



[REDACTED]  
Person with Management or Control  
Oorama Operations Pty Limited  
RE: Kindy Patch Bonython

Email: [REDACTED]

Dear [REDACTED]

### Decision to issue Administrative Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance. 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 recently investigated suspected offences under the Law relating to the operation of Kindy Patch Bonython SE-00009841 (the Service), operated by Oorama Operations Pty Limited PR-40001489 (the Provider).
3. The 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. On 25 July 2022, the Authority sent the Provider a Show Cause Notice (the Notice) advising the Provider that the Authority had determined that there was sufficient evidence to support a case to answer for the Provider regarding suspected offences under the Law.
5. The Notice outlined the grounds for issue, relevant evidence supporting suspected contraventions of Law, and potential compliance actions being considered if allegations were substantiated. Refer copy of Notice (minus attachments due to size, noting they can be produced on request) at Attachment A.
6. The Notice advised that evidence obtained during the investigation supported allegations of offences under the Law as follows:

### Allegation One

It is alleged that on, 22 October 2021, the Provider failed to adequately supervise children being educated and cared for by the Service resulting in harm, in that [REDACTED] received

an injury to her face that was not witnessed, in contravention of section 165(1) of the *Law*, engaging a contravention of s167(1) of the *Law*.

#### Allegation Two

It is alleged that, between 4 January 2022 to 14 January 2022, the Provider failed to take reasonable steps to protect a child from harms and hazards. In that [REDACTED], was sent home in a soiled nappy one day and no underwear or nappy another day and pointing to her genital area saying 'ouch' after the service being advised by her parent of toilet training, resulting in a rash, in contravention of section 167(1) of the *Law*.

#### Allegation Three

It is alleged that, on 4 February 2022 the Provider failed to notify the Authority of a serious incident, as defined by Regulation 12, in that [REDACTED] fell from a chair grazing her nose and upper lip which required urgent medical attention to be sought from a medical practitioner, contravening section 174(2) of the *Law*.

#### Allegation Four

It is alleged that, on 4 February 2022, the Provider failed to notify the Authority of a received complaint alleging that the *Law* had been contravened and that a serious incident had occurred on 4 February 2022, contravening 174(2)(b) of the *Law*.

7. On 8 August 2022, the Provider submitted a response via email with advice that supporting documents were posted via express post due to size. Refer copy Response (minus attachments due to size, noting they can be produced on request) at Attachment B.
8. Evidence submitted by the Provider as part of the Response via posted attachments/supporting documents included:
  - a) Copy of Internal Process/Procedures for Reporting Obligations, Toileting Children, Medication and Medical Management Practice Manual & Policy, Supervision Policy & Procedure.
  - b) Copy of 9x Staff acknowledgements to Supervision Policy & Procedure dated 22 February 2022.
  - c) Copy of Nappy Changing Toy Box Talk relevant to 17 January 2022 and Template for Toilet Learning Support Plan.
  - d) Discussion records with educators dated 17 January 2022, 26 January 2022, Team Memo dated 29 July 2022, and Conversations with children dated 25 January 2022.
  - e) Copy of Performance Improvement Plan for Centre Director dated 18 January 2021.
  - f) Copy of Child Protection Statement of Commitment and Template form for Agency Team Member Induction.

## Law

9. Provisions of the *Law* relevant to the investigation engaged the following:

### **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.

### **Section 174 of *Law* - Offence to fail to notify certain information to Regulatory Authority**

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—

- (a) any serious incident at the approved education and care service;
- (b) any complaints alleging—
  - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service;
  - or
  - (ii) that this *Law* has been contravened.
- (c) information in respect of any other prescribed matters.

Penalty: \$4 000, in the case of an individual  
\$20 000, in any other case.

- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to—
- (a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates

### **Regulation 176(2)(a)(ii) and (b) – Time to notify certain information to Regulatory Authority**

- (2) For the purposes of section 174(4) of the *Law*, a notice must be provided—
- (a) in the case of a notice under section 174(2)(a)—
    - (ii) in the case of any other serious incident, within 24 hours of the incident or the time that the person becomes aware of the incident.
  - (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident.

### **Regulation 12(b) and (c) – Meaning of *serious incident***

For the purposes of the definition of *serious incident* in section 5(1) of the Law, each of the following is prescribed as a serious incident -

- (b) any incident involving serious injury or trauma to a child occurring while that child is being educated and cared for by an education and care service –
  - i. which a reasonable person would consider required urgent medical attention from a registered medical practitioner; or
  - ii. for which the child attended, or ought reasonably to have attended, a hospital
- (c) any incident involving serious illness of a child occurring while that child is being educated and cared for by an education and care service for which the child attended, or ought reasonably to have attended, a hospital.

### **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 particular 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;*
  - (d) *to receive and investigate complaints arising under 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 and Reasons

16. The Authority has considered all the information supplied by the Provider and is satisfied, on balance of probabilities, that there is sufficient evidence to substantiate Allegations 1 through 4 – engaging substantiated offences under sections 165, 167 and 174 of the *Law* in this instance.
17. In relation to Allegation One, the Authority is satisfied that the Provider failed to adequately supervise children being educated and cared for by the Service resulting in harm, in that [REDACTED] [REDACTED] received an injury to her face that was not witnessed, in contravention of section 165(1) of the *Law*, and engaging a contravention of s167(1) of the *Law*.
18. In relation to Allegation Two, the Authority is satisfied that the Provider failed to take reasonable steps to protect a child from harms and hazards, in that [REDACTED], was sent home in a soiled nappy one day and no underwear or nappy another day and pointing to her genital area saying ‘ouch’ after the service being advised by her parent of toilet training, resulting in a rash, in contravention of section 167(1) of the *Law*.
19. In relation to Allegations Three and Four, the Authority is satisfied that the Provider:
  - a) Failed to notify the Authority of a serious incident, as defined by Regulation 12, in that [REDACTED] fell from a chair grazing her nose and upper lip which required urgent medical attention to be sought from a medical practitioner, contravening section 174(2) of the *Law*; and
  - b) failed to notify the Authority of a received complaint alleging that the Law had been contravened and that a serious incident had occurred on 4 February 2022, contravening 174(2)(b) of the *Law*.
20. In relation to the Provider’s response, the Authority acknowledges that the Provider appears to concede that, based on the combined evidence obtained by the Authority and through its own investigations that the matters raised occurred as detailed by the allegations, therefore supporting the substantiated contraventions of *Law*.
21. The Authority notes that the Provider, considering its own internal investigation findings of the matter and through its response to the Notice, has advised of multiple remediation steps taken to mitigate the risk of similar incidents resulting in similar non-compliance – supportive documentation to the response reinforced these actions as occurring.
22. 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.
23. 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 take statutory compliance actions.

24. This Decision is issued to remind the Provider, that staffing, and supervision levels need to meet the emotional, developmental, and physiological needs of all children always. 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.
25. In addition, this serves as a reminder that, as a Provider, it is imperative to ensure that nominated supervisors and educators, at all times, are aware of and understand the policies, procedures and expectations of the Provider, and the *National Law*, in relation to the operation of the Service, and in their roles of educating and caring for children.
26. The substantiated contraventions have been recorded on your Service file and may be considered by the Authority in determining the action to be taken, should further similar breaches of the *Law* or *Regulations* be substantiated.

#### **Legislation**

27. 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> . 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>
28. Should you have any questions about this Decision please contact Authorised Officer, Vittorio Colosimo at [Vittorio.Colosimo@act.gov.au](mailto:Vittorio.Colosimo@act.gov.au)

Yours Sincerely,



Jo Williams  
Director  
Children's Education and Care Assurance  
Education and Care Regulation and Support  
ACT Education Directorate

12 September 2022