



Ms [REDACTED]
Person with Management or Control
Guardian Community Early Learning Centres Pty Ltd
RE: Guardian Childcare & Education Wanniasa

Email: [REDACTED]
CC: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Potential Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance. As you are aware, 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* (the *Law*). One of the Authority’s roles is to investigate suspected offences under the *Law*.
2. The Authority is currently investigating several allegations raised, directly to the Authority.
3. The allegations related to supervision, staffing arrangements, notification of incidents to the Authority and reasonable precautions not being taken to protect children between January and February 2023, at Guardian Childcare & Education Wanniasa SE-40004191 (the Service) operated by Guardian Community Early Learning Centres Pty Ltd PR-00000823 (the Provider).
4. Web addresses to the *Law* and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this notice.
5. Authorised Officers have now finished obtaining evidence (unless further lines of enquiry emerge) and the Authority has determined that the Provider has a case to answer regarding suspected offences.
6. However, the Authority’s investigation is not complete until the Provider has had an opportunity to respond to the allegation/s and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (the Notice) to you.
7. Detailed instructions of how to respond appear at the end of this Notice.
8. If substantiated, the allegation may constitute an offence under sections 165(1), 167(1), s169(1) & (2), s174, and s175 of the *Law*. If, after considering all available evidence, the Authority finds any offences are substantiated, it will need to consider whether compliance action is required.
9. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than

punishment. Further details regarding potential compliance actions appear at the end of this Notice.

Background

10. In March 2023, the Authority received a direct complaint relating to the operation of the Service. Allegations included matters regarding:
 - a) inadequate staffing arrangements
 - b) inadequate supervision
 - c) a complaint received by the Service
 - d) an unwitnessed injury to a child being educated and cared for at the Service that was not reported to the Authority
 - e) educators and children not being able to exit the Service following the evacuation pathway as they were locked in without a key to the gate.
11. Due to the risk to children from the allegations, the Authority determined to investigate the complaint.

Allegation One – Section 169 of the Law

12. It is alleged, on multiple occasions during January 2023 and February 2023, the Provider did not have the required number of educators educating and caring for the children as prescribed for this purpose in contravention of s169(1) of the *Law*.
13. It is alleged, during January 2023 and February 2023, the Provider did not have a waiver in place for a second Early Childhood Teacher (ECT) resulting in the Service not meeting the qualification requirements relevant to the educator's role as prescribed by the Regulations in contravention of s169(2) of the *Law*.

Allegation Two – Section 167 of the Law

14. It is alleged, on 28 February 2023, the Provider did not ensure every reasonable precaution was taken to protect children, as a fire alarm went off at the Service and, on evacuation of the Service, children and educators did not have a key to open the gate and were unable to leave the courtyard as per the evacuation plan in contravention of s167(1) of the *Law*.

Allegation Three – Section 165 and 167 of the Law

15. It is alleged, on multiple occasions during January 2023 and February 2023, the Provider did not ensure that all children being educated and cared for by the service were adequately supervised at all times, in that a child received a black eye at the Service unwitnessed by educators and, that there were inadequate supports for additional needs children in contravention of s165(1) of the *Law*, engaging s167(1) of the *Law*.

Allegation Four – Section 175 of the Law

16. It is alleged that Provider did not keep prescribed records, in particular working directly with children (WDWC) records for the Preschool room for dates 16, 23, 24, 25, 30, and 31 January 2023 in contravention of s175 of the Law.

Allegation Five – Section 174 of the Law

17. It is alleged the Provider received a complaint on 17 February 2023 regarding a child receiving an unwitnessed injury resulting in a black eye, that was not reported to the Authority, in contravention of s174 of the Law.

Legislation Relevant to Allegations

18. The following provisions of the Law and Regulations are relevant to Allegation One:

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

An approved provider of an education and care service must ensure 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.

Section 169(2) of the Law - Offence relating to staffing arrangements

An approved provider of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations.

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

19. The following provisions of the Law and Regulations are relevant to Allegation Two:

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.

20. The following provisions of the Law and Regulations are relevant to Allegation Three:

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.

21. The following provisions of the *Law* and *Regulations* are relevant to Allegation Four:

Section 175 of the Law - Offence relating to requirement to keep enrolment and other documents

An approved provider of an education and care service must keep the prescribed documents available for inspection by an authorised officer in accordance with this section.

Penalty: \$4 000, in the case of an individual
\$20 000, in any other case.

22. The following provisions of the *Law* and *Regulations* are relevant to Allegation Five:

Section 174(2) of the Law - Offence to fail to notify certain information to Regulatory Authority

An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—

- (a) any serious incident at the approved education and care service;
- (b) any complaints alleging—
 - i. that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
 - ii. that this Law has been contravened;
- (c) information in respect of any other prescribed matters

Penalty: \$4 000, in the case of an individual
\$20 000, in any other case.

Evidence Relevant to Allegations

23. A ratio analysis was undertaken by Authorised Officers utilising the educator working directly with children records and child attendance records submitted via the Provider's response to the notice issued under section 215 of the *Law*.
24. The analysis was of ten days the Service operated between 16 January 2023 and 1 March 2023. The analysis indicates that the Service was not within ratio for all ten days. Refer analysis at Attachment A.
25. The Authority notes that Provider applied for Service or Temporary Waiver (APP-40215870) on 7 March 2023.
26. Records produced by the Provider on 17 April 2023, 24 April 2023, and 17 May 2023 supported the following:
- a) Guardian Childcare & Education Wanniasa was in operation on between 17 January 2023 and 1 March 2023.

- b) The Service received an email on 17 February 2023 regarding an injury to a child known as [REDACTED]
- c) The Provider did not keep prescribed records, in particular working directly with children records for the Preschool room at the Service for the 16, 23, 24, 25, 30, and 31 January 2023.

Refer evidence at Attachment B.

27. As part of the investigation, the Authority obtained statements from witnesses, relevant excerpts from which are included below. Please note that all witness statements were obtained exercising powers under section 215 of the *Law*. To clarify, all witnesses were compelled by notice to attend before Authorised Officers and provide evidence. Failure to comply is an offence under the *Law*, as is obstructing or hindering the Authority's investigation.

Evidence relevant to Allegation One

28. Ratio Analysis conducted by the Authority. Please refer to Attachment A.

29. Relevant extracts from Witness A's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. Relevant extracts from Witness B's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

31. Relevant extracts from Witness C's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

32. Relevant extracts from Witness D's statement are:

[REDACTED]

33. Relevant extracts from Witness E's statement are:

[REDACTED]

Evidence relevant to Allegation Two

34. Fire alarm evacuation test – Refer to Attachment B.

35. Relevant extracts from Witness A's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

36. Relevant extracts from Witness C's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

37. Relevant extracts from Witness E's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Evidence relevant to Allegation Three

- 38. Ratio Analysis of the Service – Refer to Attachment A.
- 39. Email from Parent in relation to [REDACTED] injury – Refer to Attachment B.
- 40. Relevant extracts from Witness A's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 41. Relevant extracts from Witness B's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

42. Relevant extracts from Witness C's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43. Relevant extracts from Witness D's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

44. Relevant extracts from Witness E's statement are:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Evidence relevant to Allegation Four

- 45. Email from Provider unable to provide working directly with children records for the Preschool room for the 16, 23, 24, 25, 30, and 31 January 2023 – Refer to Attachment B.

Evidence relevant to Allegation Five

- 46. Email Complaint from [REDACTED] parents – Refer to Attachment B
- 47. Relevant extracts from Witness A's statement are:

[REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]

- 48. Relevant extracts from Witness D's statement are:

[REDACTED]



Contraventions of Law supported by evidence of allegations.

49. Evidence gathered appears to support contraventions of section 165(1), 167(1), s169(1) & (2), s174, and s175 of the *Law*.

Potential Compliance Action

50. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions, if any offences are substantiated. Potential compliance actions include:
- a. Non-statutory Administration Action (similar to a caution) with no further action;
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced; or
 - c. A Compliance Notice under section 177 of the *Law*; or
 - d. Imposing of Conditions on the Service’s approval under section 51 of the *Law*.
 - e. Suspension of the service approval under section 72 of the *Law*. *The suspension would be from the time that the provider has been notified of the decision until the provider has demonstrated risks have been mitigated.*
 - f. Cancellation of the service approval under section 79 of the *Law*.
51. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.
52. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.

Right of response

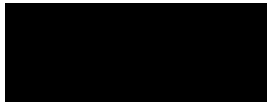
53. As mentioned previously, this letter is the Provider’s opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a written submission for the Authority’s consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
54. At Attachment C to this Notice is a ‘4 Step Guide to Responding to a Show Cause Notice’ to assist in the development of your submission. Please direct your written submission via email to Vittorio.Colosimo@act.gov.au or by post to:

Children's Education and Care Assurance
Attention: Vittorio Colosimo
GPO Box 158, Canberra ACT 2601.

Caution

55. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation are protected disclosures under section 296 of the *Law*.
56. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
57. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
58. The *Law* applies to you as a nominated supervisor and to any service you are engaged at. 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>.
59. 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>
60. Should you have any questions about this Show Cause Notice please contact Senior Investigator Vittorio Colosimo on email Vittorio.Colosimo@act.gov.au.

Yours sincerely



Jo Williams
Director – Regulatory Operations
Children's Education and Care Assurance
Education and Care Regulation and Support

17 August 2023