

Ms [REDACTED]
Person with Management or Control
Communities @ Work
Re: Communities @ Work Neville Bonner Out of School Hours Care

Email: [REDACTED]@commsatwork.org
[REDACTED]@commsatwork.org

Dear Ms [REDACTED]

Decision to issue Administrative Action RE: 40528035

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 a Notification (NOT-40528035) advising of an incident at Communities @ Work Neville Bonner Out of School Hours Care SE-00014264 (the Service), operated by Communities @ Work PR-00005824 (the Provider) on 8 April 2021.
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 9 April 2021, the Authority received a Notification of Incident (NOT-40528035) from the Provider, advising that an enrolled child of the Service, known to be [REDACTED] (age 8 years), was not seen exiting the Service premises, and was subsequently found outside of the Service by his mother who had arrived to pick him up at 4pm. Refer NOT-40528035 and supportive documentation at Attachment A.

Law

4. Evidence submitted via NOT-40528035 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.

Reasons

5. Having considered all documents submitted by the Provider the Authority is satisfied that the Provider has failed to comply with the Law.

6. The Authority is satisfied that sections 165(1) and 167(1) of the *Law* were contravened on 8 April 2021. Sections 165 and 167 of the *Law* were engaged by documentation obtained from the Provider.
7. 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*.
8. 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*.
9. The fact that [REDACTED] was able to leave the Service premises unnoticed by educators and was located outside of the Service when found by his mother, without educators noticing that he was not present at the Service, further supports the contraventions of sections 165 and 167 of the *Law*.
10. In addition, the fact that educators appear to not have been able to visually account for the child after 11:45am, and [REDACTED] describes having eaten his lunch in the school gardens whilst waiting to be picked up further supports that educators were unaware of [REDACTED] location for up to three hours – posing a risk to [REDACTED] health, safety and wellbeing.

Decision

11. 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.
12. In determining this outcome, the Authority took into consideration the actions undertaken by the Provider at the time of the incident, and the compliance history of the Service.
13. 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.
14. In addition to the above, the Provider is requested to submit 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 of reviewed supervision policies, practices and procedures in relation to the active supervision of children to mitigate risk of a child being unaccounted for or missing.
 - (b) Evidence to support that the Nominated Supervisor and all educators are aware of, and understands, policies, procedures and practices relevant to supervision.
 - (c) Evidence of processes/plans in place to mitigate risk of inadequate supervision because of high-risk environments and activities.

15. The required evidence should be submitted to the Authority by close of business 14 days from the date of receipt of this Decision. Information can be sent by email to janine.fairburn@act.gov.au or by post to:

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

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.

Yours sincerely



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

28 April 2021