

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-40510213

1. As you may be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Complaint (NOT-40510213) alleging that a serious incident had occurred at 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 letter.

Facts

4. On 12 February 2021, the Authority received a Notification of Complaint (NOT-40510213) and associated documents, advising that on 11 February 2021, the Service received an email from a parent of a child, known to be [REDACTED] (aged one year).
5. [REDACTED] parent raised concerns where she felt her child's safety and wellbeing was not supported by the service after the child sustained sunburn to their nose, cheeks, and forearms. Refer Attachment A.
6. On 12 February 2021, the Authority requested further information the Service, being a copy of the complaint email from the parent with photos of the sunburn attached. Refer Attachment B.

Law

7. 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

8. Having considered the information supplied by the Provider, the Authority is satisfied that the Provider has failed to comply with the *Law*.
9. The evidence of sunburn via the photographs from the parent, as well as the response back to the parent supports, on balance of probabilities, the allegation being substantiated as stated.
10. The Authority is satisfied adequate supervision and reasonable precautions via ensuring educators were applying sunscreen correctly to infants and following Service policy and procedure was not occurring at all times, and has contributed to [REDACTED] sustaining noticeable sunburn without intervention from educator, engaging an offence of sections 165 and 167 of the *Law*.
11. 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.
12. 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.
13. In determining to issue the Provider with an Administrative Action, the Authority took the following into consideration:
 - a) The Notification of Complaint was reported within the prescribed timeframe; and
 - b) The Provider has advised of strategies which, if implemented and followed correctly, are deemed appropriate in mitigating risk of a similar incident.
14. Regarding the substantiated offence under section 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 sunscreen self-assessments by educators as advised of in the Notification of Complainant; and
 - b) The outcome of those reflections.
15. Evidence to demonstrate the above can be forwarded to me at janine.fairburn@act.gov.au, or alternatively via post at:

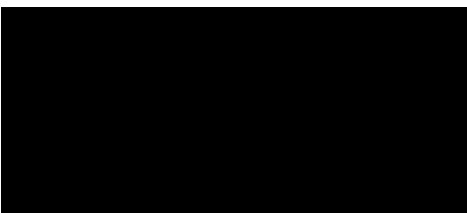
Attention: Janine Fairburn
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate
PO Box 158, Canberra City 2601

16. 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

17. 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>.
18. 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>
19. If you have any questions in relation to this letter, please contact me by email at Janine.fairburn@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

9 March 2021