



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

Email: [REDACTED]
[REDACTED]

Dear Mr [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. The ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated a notified complaint alleging that the *Education and Care Services National Law (ACT)* (the *Law*) was contravened at Gungahlin Kinder Haven SE-400001554 (the *Service*), operated by Alfoom Investments Pty Ltd PR-40000959 (the *Provider*).
2. 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.
3. If any allegations are substantiated I am considering compliance action based on suspected contraventions of the *Law* and the *Regulations* arising from the investigation into a complaint regarding supervision and failure to take reasonable precautions to protect children from harm and from hazard.
4. During the investigation, the Authority received documentation which raised a suspected contravention regarding staffing levels. As a delegate of the Authority, I am considering compliance action under Part 7 of the *Law*.

Grounds for issuing Show Cause for Compliance Action

5. The Authority is considering compliance action based on evidence that supports contraventions of the *Law* arising from the Authority’s investigation. Specifically, the evidence obtained during the investigation suggests two sets of grounds that support offences under the *Law* or *Regulations*.
6. The first set of grounds relates to staffing, supervision and protecting a child from harm or hazards. The second set of grounds relates to accuracy of prescribed records.

Background

7. On 27 April 2021, the Authority received a notification of complaint (NOT-40532950) by a parent regarding an injury to their child, [REDACTED] (1 year, 11 months) caused by falling and

striking his head on concrete, which was not notified to the parent. [REDACTED] was taken to hospital after repeated vomiting.

8. Additional information was obtained from the Provider, including the Provider's internal investigation, which included statements from educators, one of which referred to two educators caring for 11-12 children (in the nursery rooms).

Refer Attachment A for all documentation produced by the Provider regarding the notification.

9. It was determined by the Authority to investigate suspected offences of inadequate supervision and failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury.

First set of grounds –Supervision and Protection from Harm

Allegation One

10. It is alleged that, on Thursday 22 April 2021, the Provider failed to ensure adequate supervision of all children being educated and cared for in that [REDACTED] [REDACTED] [REDACTED] [REDACTED] sustained a head injury and parents were not notified promptly, in circumstances where two educators were required to educate and care for 11-12 children under two years of age, in contravention of sections 165(1) and 167(1) of the *Law*.

Legislation Relevant to Allegation One

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

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

Evidence Relevant to Allegation One

12. On 30 June 2021, a notice for production of documents, allowable under section 215 of the *Law*, was issued. On 7 July 2021, a partial response was received, with some additional documentation produced on 8 July 2021.

[Redacted text]

- [Redacted text]

- [Redacted text]

18. Relevant extracts from [Redacted] statement are:

- [Redacted text]

- [Redacted text]

- [Redacted text]

- [Redacted text]

- [Redacted text]

- [Redacted text]

- [Redacted text]

- [Redacted text]

- [Redacted text]

- [Redacted text]

19. Relevant extracts from [Redacted] statement are:

- [Redacted text]

- [Redacted text]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

20. Although there are differences in accounts regarding whether support was requested regarding lack of staffing in Nursery 2/3 and other aspects of what took place, accounts are consistent that there were 11-12 children under two years of age being cared for by two educators, that one educator was needed to do nappy changes, and [REDACTED] parents were not notified of [REDACTED] head injury until he was collected.

Contraventions Supported by Allegation One

21. Evidence gathered appears to support contraventions of sections 165(1) and 167(1) of the *Law*.

Allegation Two – Inadequate Staffing

22. It is alleged that, on 22 April 2021, the Provider failed to ensure that staffing levels met the prescribed minimum at all times when children were being educated and care for by the Service, in contravention of section 169(1) of the *Law*.

Legislation Relevant to Allegation Two

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 a 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.

Regulation 123 (1) and (2) –Educator to child ratio-centre – based service

(1) The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios –

(a) for children from birth to 24 months of age—1 educator to 4 children;

27. Analysis indicates that the Service was inadequately staffed by one to two educators between 3:00 and 4:00pm, and by one educator between 4:30 and 5:00pm. Given breaks not being included in noted instances, it is likely that there were additional times throughout the day where staffing levels did not meet the prescribed minimum.

Contravention supported by Allegation Two

28. Evidence gathered appears to support a contravention of section 169(1) of the *Law*.

Allegation Three – Inaccurate Records

29. It is alleged that the Provider failed to take reasonable steps to ensure accuracy of prescribed records for 22 April 2021 in that working directly with children records were incomplete and inaccurate, and children’s attendance records were incomplete, in contravention of Regulation 177(2).

Legislation Relevant to Allegation Three

Regulation 151 – Record of educators working directly with children

The approved provider of a centre-based service must keep a record of educators working directly with children that includes the following information:

- (a) The name of each educator who works directly with children being educated and cared for by the service;
- (b) The hours that each educator works directly with children being educated and cared for by the service.

Regulation 158 – Children’s attendance record to be kept by approved provider

- (1) The approved provider of an education and care service must ensure that a record of attendance is kept for the service that –
 - (a) records the full name of each child attending the service; and
 - (b) records the date and time each child arrives and departs; and
 - (c) is signed by one of the following persons at the time that the child arrives and departs-
 - (i) the person who delivers the child to the education and care service premises or collects the child from the education and care service premises;
 - (ii) a nominated supervisor or an educator.

Regulation 177 – Prescribed enrolment and other documents to be kept by approved provider

- (1) For the purposes of section 175(1) of the *Law*, the following documents are prescribed in relation to each education and care service operated by the approved provider –
 - (h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151.

- (2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

Penalty: \$2000

Evidence Relevant to Allegation Three

30. Documents obtained during the investigation included children's attendance records and working directly with children records (Refer Attachments C and D).
31. Such records were incomplete in that some room sign-in, sign-out sheets were missing, and rosters and time sheets did not accurately record times during which educators were not working directly with children, such as lunch or other break times for some educators. Missing information has been noted on the ratio analysis at Attachment E.
32. Whilst some educators working shorter days expressly noted on the time sheet that they did not have lunch, other educators, for example [REDACTED], [REDACTED] and [REDACTED] worked full time hours and no lunch or other break times have been noted.
33. Regarding children's attendance records, several children were not signed out, as indicated in the ratio analysis at Attachment E.

Contravention Supported by Allegation Three

34. Evidence gathered appears to support a contravention of Regulation 177(2).

Proposed Compliance Action

35. The Authority is proposing compliance action under Part 7 of the *Law*, should the Authority find that any or all of Allegations One, Two and Three are substantiated on the balance of probabilities. Potential compliance actions include:
- a. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*; or
 - b. Non-statutory action.

Right of response

36. You have a right to respond to the allegations set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
37. At Attachment F 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 tanya.masterman@act.gov.au or by post to

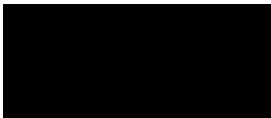
Children's Education and Care Assurance
Attention Tanya Masterman
GPO Box 158

Canberra ACT 2601.

Caution

38. 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*.
39. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
40. 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.
41. 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>.
42. 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>
43. Should you have any questions about this Show Cause Notice please contact Senior Investigator Tanya Masterman, on telephone (02) 6205 2012 or email
tanya.masterman@act.gov.au

Yours sincerely



Clare Brookes
Senior Director,
Education and Care Regulation and Support
ACT Education Directorate

15 September 2021