

[REDACTED]
Person with Management or Control
OORAMA OPERATIONS PTY LIMITED
RE: Symonston Kinder Haven

Email: [REDACTED]

Dear [REDACTED]

Decision to issue Administrative Action

1. As you are aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA), recently assessed three Notifications (NOT-40592574, NOT-40592267 and NOT-40592782) relating to allergy management at Symonston Kinder Haven SE-00009842 (the Service), operated by OORAMA OPERATIONS PTY LIMITED PR-40001489 (the Provider) on 9 and 10 November 2021.
2. The notifications related to two children being provided with food/drinks contrary to the medical management plans in place for each child.
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 Decision.

Facts

4. On 10 November 2021, the Authority received two Notifications (NOT-40592574 and NOT-40592267) and attachments from the Provider. NOT-40592267 was identified as a Notification of Incident, and NOT-40592574 was identified as a Notification of Complaint.
5. The Notifications advised that on 9 November 2021 a child, believed to be [REDACTED] (1:10 old), being given a bottle of cow's milk before sleep despite it being a known allergen. Further, the Notifications advised that [REDACTED] parent was not notified of the incident until approximately 3 hours later when she arrived to pick him up. Refer Notification and documents at Attachment A.
6. On 10 November 2021, the Authority sought additional information from the Provider, which was received on 12 November 2021. The documentation received from the Provider included:
 - a) Action Plan for Anaphylaxis;
 - b) Medical Conditions Management Plan;
 - c) Consent to display medical management plan and photo; and

d) Individual Management and Risk Minimisation Plan for Severe Allergy/Anaphylaxis.

7. It was noted, in the body of the correspondence received 12 November 2021, that the Provider advised of a meeting to be held to obtain further information in relation to the incident and the Educator who provided the allergen to the [REDACTED]. Refer email correspondence at Attachment B.
8. On 11 November 2021, the Authority received a Notification of Incident (NOT-40592782) and additional documents (Incident Report and Medication record) from the Provider.
9. The Notification advised of a child, believed to be [REDACTED] (0:11 yrs), was served fried rice containing cooked egg for lunch. After she had started to eat her lunch, an educator realised it contained egg and removed it from [REDACTED] is allergic to egg. Refer Notification and documents at Attachment C.
10. On 11 November 2021, the Authority sought additional information from the Provider, which was received on 16 November 2021. Refer email correspondence at Attachment D.
11. It was noted, in the body of the correspondence received 16 November 2021, that the Provider advised that on 11 November 2021, the Service was using an agency cook who changed the menu and did not follow the process as inducted. Further the Nominated Supervisor and Area Manager were meeting with the team members to understand what steps were taken in the room prior to the food being served.

Law

12. The following provisions of the *Law* were relevant to the assessment:

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 and Decision

13. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, that [REDACTED] and [REDACTED] were provided with food and drink contrary to their medical management plan, and which were known allergens, on 9 and 10 November 2021 and therefore, failed to take reasonable precautions to protect said child, from any harm and from hazard likely to cause injury.
14. The very nature of the Notification and accompanying documentation submitted by the Provider, support offences under section 167(1) of the *Law* being substantiated.

Information considered by the Authority supported that the Provider had not ensured that all educators/staff, responsible for managing children's dietary requirements, were aware of what requirements were in place or what was in the foods that they were serving, and this has contributed to the incidents on 9 and 10 November 2021.

15. 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 the Provider in achieving compliance and improved outcomes for children.
16. When deciding what appropriate action to take, the Regulatory Authority took the following matters into consideration:
 - a. The good compliance and quality history of the Service;
 - b. The age and potential risks associated to the children when ingesting known allergens;
 - c. The Providers advice that communications and strategies have been undertaken in relation to Medical Management Plans and food allergens with educators mitigate risk of a similar incident.
17. In this circumstance, noting actions already undertaken by the Provider, the Authority has determined not to initiate statutory action but instead to issue this Administrative Decision.
18. Regarding the substantiated offences under section 167(1) of the Law, the Authority requires evidence demonstrating how:
 - a. The Provider is monitoring and ensuring educators are aware of, and follow, the policy and procedures in place to manage allergens
 - b. Any policy and procedures in place to ensure relief agency cooks are aware of all allergens for children attending the Service, and how these are to be managed.
19. Evidence should be produced, within 14 days of receipt of this letter, to Senior Investigator Sheree Lockwood at sheree.lockwood@act.gov.au.
20. This decision will be recorded on the Service's file and may be considered in any future applications for approvals, amendments, or waivers. This decision may also be considered in determining any future regulatory action, should there be future breaches of the *Law* or *Regulations*.

Legislation

21. The *Law* and *Regulations* 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>
22. 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>

23. Should you have any questions about this Decision please contact Senior Investigator Sheree Lockwood on Sheree.lockwood@act.gov.au.

Yours Sincerely,



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

01 December 2021