



Mr [REDACTED]  
Person with Management and Control  
Alfoom Investments Pty Ltd  
RE: Gungahlin Kinder Haven

Email: [REDACTED]

Dear Mr [REDACTED]

**Decision to issue Administrative Letter RE: NOT-40472287**

1. As you may be aware, Authorised Officers from Children's Education and Care Assurance, also known as the ACT Regulatory Authority (the Authority), recently assessed a Notification of Incident (NOT-40472287) advising that a child was missing/unaccounted for at Gungahlin Kinder Haven, SE-40001554, (the Service) operated by Alfoom Investments Pty Ltd, PR-40000959, (the Provider) on 15 September 2020.
2. The enquiries related to whether inadequate supervision contributed to the child being unaccounted for at the Service.
3. The Regulatory Authority is satisfied that the Service was not complying with the provisions of the *Education and Care Services National Law (ACT) (the Law)* in respect to operating and education and care service on 15 September 2020.
4. Web Addresses to *Law* and associated National Regulations are provided for your convenience at the end of this letter.

**Facts**

5. On 16 September 2020, the Authority received a Notification of Incident (NOT-40472287) from the Provider advising that a four-year-old child, known to be [REDACTED] was located in an unsupervised room after transitioning to group rooms. The notification advises that the child was missing and unaccounted for more than 10 minutes but less than 30 minutes. Refer Attachment A.
6. On 16 September 2020, the Authority requested further information from the Provider. This information was received on 18 September 2020. Refer correspondence at Attachment B.
7. Additional Information included:
  - a) Working Directly with Children (WDWC) records and child attendance records;
  - b) Supervision and Transition Policy and Procedures;
  - c) Evidence demonstrating that a review of supervision protocols has occurred; and
  - d) Diagram/Mud map of Service.

**Law**

8. Evidence submitted via the Notification of Incident and supporting documentation engages the following sections of the *Law* and the *Regulations*:

**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**

9. Having considered the evidence of the assessment and documents submitted by the Provider; the Regulatory Authority is satisfied that the Provider has failed to comply with the *Law*.
10. I am satisfied that, sections 165(1) and 167(1) of the *Law* were contravened on 15 September 2020. Sections 165 and 167 of the *Law* were engaged by educator accounts and by documentation obtained from the Provider.
11. Information gathered engaged the obligation that the Provider must ensure that all children being educated and cared for by the service were adequately supervised at all times that the children are in the care of that Service, as required by section 165 of the *Law*.
12. Information gathered supports that the Provider, by not ensuring adequate supervision of children, has not appeared to ensure that every reasonable precaution was taken to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury, in contravention of section 167 of the *Law*.
13. The fact that a four-year-old child was left in an unsupervised room, on a different level of the Service unnoticed by educators for approximately 20 minutes, and not be identified as missing/unaccounted for until such time as a parent sought assistance to gain entry to the room to look for missing belongings further supports the contraventions of sections 165 and 167 of the *Law*.

**Decision**

14. 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. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue you this Administrative Decision.
15. 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.

16. In addition to the above, the Provider is required to provide documentation and evidence to demonstrate that the Nominated Supervisor and all educators are aware of, and understand, the expectations and obligation to 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, for example, evidence of:

- (a) Evidence to support that the Nominated Supervisor and all educators are aware of, and understands, policies, procedures and practices relevant to supervision and transitioning of children.
- (b) Evidence to demonstrate that staffing levels are determined, not just on minimum regulated ratio levels, but on ensuring adequate supervision at all times, taking into account individual needs of each child, the environment, and the experience levels of educators employed.

17. The required evidence should be submitted to the Authority by close of business 14 days from the date of receipt of this letter. Information can be sent by email to [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au) or by post to:

Janine Fairburn, Authorised Officer  
Children's Education and Care Assurance  
PO Box 158, CANBERRA ACT 2601

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

19. The National Law is made up of an Act and Regulations which can be viewed at:

- <http://www.acecqa.gov.au/national-law>, and
- <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

20. This letter will be recorded on your 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.

21. If you have any queries regarding this letter or if you require any information in order to understand your obligations under *the Law* and *Regulation*, please contact me on (02) 6205 4390 or alternatively at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).

regulation

ACT Education Directorate

30 September 2020