



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

Email: [REDACTED]

Dear Ms Palmer

Decision to Issue Compliance Notice

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance. 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 (ACT) (the Law)*, together with receiving and investigating complaints arising under the *Law*.
2. As you are aware, the Authority has recently assessed a Notification of Incident (NOT- 40835435) relating to Gungahlin Kinder Haven SE-40001554 (the Service), operated by Alfoom Investments Pty Ltd PR-40000959 (the Provider), which engaged suspected offences of the *Law* being contravened.
3. The Regulatory Authority is satisfied that the Provider was not complying with the provisions of the *Law* in respect to this matter. Web addresses to the *Law* and associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 16 March 2023, the Authority received Notification of Incident (NOT- 40835435) from the Provider. The notification advised that on 16 March 2023, a child, known to be [REDACTED] (aged four years old) accessed the kitchenette and obtained a push button lighter.
5. The child then set the canopy of the wooden grocery stall on fire. Team members noticed and promptly put out the flames and commenced an evacuation. Refer NOT-40835435 at [Attachment A](#) and evidentiary documentation at [Attachment B](#).
6. Additional information was requested from the Provider, which was responded to on 17 and 20 March 2023. Refer correspondence at [Attachment C](#).
7. Information submitted by the Provider in response the Authority's request included:
 - a) CCTV Footage identifying incident and persons involved and CCTV Footage Investigation Report (Attachment D);

- b) Working Directly with Children records, ratio check records and Child attendance records for 16 March 2023;
 - c) Incident reports, records of conversations and meetings (Attachment E);
 - d) Supervision policy and procedure and indoor areas risk assessment;
 - e) Photos of burnt shelving and kitchenette door.
8. On 20 March 2023, the Authority received Notification of Incident (NOT- 40836560) from the Provider. The notification advised that on 16 March 2023, a child, known to be [REDACTED] (aged three years old) was left on the changing table when the incident NOT-40835435 occurred. Refer copy of NOT-40836560 at [Attachment E](#).

Law

9. Provisions of the *Law* relevant to the notification assessment engaged the following:

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, Providers and Services

10. 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".
11. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have particular application in this instance, being:
- (a) *that the rights and best interests of the child are paramount; ...*
 - (f) *that best practice is expected in the provision of education and care services.*
12. 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.*
13. 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*.

14. 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.
15. 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.

Reasons and Decision

16. The Authority has considered all the information supplied by the Provider and is satisfied that, on balance of probabilities, the Provider has not complied with sections 165(1), 167(1) of the *Law*.
17. The Authority is satisfied that, on 16 March 2023, the Provider has not ensured that all children being educated and cared for by the Service were adequately supervised at all times, in contravention of section 165(1) of the *Law* due to the following:
 - a) ██████ due to not being adequately supervised, was able to access a push button lighter, and attempt to ignite multiple surfaces, including another child, prior to successful igniting of the 'shop' canopy;
 - b) ██████ due to being inadequately supervised, was left unattended on a raised nappy change surface for two minutes whilst educators' attention was focused on the fire incident.
18. The Authority is satisfied that on 16 March 2023, the Provider has not ensured that every reasonable precaution was taken to protect children attending the Service from harm and hazard likely to cause injury or illness, in contravention of section 167(1) of the *Law* due to the following:
 - a) A push button lighter was stored on child height shelving within the preschool room, rather than being placed in a location unable to be accessed easily by children. This action would have been a reasonable precaution to prevent children from harm and hazards;
 - b) Inadequate supervision contributed to the two incidents as notified. Adequate supervision is a key precaution to protect children from harm and hazards;
 - c) Inadequate steps to remove children quickly from the area of the fire emergency or follow expected policy and procedure by educators. Ensuring educators are aware of, understand and can confidently respond to an emergency in line with expectations of the Provider and the *Law* is a key precaution to protect children from harm and hazard.
19. The very nature of the incident as notified, corroborating evidence via CCTV, and Provider records supports the offences under the *Law* being substantiated. The Authority is satisfied that these incidents, and subsequent risk to children could have reasonable been prevented if adequate supervision was occurring, and if the push button lighter had not been made so accessible.

20. Although the Authority acknowledges that no serious injury was sustained by any child or educator as a result of the incidents, the Authority notes that the consequences of the failings in supervision and risk prevention could have been catastrophic.
21. Considering all the evidence obtained, the level of seriousness of the contraventions, the two identified incidents of inadequate supervision engaging risk to children which could have been prevented, and the Service's previous compliance history, I have decided that that issuing a Compliance Notice is appropriate and in the best interests of children.
22. The Authority is empowered to issue a compliance notice under section 177 of the *Law*:

Section 177 of the *Law*– 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.
23. The Compliance Notice is Attachment G to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions.
 24. You must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment G.**

Review Rights

25. 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).
26. 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.

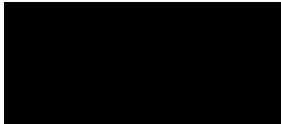
Legislation

27. The Education and Care Services National Law applies to you as an approved 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>.
28. 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>

29. Should you have any questions about this Decision or Compliance Notice please contact Authorised Officer Janine Fairburn via email at janine.fairburn@act.gov.au.

Yours Sincerely



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

29 March 2023