

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

Email: [REDACTED]

Dear Mr [REDACTED]

Decision to issue Administrative Action RE: NOT-40904251

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed a Notification of Incident (NOT-40904251) relating to Guardian Childcare & Education Bruce SE-40004913 (the Service), operated by Guardian Community Early Learning Centres Pty Ltd PR-00000823 (the Provider).
2. The notification of incident advised whereby a 1-year-old child, known as [REDACTED], was in the outdoor area alone and unsupervised on 19 September 2023.
3. The Authority is satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) and the *Education and Care Services National Regulations (the Regulations)* in this instance. Web addresses to the *Law* and the *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 20 September 2023, a notification of incident (NOT-40904251) was submitted to the Authority by the Provider advising that on 19 September 2023, a child ([REDACTED] 1yr old) was found unsupervised in an outdoor area of the Service by another child’s grandparent. Refer copy of the NOT-40904251 at Attachment A.
5. Additional documents submitted with NOT-40904251 included:
 - Serious Incident Report (Attachment B);
 - Educator room log and Responsible person log;
 - Child’s enrolment record;
 - Staff roster; and
 - Nursery 1 Supervision Checklist (Attachment C).

Law

6. The Notification and Notice engaged the following provisions of the *Law*:

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.

Decision

7. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to ground an offence under section 165 of the *Law*, engaging an offence under section 167 of the *Law* in this instance.
8. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure adequate supervision at all times on 19 September 2023. The Authority is satisfied that inadequate supervision has contributed to a 1-year-old child being able to move from an indoor space to an outside space unnoticed by educators.
9. In addition, it is noted that the educators only became alerted to the child being missing from the room when the grandparent of another child notified them of the circumstances.
10. Furthermore, the Authority is satisfied, on balance of probabilities, that the Provider failed to ensure all reasonable precautions were undertaken to protect children, by not ensuring adequate supervision of [REDACTED], and by not having sufficient processes in place to ensure that infants cannot access other areas of the Service unaccompanied, in contravention of section 167(1).
11. The Authority notes the ACT Supervision Checklists submitted both are labelled as for Nursery 1 room for 19 September 2023, yet both records only appear to identify supervision checks up to 12pm, with 22 children identified as being in attendance for Nursery 1 room.
12. The very nature of the incident, admissions to the incident occurring as detailed and the Provider's management of matter supports the contravention being determined.

13. 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.
14. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the demonstrated 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 to address the non-compliances.
15. In relation to substantiated breaches engage by the Provider under section 165 and 167 of the *Law*, the Authority requests the Provider to submit the following evidence to support risk mitigation actions have been undertaken:
 - (a) Evidence of reviewed supervision policies, practices, and procedures in relation to the active supervision of children to mitigate risk of a child being unaccounted for or missing.
 - (b) Evidence to support that the Nominated Supervisor and all educators are aware of, and understands, policies, procedures, and practices relevant to supervision.
 - (c) Evidence of processes/plans in place to mitigate risk of inadequate supervision implemented resultant to the incident occurring 19 September 2023.
16. Requested information should be submitted to the Authority by close of business 14 days from the date of receipt of this Decision. Information can be sent by email to janine.fairburn@act.gov.au or by post to:

Authorised Officer, Janine Fairburn
Children’s Education and Care Assurance (CECA)
ACT Education Directorate
PO Box 158, CANBERRA ACT 2601
17. 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 be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
18. 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

19. The *Law* applies to you as a provider and any service you operate. 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> . 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>.

20. Should you have any questions about 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

20 October 2023