

[REDACTED]
Person with Management or Control
KIDS CLUB EARLY CHILDHOOD LEARNING CENTRES PTY LTD
RE: Kids Club Phillip Early Learning Centre

Email: [REDACTED]

Dear [REDACTED]

Administrative Decision RE: NOT - 40509501

1. As you may be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently carried out inquiries into a notification of a serious incident at Kids Club Phillip Early Learning Centre SE-40012144 (the Service) operated by Kids Club Early Childhood Learning Centres Pty Ltd PR-40001605 (the Provider).
2. The Authority is satisfied that the Provider has contravened provisions of the *Education and Care Services National Law (ACT)* (the Law).
3. Web addresses to the Law and the *Education and Care Services National Regulations 2011* (the Regulations) are provided for your convenience at the end of this Decision.

Facts

4. On 10 February 2021, the Authority received a Notification of Incident (NOT-40509501) and associated documents, advising that, on 8 February 2021, a child being educated and cared for by the Service was found to have been unsupervised for a period of up to 10 minutes. Refer Attachment A.
5. On 11 February 2021, the Authority requested further information from the Provider in relation to the incident. On 12 February 2021, this additional information was uploaded to the associated Notification within the National Quality Agenda Information Technology System (NQA ITS).
6. A subsequent internal investigation by the Provider identified that the child, enrolled in the Outback room, was unaccounted for during a transition to the Ocean environment and the child’s mother located the child in the Outback outdoor area, trying to get inside the Outback room.
7. The Provider has advised that because of that internal investigation, two educators present at the time were given a first and final warning in relation to the incident. Refer Attachment B.

Law

8. As a result of its assessment of the Notification, the Authority found evidence to support non-compliance with the following provision 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.

Reasons

9. Having considered the evidence gathered during the Provider's internal investigation as well as all documents supplied by Provider, as requested by the Authority, I am satisfied that the Provider has failed to comply with the *Law*.
10. In relation to the notification that, on 8 February 2021, a child being educated and cared for by the Service was found to have been unsupervised for a period of up to 10 minutes, I find that an offence under section 165(1) of the *Law* is substantiated on the balance of probabilities.
11. The Authority noted the Provider submitted evidence to support that appropriate policies, procedures and practices were in place at the time to mitigate the risk of such an incident occurring. Those policies and procedures, if followed correctly, meet the expectations of the Authority.
12. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. Many of these options allow the Authority to publish details of substantiated non-compliance.
13. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. On this occasion, the Authority has determined to issue you with this Administrative Action rather than impose any statutory compliance actions.
14. In determining whether to issue the Provider with an Administrative Action, the Authority took the following into consideration:
 - a) The Notification of Incident was submitted within the prescribed timeframe;
 - b) The Provider commenced, conducted and concluded its internal investigation and addressed identified failings which contributed to the incident; and
 - c) The child was identified as being unaccounted for a short period of time – being between five and ten minutes.
15. Regarding the substantiated offence under section 165(1) of the *Law*, the Authority is satisfied that, so long as the current policies and procedures in place at the Service are followed correctly, no further action is required.

16. This Decision will be recorded on your Service 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 *Regulations* be found.

Legislation

17. 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>.

18. 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. If you have any questions in relation to this letter, please contact me at Janine.fairburn@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

11 March 2021