

8. The Authority also notes an earlier Notification of Complaint, NOT-40663914, which was received 8 March 2022 from Think Childcare Services Pty Ltd, prior to the Provider's transfer of the Service. NOT-40663914 advised of a parent complaint alleging that on 23 February 2022, when they came to collect their two-year-old child that afternoon, their child was not outside in the yard with their room peers but in the Kinder room with another educator. Refer [Attachment E](#).
9. The Authority noted that although this matter was originally being managed by Think Childcare Services Pty Ltd, upon transfer of the service approval to the Provider, the matter was then taken over by the Provider for action. Refer relevant correspondence at [Attachment F](#).

Law

10. The facts as outlined in the Notification and additional Provider submitted information engaged the following:

Section 165(1) of 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 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.

Decision

11. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to ground a reasonable suspicion of an offence under section 165 of the *Law*, engaging an offence under section 167 of the *Law* in this instance.
12. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider has not ensured adequate supervision at all times, which resulted in [REDACTED] being able to leave the toddler outdoor area and enter the Kinder 1 kitchenette, initially unnoticed by educators. The very nature of the incident, admissions within the Provider's internal investigation and management of matter supports the contravention being determined.

13. Furthermore, the Authority is satisfied that the Provider, by not ensuring adequate supervision of a toddler has not ensured all reasonable precautions have been taken to protect children, specifically █████ in this instance, from harm and hazard likely to cause injury, engaging the substantiated offence under section 167(1) of the *Law*.
14. The earlier notification of NOT-40663914 was also considered by the Authority when reaching this determination. Although the Authority acknowledges that this complaint occurred whilst the Service was being operated by Think Childcare Services Pty Ltd, the Authority notes that the incident alleged related to the same age group of children, area of the Service and, on balance of probabilities, the same educators present at the time.
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 you to achieve compliance and improve outcomes for children.
16. 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.
17. In relation to substantiated offences engaged by the Provider under sections 165 and 167 of the *Law*, the Authority requests the Provider to submit the following evidence to support risk mitigation actions have been undertaken:
 - a) Risk assessments have been reviewed to take into consideration children being able to move around the Service unnoticed, specifically in relation to the Toddler and Kinder spaces, and what steps to mitigate this from occurring;
 - b) Supervision plans and arrangements been reviewed, specifically in relation to the Toddler and Kinder spaces; and
 - c) Any changes to practice have been communicated to educators to ensure that staff are aware of and understand the Provider's expectations in relation to supervision.
18. Requested information outlined in paragraph 17 can be submitted to Assistant Director, Janine Fairburn at Janine.fairburn@act.gov.au. The Authority requests this to occur within 14 days of receipt of this decision.
19. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of all children at all times. 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.
20. The substantiated contraventions have been recorded on your Service file and may be considered by the Authority in any future applications for approvals, amendments, or

waivers. They may also be considered in determining the action to be taken, should further similar breaches of the *Law* or *Regulations* be substantiated.

Legislation

21. The *Law* 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 me at
Janine.fairburn@act.gov.au.

Yours Sincerely,



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

28 April 2021