

[REDACTED]  
Person with Management or Control  
Think Childcare Services Pty Ltd  
RE: Nido Early School Franklin

Email: [REDACTED]

Dear [REDACTED]

### Decision to issue Administrative Action

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA), recently assessed two Notifications (NOT-40594918 and NOT-40594952) relating to Nido Early School Franklin SE-40015950 (the Service), operated by Think Childcare Services Pty Ltd PR-40000153 (the Provider) on 16 and 17 November 2021.
2. The notifications related to two instances, on two separate days where the same child was unaccounted for/missing for a period of time.
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 17 November 2021, the Authority received two Notifications (NOT-40594918 and NOT-40594952) and attachments from the Provider. Both Notifications related to separate incidents involving the same child.
5. Notification (NOT-40594918) advised that on 16 November 2021 a child, believed to be [REDACTED] (2:4 old), was located in a lift, unattended, by a parent who was exiting the Service. Refer Notification and documents at Attachment A.
6. Notification (NOT-40594952) advised that on 17 November 2021 a child, believed to be [REDACTED] (2:4 old), was located in a lift, unattended, by a parent. The parent has then guided [REDACTED] out of the lift and notified a staff member. [REDACTED] has then run up the stairs before being followed by an Educator who returned him to the classroom. Refer Notification and documents at Attachment B.

7. On 18 November 2021, the Authority sought additional information from the Provider, which was received on 23 November 2021.
8. It was noted, in the body of the correspondence received 23 November 2021, that [REDACTED] had only recently commenced at the Service and the Service was reviewing all supervision plans. A review of the incident had led to interim changes being made implemented such as a “scrunchie system”, lifting door handle heights, changing the lift to key only operation, supervision strategies and continuing with an assessment of [REDACTED] for possible Autism. Refer email correspondence at Attachment C.
9. On 30 November 2021, the Authority was notified that further documentation had been uploaded to the ACECQA NQA ITS in relation to the incidents. This documentation consisted of:
  - a. Updated wellbeing plan for [REDACTED]
  - b. Strategies for [REDACTED]
  - c. Supervision plan review
  - d. Induction documents for staff members [REDACTED] and [REDACTED]
  - e. Outcome meeting record with staff members [REDACTED], [REDACTED]
  - f. Investigation records for staff members [REDACTED] and [REDACTED]
  - g. Door handle maintenance request.

### Law

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

#### **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.

#### **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

11. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities that on 16 and 17 November 2021, inadequate supervision

contributed to [REDACTED] being able to exit the room unseen by Educators. Inability to ensure adequate supervision at all times engages a failure to take reasonable precautions to protect said child, from any harm and from hazard likely to cause injury.

12. The Authority is satisfied that on 16 November 2021 these failures contributed to [REDACTED] being able to exit the classroom unnoticed and enter a lift, of which he remained inside of unseen for a period of up to 10 minutes.
13. The Authority is further satisfied that on 17 November 2021, these failures contributed to [REDACTED] being able to exit the classroom unnoticed and enter a lift where he was located by parent, before running unsupervised up a flight of stairs.
14. The very nature of the Notification and accompanying documentation submitted by the Provider, support offences under sections 165(1) and 167(1) of the *Law* being substantiated for each incident on the 16 November 2021 and 17 November 2021.
15. 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 the Provider in achieving compliance and improved outcomes for children.
16. When deciding what appropriate action to take, the Regulatory Authority took the following matters into consideration:
  - a. The good compliance and quality history of the Service;
  - b. The age, potential risks and timeframe associated to the child being missing/unaccounted for without being noticed by Educators
  - c. The Providers advice that communications and strategies have been undertaken in relation to supervision plan review, maintenance requests and support for [REDACTED]
17. In this circumstance, noting actions already undertaken by the Provider, the Authority has determined not to initiate statutory action but instead to issue this Administrative Decision.
18. Noting the proposed strategies which includes changing the lift to a key operated only entry and raising the height of the door handles, the Authority requests confirmation that the proposed changes to both the lift and the door handles does not impact on any fire safety standards and pose any risk.
19. Evidence should be produced, within 14 days of receipt of this letter, to myself at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).
20. 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

21. The *Law and Regulations* 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>
22. 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>
23. Should you have any questions about this Decision please contact Senior Investigator Sheree Lockwood on [Sheree.lockwood@act.gov.au](mailto:Sheree.lockwood@act.gov.au).

Yours Sincerely,



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

07 December 2021