

Ms [REDACTED]  
Person with Management or Control  
Communities @ Work  
RE: Communities @ Work Palmerston Out of School Hours Care  
Email: [REDACTED]@commsatwork.org

Dear Ms [REDACTED]

**Decision to issue Administrative Action RE: 40815581**

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment into Notification (NOT-40815581) advising of an incident at Communities @ Palmerston Out of School Hours Care SE-00009682 (the Service), operated by Communities @ Work PR-00005824 (the Provider) on 19 January 2023.
2. Web addresses to the *Education and Care Services National Law (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**

3. On 25 January 2023, the Authority received a Notification of Incident (NOT-40815581) from the Provider, advising that two enrolled children of the Service, known to be [REDACTED] and [REDACTED] (both aged 6 years), were reported by school staff to have been observed wandering within the school's fenced carpark without supervision on 19 January 2023. Refer NOT-40815581 at Attachment A.
4. Additional information was requested by the Authority and submitted by the Provider on 31 January 2023. Refer copy of correspondence at Attachment B. Additional information submitted included:
  - a) Records of contact made with relevant children's parents (Attachment C);
  - b) Copies of Incident reports relevant to each child involved (Attachment C);
  - c) Staff register, educator and child attendance records for 19/01/2023;
  - d) Service Supervision Plan, Term Supervision Plan, active Supervision Procedure and Procedure for missing and unaccounted for children;
  - e) Provider's investigation of incident (Attachment D);
  - f) Staff discussion record and email reflection from Ms [REDACTED] dated 31/01/2023;
  - g) Photo's of Communication Log and Supervision Plan displayed; and
  - h) Resignation and Nominated Supervisor records relevant to [REDACTED]

## Law

5. Information submitted via NOT-40815581 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.

**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.

**Section 174 of the *Law* - Offence to fail to notify certain information to Regulatory Authority**

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to the approved education and care service operated by the approved provider –
- (a) any serious incident at the approved education and care service.
- (4) A notice under subsection (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)** provides that for the purposes of section 174(2)(a) of the *Law*, a notice must be provided within 24 hours of the incident or the time that the person becomes aware of the incident.

## Reasons

6. Having considered all documents submitted by the Provider regarding NOT-40815581 the Authority is satisfied that the Provider has failed to comply with the *Law*.
7. The Authority is satisfied that sections 165(1) and 167(1) of the *Law* were contravened on 19 January 2023. Sections 165 and 167 of the *Law* were engaged by documentation obtained from the Provider.
8. Information gathered supports that the Provider did not 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, in contravention of section 165 of the *Law*.
9. 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*.
10. The fact that the two children were able to leave the Service unnoticed by educators and was located outside of the Service in a carpark by schoolteachers, without educators noticing that they were not present at the Service, further supports the contraventions of sections 165 and 167 of the *Law*.
11. The Authority is satisfied that section 174 of the *Law* has been contravened also in this instance. The Authority acknowledges the Provider's advice that the Responsible Person/ Nominated

Supervisor did not report the matter to the Provider, with the Provider only becoming aware of the incident on 24 January 2023.

12. However, ultimate liability to ensure that notifiable matters are notified to the Authority within regulated timeframes falls with the Provider. If the Provider chooses to delegate a legislated responsibility to a Nominated Supervisor, or any other member of staff, than the Provider also must take accountability for any failings by these delegated individuals.

### Decision

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 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.
14. In determining this outcome, the Authority took into consideration the actions undertaken by the Provider to mitigate risk of a similar incident and notification issues, and the compliance history of the Service.
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. This Decision will be recorded on the Service's 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 associated *Regulations* be found.
17. For your convenience, and to support future compliance, please find web addresses to relevant legislation:

The *Law* applies to you as an approved provider and any service that you operate. 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>.

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>

18. If you have any queries regarding this Decision, please contact me via email at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).

Yours sincerely



Janine Fairburn  
Assistant Director  
Children's Education and Care Assurance  
Education and Care Regulation and Support  
ACT Education Directorate

14 February 2023