

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

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Administrative Action RE: NOT-40825637

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40825637) relating to Symonston Kinder Haven SE-00009842 (the Service) operated by OORAMA OPERATIONS PTY LIMITED PR-40001489 (the Provider).
2. The notified incident advised that two-year-old child sustained head injuries because of an unknown incident occurring at the Service on 20 February 2023.
3. The Authority is satisfied that the Provider has not complied with provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) in this instance. Web addresses for the *Law* and the *Regulations* are provided for your convenience at the end of this decision.

Facts

4. On 21 February 2023, the Authority received a Notification of Incident (NOT-40825637) from the Provider advising that, on 20 February 2023, when a mother picked up her child, known to be [REDACTED], she noticed a bruise and bump on her child's forehead. After noticing this, she asked the team what had happened. None of the educators were able to identify when, where or how this had happened. Refer [Attachment A](#).
5. Evidentiary documents provided with the notification included:
 - Email and photo's from parents;
 - Incident/Injury reports and Educator witness statements; and
 - Working Directly with children records and ratio check records for 20 February 2023. Refer [Attachment B](#).
6. On 23 February 2023, the Provider submitted additional information via the NQAITS portal in response to a request for additional information by the Authority. Refer correspondence at [Attachment C](#).
7. This information consisted of records supporting actions undertaken by the Provider regarding the incident, additional child and educator attendance records and further correspondence with [REDACTED] mother via email – these can be provided on request.

Law

8. Provisions of the *Law* relevant to the notification assessment are:

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

9. Upon considering all evidence for assessment, inclusive of Provider supplied information, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under sections 165(1), s167(1) of the *Law* in this instance.
10. The Authority is satisfied that inadequate supervision has contributed to ■■■ sustaining an obvious head injury resulting from an unknown, unwitnessed incident on 20 February 2023.
11. Information gathered supports that the Provider did not ensure that all children being educated and cared for by the service were adequately supervised at all times that the children are in the care of that Service, in contravention of section 165 of the *Law*.
12. Information gathered supports that the Provider, by not ensuring adequate supervision of children, has not appeared to ensure 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. The very nature of the notification, evidence of the injury sustained by ■■■ on the day and actions taken by the Provider support the non-compliances as identified.
14. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps taken by the Provider to mitigate risk of a similar incident, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliances.

15. This Decision is intended to bring to your attention the need to ensure that the Provider meets its obligations under the *Law*, in particular the obligation that children are being adequately supervised at all times.
16. Furthermore, this Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children and educators alike. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
17. This Decision will be recorded on the Service’s 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 associated *Regulations* be found.

Legislation

18. 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>.
19. 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>
20. If you have any questions in relation to this Decision, please contact me by email at janine.fairburn@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Children’s Education and Care Assurance
Education and Care, Regulation and Support

22 March 2023