

██████████
Person with Management or Control
Communities@Work
RE: Communities@Work Monash Out of School Hours Care

Email: ██████████ [@commsatwork.org](mailto:██████████@commsatwork.org)

Dear Ms ██████████

Decision to Issue Administrative Action RE: NOT-40966039

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed Notification of Incident (NOT-40966039) relating to Communities@Work Monash Out of School Hours Care SE-00009694 (the Service) operated by Communities@Work PR-00005824 (the Provider).
2. NOT-40966039 advised of a 5-year-old child who was signed into the service for after school care on 12 March 2024, despite not being present.
3. The Authority is satisfied that the Provider has not complied with provisions of the *Education and Care Services National Law Act (ACT)* (the Law) in this instance. Web addresses for the Law and the *National Regulations* are provided for your convenience at the end of this decision.

Facts

4. On 13 March 2024, the Provider submitted NOT-40966039, advising that ██████████ (aged 5 years) was signed into the Service for after school care, despite not being present. The notification advised that ██████████ had been waiting in the front office and was brought down to the program at 3:55 pm by front office staff.
5. Furthermore, the notification advised that the educator responsible for picking up the Kindy children, and the educator responsible for signing in these children did not notice that ██████████ was physically not present when accounting for him. Refer copy of NOT-40966039 and attached incident report at Attachment A.

Law

6. Provisions of the Law relevant to the Notification are:

Section 165(1) of 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: \$11 400, in the case of an individual
\$57 400, 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: \$11 400, in the case of an individual
 \$57 400, in any other case.

Reasons

7. After carefully considering all information submitted by the Provider via the notified incident, the Authority finds a contravention of sections 165(1) and 167(1) of the *Law* against the Provider have been substantiated in this instance.
8. In relation to sections 165 and 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider has not ensured that adequate supervision was being provided at all times and that all reasonable precautions were taken to ensure each child was protected from injury by accounting for their whereabouts at all times that they are attendance at the Service on 12 March 2024.
9. The Authority is satisfied that this failing has resulted in no educator identifying that [REDACTED] wasn't present at the Service for nearly an hour, and that no checks were undertaken to ensure that all children were in attendance during the transition period of being picked up from the Kindy Class and arriving at the Service.
10. The very nature of the incident, and additional information submitted by the Provider, confirming that [REDACTED] was not accounted for, and signed into the Service when not present further supports the offences being substantiated.
11. The Authority acknowledges the advice submitted via the notification stating that the Provider has taken steps to prevent or minimise this type of incident in the future by undertaking a review of the kindergarten collection procedure, including changing of collection times to support two educators being available as well as an expectation of children raising their hands and educators visually confirming each child is present before returning to the program.
12. Considering the evidence, the objectives and guiding principles of the *Law*, the actions taken by the Provider in response to the incident, and the compliance history of the Service, the Authority has decided to issue this administrative action rather than statutory compliance action in this instance.
13. The Authority notes that a non-statutory action was issued to the Provider on 4 March 2024 relating to substantiated s165 offence arising from the assessment of Notified Incident NOT-40952554.
14. This Decision is issued to again remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children at all times. 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.

15. In addition, ensuring educators are not only aware of and understand the Service's policy and procedures, but also practicing these regularly, including those relating to supervision and transitions of children, is considered a reasonable precaution to take to protect children from harms and hazards.
16. The Authority strongly encourages the Provider to review current transition processes with consideration and communication with the School, via Committee of Practice meetings, as required under the Deed agreement to further support quality and safe transitions of children between the School and the Service.
17. 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.

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 me by 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

10 April 2024