



██████████

Person with Management or Control  
LP Childcare Management PTY LTD  
RE: Little Penguins Early Learning Centre

Email: ██████████

Dear Ms ██████████

**Decision to issue Administrative Action RE NOT-40588707**

1. As you are aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40588707) relating to the operation of Little Penguins Early Learning Centre, SE-40011068 (the Service), operated by LP Childcare Management PTY LTD, PR-40018855 (the Provider).
2. The Notification related to a child from Studio 2 being able to exit the Service at around 5:15pm on 28 October 2021.
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 29 October 2021, the Authority received a Notification of Incident from the Provider in relation to a child from Studio 2 (██████████) exiting the room and then the Service, in a group of parents and children who were leaving the Service. ██████████ gained access to the car park and was returned by a parent who had collected her child from Studio 2. The notification was made within the prescribed time. Refer Notification and accompanying documentation at Attachment A.
5. On 29 October and 1 November 2021, the Authority liaised with the Provider concerning CCTV footage, which was collected from the Service by an Authorised Officer on 2 November 2021. The CCTV footage is not attached to this Decision due to size but consisted of three video files recorded in three locations: Studio 2, the foyer and outside the door leading to the car park.
6. On 3 November 2021, the Provider submitted additional documentation in relation to steps taken in response to the incident. Refer Attachment B. The additional information included:
  - a. Record of staff meeting concerning the incident;
  - b. Formal warning letters issued to five educators;
  - c. Infant/Nursery Pod outdoor supervision plans (including one with educator review notes);
  - d. Service floor plan;
  - e. Risk Assessment for child escaping the Service; and
  - f. Template for use for children identified at risk of leaving the Service.

## Law

7. The following provisions of the *Law* were relevant to the assessment:

### **Section 165(1) of the *Law* - Offence to inadequately supervision 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

8. The Authority has considered all the information supplied by the Provider and is satisfied that, on 28 October 2021, the Provider failed to ensure adequate supervision of all children being educated and cared for by the Service and to take every reasonable precaution to protect a child from harm or hazards likely to cause injury, in that a child [REDACTED] was able to exit the Service into the car park unnoticed by educators.
9. The evidence submitted by the Provider supports offences under sections 165(1) and 167(1) of the *Law* being substantiated on the balance of probabilities.
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. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue you this Administrative Decision.
11. In determining this action, the Authority considered that:
- a. The Provider acted promptly in its response to the incident, including strong engagement with the Regulatory Authority;
  - b. The Provider has implemented (or is in the process of implementing) numerous risk mitigation steps, including:
    - i. communication to educators and families about procedures around doors and not holding them open for other families, with external door and gate not to be open at the same time;
    - ii. communication to families regarding order of collection of children where families have more than one child attending the service;

- iii. indoor/outdoor programs not to be conducted at pick-up/drop-off times;
  - iv. Identification of specific children who may be at risk of escaping;
  - v. Staff to monitor doors at peak times;
  - vi. Only one external door per pod to be unlocked at pick-up time to reduce number of access/exit points.
12. Regarding the substantiated offences under sections 165 and 167 of the *Law*, the Provider's response largely meets the expectation of the Authority. The risk assessment provided refers to educators completing supervision training. The Authority requires the Provider to submit evidence that all educators at the Service understand and are aware of supervision expectations, particularly for [REDACTED] and any other children identified as being at risk of leaving the Service. Such evidence should be produced, within 14 days of receipt of this letter, to Senior Investigator Tanya Masterman on [Tanya.Masterman@act.gov.au](mailto:Tanya.Masterman@act.gov.au).
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 breaches of the *Law* or *Regulations*.

#### **Legislation**

14. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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 Tanya Masterman on [Tanya.Masterman@act.gov.au](mailto:Tanya.Masterman@act.gov.au).

Yours Sincerely,



Jo Williams  
Director Quality Assurance and Audit  
Children's Education and Care Assurance  
Education Care Regulation and Support  
ACT Education Directorate

12 November 2021