

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

Email: [REDACTED]  
Cc: [REDACTED]

Dear Mr [REDACTED]

**Decision to Issue Administrative Action RE: NOT-40528884 and NOT-40532616**

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed two Notifications of Incident (NOT-40528884 and NOT-40532616) relating to the operation of Guardian Childcare & Education Bruce SE-40004913 (the Service), operated by Guardian Community Early Learning Centres Pty Ltd PR-00000823 (the Provider).
2. The Authority is satisfied that the Provider has contravened provisions of the *Education and Care Services National Law (ACT)* (the Law).
3. Web addresses to the Law and the *Education and Care Services National Regulations 2011* (the Regulations) are provided for your convenience at the end of this Decision.

**Facts**

4. On 13 April 2021, the Authority received a Notification of Incident (NOT-40528884) advising that on 12 April 2021, a child, known to be [REDACTED] (aged two years), was found in the programming, unaccounted for and unsupervised.
5. Furthermore, the Notification advised that when [REDACTED] was found in the programming room unsupervised, he was standing at the filing cabinet with his hands in a container of thumb tacks. Refer NOT-40528884 at Attachment A.
6. On 13 April 2021, additional information was also received via email from the Provider. Refer Attachment B.
7. On 26 April 2021, the Authority received a Notification of Incident (NOT-40532616) advising that as a result of internal enquiries into events relating to NOT-40528884, the Provider had become aware of another instance of [REDACTED] being found in the planning space, unaccounted for and unsupervised on 12 April 2021. Refer NOT-40532616 and subsequent email from Provider at Attachment C.

8. On 3 May 2021, the Provider submitted additional information via email. The additional information identified enquiries made by the Provider, as well as analysis of records identifying staffing arrangements and child attendance on 12 April 2021.
9. Furthermore, the email outlined immediate risk mitigation strategies implemented by the Provider/Service, the internal investigation process, and advised of additional lines of enquiry being made by the Provider in respect to the incidents of 12 April 2021. Refer email at Attachment D.

## **Law**

10. As a result of its assessment and in considering the Provider's information furnished with the Notification, the Authority found evidence to support non-compliance with the following provisions of the *Law*:

### **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**

11. Having considered the information supplied by the Provider, the Authority is satisfied that the Provider has failed to comply with the *Law*.
12. The Authority is satisfied that there is sufficient evidence to support that on 12 April 2021, inadequate supervision contributed to [REDACTED] being able to enter the programming room/planning space unnoticed by educators, in contravention of section 165 of the *Law*.
13. The Authority is also satisfied that there is sufficient evidence to support that on 12 April 2021, reasonable precautions were not taken by the Provider to ensure that the door of the programming room was in proper working order to prevent a child access to the area with known hazards likely to cause injury in the room, in contravention of section 167 of the *Law*.
14. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. Many of these options allow the Authority to publish details of substantiated non-compliance.

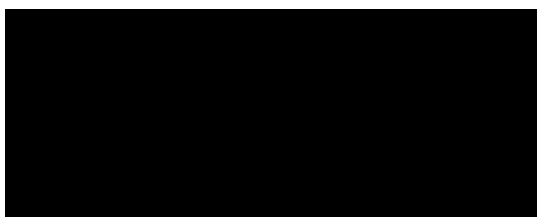
15. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. On this occasion, the Authority has determined to issue you with this Administrative Action rather than impose any statutory compliance actions.
16. In determining to issue the Provider with an Administrative Action, the Authority took the following into consideration:
  - a) The Notifications were reported within the prescribed timeframe;
  - b) The Provider promptly made internal enquiries to identify how the incident occurred;
  - c) The Provider has advised of, and provided evidence to demonstrate actions undertaken by the Provider to mitigate risk of a similar incident; and
  - d) The Provider has advised of additional enquiries being made to identify what further actions may need to be implemented to improve quality of supervision at the Service.
17. Regarding the substantiated offences under sections 165(1) and 167(1) of the *Law*, the Authority requests that the Provider, within 14 days of receipt of this Decision, submit the following evidence:
  - a) The completed internal investigation report; and
  - b) Evidence to demonstrate that the Nominated Supervisor, educators and relief staff are aware of and understand the Provider's supervision policy, procedures, and processes in relation to providing adequate and active supervision to all children at all times.
18. Evidence to demonstrate the above can be forwarded to me at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au), or alternatively via post at:

Attention: Janine Fairburn  
Children's Education and Care Assurance  
Early Childhood Policy and Regulation  
ACT Education Directorate  
PO Box 158, Canberra City 2601
19. This Decision is issued as a reminder that at all times, staffing and supervision levels need to meet the emotional, developmental and physiological needs of all children and educators alike. Staffing arrangements may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – especially in rooms that cater to mixed age groups and when children are engaged in riskier environments.
20. Furthermore, this Decision is to advise the Provider that the Regulatory Authority will be monitoring more strictly how the Service is being operated, and that any further similar non-compliances may result in stronger enforcement measures being actioned by the Regulatory Authority.
21. This Decision will be recorded on the Service 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 *Regulations* be found.

## Legislation

22. 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>.
23. 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>
24. If you have any questions in relation to this letter, please contact me by email at [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au).

Yours sincerely



Janine Fairburn  
Assistant Director  
Education and Care Regulation and Support  
ACT Education Directorate

13 May 2021