

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

Email [REDACTED]

Dear Mr [REDACTED]

**Decision to issue Administrative Action RE: NOT-40730263**

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40730263) relating to the operation of Gungahlin Kinder Haven SE-40001554 (the Service), operated by Alfoom Investments Pty Ltd PR-40000959 (the Provider).
2. The Notification advised that there were inadequate staffing arrangements at the Service on 22 June 2022.
3. Web addresses to the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations 2011* (the Regulations) are provided for your convenience at the end of this letter.

**Facts**

4. On 22 June 2022, the Authority received NOT-40730263 (the Notification) from the Provider advising that, on 22 June 2022, 2 between 7.30am and 8.00am the ratio at Service was impacted by changes in shifts as well as team absences. The Notification advised
5. Specifically, the Notification advised that ratio was not met during the times of 7.30am and 8 am due to these shift changes as well as a higher number of children being dropped off between the times listed than is usual for the service. Refer Attachment A for copy of Notification.
6. On 28 June 2022, additional information was requested from the Provider, being child attendance records and working directly with children records for the Service on 22 June 2022. These records were provided same day. An analysis of ratio levels was performed by the Authority utilising records provided.
7. It was noted that the analysis performed by the Authority supported advice from the Provider via the Notification. Refer copy of analysis at Attachment B.

## Law

8. The following provision of the *Law* is relevant to the facts as outlined in the Notification:

### **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 the 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.

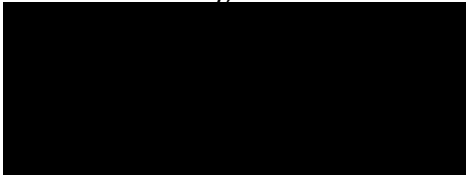
## Decision

9. The Authority has considered all the information supplied by the Provider and is satisfied that the failure to ensure that staffing was sufficient to meet the minimum prescribed number of educators at all times that children were being educated and cared for on 22 June 2022 constitutes an offence under section 169(1) of the *Law*.
10. The very nature of the admissions made within the notification further support the substantiation of the offence.
11. However, in mitigation, the Authority does acknowledge that the breach was contributed to by staff absences, was for only 30 minutes, and that steps were taken to ensure adequate supervision and reduce possible risks during the relevant times that minimum regulated ratio levels were not being met.
12. 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.
13. In this circumstance, the Authority has determined to issue this Administrative Letter rather than any statutory action to address the non-compliance, with no further response required from the Provider to the matter.
14. This decision is to remind the Provider that appropriate contingency plans need to be in place to manage such instances of educator absence to ensure compliance with the *Law*. This may include, if unsuccessful in engaging educators to meet ratio, taking options to reduce the number of children being educated and cared for on these days.
15. Please be aware that the contravention of *Law* has been recorded on the Service file and may be considered in the instance of any future similar incidents.

## Legislation

16. 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>.
17. 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>
18. Should you have any questions about 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  
Education and Care, Regulation and Support  
ACT Education Directorate

8 July 2022