



██████████
Person with Management or Control
TEAM HOLIDAY PTY LTD
RE: TeamKids - St Thomas More's Primary
Email: ██████████

Dear ██████████

Decision to issue Administrative Action RE: NOT-40872647

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-40872647) relating to TeamKids - St Thomas More's Primary - SE-40020299 (the Service) operated by TEAM HOLIDAY PTY LTD - PR-40002234 (the Provider).
2. The notified incident advised that two children (██████████) did not attend the Service on a day they were enrolled to attend.
3. The Authority is satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the Law) in this instance.
4. Web addresses to the Law and the *Education and Care Services National Regulations (the Regulations)* are provided for your convenience at the end of this Decision.

Facts

5. On 28 June 2023, the Authority received a notification of incident (NOT-40872647) from the Provider advising that on 26 June 2023 two children (██████████) did not attend the Service on a day they were enrolled to attend.
6. The notification further advised that the Service attempted contact with a parent unsuccessfully at 3:32pm with no further attempts made until the parent attended the Service to pick up their children and identified that they were not present. The Service advised that the children were found at their neighbour's house at 4:10pm. Refer copy of NOT-40872647 at Attachment A.

Law

7. Provision of the Law relevant to the assessment of the notification are:

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.

Obligations upon Regulatory Authority

8. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. Relevant to this decision is the objective at section 3(2)(a), namely

'To ensure the safety, health and wellbeing of children attending education and care services; ...'

9. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:

(a) that the rights and best interests of the child are paramount; ...

(f) that best practice is expected in the provision of education and care services.

10. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:

(c) to monitor and enforce compliance with this *Law*;

(d) to receive and investigate complaints arising under this *Law*.

11. The *Law* works to protect a particularly vulnerable part of our society — children — when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.

12. A key object of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.

Decision

13. 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 167 of the *Law*.

14. In relation to section 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider failed to ensure all reasonable precautions were undertaken to protect children, by not knowing the location of the children or making any further attempts after the initial unsuccessful phone call to the parent to locate them, and therefore not ensuring the health, safety and wellbeing of the children.

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 demonstrated 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 to address the non-compliances.

17. In relation to the substantiated breach engaged by the Provider under section 167 of the *Law*, the Authority requests the Provider to submit the following evidence to support risk mitigation actions have been undertaken:
 - a. Provide evidence that the Provider has mitigated risk of similar nature via provision of policy and procedure for arrival and collection of children inclusive of accounting for children when unexpectedly absent.
18. Requested information outlined in paragraph 17 can be submitted to Authorised Officer Vittorio Colosimo at Vittorio.Colosimo@act.gov.au. The Authority requests this to occur within 14 days of receipt of this decision.
19. This Decision serves as a reminder that, as a Provider, it is imperative to ensure that nominated supervisors and educators, at all times, are aware of and understand the policies, procedures and expectations of the Provider, and the *National Law*, in relation to the operation of the Service, and in their roles of educating and caring for children.
20. 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

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> . 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>.
22. Should you have any questions about this Decision please contact Authorised Officer Vittorio Colosimo at Vittorio.Colosimo@act.gov.au.

Yours Sincerely,



Jo Williams
Director
Children's Education and Care Assurance
Education and Care Regulation and Support

17 August 2023