



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

Email: [REDACTED]

Dear Mr [REDACTED]

**Decision to issue Administrative Letter RE: NOT-40492740 and NOT-40500189**

1. As you may be aware, Authorised Officers from Children's Education and Care Assurance, also known as the ACT Regulatory Authority (the Authority), recently assessed two Notifications (NOT-40492740 and NOT-40500189), with each notification advising that a child was missing/unaccounted for at Gungahlin Kinder Haven, SE-40001554, (the Service) operated by Alfoom Investments Pty Ltd, PR-40000959, (the Provider) on 1 December 2020 and 4 January 2021.
2. The enquiries related to whether inadequate supervision contributed to the child being unaccounted for at the Service.
3. The Authority is satisfied that the Service was not complying with the provisions of the *Education and Care Services National Law (ACT) (the Law)* in respect to operating and education and care service on 1 December 2020 and 4 January 2021.
4. Web Addresses to *Law* and associated National Regulations are provided for your convenience at the end of this letter.

**Facts**

5. On 3 December 2020, the Authority received a Notification of Complaint (NOT-40492740) from the Provider advising that a parent had complained that their one year old child was located in an unsupervised room during family grouping time at approximately 5:50pm on 1 December 2020. Additional complaints were made regarding hygiene and the standard of the premises. Refer copy of NOT-40472287 at Attachment A.
6. On 8 December 2020, the Authority requested further information from the Provider. This information was received on 14 December 2020.
7. Documentation included:
  - a) Complaint email from parent;
  - b) Working Directly with Children (WDWC) records and ratio check sheets;
  - c) Child attendance summary for 1 December 2020, which does not include the child in question
  - d) Educator statements;
  - e) Check lists for bathroom hygiene and yard maintenance;

- f) Email regarding active supervision on 2 October 2020 with attached Toybox Talk, active supervision handout and supervision policy;
  - g) Email regarding active supervision on 2 December 2020, with the same attachments.
8. On 5 January 2021, the Authority received a Notification of Incident (NOT-40500189) from the Provider advising that a four-year-old child was located by the Service's cook unsupervised in the junior preschool room on 4 January 2021. Refer copy of NOT-40500189 at Attachment B.
9. On 5 January 2021, the Authority requested further information from the Provider. This information was received on 6 January 2021. Documentation included:
- a) Child attendance records for 4 January 2021; and
  - b) Working Directly with Children (WDWC) records for 4 January 2021.

## Law

10. Evidence submitted via the Notification of Incidents and supporting documentation engages the following sections of the *Law* and the *Regulations*:

### **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.

## Reasons

11. Having considered the evidence of the assessment and documents submitted by the Provider; the Authority is satisfied that the Provider has failed to comply with the *Law*.
12. Information gathered supports that the Provider, by not ensuring adequate supervision of children in contravention of section 165(1) of the *Law*, has not ensured that every reasonable precaution was taken to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury, in contravention of section 167 of the *Law*.
13. Educator accounts support that no educators were aware that [REDACTED] had left the Toddler 3 room, gone through the bathroom, and was alone and unsupervised in the Toddler 2 room on 1 December 2020. Educators in the room appeared to be engaged in cleaning activities (washing toys and sweeping the floor) rather than being directly engaged in the provision of education and care to the children in the room.
14. The incident report submitted with NOT-40500189 states that the cook found the child unsupervised, with no educators physically in the room on 4 January 2021, and the sliding

doors from the room to the outdoor area locked. The incident report indicated that all other children and educators were likely outside, and not actively or adequately supervising inside.

15. The Authority is satisfied that, sections 165(1) and 167(1) of the *Law* were contravened on 1 December 2020 and 4 January 2021.

## **Decision**

16. 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. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue you this Administrative Decision.
17. This Decision is issued to remind the Provider that supervision levels need to meet the emotional, developmental and physiological needs of children and that active supervision requires being engaged with children as well as physical presence.
18. In addition to the above reminder, the Provider is required to provide evidence to demonstrate:
  - a. that the Nominated Supervisor and all educators at the Service are aware of, and understand, what active supervision requires and how it is to be performed to meet the expectations of the *Law* and the Provider's supervision policy and procedure; and
  - b. implementation of strategies to ensure all children are adequately supervised during all times that the children are in attendance, with emphasis on family grouping times and transition times between environments and activities.
19. The required evidence should be submitted to the Authority by close of business 14 days from the date of receipt of this letter. Information can be sent by email to [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au) or by post to:

Janine Fairburn, Authorised Officer  
Children's Education and Care Assurance  
PO Box 158, CANBERRA ACT 2601
20. The *Law* applies to you as a 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>.
21. 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>
22. This Decision will be recorded on your Service file and may be considered in any future applications for approvals, amendments or waivers. It may also be considered in determining the action to be taken, should further breaches of the *Law* or *Regulations* be found.
23. If you have any queries regarding this Decision please contact me on (02) 6205 4390 or alternatively at [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

22 January 2021