

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

Email: [REDACTED]

Dear Ms [REDACTED]

**Decision to issue Administrative Action RE: NOT-40844373**

1. As you are aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment into Notification of Complaint (NOT-40844373) advising of a parent complaint stating their child had been in the same nappy for 9 hours whilst being educated and care for at Gungahlin Kinder Haven - SE-40001554 (the Service), operated by Alfoom Investments Pty Ltd PR-40000959 (the Provider).
2. Web addresses to the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations 2011 (the Regulations)* are provided for your convenience at the end of this decision.

**Facts**

3. On 12 April 2023, the Authority received a Notification of Complaint (NOT-40844373) from the Provider, advising of a parent complaint alleging that on 6 April 2023, their 3-year-old child was left in the same nappy for up to 9 hours.
4. Furthermore, the parent alleges that when they picked up their child, his nappy was so full that it hung down to his knees and resulted in urine scalding to his thighs. Refer to Attachment A and B for notification and supportive information submitted.

**Law**

5. Relevant provisions of the Law engaged by the notification are as follows:

**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 cared for by the service from harm and from hazard likely to cause injury.

**Reasons**

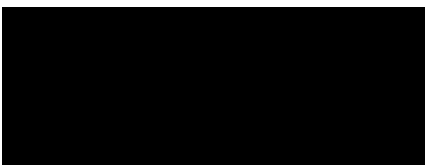
6. Upon considering all evidence for assessment, inclusive of Provider supplied information, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under section s167 of the Law.
7. The Authority is satisfied that the Provider has failed to take reasonable steps to ensure that, on this occasion, [REDACTED] was protected from harms and hazards likely to cause injury. Active supervision and observation of children in relation to toileting is considered a reasonable precaution to mitigate risk of a child soiling themselves, or being left in nappies for an unreasonable length of time.

8. In this instance, the Authority is satisfied that a lack of supervision and engagement by educators has contributed to [REDACTED] being left in the same nappy for 9 hours unnoticed by educators, supporting the substantiation of a breach of s167 of the *Law*.
9. In deciding if compliance action should be taken, the Authority has considered all relevant information supplied by the Provider regarding the Provider's enquiry and management of the parent's complaint, strategies implemented to mitigate risk of a similar complaint, and addressing of educator failings relevant to the matter.
10. In consideration of all relevant information, the Authority has determined in this instance not to initiate statutory compliance action regarding the substantiated contravention of section 167(1) of the *Law*, but rather issue this administrative decision to address the non-compliances.
11. Noting the service has managed and addressed the parent's complaint and implemented strategies to mitigate risk, the Authority administers this letter in acknowledgement of the substantiated breach and subsequent actions undertaken to mitigate risk of similar occurrences; and to remind you of your compliance expectations under the *Law* and *Regulation*.
12. This Decision is intended to bring to your attention the need to ensure that the Provider meets its obligations under the *Law*, in particular the obligation to ensure every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury or illness.

### **Legislation**

13. The *Law* applies to you as an approved provider and any approved service that the Provider operates.
14. 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>
15. This Decision 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.
16. If you have any queries regarding this Decision, please contact me at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).

Yours sincerely



Janine Fairburn  
Assistant Director  
Children's Education and Care Assurance  
Early Childhood Policy and Regulation

28 April 2023