

[REDACTED]
Person with Management or Control
Oorama Operations Pty Ltd
RE: Symonston Kinder Haven

Email: [REDACTED]
[REDACTED]

Dear [REDACTED],

Decision to Issue Compliance Notice

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA). The Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law (ACT)* (the *Law*), together with receiving and investigating complaints arising under the *Law*.
2. As you are aware, the Authority have recently assessed multiple notifications, submitted by the Provider via NQA ITS, which give rise to suspected inadequate supervision and educator interactions at Symonston Kinder Haven SE-00009842 (the Service) operated by OORAMA OPERATIONS PTY LIMITED PR-40001489 (the Provider).
3. The Regulatory Authority is satisfied that the Provider was not complying with the provisions of the *Law* in respect to this matter. Web addresses to the *Law* and associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. Between 9 August 2023 and 14 August 2023, the Authority received multiple notifications of Incident and Complaint engaging allegations that sections 165 and 167 of the *Law* were not being complied with at the Service.
5. On 31 August 2023, the Authority sent a Show Cause Notice (the Notice) to the Provider. Refer copy of the Notice (minus attachments due to size – can be provided again upon request) at [Attachment A](#).
6. The Notice outlined the grounds for issue, allegations and the evidence relied on by the Authority. In addition, the Notice outlined the compliance actions being considered by the Authority should the allegations be substantiated.

Allegations

7. The Allegations raised via the Notice are as follows:

Allegations One and Two – Section 165 and 167 of the Law

It is alleged that, on multiple occasions on 8 and 9 August 2023, the Provider failed to ensure that all children being educated and cared for by the service were adequately supervised at all times, in contravention of s165(1) of the *Law*.

It is alleged that, on multiple occasions on 8 and 9 August 2023, the Provider failed to ensure that the reasonable precaution of ensuring adequate supervision at all times that children were being educated and cared for, was taken to protect children from harm and hazard likely to cause injury or illness, in contravention of s167(1) of the *Law*.

Allegation Three – Section 167 of the Law, engaged by Regulation 155

It is alleged that, on 10 August 2023, the Provider by not ensuring appropriate interactions by educators towards children, has not taken reasonable precautions to protect children from harms and hazards likely to cause injury, in breach of Regulation 155, and engaging a contravention of section 167 of the *Law*.

8. On 21 September 2023, the Provider submitted to the Authority a response to the Notice. Refer copy of response at Attachment B.

Law

9. In relation to the non-compliance identified, the following provisions of the *Law* are engaged:

Section 165(1) of the Law - Offence to inadequately supervise children

The approved provider of an education and care service must ensure that 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.

Regulation 155 – Interactions with children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that –

- (a) encourages the children to express themselves and their opinions; and
 - (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
 - (c) maintains at all times the dignity and rights of each child; and
 - (d) gives each child positive guidance and encouragement toward acceptable behaviour;
- and

- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

Obligations upon Regulatory Authority, Providers and Services

10. The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. Relevant to this decision is the objective at section 3(2)(a), namely: "*to ensure the safety, health and wellbeing of children attending education and care services*".
11. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific application in this instance, being:
- (a) *that the rights and best interests of the child are paramount; ...*
 - (f) *that best practice is expected in the provision of education and care services.*
12. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
- (c) *to monitor and enforce compliance with this law;*
13. The *Law* works to protect a particularly vulnerable group in our society – children – when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
14. A key objective of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.
15. The *Law* is predominantly a protective *Law* and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

Decision

16. The Authority has considered all information supplied by the Provider and is satisfied that there is sufficient evidence to substantiate allegations One and Two engaging an offence under section 165(1) of the *Law*, and further engaging 167(1) of the *Law*.
17. The Authority is not satisfied that there is sufficient evidence to substantiate allegation Three to engage an offence under section 167(1) of the *Law*.
18. In relation to Allegation One and Two, the Authority is satisfied that, on 8 and 9 August 2023, the Provider failed to ensure that that all children were adequately always supervised while in the care of the Service, in contravention of section 165(1) of the *Law*, and engaging section 167(1) of the *Law*.

19. The Authority is satisfied that evidence obtained via notifications and additional information submitted by the Provider supports the offences being substantiated, on balance of probabilities. The Authority is not satisfied that the Provider's response to the Notice mitigates or disproves the credibility of the evidence put to the Provider by way of the Notice.
20. The Authority notes the Provider's response that they determined that the educators failed to provide adequate supervision and failed to protect children from harm and hazard likely to cause illness or injury regarding NOT-40889098 and NOT-40889104, and NOT-40889109, NOT-40889104 and NOT-40890686.
21. However, a Provider's obligations under sections 165(1) and 167(1) of the *Law* is positively and strongly framed – the Provider must always ensure adequate supervision, and 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 or illness. Adequate supervision is viewed as a reasonable precaution to be taken to protect children from harm and hazard likely to cause injury or illness.
22. Furthermore, it is considered a reasonable precaution to ensure that 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.
23. People and entities that choose to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case the Provider chose and consented to participating in the education and care of children and has a responsibility to comply with the standard of care under the *Law*.
24. The Authority acknowledges that the Provider has advised in the Response to the Notice (via paragraphs 10, 11, 12 and 13) multiple remediation steps being undertaken to mitigate the risk of further non-compliance relating to supervision of children.
25. Considering the information submitted by the Provider, the level of seriousness of the contravention, and the objectives and guiding principles of the *Law*, I have decided that issuing a Compliance Notice is appropriate and in the best interests of children.
26. The Authority is empowered to issue a compliance notice under section 177 of the *Law*:

Section 177 of the *Law*– Compliance notices

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this *Law*.
- (2) The Regulatory Authority may give the approved provider a notice (a **compliance notice**) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.
Penalty: \$6 000, in the case of an individual

\$30 000, in any other case.

27. The Compliance Notice is provided as Attachment C to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions. You must produce evidence of the steps required by the times indicated for each step within the Notice at Attachment C.

Review Rights

28. A decision to issue a compliance notice and a decision to impose a condition on a service approval are *reviewable decisions* as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).

29. An application for review may be made by completing the form *AR01 Application for Internal Review of Reviewable Decision* which can be obtained from the ACECQA website.

Legislation

30. The Education and Care Services National *Law* applies to you as an approved 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>.

31. 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>

32. Should you have any questions about this Decision or Compliance Notice please contact me via 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

23 October 2023