

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

Email: ██████████@commsatwork.org

Dear ██████████

Decision to Issue Administrative Action RE: NOT-40836239

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 a Notification of a missing and unaccounted for child (NOT-40836239) relating to Communities@Work Maribyrnong Out of School Hours Care SE-00011294 (the Service) operated by Communities@Work PR-00005824 (the Provider).
2. The notified incident submitted to the Authority on 20 March 2023, advised that on 17 March 2023, a child (10 years old) left the Service to go to the shops with his friends and subsequently returned to the Service without educators being aware of any of the child’s movements.
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. The notified incident advised that on 17 March 2023, a child (10 years old), known to be ██████████ ██████████, left the Service to go to the shops with his friends and returned to the Service without educators being aware.
5. The notified incident further advised that following a roll check at 8.40am by ██████████ (Responsible Person) the child left the service until he was noticed by the Deputy Principal ██████████ ██████████ at 8.45am. She spoke with ██████████ and directed him to return to the Service. ██████████ returned to the Service until 8.50am when he was released for the school day. ██████████ ██████████ subsequently notified the child’s parent, ██████████
6. Additional information by way of a timeline was submitted to the Authority on 23 March 2023. Refer NOT-40836239 at [Attachment A](#) and submitted timeline at [Attachment B](#).

Law

7. Provisions of the Law relevant to the notification assessment are:

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

Penalty: \$10 000, in the case of an individual

\$50 000, 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: \$10 000, in the case of an individual

\$50 000, in any other case.

Reasons

8. Upon considering all evidence for assessment, inclusive of Provider supplied information, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under sections 165(1) and 167(1) of the *Law* in this instance.
9. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, that on 17 March 2023, inadequate supervision contributed to [REDACTED] being able to leave the service premises unnoticed by educators.
10. 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.
11. The very nature of the Notification and accompanying documentation submitted by the Provider, support the offences under sections 165(1) and 167(1) of the *Law*.
12. 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.
13. 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.

14. 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 protect children from harm and hazard likely to cause injury – both physically and psychologically.
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 at janine.fairburn@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care, Regulation and Support

21 April 2023