

Mr [REDACTED]
Guardian Corporate Early Learning Centres Pty Ltd
T/A Guardian Early Learning Centre Forrest
L20, Suite 2002, 101 Grafton Street
BONDI JUNCTION NSW 2022

Email: [REDACTED]

Dear Mr [REDACTED]

Decision to Issue Compliance Notice

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children Education and Care Assurance, recently conducted a compliance audit based on complaints alleging that the health, safety and wellbeing of children was compromised at Guardian Childcare and Education Forrest SE-40005756 (the Service), operated by Guardian Corporate Early Learning Centre Pty Ltd PR-00004736 (the Provider).
2. I am satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law (ACT) Act 2011* (the Law) and the *Education and Care Services National Regulations* (the Regulations).
3. Web addresses to the *Education and Care Services National Law Act 2010*¹ (the Law) and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.

Background Facts

4. A provider approval was granted by New South Wales Regulatory Authority to Guardian Corporate Early Learning Centres Pty Ltd (PR-00004736).
5. On 13 November 2015, a service approval was granted for Guardian Childcare and Education Forrest, SE-40005756. A copy of the service approval is at Attachment A to this decision.
6. On 2 October 2020, the Authority received a direct complaint in relation to inadequate staffing, that the ratio requirements were not met within rooms.
7. Authorised Officers entered the Service on 21 October 2020, exercising powers under sections 197 of the Law. Authorised Officers observed staff and took photographs of prescribed records, including records of educators working directly with children.

¹ Adopted in the ACT under the *Education and Care Services National Law (ACT) Act 2011*

8. Due to the specific circumstances on arrival at the service, Authorised Officers discussed with the Nominated Supervisor alternatives to revisit the service to complete the audit. In agreement an Authorised Officer returned to the service on 28 October 2020. The Authorised Officer requested the following documents and received them on 2 November 2020 (Attachment B).
9. Documents received by email on 2 November 2020, included:
 - a. Working Directly with Children (WDwC) records from 7 - 13 September 2020 and 21 – 25 September 2020; and
 - b. Child Attendance Records, including the age of the child from 7 - 13 September 2020 and 21 – 25 September 2020.
10. Analysis of staffing levels were completed, however working directly with children records identified abnormalities and appeared inaccurate (Attachment C).
11. It was alleged that, ratio analysis on 7, 9, 11, 22 and 24 September 2020, appeared to support contraventions of the *Law* by the Provider. Refer Attachment D and E
12. It is alleged that on 7, 9, 11, 22 and 24 September 2020, the Provider failed to ensure adequate staffing in contravention of section 169(1) of the *Law*, engaging an offence of inadequate supervision under section 165(1) and failure to take reasonable precautions to protect children from harm and hazards likely to cause injury under section 167(1) of the *Law* (Allegation One).
 - a. It was alleged that the Provider failed to ensure, on Monday 7 September 2020, adequate staffing over significant period during which the service had up to three educators fewer than the prescribed minimum (Allegation One): and
 - b. It was alleged that the Provider failed to ensure, on Wednesday 9 September 2020, adequate staffing over significant periods of hours during which the service had up to five educators fewer than the prescribed minimum (Allegation One): and
 - c. It was alleged that the Provider failed to ensure, on Friday 11 September 2020, adequate staffing over significant periods of hours during which the service had up to six educators fewer than the prescribed minimum (Allegation One): and
 - d. It was alleged that the Provider failed to ensure, on Tuesday 22 September 2020, adequate staffing over significant periods of hours during which the service had up to six educators fewer than the prescribed minimum (Allegation One): and
 - e. It was alleged that the Provider failed to ensure, on Thursday 24 September 2020, adequate staffing over significant periods of hours during which the service had up to four educators fewer than the prescribed minimum (Allegation One).

11. In addition, it was alleged that on Tuesday 22 September 2020, the service provided documents identifying that the records of educators working directly with children were incomplete and inaccurate. Engaging Regulation 177(1)(h) and (2) and Regulation 151 (a)(b). (Allegation Two).
- a. Educator Ms [REDACTED] was identified on Tuesday 22 September 2020, educating, and caring for Young Adventurer children between 7:50am and 2:15pm. Educator Ms [REDACTED] signed out of the WDwC record noting the reason for leaving was lunch and planning.
 - b. Ms [REDACTED] was identified on Tuesday 22 September 2020, educating and caring for children within the Little Explorers 1 and 2 room between:
 - i. 9:15am – 10:35am, signing out to take a morning tea break and signing back in at:
 - ii. 10:45am – 1:05pm, signing out to take a lunch break and signing back in at:
 - iii. 1:45pm – 4:30pm, signing out at 4:30pm for the reason the shift was completed.
 - c. It was identified that on Tuesday 22 September 2020, educator [REDACTED] failed to sign out of the Young Adventurers WDwC record.
 - d. In addition, WDwC records provided for Early Learners for week commencing Monday 21 September 2020, consisted of two WDwC records dated 21 September 2020.

Law and Regulations

Legislative Provisions 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.

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.

Legislative Provisions Relevant to Allegation Two

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.

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.

Penalty: \$1000

Decision

13. Having considered the evidence relevant to Allegation One, I am satisfied that the allegation has been substantiated on the balance of probabilities. I am satisfied that the Provider Contravened Section 165(1), 167(1) and 169(1) of the *Law*, by failing to ensure adequate staffing at all times that children were educated and cared for at the service on 7, 9, 11, 22 and 24 September 2020.
14. In relation to Allegation Two, I am satisfied that Regulation 177(1)(h) and (2) was contravened on numerous occasions on Tuesday 22 September 2020. I am satisfied that the Provider Contravened Regulation 177(1)(h)(2) of the *Regulations*, by failing to ensure documents referred in subregulation (1) are accurate.
15. The compliance notice is at [Attachment F](#) to this Decision Letter. You are required to take the steps directed in the Notice to comply with the relevant provision.

16. You must produce evidence of the steps require by **the times indicated for each step within the Notice at Attachment F.**

Obligations upon Regulatory Authority

17. 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”.

18. 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.*

19. 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*.
20. 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.
21. 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.

Compliance History

22. In determining appropriate compliance action, I have considered the compliance history of the Service, which has had no compliance history prior to this Decision.

Rights of Review

23. 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).
24. 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

25. 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>.

26. 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>

27. Should you have any questions about this Decision or the Compliance Notice please contact Authorised Officer Nicola Atherton at: Nicola.atherton@act.gov.au or alternatively on 02 6205 0375.

Yours sincerely



Clare Brookes
Senior Director,
Early Childhood Policy and Regulation
ACT Education Directorate
9 December 2020