in this instance, engaging a further contravention of section 167(1) of the *Law*.
11. The Authority is satisfied that inadequate supervision has contributed to ██████ falling in the outdoor environment and sustaining a serious injury unnoticed by educators on 26 June 2023. CCTV identified one educator supervising up to 15 children in an outdoor play area which further supports inadequate supervision.
12. In addition, inadequate supervision contributed to a subsequent lack of injury management and first aid being provided to child.
13. Furthermore, the Authority is satisfied that the Provider failed to ensure all reasonable precautions were undertaken to protect children, by not ensuring adequate supervision of ██████
14. 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.
15. 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.
16. In relation to substantiated breaches engage by the Provider under section 165 and 167 of the *Law*, the Authority requests the Provider to submit the following evidence to support risk mitigation actions have been undertaken:
 - a) Provide evidence demonstrating that the Provider has reviewed supervision arrangements and plans to support child activities in the outdoor environment;
 - b) Provide evidence demonstrating that a review of the current outdoor play area risk assessment has been performed; and
 - c) Provide evidence to demonstrate that any amendments made to current supervision practices have been communicated to educators.

17. Requested information can be submitted to me via email at Janine.fairburn@act.gov.au. The Authority requests this to occur within 14 days of receipt of this decision.
18. This Decision is intended to bring to your attention the need to ensure that the Provider meets its obligations under the *Law*, in particular the obligation to always supervise children and ensure that every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury.
19. Furthermore, 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.
20. 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

21. 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>.
22. 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>
23. If you have any queries regarding this Decision, please contact me via email at janine.fairburn@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Children’s Education and Care Assurance
Education and Care, Regulation and Support

28 July 2023