

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

Email: ██████████@commsatwork.org

Dear Ms ██████████

Decision to Issue Administrative Action RE: NOT-40952554

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-40952554) relating to Communities@Work Monash Out of School Hours Care SE-00009694 (the Service) operated by Communities@Work PR-00005824 (the Provider).
2. NOT-40952554 advised of a 4-year-old child unaccounted for, and unsupervised by service staff, in the outdoor play area of the primary school on 7 February 2024. Refer copy of NOT-40952554 and submitted incident report at Attachment A.
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 *Regulations* are provided for your convenience at the end of this decision.

Facts

4. On 8 February 2024, the Provider submitted NOT-40952554, advising that ██████████ (4years) was playing outside with the larger group and not correctly accounted for by educators as they returned indoors. ██████████ was found by the supervising teacher on duty and returned to the service. Refer Attachment A.
5. Initial enquires were made by the Authority, with the Provider submitting requested additional information on 22 February 2024 (Refer Attachment B). Additional information submitted by the Provider included:
 - a) Updated second page of incident report with parent signature;
 - b) Copy of email relating to educator online supervision training dated 20/02/2024; and
 - c) Copy of Team Meeting Agenda and Minutes dated 7/02/2024.

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: \$10 000, in the case of an individual
\$50 000, 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 section 165(1) of the *Law* against the Provider have been substantiated in this instance.
8. In relation to section 165 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. The Authority is satisfied that this failing has resulted in [REDACTED] being left unsupervised in the playground of the school on 7 February 2024.
9. The Authority noted that the exact time that [REDACTED] was unaccounted and unsupervised by the Service was confirmed via the internal incident report as being 15 minutes.
10. The very nature of the incident, and additional information submitted by the Provider, confirming that [REDACTED] was not being supervised at all times when in the outdoor space by the Service, supports the substantiation of the offence.
11. The Authority acknowledges the evidence submitted 22 February 2024 demonstrating that the Provider has taken steps to prevent or minimise this type of incident in the future.
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. 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 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.
14. In addition, ensuring educators are not only are 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.
15. 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

16. 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>.
17. 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 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

4 March 2024