

[REDACTED]
Person with Management or Control

Communities@Work

RE: Communities@Work Stirling Child Care and Education Centre

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Administrative Action RE: NOT-40947510

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40947510) regarding an incident occurring at Communities@Work Stirling Child Care and Education Centre SE-00009843 (the Service) operated by Communities@Work PR- 00005824 (the Provider).
2. The notified incident related to a child being locked in an outdoor shed for a period of time, unknown to educators on 23 January 2024.
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 25 January 2024, the Authority received a Notification of Incident (NOT-40947510) from the Provider. The Notification advised that, at some time between 3.00-3.30pm, on 23 January 2024 a child that had been helping get resources within the shed was still inside the shed and the door was closed by an educator and the educator left the area.
5. The Notification further advised that the Provider was not notified of the incident until 12.55pm on 25 January 2024, some two days after the incident occurred. Refer NOT-40947510 and additional documents submitted at Attachment A.
6. On 29 January 2024, the Authority sought additional information from the Provider, which was received on 2 February 2024. Refer copy of email correspondence and response at Attachment B.
7. Additional documentation submitted included:
 - a) Service Team Meeting minutes dated 30/01/2024
 - b) Educator and Responsible Persons records of conversation
 - c) Reasons for delay in reporting

- d) Child and educator attendance records for 23/01/2024
- e) Training Certificate for [REDACTED], and qualification record for Randstad employee
- f) Incident report and witness accounts

Law

8. The following provisions of the *Law* relevant to the notification assessment are:

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 174(2)(a) of the *Law* – Offence relating to failure to notify the Authority within the prescribed time frame

An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—

- (a) any serious incident at the approved education and care service;

Penalty: \$4500, in the case of an individual
\$22 900, in any other case.

Section 174(4)(a) of the *Law* – Offence relating to failure to notify the Authority within the prescribed time frame

A notice under section (2) must be in writing and be provided within the relevant prescribed time to –

- (a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates;

Regulation 176(2)(a)(ii) – Time to notify certain information to Regulatory Authority

For the purposes of section 174(4) of the *Law*, a notice must be provided –

- (a) in the case of a notice under section 174(2)(a-
 - (ii) in the case of any other serious incident, within 24 hours of the time that the person becomes aware of the incident;

Reasons and Decision

9. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, that on 23 January 2024, inadequate supervision contributed to a child being left inside a closed, outdoor shed. Inability to ensure adequate supervision at all times engages a failure to take reasonable precautions to protect said child, from any harm and from hazard likely to cause injury.
10. The very nature of the Notification and accompanying documentation submitted by the Provider, support offences being substantiated in this instance under sections 165(1) and 167(1) of the *Law*.
11. In relation to the matter of the incident being notified after the prescribed time frame for notification, being 24 hours, the Authority is satisfied that in this instance no offence is substantiated due to the notice being submitted within 24 hours of the Provider advising they became aware of the matter.
12. The Authority acknowledges the advised of actions undertaken by the Provider to ensure that all educators, including the Responsible Person, understand and are aware of the importance of reporting incidents to the Provider and parents at the time that incidents occur to mitigate risks of non-compliance.
13. 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 the Provider in achieving compliance and improved outcomes for children.
14. When deciding what appropriate action to take, the Regulatory Authority took the following matters into consideration:
 - a) The age of the child and the potential risks associated with were the child was;
 - b) The length of time that the child was identified as unsupervised and unaccounted for;
 - c) Reasons submitted by the Provider for the delay in reporting;
 - d) The information that the Provider has submitted indicating that risk mitigation strategies have been revised and implemented to reduce the risk of the recurrence of a similar incident.
15. In this circumstance, the Authority has also considered the Service's compliance history and determined not to initiate statutory action but instead to issue this Administrative Decision, with no additional need for further action.
16. This Decision is intended to bring to your attention the need to ensure that the Provider meets its obligations under the *Law*, in particular to ensure all children are adequately supervised at all times, and that every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury.

17. 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 similar breaches of the *Law or Regulations*.

Legislation

18. 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>.
19. 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>
20. If you have any questions in relation to this Decision, please contact Authorised Officer Nicole Withers by email at nicole.withers@act.gov.au

Yours sincerely



Nicole Withers
A/g Assistant Director
Children's Education and Care Assurance
Education and Care, Regulation and Support

16 February 2024