

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.

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.

Reasons

10. The Authority is satisfied, after careful consideration of the Provider's response to the Notice and all available evidence, that on the balance of probabilities, there is sufficient evidence to substantiate a contravention of section 165(1) and 167(1) of the *Law* namely-
 - I. That on 6 October 2020, the Provider failed to ensure adequate supervision, resulting in a child falling from a highchair to the floor of the Service, in contravention of section 165(1) of the *Law*.
 - II. That on the 6 October 2020, the Provider failed to ensure reasonable precautions were taken to protect a child from harm and hazard likely to cause injury due to being inadequately secured in a highchair which resulted in the child falling to the floor of the Service, in contravention of section 167(1).
11. The very nature of the Notification of Incident supports the contraventions, and evidence gathered as part of the Authority's investigation also corroborate the circumstances resulting in the contraventions.
12. Furthermore, the Authority is satisfied that educators were also performing related tasks at the time of the incident and that ██████ was knowingly unrestrained in the highchair. It is noted that this child suffering no ill effects from the fall.
13. The Authority also noted the Provider's timely response in replacing non-compliant highchairs and amendment of policies, procedures, and protocols, to mitigate risk of a similar incident occurring in the future.
14. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. Many of these options allow the Authority to publish details of substantiated non-compliance.
15. The Authority has the flexibility to choose the most appropriate action to support providers to achieve compliance as well as improve outcomes for children. On this occasion, the Authority has determined to issue this Administrative Action rather than impose any statutory compliance actions.
16. In determining whether to issue the Provider with an Administrative Action, the Authority took the following into consideration:
 - a) The Notifications of Incident were submitted within the prescribed timeframe, and the Service's previous compliance history.

- b) The Provider's response to the Notice did not refute the allegations, but rather focused on rectification of potential risks identified by the incident on 6 October 2020.
 - c) The Provider's response to the incident at the time, and subsequent implementation of strategies, are deemed appropriate in mitigating risk of a similar incident.
17. Regarding the substantiated offences under sections 165(1) and 167(1) of the *Law*, the Authority is satisfied that already demonstrated subsequent strategies implemented by the Provider will meet the expectations of the Authority, and therefore no further action is required.
18. This Decision will be recorded on your Service 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 *Regulations* be found.

Legislation

19. 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>.
20. 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>
21. If you have any questions in relation to this Decision, please contact Authorised Officer Brian Cropper on (02) 6207 1104 or by email at brian.cropper@act.gov.au.

Yours sincerely



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11 May 2021