



Ms [REDACTED]
Person with Management and Control
Guardian Community Early Learning Centres Pty Ltd
RE: Guardian Childcare & Education Bruce

Email: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated complaints alleging that the health, safety and wellbeing of children was compromised at Guardian Childcare & Education Bruce SE-40004913 (the Service), operated by Guardian Community Early Learning Centres Pty Ltd PR-00000823(the Provider).
2. Web addresses to the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.

Grounds for issuing Show Cause for Compliance Action

3. I am considering compliance action based on suspected contraventions of the Law and the Regulations arising from the investigation into complaints regarding supervision and failure to take reasonable precautions to protect children from harm.
4. During the course of the investigation, the Authority obtained documentation which raised suspected contraventions of minimum staffing requirements. As a delegate of the Authority, I am considering compliance action under Part 7 of the Law.

Background

5. On 6 March 2020, the Provider notified the Authority of a complaint alleging that a child aged 6 months [REDACTED] had been repeatedly bitten over the preceding three weeks due to inadequate supervision (NOT-40422338). It was initially determined by the Authority that the issue was being appropriately managed by the Provider/Service. Refer Attachment A for documents relating to NOT-40422338.
6. On 17 March 2020, the Authority received a direct complaint alleging that the same child was bitten, and the parents incorrectly advised that the injury was caused by a block. On 18 March 2020, the Provider notified the Authority of the same complaint (NOT-40425136). Records

provided as part of the initial assessment process for NOT-40422338 indicated that staffing levels may have been inadequate. Refer Attachment B for documents relating to NOT-40425136.

7. Due to the risk to children when staffing and supervision are inadequate, the Authority determined to conduct an investigation into suspected offences of inadequate staffing, supervision and failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury.
8. COVID-19 Pandemic procedures were implemented at the end of March 2020.
9. On 21 April 2020, a notice, allowable under section 215 of the *Law*, was issued to the Provider requiring production of documents by 30 April 2020. Due to the burden of managing the complexities of the COVID-19 Pandemic, the Provider requested and was granted an extension of time to comply with the notice to 15 May 2020. The documents required were produced within the specified time.
10. On 1 May 2020, the Provider notified the Authority of a complaint concerning a child aged 2 years and 8 months [REDACTED] being bitten (unwitnessed) on 29 and again on 30 April 2020 (NOT-40436457). Records provided as part of the initial assessment process indicated that staffing levels may have been inadequate. It was determined that this additional complaint be amalgamated with the existing investigation. Refer Attachment C for documents relating to NOT-40436457.

Allegation– Inadequate staffing and supervision between 17 February 2020 and 30 April 2020

11. It is alleged that, during the period 17 February to 30 April 2020 (inclusive), the Provider failed to ensure adequate staffing was in place at all times during which children were being educated and cared for, in contravention of section 169(1) of the *Law*, engaging contraventions of sections 165(1) and 167(1) of the *Law*.

Legislation Relevant to Allegation One

12. 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.

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;
- (a) for children over 24 months and less than 36 months of age—1 educator to 5 children;
- (b) for children aged 36 months of age or over (not including children over preschool age)—1 educator to 11 children;
- (c) for children over preschool age, 1 educator to 15 children.

(2) If children being educated and cared for at a centre-based service are of mixed ages the minimum number of educators for the children must meet the requirements of subregulation (1) at all times.

Regulation 122 –Educators must be working directly with children to be included in ratios

An educator cannot be included in calculating the educator to child ratio of a centre- based service unless the educator is working directly with children at the service.

Regulation 13 – Meaning of *working directly with children*

For the purpose of these Regulations a person is working directly with children at a given time if at that time the person –

- a) Is physically present with the children; and
- b) Is directly engaged in providing education and care to the children.

Evidence Relevant to Allegation

13. Documentation relevant to the allegation was obtained by notice under section 215 of the *Law* and included working directly with children (WDWC) records prescribed under Regulation 151 and child attendance records prescribed under Regulation 158.
14. Using child attendance records and WDWC records, ratio analysis for the following dates was carried out, which indicated as follows:

- a. Tuesday 18 February 2020 – 2 periods of fifteen minutes during which there was one educator fewer than the prescribed minimum required to be working directly with children;
- b. Thursday 20 February 2020 – total period of 6.75 hours, during which there were up to six educators fewer than the prescribed minimum required to be working directly with children;
- c. Monday 24 February 2020 – adequate staffing levels for the entire day;
- d. Thursday 27 February 2020 – total period of 4.25 hours, during which there were up to three educators fewer than the prescribed minimum required to be working directly with children;
- e. Monday 2 March 2020 – total period of 0.75 hours, during which there was one educator fewer than the prescribed minimum required to be working directly with children;
- f. Thursday 5 March 2020 – total period of 3.75 hours, during which there were up to two educators fewer than the prescribed minimum required to be working directly with children;
- g. Thursday 30 April 2020 – total period of 7.5 hours, during which there were up to five educators fewer than the prescribed minimum required to be working directly with children.

A copy of the ratio analyses carried out is attached and marked Attachment D.

15. During the course of the investigation, the Authority obtained statements from witnesses.

16. Relevant extracts from Witness A's evidence are:





17. Relevant extracts from Witness B's evidence are:



Contraventions Supported by Allegation

18. Evidence gathered, particularly analysis of prescribed records, appears to support the following contraventions of the *Law* by the Provider:
- (a) Failing to ensure adequate staffing arrangements at all times that the Service was educating and caring for children between 17 February 2020 and 30 April 2020 (inclusive), in contravention of section 169(1) of the *Law*;
 - (b) Failing to ensure adequate supervision of all children being educated and cared for by the Service at all times between 17 February 2020 and 30 April 2020 (inclusive), in contravention of section 165(1) of the *Law*;
 - (c) Failing to take reasonable precautions to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury between 17

February 2020 and 30 April 2020 (inclusive), in contravention of section 167(1) of the *Law*.

Proposed Compliance Action

19. The Authority is proposing compliance action under Part 7 of the *Law*, should the Authority find that the offences 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*;
 - b. Non-statutory action.

Right of response

20. 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. [REDACTED]

21. At Attachment E 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

22. 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*.
23. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
24. 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.
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 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,
Early Childhood Policy and Regulation
ACT Education Directorate

28 July 2020

