



Mr [REDACTED]  
Person with Management or Control  
GUNG AHLIN MONTESSORI ACADEMY PTY LTD  
RE: Gungahlin Montessori Academy  
Suite 1, Level 1, Gungahlin Market Place  
33 Hibberson Street,  
GUNG AHLIN ACT 2912

Email: [gungahlin@montessoriacademy.com.au](mailto:gungahlin@montessoriacademy.com.au)

Dear Mr [REDACTED]

### **Decision to Issue Compliance Notice**

1. As you may already be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated a Notification of Complaint (NOT-40712265) concerning Gungahlin Montessori Academy SE-40020141 (the Service), operated by Gungahlin Montessori Academy Pty Ltd PR-40017814 (the Provider).
2. I am satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act 2010*<sup>1</sup> (the Law) and the *Education and Care Services National Regulations* (the Regulations).
3. Web addresses for the Law and the Regulations are provided for your convenience at the end of this notice.

### **Facts**

4. On 19 May 2022, the Authority received a Notification of Complaint (NOT-40712265) submitted by the Provider advising on 18 May 2022, a 4-month-old child was found by their mother unattended in the cot room on their stomach by their mother on pick up. Refer to copy of Notification of Complaint at Attachment A.
5. Initial enquiries were made by the Authority in relation to the Notification, with the Provider forwarding additional information on 26 May 2022. Refer response at Attachment B. The response submitted by the Provider via email consisted of:
  - a) CCTV Footage timeline
  - b) [REDACTED] and [REDACTED] Timeframe
  - c) Incident Report
  - d) Link to CCTV footage

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<sup>1</sup> Adopted in the ACT by the *Education and Care Services National Law (ACT) Act 2011*.

## Law

6. Legislative Provisions Relevant to the Notification are as follows:

### **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.

## 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. 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.*
9. 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*.
10. 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.

11. 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.

### **Decision and Reasons**

12. I am satisfied that the very nature of NOT-40712265, and the information subsequently obtained via investigation by the Authority, supports the Provider has failed to adequately supervise children and failed to take reasonable steps to protect children from harm and hazard likely to cause injury, in contravention of sections 165(1) and 167(1) of the *Law*.
13. Specifically, reasonable steps did not appear to have been taken to protect [REDACTED] from rolling onto her stomach in a cot while not being adequately supervised on 18 May 2022.
14. When investigating this matter, the Authority noted that educators did not appear to be aware that [REDACTED] was in the cot room or aware if she had been checked on during her time in the cot room.
15. Considering the information obtained from the investigation conducted, the severity of risk posed to the child, the Service compliance history, and the objectives and guiding principles of the *Law*, I have determined that issuing a compliance notice would be appropriate and in the best interests of children.
16. The Authority is empowered to issue a compliance notice under section 177 of the *Law*.

#### **177 – 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: \$6 000, in the case of an individual  
\$30 000, in any other case.
17. The compliance notice is Attachment C to this Decision letter. You are required to take the steps directed in the Notice to comply with the relevant provisions.
  18. You must produce evidence of the steps required by the time indicated with the Notice at Attachment C. Evidence is to be forwarded to Authorised Officer, Vittorio Colosimo, via email at [Vittorio.Colosimo@act.gov.au](mailto:Vittorio.Colosimo@act.gov.au).

19. Alternatively, evidence information can be forwarded via post to –

Children’s Education and Care Assurance  
Attention: Vittorio Colosimo  
ACT Education Directorate  
GPO Box 158 Canberra ACT 2601

### **Rights of Review**

20. 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).
21. 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**

22. 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>.
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. Should you have any questions about this Decision, or the Compliance Notice please contact Vittorio Colosimo on email [Vittorio.Colosimo@act.gov.au](mailto:Vittorio.Colosimo@act.gov.au).

Yours Sincerely



Jo Williams  
Director  
Children’s Education and Care Assurance  
Education and Care Regulation and Support  
ACT Education Directorate

18 October 2022