

Ms [REDACTED]
Person with Management or Control
Anglicare NSW South NSW West and ACT
RE: Anglicare at Southern Cross ECS

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Action RE: NOT-40968769

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed a Notification of Incident (NOT-40968769) relating to Anglicare at Southern Cross ECS SE-00011292 (the Service) operated by Anglicare NSW South NSW West and ACT PR-00005801 (the Provider).
2. The notification of incident advised that on 18 March 2024, [REDACTED] 3 yrs old) slipped off a picnic table chair and hit his head on the concrete floor, choking on a piece of apple in his mouth until an Educator removed it. [REDACTED] has additional needs, requires special equipment and ongoing support.
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*) in this instance. Web addresses to the *Law* and the associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 21 March 2024, a notification of incident (NOT-40968769) was submitted to the Authority by the Provider advising that on 18 March 2024, [REDACTED] was sitting alone on an outdoor picnic table, without active supervision or support, when he suddenly fell backwards onto the concrete, hitting his head. When an Educator was alerted (having heard the distress from inside the baby's room and going outside to check on him) he was silent and choking on his apple, with the nearby educators not assisting him in that situation. The responding educator proceeded to remove the apple from his mouth, and then give him back blows.
5. Additional information submitted with NOT-40968769 included the following:
 - Educator Statement (1);
 - Educator Statement (2);
 - Email Complaint/Correspondence with Parent;
 - Incident report.
6. On 3 April 2024, the Provider submitted additional documents in response to a request for further information from the Authority, including:
 - Working Directly with Children record;

- Working Directly with Children record (2);
 - Supervision – Risk Assessment;
 - Supervision – Risk Assessment (2);
 - Educator Qualifications;
 - Educator Statement;
 - Educator Statement (2);
 - Inclusion Plan;
 - Summary of Development;
 - Picnic Table photos;
 - Noah’s Ark – Record of Visit;
 - Email Correspondence with Parent;
 - ██████ – Physio Contact;
 - Meeting Notes – Staff and Parent.
7. Please note, documents referred to in paragraph 4 through 6 are not included due to size. These documents can be provided upon request.
8. NOT-40968769 further advised that steps taken by the Provider to prevent or minimise a similar incident included:
- Review ██████ plan, review the strategies we have in place and work on any communication issues.
 - We will also be reviewing the current Educators in the room, working closely with the Room Leader, reviewing associated risk assessments and any risk assessments/risk minimisation and communication plans already in place for ██████

Law

9. The Notification engaged 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: \$11 400, in the case of an individual
\$57 400, 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: \$11 400, in the case of an individual
\$57 400, in any other case.

Section 174(1) of the Law - Offence to fail to notify certain information to Regulatory Authority

An approved provider must notify the Regulatory Authority of the following information in relation to the approved provider, or each approved education and care service operated by the approved provider -

- (a) any change relevant to whether the approved provider is a fit and proper person to be involved in the provision of an education and care service;
- (b) information in respect of any other prescribed matters.

Penalty: \$4 500, in the case of an individual
\$22 900, in any other case.

Decision

10. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to support an offence under section 165, 167 and 174 of the *Law* in this instance.
11. In relation to section 165, 167 and 174 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure that all children were adequately supervised or protected from harm at all times while in the care of the Service on 18 March 2024.
12. The Authority is satisfied that the very nature of the matter notified, and additional information submitted by the Provider supports, on balance of probabilities, the offence being substantiated.
13. The Authority is satisfied that [REDACTED] was not adequately supervised or protected from harm, resulting in his injury and choking hazard, by educators responsible for his education and care at the time.
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 advised of steps taken by the Provider to mitigate risk of a similar occurrence, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliance.
16. This decision services to remind the Provider of their obligations and responsibilities under the *Law*, and to ensure that staffing and supervisory processes and educator practice is monitored regularly to ensure ongoing compliance with the *Law* and encourage continual improvements for outcomes for children.
17. 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

18. 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>.
19. Should you have any questions about this Decision please contact me at vittorio.colosimo@act.gov.au.

Yours Sincerely,



Vittorio Colosimo
A/g Assistant Director Investigations
Regulation and Compliance
Education Directorate

09 October 2024