



## Law

6. 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

7. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, that on 6 February 2023, the Provider has failed to ensure adequate supervision a child in the nursery space, and therefore, failed to take reasonable precautions to protect said child, from any harm and from hazard likely to cause injury.
8. The Authority is satisfied that this contributed to ██████ being able to gain entry to the laundry area unnoticed by educators and subsequently lock himself in.
9. 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.
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 the Provider in achieving compliance and improved outcomes for children.
11. When deciding what appropriate action to take, the Regulatory Authority took the following matters into consideration:
- The age of the child and associated risks if unsupervised in laundry areas;
  - The length of time that the child was unsupervised/unaccounted for;
  - The Provider has submitted advice that the supervision policy was reviewed; and

- d) The Provider has submitted advice that communications around supervision and safety expectations have been had with educators and support workers to mitigate risk of a similar incident.
12. In this circumstance, the Authority has also considered the Service's compliance history and determined not to initiate statutory action but instead to issue this Administrative Decision to address the non-compliances.
13. 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 similar breaches of the *Law* or *Regulations*.

#### **Legislation**

14. 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>
15. 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>
16. 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

28 February 2023