



7. NOT-40846854 further advised that the CCTV showed the older child opening the door and exiting the room whilst holding the hand of the younger child. They were out of the room for 40 seconds according to the CCTV. Refer copy of NOT-40846854 at [Attachment B](#).

### **Law**

8. Provisions of the *Law* relevant to the notification assessment are:

#### **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. Upon considering all evidence for assessment, inclusive of Provider supplied information, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under section 165 of the *Law* in this instance.
10. The Authority is satisfied that inadequate supervision contributed to [REDACTED] being able to leave Studio 6 unnoticed by educators.
11. 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 statutory compliance actions.
12. This Decision is intended to bring to your attention the need to ensure that the Provider meets its obligations under the *Law*, in particular the obligation to always supervise children and ensure that every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury.
13. Furthermore, this Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children and educators alike. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
14. This Decision will be recorded on the Service's 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 associated *Regulations* be found.

**Legislation**

15. 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>.
16. 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>
17. If you have any questions in relation to this Decision, please contact me by email at [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au) .

Yours sincerely



Janine Fairburn  
Assistant Director  
Children's Education and Care Assurance  
Education and Care, Regulation and Support

2 June 2023