

Ms [REDACTED]
Person with Management or Control
North Belconnen Community Association Incorporated
RE: Coinda Cottage

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Action RE: NOT-40880671

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA), recently assessed a Notification of Incident (NOT-40880671).
2. The Notification outlined that a child (1yr) sustained an injury after falling from outside play equipment whilst attending Coinda Cottage SE-00009769 (the Service, operated by North Belconnen Community Association Incorporated PR-00005854 (the Provider), on 18 July 2023.
3. The Authority is satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) and the *Education and Care Services National Regulations (the Regulations)* in this instance.
4. Web addresses to the *Law* and the *Regulations* are provided for your convenience at the end of this Decision.

Facts

5. On 18 July 2023, the Authority received Notification of Incident (NOT-40880671) from the Provider. The Notification advised of a child, known to be [REDACTED] (aged 1year) who suffered an injury after falling fifty-nine centre-meters from a piece of outside play equipment. Refer Attachment A.
6. Accompanying the Notification were the was an incident report and two photos. Refer to Attachment B.
7. On 19 July 2023, additional information was submitted upon request to the Authority. Relevant documents and information include CCTV video footage and Risk Assessment. Refer Attachment C for risk Assessment and Attachment D for CCTV Video Footage.

Law

8. The Notification engage the following provisions of the *Law*:

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

9. 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; ...'

10. 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.

11. 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.

12. 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*.

13. 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

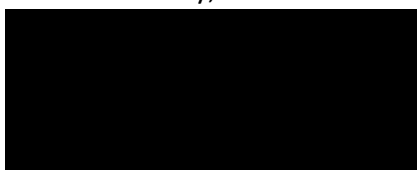
14. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to ground an offence under section 165 and 167 of the *Law*.
15. In relation to section 165 and 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider failed to ensure all children were adequately supervised at all times and therefore every reasonable precaution was not undertaken to protect children.
16. CCTV footage identifies only one educator supporting and supervising infants on the play equipment identified as being in the 'Big Yard'. Furthermore, CCTV footage identified that the educator was providing one-on-one support to another child to navigate the multi-layered 'reels' and had their back turned on the other children standing on the main platform. When the educator was alerted to ██████ falling, she then turned her back on the child she was initially supporting and who was still standing up on the third 'reel'.
17. The very nature of the Notification and accompanying documentation submitted by the Provider, support offences under sections 165 (1) and 167(1) of the *Law* being substantiated in this instance.
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. 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 that demonstrates a review of practices and risk assessment for infants' activities using outdoor environments and resources designed for older children has been completed.
21. Requested information can be submitted to Authorised Officer Janine Fairburn at Janine.fairburn@act.gov.au. The Authority requests this to occur within 14 days of receipt of this decision.

22. This Decision serves as a reminder that, it is imperative to ensure that that risk assessments include details of how adequate supervision will be achieved to support younger children's agency when utilising play equipment not specifically designed for their age group.
23. Supervision and staffing levels may need to be increased in higher risk environments, and to take into consideration of each child's developmental needs to ensure reasonable precautions have been taken to protect children from harms and hazards likely to cause injury.
24. 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

25. 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> . 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>.
26. Should you have any questions about this Decision please contact me at Janine.fairburn@act.gov.au.

Yours Sincerely,



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

03 August 2023