

Ms [REDACTED]
Person with Management or Control
Anglicare NSW South NSW West and ACT
RE: Anglicare at Southern Cross Early Childhood Service

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Action RE: NOT- 00046457

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT- 00046457) relating to Anglicare at Southern Cross ECS SE-00011292 (the Service) operated by Anglicare NSW South NSW West and ACT PR-00005801 (the Provider).
2. The notification of incident advised that on 18 June 2024, [REDACTED] (2years, 10 months) was left in the Service alone and was unaccounted for around 45 minutes while Educators and 21 other children went on an excursion to the nearby oval.
3. The Authority is satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) in this instance. Web addresses to the *Law* and the associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 19 June 2024, a notification of incident (NOT- 00046457) was submitted to the Authority by the Provider advising that on 18 June 2024, [REDACTED] peer group were taken out for an excursion to the school's oval without him, leaving him alone in the Service during this time (for around 45 minutes) with the Educator only noticing his absence upon return from the excursion. Refer copy of the NOT- 00046457 at Attachment A.
5. Additional information submitted with NOT- 00046457 included the following:
 - Notes regarding incident

Refer Attachment B.

6. On 20 June 2024, the Provider submitted additional documents in response to a request for further information from the Authority, including:
 - Anglicare Incident report One;
 - Anglicare Incident report Two;
 - Attendance record;
 - Educators contact information;

- Educator One - Statement;
- Educator Two - Statement;
- Email to Parents;
- Regular local excursion log;
- Educator One - Warning Letter
- Educator Two - Warning Letter
- Educator Three - Warning Letter
- Working Directly with Children report

Refer Attachment C.

7. NOT- 00046457 further advised that steps taken by the Provider to prevent or minimise a similar incident included:
 - Ensuring a roll call is conducted whenever excursions occur, instead of just a headcount.

Law

8. The Notification engaged the following provisions of the *Law*:

Section 165(2) of the Law - Offence to inadequately supervise children

The nominated supervisor 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(2) of the Law - Offence relating to protection of children from harm and hazards

The nominated supervisor 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.

Decision

9. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to support an offence under section 165 and section 167 of the *Law* in this instance.
10. In relation to section 165 and section 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure that all children were adequately supervised at all times while in the care of the Service on 18 June 2024.
11. The Authority is satisfied that the very nature of the matter notified, and additional information submitted by the Provider supports, on balance of probabilities, the offence being substantiated.

12. The Authority is satisfied that [REDACTED] was left alone in the Service (due to a mis-calculated headcount), unsupervised for over 45 minutes, raising great potential risk of harm or hazard.
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.
14. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the advised of steps taken by the Provider to mitigate risk of a similar occurrence, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliance.
15. This decision serves to remind the Provider of their obligations and responsibilities under the *Law*, and to ensure that staffing and supervisory processes and educator practice is monitored regularly to ensure ongoing compliance with the *Law* and encourage continual improvements for outcomes for children.
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.

Legislation

17. The *Law* applies to you as a provider and any service 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>.
1. Should you have any questions about this Decision please contact me at
nicole.withers@act.gov.au.

Yours Sincerely,

[REDACTED]

Nicole Withers
Team Leader Investigations
Regulation and Compliance
Education Directorate

5 August 2024