



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

Email: ██████████@commsatwork.org

Dear ██████████

Decision to issue Administrative Letter RE: NOT-00095168

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 investigated suspected offences at Communities@Work Gordon Out of School Hours Care, SE-00009679 (the Service) operated by Communities@Work, PR-00005824 (the Provider).
2. 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

3. On Wednesday, 27 November 2024, the Authority received a notification (NOT-00095168) from the Provider advising that a child, ██████████ had been signed out of Before School Care, where he joined a group of kindergarten children walking to their classrooms. The Provider advised that they were notified by ██████████ (██████████ mother), that ██████████ had not made it to class and had made his way to a nearby garden where he was located by school staff at 9:45am.

Refer Attachment A

4. Due to the risk of harm and hazards to children, likely to cause injury resulting from inadequate supervision, the Authority determined to investigate.
5. The Authority has determined there was sufficient evidence to support a case to answer regarding under sections 165 and 167 of the Law.

Allegation

On Tuesday, 26 November 2024, the Approved Provider failed 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, in that a child, ██████████ (5:7), walked away from educators while transitioning from Before School Care to School without being noticed, in contravention of **Section 165(1)**, giving rise to a contravention of **Section 167(1)** of the Law.

Law

6. Refer Attachment B for provision of the Law relevant to the Allegation and Decision.

Obligations upon Regulatory Authority

7. The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. Relevant to this decision is the objective at section 3(2)(a), namely: "*to ensure the safety, health and wellbeing of children attending education and care services*".
8. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific application in this instance, being:

(a) that the rights and best interests of the child are paramount; ...

(f) that best practice is expected in the provision of education and care services.

9. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:

(c) to monitor and enforce compliance with this law;

(d) to receive and investigate complaints arising under this law.

10. The *Law* works to protect a particularly vulnerable group in our society – children – when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
11. A key objective of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.
12. The *Law* is predominantly a protective *Law* and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

Reasons and Decision

13. The Authority has considered all evidence gathered via the investigation process, and is satisfied on the balance of probabilities, allegations are proven, therefore substantiating contraventions of sections 165 and 167 of the *Law*.
14. In relation to section 165 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 26 November 2024.
15. This finding is supported by the Provider's following admissions, thus supporting the allegations as detailed.

- a) *“There was confusion about who was responsible for the child for the transition period as the roles had been shifted right before transition.”*
- b) *“The delay by two kindy children resulted in a separation of the kindy group and impacted the educator’s capacity to support supervision.”*
- c) *“The educator practice of dropping the child directly to a member of the school staff did not align with the child’s current drop off routine which was documented in the Behavioural Support Plan.”*
- d) *“The educator assigned to support the child had not been briefed around the expectations of the current practice.”*
- e) *“The previous drop off routine of dropping the child directly to school staff was not followed.”*

16. 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.

17. People and entities that choose to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case, as an approved provider, you chose and consented to participating in the education and care of children and have a responsibility to comply with the standard of care under the *Law*.

18. 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.

19. Regarding the substantiated offence under sections 165 and 167 of the *Law*, the Authority requires the Provider to produce the following:

- a) Evidence to show that all children's support needs are communicated to every educator, including agency educators, and how that is communicated.
- b) Evidence of communicating the needs of children with transitioning, especially those who are young, and those who have need additional supports in place.
- c) What process are in place to monitor educator practice to ensure that expected supports for transitions are being implemented.
- d) Evidence on how this monitored to ensure that the policies and procedures are being followed.

20. Such evidence should be produced, within 14 days of receipt of this letter, to Authorised Officer, Jarrod REID at Jarrod.Reid@act.gov.au.

21. This Decision will be recorded on our file’s 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.

22. The National Law is made up of an Act and Regulations which can be viewed at:
<http://www.acecqa.gov.au/national-law>, and
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

23. Should you have any questions about this decision please contact Authorised Officer, Jarrod REID
via email Jarrod.Reid@act.gov.au.

Yours sincerely



Vittorio Colosimo
A/g Assistant Director
Education and Care Regulation and Support
Education Directorate

20 June 2025