



Mr [REDACTED]
Person with Management or Control
Guardian Community Early Learning Centres Pty Ltd
Re: Guardian Childcare & Education Bruce

Email: [REDACTED]

Dear Mr [REDACTED]

Decision to Issue Compliance Notice

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA). The Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law (ACT)* (the *Law*), together with receiving and investigating complaints arising under the *Law*.
2. As you are aware, the Authority has recently deliberated on suspected offences relating to Educators being unaware of the location of a child's asthma medication at Guardian Childcare & Education Bruce – SE-40004913 (the Service) operated by Guardian Community Early Learning Centres Pty Ltd – PR-00000823 (the Provider), on 22 April 2025.
3. The Authority is satisfied that the Provider was not complying with the provisions of the *Law* and *Regulations* in respect to this matter. Web addresses to the *Law* and associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 23 April 2025, the Authority received a notification of complaint alleging that on 22 April 2025, a child known to be [REDACTED] medication location and action plan were not known to Educators, giving rise to concerns relating to harms and hazards.
5. Due to the risk of harms and hazards likely to cause injury if children don't have access to medication during an allergic reaction, the Authority determined to assess the matter, which engaged suspected offences under sections 167 of the *Law*, as well as *Regulation* 90 and 170.

Law

6. Provisions of the *Law* relevant to the matters raised in the Notice include the following:

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: \$11 400, in the case of an individual

\$57 400, in any other case.

Regulation 90(1) - Medical conditions policy

The medical conditions policy of the education and care service must set out practices in relation to the following —

- (a) the management of medical conditions, including asthma, diabetes or a diagnosis that a child is at risk of anaphylaxis;
- (b) informing nominated supervisors and staff members of, and volunteers at, the service of practices in relation to managing those medical conditions;
- (c) the requirements arising if a child enrolled at the education and care service has a specific health care need, allergy or relevant medical condition.

Regulation 170 (1) - Policies and procedures to be followed

The approved provider of a centre-based service must take reasonable steps to ensure that nominated supervisors and staff members of, and volunteers at, the service follow the policies and procedures required under regulation 168.

Penalty: \$1100.

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 accepted, through the notification of complaint, that staff were unaware of [REDACTED] asthma medication in the case of an allergic reaction. Therefore, substantiating contraventions of sections 167(1) of the *Law*.
14. The *Law* and *Regulations* require approved providers to ensure that all children being educated and cared for are protected from harm and hazards.
15. 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 the Provider chose and consented to participating in the education and care of children and has a responsibility to comply with the standard of care under the *Law*.
16. Considering the information submitted by the Provider, the level of seriousness of the contravention, and the objectives and guiding principles of the *Law*, the Authority has decided that issuing a Compliance Notice is appropriate and in the best interests of children.
17. The Authority is empowered to issue a compliance notice under section 177 of the *Law*:

Section 177 of the *Law* – Compliance notices

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this *Law*.
- (2) The Regulatory Authority may give the approved provider a notice (a ***compliance notice***) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.

Penalty: \$6 800, in the case of an individual

\$34 400, in any other case.

18. The Compliance Notice is provided at Attachment A to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions. You must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment A**.

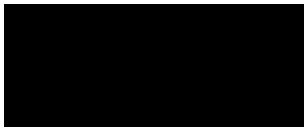
Review Rights

19. A decision to issue a compliance notice is a ***reviewable decision*** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).
20. An application for review may be made by completing the form *AR01 Application for Internal Review of Reviewable Decision* which can be obtained from the ACECQA website.

Legislation

21. The Law applies to you as an approved provider and any service you operate.
The National 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>
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 or Compliance Notice, please contact me via email at Vittorio.Colosimo@act.gov.au.

Yours sincerely,



Vittorio Colosimo
A/g Assistant Director Investigations
Children's Education and Care Assurance
Education and Care, Regulation and Support

19 June 2025