

Ms [REDACTED]
Person with Management and Control
Goodstart Early Learning Ltd
RE: Goodstart Early Learning Kambah

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Administrative Action

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 Serious Incident (NOT-40707321) relating to the operation of Goodstart Early Learning Kambah - SE-00009784 (the Service), operated by Goodstart Early Learning Ltd - PR-00001129 (the Provider).
2. The Notification related to an incident occurring on 11 May 2022 advising of a circumstance where an enrolled child, [REDACTED] (aged 1-year 4months), was unsupervised for a short period of time, and found in the service hallway by her parent.
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 3 June 2022, the Authority sent the Provider a Show Cause Notice (the Notice) advising the Provider that the Authority had determined that there was sufficient evidence to support a case to answer for the Provider regarding suspected offences under the *Law*. However, the Authority's final determinations would not be made until the Provider had an opportunity to respond to the allegations and evidence obtained by the Authority.
5. The Notice outlined the grounds for issue, relevant evidence supporting suspected contraventions of the *Law*, and potential compliance actions if allegations were substantiated. Refer copy of Notice (minus attachments due to size, noting on request can be produced again) issued at Attachment A.
6. The Notice advised that evidence obtained during the assessment supported the following offences under the *Law*:

Allegation One – Sections 165, 167 of the Law

It is alleged that on 11 May 2022, the Provider failed to ensure that all children being educated and cared for at the Service, were adequately supervised at all times, contravening s165(1) of the *Law*, and engaging a further contravention of 167(1) of the *Law*.

Allegation Two – Section 169 of the Law

It is alleged that on 11 May 2022, the Provider failed to ensure that the relevant number of educators educating and caring for children was no less than the number prescribed for this purpose under *Regulation 123*, in contravention of section 169(1) of the *Law*.

7. On 17 June 2022, the Provider submitted to the Authority a response to the Notice. Refer a copy of the response correspondence at Attachment B.
8. The Provider's response consisted of a covering letter addressing matters raised in the Notice, as well as attachment of the following supportive evidence of actions undertaken to mitigate risk of a similar incident:
 - a) Risk assessment and control form dated 18 May 2022;
 - b) Photographs of Preschool Two Safety Commitment and Supervision Plan;
 - c) Copy of Provider's Supervision Super 7's Area Action Plans refresher training/presentation;
 - d) Photograph of top lock/hook on door;
 - e) Copy of Children Number Check/ Educator sign in and out Procedure with educator acknowledgements dated 10 and 14 June 2022;
 - f) Evidence of communications between educators and families relevant to supervision needs and requirements;
 - g) Copy of internal Educator staff ratio check, child attendance sheets, and rostering/timesheet documents for 11 May 2022; and
 - h) Educator Qualification records.

Law

9. Provisions of the *Law* outlined in the Notice engaged the following:

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.

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.

Section 169(1) of the Law - Offence relating to staffing arrangements

The Approved Provider of an education and care service must ensure that every that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Regulation 123 – Educator to child ratios –centre-based services

- (1) The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios –
 - a) For children from birth to 24 months of age – 1 educator to 4 children;
 - b) For children over 24 months and less than 36 months of age – 1 educator to 5 children;
 - c) For children aged 36 months of age or over (not including children over preschool age) – 1 educator to 11 children.
- (2) If children are being educated and cared for at a centre-based service are of mixed ages the minimum number of educators for the children must meet the requirements of subregulation (1) at all times.

Regulation 122 – Educators must be working directly with children to be included in ratios

- (3) An educator cannot be included in calculating the educator to child ratio of a centre-based service unless the educator is working directly with children at the service.

Regulation 13 – Meaning of *working directly with children*

For the purposes of these Regulations a person is working directly with children at a given time if at that time the person –

- a) Is physically present with the children; and
- b) Is directly engaged in providing education and care to the children.

Obligations upon Regulatory Authority, Providers and Services

10. 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”.
11. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have particular 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.*
12. 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.*

13. 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*.
14. 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.
15. 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

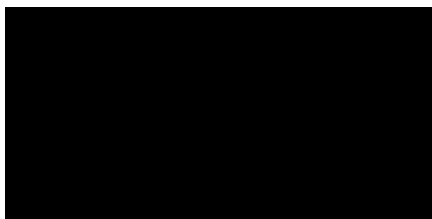
16. The Authority has considered all the information supplied by the Provider, inclusive of the response to the Notice, and is satisfied that, on balance of probabilities, allegation One is substantiated, being in contravention of sections 165(1) and 167(1) of the *Law*.
17. In relation to Allegation Two, on balance of probabilities, the Authority is not satisfied that s169(1) of the *Law* was contravened in this instance.
18. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider has not ensured adequate supervision at all times, which contributed to a one-year-old child being able to leave the Nursery space unchallenged only to be located unsupervised in the hallway of the Service by their mother. The very nature of the incident, admissions within the Provider's incident report and management of matter supports the contravention being determined.
19. Furthermore, the Authority is satisfied that the Provider, by not ensuring adequate supervision of an infant, has not ensured all reasonable precautions have been taken to protect children, specifically [REDACTED] in this instance, from harm and hazard likely to cause injury, engaging the substantiated offence under section 167(1) of the *Law*.
20. It is noted that the Provider's response to the Notice did not refute the allegations of non-compliance, rather focused on demonstrating actions taken after the incident to mitigate risk of a similar incident occurring.
21. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps taken by the Provider to mitigate risk of a similar incident, the Authority has decided to issue this administrative action rather than statutory compliance actions.

22. 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.
23. 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, and with consideration of the type of environment that children are being educated and cared in.
24. In relation to substantiated offences engaged by the Provider under sections 165 and 167 of the *Law*, the Authority is satisfied that this administrative action addresses the non-compliance, with no further response required from the Provider.
25. 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

26. 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>.
27. 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>
28. 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
ACT Education Directorate

14 July 2022