

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-40484338**

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 conducted an assessment of a Notification of Incident (NOT-404884338) relating to the operation of 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 (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**

3. On 3 November 2020, the Authority received NOT-40484338 (the Notification) from the Provider. Refer Notification and supportive documentation at Attachment A.
4. The Notification advised that the Service was experiencing a gastro outbreak commencing 9 October 2020 with 38 cases to date, including children, staff members and parents, with ACT Health being notified on 16 October 2020.
5. On 4 November 2020, additional information was requested from the Provider which was submitted on 9 November 2020. Refer Attachment B.

**Law**

6. The facts as outlined in the Notification engage the following legislative considerations:

**Section 174(2)(c) of the Law** provides that an approved provider must notify the Regulatory Authority of any information in respect to prescribed matters.

**Regulation 175(2)(c)** provides that for the purposes of section 174(2)(c) of the Law, the following matter is prescribed – any circumstance arising at the service that

poses a risk to the health, safety or wellbeing of a child or children attending the service.

**Section 174(4)(a) of the Law** provides that a notice under subsection (2) must be in writing and be provided within the relevant prescribed time to the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

**Regulation 176(2)(c)** provides that for the purposes of section 174(4) of the Law, a notice must be provided - in any other case (being a case of a notice under section 174(2)(c)), within 7 days of the approved provider becoming aware of the relevant information.

### **Reasons**

7. The Authority is satisfied that the Provider has not notified of a circumstance arising at the service that poses a risk to the health, safety or wellbeing of a child or children attending the service within the prescribed timeframe of 7 days, which engages a contravention of sections 174(2)(c) and 174(4)(a) of the *Law*.
8. The notification clearly identifies that the circumstance posing risk commenced 9 October 2020, and was identified as posing a risk to warrant reporting to ACT Health on 16 October 2020, yet was not notified to the Authority until 3 November 2020, outside of regulated timeframes outlined in *Regulation 176(2)(c)*.
9. In deciding if compliance action should be taken, the Authority has considered that there have been no similar identified non-compliances in relation to late notification within the previous 12 months. The Authority determined that due to this, the Authority will not be initiating statutory compliance action in this instance.
10. This Decision, however, is intended to bring to your attention the need to ensure that all notifiable incidents, complaints, and circumstances, as outlined under the *Law* and *Regulations* are notified by the Provider within the regulated timeframes.
11. This Decision will be recorded on your service file and may be considered in any future applications for approvals, amendments or waivers. Should further breaches of the *Law* or *Regulations* be identified, this Decision will be taken into account to determine if stronger enforcement actions are required.

### **Legislation**

12. 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>.

13. 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>
14. Should you have any queries regarding this letter please contact me on (02) 6205 4309 or email [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au).

Yours Sincerely,



Janine Fairburn  
Assistant Director  
Early Childhood Policy and Regulation  
ACT Education Directorate

18 August 2020