



## EDUCATION AND CARE

### Information Sheet – Strict Liability

#### What is a strict liability? –

Definition: *liability which does not depend on actual negligence or intent to harm.*

In criminal and civil law, strict liability is a term to describe a standard of liability where a person is legally responsible for the consequences of an activity/event, even in the absence of fault or criminal intent on the part of the person.

#### How does strict liability apply to the Child Care Act and Standards?

Some parts of the *Child Care Act 2001* (Child Care Act) or the Centre Based Care Class 4 or 5, or In Home Care Standards (Standards) are written as ‘must’ or ‘must ensure’.

Other obligations in the legislation are written as ‘take reasonable steps’.

Where ‘must’ is written and the requirement is not met, a strict liability breach is committed.

A strict liability breach does not necessarily mean the holder of a licence, responsible person, person-in-charge or employee educator committed a breach intentionally. It means there was an occurrence that did not meet requirements prescribed in the Child Care Act or Standards.

For example;

Section 29 of the Child Care Act – *Safe and Suitable Child Care*

- (1) *The holder of a licence, responsible person, person-in-charge and person employed by the holder of a licence to care for a child must ensure that, at all times during which a child is provided with child care under the licence –*
- a. *The child is provided with a safe environment and proper and appropriate care and supervision; and*
  - b. *Every reasonable precaution is taken to protect the child from a hazard likely to cause injury .*

In this example, the licensing representative has taken every reasonable step to ensure children are supervised by:

- having adequate induction processes
- robust policies and procedures, and
- training for educators at the service on expectations and supervision requirements.

Regardless of the steps taken, if an incident occurs, the holder of a licence is automatically in breach of section 29(1)(a) of the Child Care Act (for example, where a child has not been adequately supervised for any period of time regardless of the licence holders reason).

The same responsibilities apply to the responsible person and person in charge.

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