



██████████
Person with Management or Control
Kids Club Early Childhood Learning Centres Pty Ltd
RE: Kids Club Phillip Early Learning Centre

Email: ██████████
████████████████████████████████████████

Dear ██████████

Decision to issue Administrative Action RE NOT-40588216

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently conducted an assessment of a Notification of Incident (NOT-40588216) relating to the operation of Kids Club Phillip Early Learning Centre, SE-40012144 (the Service), operated by Kids Club Early Childhood Learning Centre, PR-40001605 (the Provider).
2. The Notification related to a child being found unattended in a room on 26 October 2021.
3. Web addresses to the *Education and Care Services National Law Act (ACT)* (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 28 October 2021, the Authority received a Notification of Incident from the Provider in relation to an enrolled child, known to be ██████████ (aged one year, seven months), who let himself into a toddler room during outdoor family grouping and was unaccounted for during an unknown period (advised to be under ten minutes). The incident took place at approximately 3:45pm on 26 October 2021. ██████████ was found in the Ocean room ██████████. The notification was made 24 hours outside the prescribed time. Refer Notification, incident report, and working directly with children records at Attachment A.

Law

5. The following provisions of the Law were relevant to the assessment:

Section 165(1) of the Law - Offence to inadequately supervision 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.

Reasons and Decision

6. The Authority has considered all the information supplied by the Provider and is satisfied that, on 26 October 2021, the Provider failed to ensure adequate supervision of all children being educated and cared for by the Service, in that [REDACTED] was able to leave the outdoor area and let himself into the Ocean room unnoticed by educators and was unaccounted for over an unknown period, in contravention of sections 165 and 167 of the *Law*.
7. Although staffing levels appeared to be adequate, and the Provider has taken steps to address the lack of supervision, the evidence submitted by the Provider supports offences under sections 165(1) and 167(1) of the *Law* being substantiated on the balance of probabilities.
8. 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. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue you this Administrative Decision.
9. In determining this action, the Authority considered that:
 - a. Staffing appeared to meet prescribed minimal levels between 3:30pm and 4:00pm;
 - b. [REDACTED] did not leave the Service;
 - c. [REDACTED] age means a higher level of vulnerability to hazards when unsupervised;
 - d. [REDACTED] appeared to be missing for under ten minutes;
 - e. The Provider has indicated that steps have been taken to address the lack of supervision.
10. Regarding the substantiated offence under sections 165 and 167 of the *Law*, the Authority requires the Provider to produce evidence of revised supervision procedures as outlined in the Notification. Such evidence should be produced, within 14 days of receipt of this letter, to Senior Investigator Tanya Masterman on Tanya.Masterman@act.gov.au
11. This decision will be recorded on the Service's file and may be considered in any future applications for approvals, amendments, or waivers. This decision may also be considered in determining any future regulatory action, should there be future breaches of the *Law* or *Regulations*.

Legislation

12. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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>.
13. 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>
14. Should you have any questions about this Decision please contact Senior Investigator Tanya Masterman on Tanya.Masterman@act.gov.au.

Yours Sincerely,



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

3 November 2021