

██████████
Person with Management and Control
Noah's Ark Resource Centre Incorporated
RE: Noahs Ark Long Day Care Service

Email: ██████████

Dear ██████████

Decision to issue Administrative Action RE: NOT-40779042

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40779042) relating to the operation of Noahs Ark Long Day Care Service SE-00009821 (the Service), operated by Noah's Ark Resource Centre Incorporated PR-00005852 (the Provider).
2. The Notification related to circumstance where a child being educated and cared for by an education and care service appears to be mistakenly locked in or locked out of the education and care service premises or any part of the premises on 30 September 2022.
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 30 September 2022, the Authority received Notification of Incident (NOT-40779042) from the Provider, advising that a one-year-old child, known to be ██████████ was identified by an educator to be on the other side of the fence moving across a grass belt towards the community playground. Refer Notification at Attachment A.
5. It was noted in the notification by the Provider that two other children were standing on the inside of the closed and latched gate, looking out to ██████████. It was not witnessed how ██████████ came to be on the other side of the closed fence. However, one identified, ██████████ was in sight while on the other side of the fence. ██████████ managed to move 5-10 meters away from the fence.

Law

6. 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 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.

Decision

7. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to ground an offence under section 165 of the *Law*, engaging an offence under section 167 of the *Law* in this instance.
8. 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. This contributed to ██████ being able to exit a gate/fence unnoticed by educators until he was on the other side of the fence and outside the Service. The very nature of the incident, admissions within the Provider's internal investigation and management of matter supports the contravention being determined.
9. Furthermore, the Authority is satisfied that the Provider, by not ensuring adequate supervision of an infant 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*.
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.
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. 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 undertaken regarding the fence and gate to ensure that it meets the requirements of the *National Regulations*.
13. Requested information can be submitted to me at Janine.fairburn@act.gov.au. The Authority requests this to occur within 14 days of receipt of this decision.
14. 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.
15. 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

16. 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> . 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. 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

11 November 2022