



██████████
Person with Management or Control
Lillypilly EEC Pty Ltd ATF Lillypilly EEC Unit Trust
RE: LILLYPILLY EEC PTY LTD

Email: ██████████@gmail.com
██████████@gmail.com

Dear Mr ██████████

Decision to issue Administrative Action RE NOT-40579409

1. As you are aware, the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed a Notification of Complaint (NOT-40579409) relating to the operation of LillyPilly EEC PTY LTD, SE-40020601 (the Service), operated by Lillypilly EEC Pty Ltd ATF Lillypilly EEC Unit Trust, PR-40023369 (the Provider).
2. The Notification (NOT-40579409) related to a parent complaint regarding the level of supervision her child was receiving after suffering an unwitnessed head injury sustained on 29 September 2021.
3. Web addresses to the *Education and Care Services National Law (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 30 September 2021, the Authority received NOT-405279409 from the Provider in relation to an enrolled child, ██████████ (17mos), whose parent had raised concerns regarding the level of care and supervision provided, including ██████████ sustaining an injury to her forehead, which had not been noticed by educators. Refer Notification at Attachment A.
5. On 5 October 2021, additional information requested by the Authority was furnished by the Provider inclusive of video footage depicting a single educator supervising up to eight children of varying ages. The educator stood to intervene when another child was climbing bookshelves, and rapidly placed ██████████ in front of a chair before turning away. ██████████ did not have secure balance, fell backwards onto the chair and then forwards, sustaining an injury to her forehead, which was unnoticed by the sole educator. Refer to Attachment B.
6. Also included in the additional information was a “Critical Reflection and Action Plan- Incident 29.09.2021” (Action Plan) outlining a number of strategies intended to mitigate risk of reoccurrence of the similar incidents. The Action Plan included the following steps:

- a) Separate children into two play spaces;
- b) Review existing roster and increase staff hours;
- c) One on one training with staff as per critical reflection;
- d) Review of Supervision Policy; and
- e) Develop and implement Working Directly with Children Record.

Refer to Attachment C.

Allegation

- 7. The Notification and additional information support an allegation that, on 29 September 2021, the Provider failed to ensure that children being educated and cared for by the Service were adequately supervised at all times, in that [REDACTED] (17mos) sustained an unwitnessed injury to her head in circumstances where one educator was supervising up to eight children of varying ages, contravening section 165(1) of the *Law*, and engaging a contravention of section 167(1) of the *Law*.

Law

- 8. The following provisions of the *Law* are relevant to the allegation:

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

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.

Decision

- 9. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, that there is sufficient weight of evidence to substantiate a contravention of the *Law*, namely that, on 29 September 2021, the Provider failed to ensure that all children being educated and cared for were adequately supervised at all times, contravening section 165(1) and giving rise to a contravention of section 167(1) of the *Law*.

10. 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 this Administrative Decision.
11. In determining to issue the Provider with an Administrative Decision, the Authority took the following into consideration:
 - a) The Provider has furnished a Critical Reflection and Action Plan with proposed strategies that is indication of an admission by the Provider that supervision was inadequate.
 - b) It appears that [REDACTED] did not sustain a significant injury or illness from the fall on 29 September 2021.
12. This Decision is issued to remind the Provider that at all times, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children and educators alike. Adequate supervision is not guaranteed by maintaining minimum regulated ratio numbers and may need to be adapted above the minimum to protect children from harm and hazard likely to cause injury – both physically and psychologically. Further information regarding supervision can be viewed at:
<https://www.acecqa.gov.au/ngf/national-quality-standard>.
13. In regard to the substantiated offences under section 165(1) and 167(1) of the *Law*, the Authority requests the Provider, within 14 days of receipt of this Decision, to submit evidence to demonstrate the following:
 - a) Policies and practices relating to staffing arrangements have been reviewed and implemented to meet adequate supervision levels;
 - b) Working Directly with Children records have been implemented and comply with *Education and Care Services Regulations* 151 and 177(2);
 - c) Implementation of staff training outlined the Critical Reflection.
14. Evidence demonstrating the above can be forwarded to Assistant Director Janine Fairburn at Janine.Fairburn@act.gov.au.
15. This Decision will be recorded on your Service file and may also 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

16. The *Law* and *Regulations* apply 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>
17. The *Law* may be viewed at:
<http://www.acecqa.gov.au/national-law>
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
18. Should you have any questions about this Decision please contact Janine.Fairburn@act.gov.au.

Yours Sincerely,



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

25 October 2021