



Ms [REDACTED]
Person with Management or Control
Community Services#1 Incorporated
RE: Mawson Out of School Hours Care

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Action RE NOT-40482977

1. As you are aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment into a Notification of Incident (NOT-40482977) relating to the operation of Mawson Out of School Hours Care, SE-0009687 (the Service), operated by Community Services#1 Incorporated, PR-00005865 (the Provider).
2. The Notification of Incident related to a ten-year-old child, known to be [REDACTED] exiting the Service premises unseen by educators on 28 October 2020.
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 letter.

Facts

4. On 29 October 2020, the Authority received NOT-40482977 from the Provider in relation to an enrolled child, [REDACTED] (ten years old), who exited the premises unseen by educators on 28 October 2020. Refer Notification at [Attachment A](#).
5. Additional information was sought by the Authority and provided on 30 October 2020. Additional information included:
 - a) Working Directly with Children records and Child Attendance records;
 - b) Revised supervision map and responsibilities;
 - c) Supervision and Duty of Care policies; and
 - d) Maps for the Service and educator supervision spots.
6. The Notification advised that [REDACTED] was missing for more than 10 minutes but less than 30 minutes and was found at the front of the school by teachers and returned to the Service. Furthermore, the Notification advised that the teacher who returned [REDACTED] had advised the Service that she had witnessed [REDACTED] walking back from the Mawson IGA shop.

Law

7. Provisions of the *Law* relevant to the assessment engaged the following:

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.

Decision

8. The Authority has considered all the information supplied by the Provider, and is satisfied that inadequate supervision contributed to [REDACTED] being able to exit the Service unseen by educators on 28 October 2020, in contravention of section 165(1) of the *Law*, and engaging section 167(1) of the *Law*.
9. 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.
10. In determining this action, the Authority considered the following:
- a) The Provider appears to have appropriate policy and procedures in place in relation to supervision of children being educated and cared for at the Service;
 - b) There have been no similar compliance issues identified at the Service in the previous 12 months; and
 - c) The Provider has advised of appropriate strategies and revision of supervision plans to mitigate the risk of a similar incident occurring.
11. This Decision is issued to remind the Provider that, always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children and educators alike. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.

Legislation

12. 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>.
13. The National Law is made up of an Act and Regulations which can be viewed at: <http://www.acecqa.gov.au/national-law>, and <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
14. Should you have any questions about this Decision please contact me at janine.fairburn@act.gov.au.

Yours Sincerely



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

18 October 2020