



Mr [REDACTED]
Person with Management or Control
Kids Club Early Childhood Learning Centres Pty Ltd
RE: Kids Club Symonston ELC
Email: [REDACTED]

Dear Mr [REDACTED]

Decision to issue Administrative Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance. The Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law (ACT)* (the Law), together with receiving and investigating complaints arising under the Law.
2. As you are aware, the Authority recently investigated suspected offences under the Law relating to the operation of Kids Club Symonston Early Learning Centre SE-40008980 (the Service), operated by Kids Club Early Childhood Learning Centres Pty Ltd PR-40001605 (the Provider).
3. The Authority is satisfied that the Provider was not complying with the provisions of the Law in respect to this matter. Web addresses to the Law and associated Regulations are provided for your convenience at the end of this Decision.

Facts

4. On 27 May 2022, the Authority received information alleging that a Service employed educator, known to be [REDACTED] had been pulling children forcefully by the arms to the nappy change area, and in one instance, was alleged to have inappropriately tapped a child's penis on 10 March 2022.
5. Due to the serious nature of the allegation, and risk to children if inappropriately interacted with, the Authority determined to investigate the allegations made against the educator, as well as allegations engaging suspected Provider offences under the Law as follows:

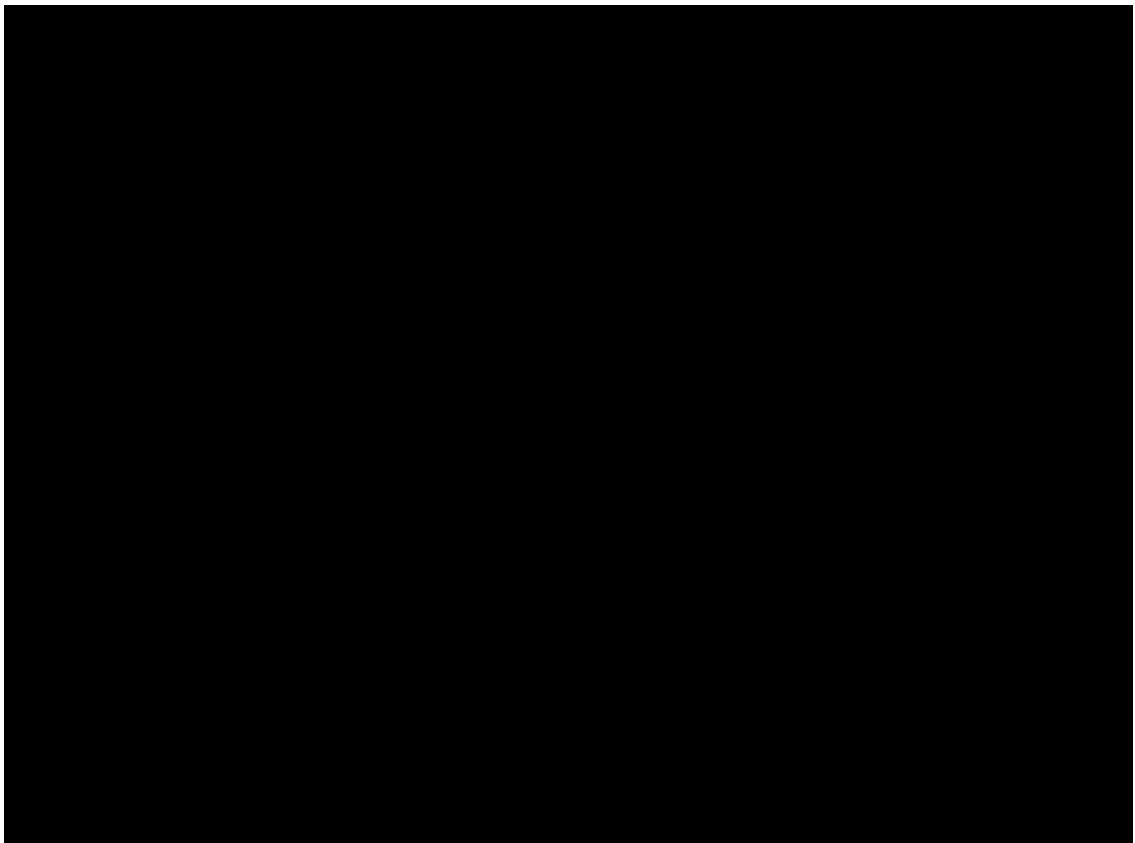
Allegation One

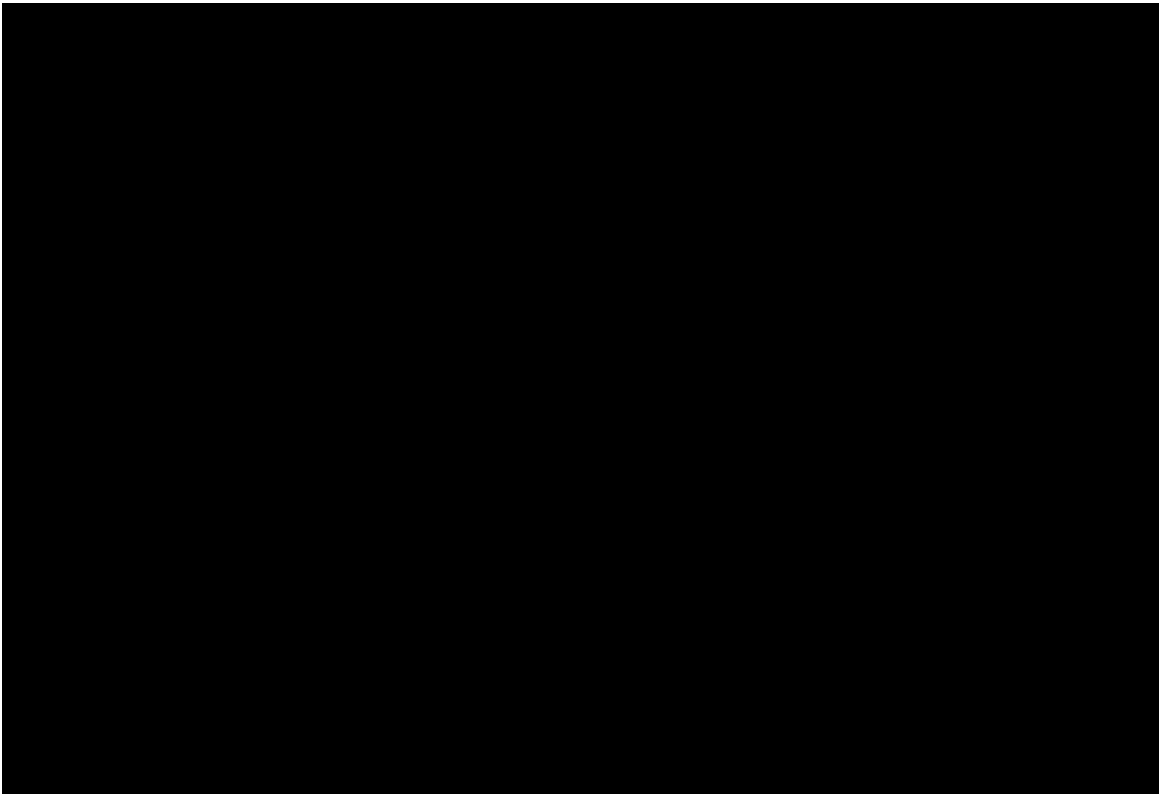
That, by the 10 March 2022, the Provider failed to ensure every reasonable precaution was taken to protect children attending the Service from harm and any form of hazard likely to cause injury, in that, a child, believed to be [REDACTED] was pulled by the arm and had his penis tapped by an educator, amounting to inappropriate interactions under *Regulation 155*, and engaging a contravention s167 of the Law.

Allegation Two

That, by 18 March 2022, the Provider failed to notify the Authority of a complaint alleging that the *Law* had been contravened, in that the Provider received a complaint from Ms [REDACTED] via a resignation email raising various allegations of non-compliance, inclusive of alleging an educator was pulling children by the arm to the nappy room and tapping one child on the penis, being a contravening s174(2)(b) of the *Law*.

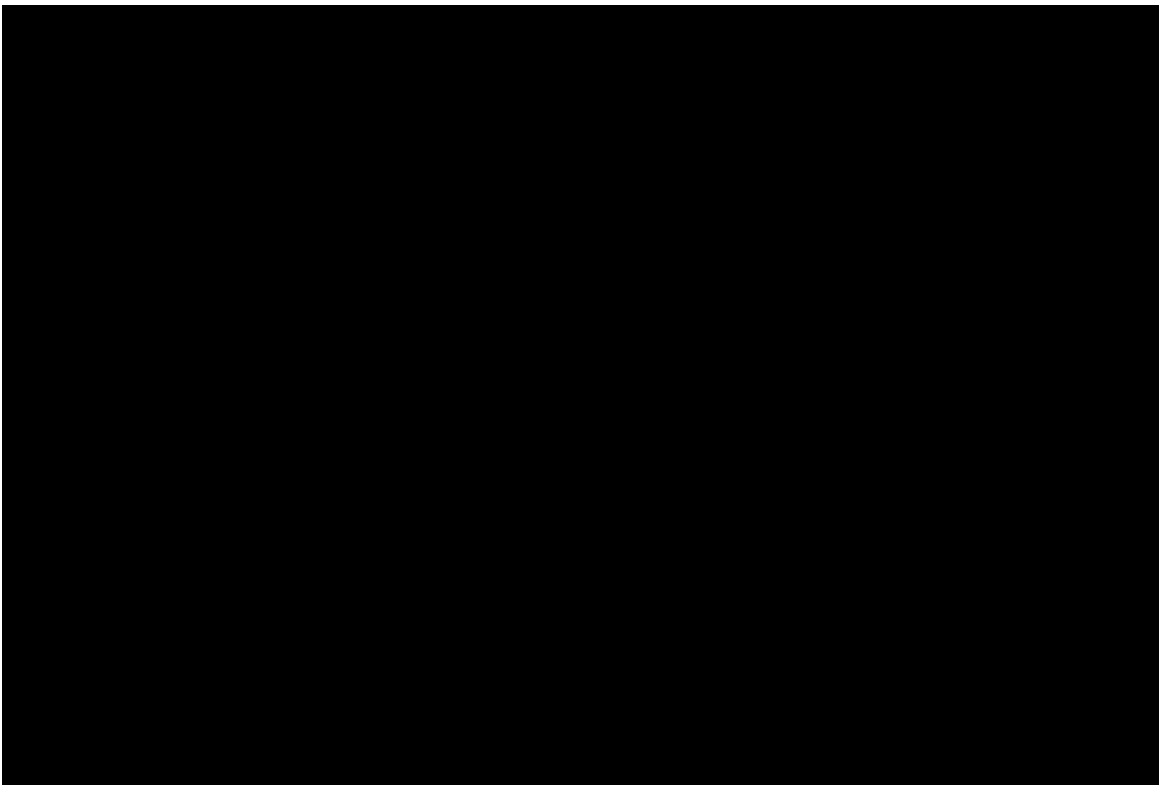
6. On 7 June 2022, the Provider was sent a notice, allowable under section 215 of the *Law* (215 Notice), which was responded to on 21 June 2022. Information submitted by the Provider included:
 - a) Investigation documents, including a copy of resignation email from Ms [REDACTED] (Attachment A)
 - b) Child attendance records, responsible person logs and staff details; and
 - c) Nappy change records and head count records
 - d) Policy and procedures.
7. During the investigation, along with information gathered from the Provider, the Authority also obtained accounts from relevant witnesses. Relevant excerpts of witness accounts are provided below.
8. Relevant excerpts from Witness A:

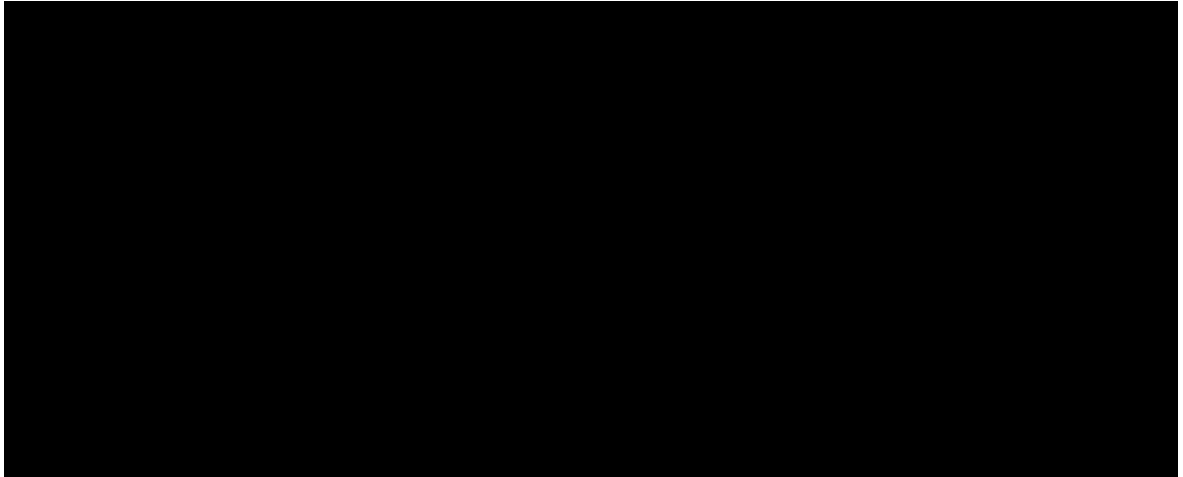




Refer copy of email at Attachment B.

9. Relevant excerpts from Witness B:





Law

10. Provisions of the *Law* relevant to the investigation engaged the following:

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.

Regulation 155 –interactions

The approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that—

- a) encourages the children to express themselves and their opinions; and
- b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- c) maintains at all times the dignity and rights of each child; and
- d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

Section 174 of *Law* - Offence to fail to notify certain information to Regulatory Authority

(2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—

- (a) any serious incident at the approved education and care service;
- (b) any complaints alleging—
 - (i) that a serious incident has occurred or is occurring while a child was or is

- being educated and cared for by the approved education and care service;
- or
- (ii) that this Law has been contravened.
- (c) information in respect of any other prescribed matters.

Penalty: \$4 000, in the case of an individual
\$20 000, in any other case.

- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to—
 - (a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates

Regulation 176(2) – Time to notify certain information to Regulatory Authority

- (2) For the purposes of section 174(4) of the Law, a notice must be provided—
 - (a) in the case of a notice under section 174(2)(a)—
 - (ii) in the case of any other serious incident, within 24 hours of the incident or the time that the person becomes aware of the incident.
 - (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident.

Obligations upon Regulatory Authority, Providers and Services

11. The foundation for the Authority’s obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. 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”*.
12. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have particular application in this instance, being:
 - (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.*
13. 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.*
14. The *Law* works to protect a particularly vulnerable group in 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*.
15. A key objective 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.

16. The *Law* is predominantly a protective law and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

Decision and Reasons

17. The Authority has considered all the information supplied by the Provider and is satisfied, on balance of probabilities, that there is insufficient evidence to substantiate Allegations One, however evidence did support substantiate Allegation Two – engaging a substantiated offences under section 174 of the *Law* in this instance.

18. In relation to Allegation One, the Authority is satisfied that the Provider did not fail to comply with section 167 of the *Law*, regarding ensuring that educator interactions with children were appropriate. The Providers policy, procedures and internal investigation into the alleged conduct of the educator supports this finding by the Authority.

19. In relation to Allegation Two, the Authority is satisfied that the Provider did fail to notify the Authority of a complaint alleging that the *Law* had been contravened, in contravention of section 174 of the *Law*.

20. The Provider’s acknowledgement of receipt of [REDACTED] resignation on 17 March 2022, that outlined multiple allegations relevant to non-compliance with the *Law* and *Regulations*, and subsequent internal investigation of matters raised specifically relating to the alleged conduct of [REDACTED] supports that substantiated breaching of *Law*.

21. 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.

22. 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 take statutory compliance actions.

23. This Decision is issued to remind the Provider, it is imperative to ensure that all staff are aware of and understand the policies, procedures and expectations of the Provider, and the *National Law*, in relation to the operation of the Service, and in their roles of educating and caring for children, especially regarding obligations under *Regulation* 155.

24. In addition, this Decision is issued to remind the Provider to ensure that all prescribed matters, outlined under the *Law* and *Regulations*, requiring notification to the Authority are notified within the timeframes prescribed.

25. The substantiated contravention of section 174 of the *Law* has been recorded on your Service file and may be considered by the Authority in determining the action to be taken, should further similar breaches of the *Law* or *Regulations* be substantiated.
26. Unless new relevant information is received, the Authority will not be making any further enquiries and considers this matter now finalised.

Legislation

27. 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>
28. Should you have any questions about this Decision please contact Authorised Officer Brian Cropper at brian.cropper@act.gov.au

Yours Sincerely,



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

13 September 2022