



Ms [REDACTED]  
Person with Management and Control  
Woden Community Service Inc  
RE: Red Hill OSHC

Email: [REDACTED]@wcs.org.au  
[REDACTED]

Dear Ms [REDACTED]

**Decision to issue Administrative Letter**

1. As you may be aware, Authorised Officers from Children's Education and Care Assurance, also known as the ACT Regulatory Authority (the Authority), recently assessed a Notification of Incident (NOT-40472287) advising that a child was missing/unaccounted for at Red Hill OSHC, SE-00009701, (the Service) operated by Woden Community Service Inc, PR-00005883, (the Provider) on 15 September 2020.
2. The enquiries related to whether inadequate supervision contributed to the child being unaccounted for at the Service.
3. The Authority is satisfied that the Service was not complying with the provisions of the *Education and Care Services National Law (ACT) (the Law)* and the *Education and Care National Regulations 2011 (the Regulations)* in respect to the operation of the Service on 15 September 2020.
4. Web Addresses to *Law* and *Regulations* are provided for your convenience at the end of this letter.

**Facts**

5. On 16 September 2020, the Authority received a Notification of Incident (NOT-40472173) from the Provider advising that a ten-year-old child, known to be [REDACTED] was able to leave the Service's premises unnoticed by educators. The notification advises that the child was missing and unaccounted for more than 10 minutes. Refer Attachment A.
6. On 16 September 2020, the Authority requested further information from the Provider. This information was received on 18 September 2020. Refer Attachment B.

**Law**

7. Evidence submitted via the Notification of Incident and supporting documentation engages the following sections of the *Law* and the *Regulations*:

**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.

**Section 175(1) of the Law – Offence relating to requirement to keep enrolment and other documents**

An approved provider of an education and care service must keep the prescribed documents available for inspection by the authorised office in accordance with this section.

Penalty: \$4000, in the case of an individual  
\$20 000, in any other case.

**Regulation 158(1) – Children’s attendance record to be kept by approved provider**

The approved provider of an education and care service must ensure that a record of attendance is kept for the service that-

- (a) records the full name of each child attending the service; and
- (b) records the date and time each child arrives and departs;
- (c) is signed by one of the following persons at the time that the child arrives and departs-
  - (i) the person who delivers the child to the education and care service premises or collects the child from the education and care service premises;
  - (ii) a nominated supervisor or an educator.

**Regulation 177 – Prescribed enrolment and other documents to be kept by approved provider**

- (1) for the purposes of section 175(1) of the *Law*, the following documents are prescribed in relation to each education and care service operated by the approved provider-
  - k) a children’s attendance record as set out in regulation 158.
- (2) the approved provider of the education and care service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

**Reasons**

- 8. Having considered the evidence of the assessment and documents submitted by the Provider; the Authority is satisfied that the Provider has failed to comply with the *Law*.
- 9. The Authority is satisfied that, sections 165(1) and 167(1) of the *Law* were contravened on 15 September 2020. Sections 165 and 167 of the *Law* were engaged by educator accounts and by documentation obtained from the Provider.
- 10. Information gathered engaged the obligation that the Provider must ensure that all children being educated and cared for by the service were adequately supervised at all times that the children are in the care of that Service, as required by section 165 of the *Law*.
- 11. Information gathered supports that the Provider, by not ensuring adequate supervision of children, has not appeared to ensure that every reasonable precaution was taken to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury, in contravention of section 167 of the *Law*.
- 12. The fact that [REDACTED] was able to leave the Service premises unnoticed by educators and go to a friend’s house further supports the contraventions of sections 165 and 167 of the *Law*.

13. The Authority is also satisfied that the Provider has failed to maintain arrival and departure times and identities of those signing for arrival and collection of children attending the Service; constituting a failure to keep a prescribed record - being a children's attendance record required by Regulation 158(1)) in contravention of section 175(1) of the Law. The only details noted were the names of children attending and booking times on 15 September 2020, and those identified as absent. Refer Child Attendance records at Attachment C.

### Decision

14. 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 Letter.
15. 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.
16. In addition to the above, the Provider is required to provide documentation and evidence to demonstrate that the Nominated Supervisor and all educators are aware of, and understand, the expectations and obligation to 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, for example, evidence of:
- (a) Evidence to support that the Nominated Supervisor and all educators are aware of, and understands, policies, procedures and practices relevant to supervision and guiding children's behaviour.
  - (b) Evidence of contingency plans in place to mitigate risk of inadequate supervision as a result of high-risk environments and activities.
  - (c) Evidence to demonstrate that staffing levels are determined, not just on minimum regulated ratio levels, but on ensuring adequate supervision at all times, taking into account individual needs of each child, the environment, and the experience levels of educators employed.
17. In addition, the Authority requires the Provider to:
- a) Advise of steps taken to ensure that child attendance records are compliant with Regulation 158; and
  - b) Provide a copy of one week's worth of compliant child attendance records.
18. The required evidence should be submitted to the Authority by close of business 14 days from the date of receipt of this letter. Information can be sent by email to [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au) or by post to:

Janine Fairburn, Authorised Officer  
Children's Education and Care Assurance  
PO Box 158, CANBERRA ACT 2601

19. The *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>.


20. 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>

21. This letter 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.

22. If you have any queries regarding this letter or if you require any information in order to understand your obligations under *the Law* and *Regulation*, please contact me on (02) 6205 4390 or alternatively at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).

Yours sincerely 



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

30 September 2020