

██████████
Person with Management or Control
Oorama Operations Pty Limited
RE: Kindy Patch Bonython

Email: ██████████

Dear ██████████

Decision to issue Administrative Action

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Complaint which has raised suspected offences under the *Education and Care Services National Law (ACT)* (the *Law*) relating to the operation of Kindy Patch Bonython SE-00009841 (the *Service*), operated by Oorama Operations Pty Limited PR-40001489 (the *Provider*).
2. Web addresses for the *Law* and the *Regulations* are provided for your convenience at the end of this decision.

Facts

3. On 10 February 2023, the Authority issued the Provider a Show Cause Notice (the Notice) regarding suspected offences engaged by the assessment of complaints received by the Authority alleging that an educator was made to work while suffering from gastroenteritis. Refer copy of the Notice at Attachment A (minus attachments due to size – can be provided again upon request).
4. The Notice advised of the grounds of issue, evidence relied on and outlined allegations of suspected contravention of Law as follows:

Allegation One - Failure to protect children by taking reasonable precautions.

It is alleged that, on 8 December 2022, the Provider failed to take reasonable steps to protect a child from harms and hazards likely to cause illness, in that an educator was expected to remain working directly with children even though they displayed symptoms of gastroenteritis, in contravention of section 167(1) of the *Law*.

Allegation Two - Failure to ensure adequate staffing arrangements.

It is alleged that, on 8 December 2022 the Provider failed to ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations, in contravention of section 169(2) of the *Law*.

Allegation Three – Failure to ensure adequate supervision of all children at all times.

It is alleged that, on 8 December 2022, the Provider failed to 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, in contravention of section 165(1) of the *Law*.

5. On 1 March 2023, the Provider submitted a response to the Notice. Refer response at Attachment B. Evidentiary documents submitted with the response included:

- a) Team Inductions and staff record 2023;
- b) Roster 5/12/2022 and [REDACTED] booking Randstad transfer; and
- c) Bonython breakdown quals and ratio.

Law

6. Sections of *Law* and *Regulation* engaged by the allegations and this decision are as follows:

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 cared for by the service from harm and from hazard likely to cause injury.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Section 169(2) of the Law - Offence relating to staffing arrangements

The Approved Provider of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

126 Centre-based services—general educator qualifications

- (1) The qualification requirements for educators at a centre-based service educating and caring for children preschool age or under are as follows—
 - (a) at least 50 per cent of the educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved diploma level education and care qualification; and
 - (b) all other educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved certificate III level education and care qualification.
- (1A) The qualification requirements in subregulation (1)(b) do not apply to an educator if the educator has been employed by an approved provider on a probationary basis for not more than 3 months, at one or more centre-based services operated by the approved provider.
- (1B) Subregulation (1A) does not apply in relation to New South Wales.
- (2) The qualification requirements for educators at a centre-based service educating and caring for children over preschool age in a jurisdiction are the qualification requirements (if any) set out in Chapter 7 for that jurisdiction.
- (3) If Division 5 requires an early childhood teacher to be in attendance at a centre-based service, that teacher, or a person taken to be an early childhood teacher under regulation 135(1), is to be counted as meeting the requirements of subregulation (1)(a).
- (4) If Division 5 requires a second early childhood teacher or a suitably qualified person to be in attendance at a centre-based service, that person, or a person taken to be a second early

childhood teacher or a suitably qualified person under regulation 135(2), is to be counted as meeting the requirements of subregulation (1)(a).

Notes—

1 - Meaning of *actively working towards*—see regulation 10.

2 - An early childhood teacher or a suitably qualified person can be included in determining the number of educators who have an approved diploma level education and care qualification if the early childhood teacher or suitably qualified person is working directly with children.

Regulation 151 – Record of educators working directly with children

The approved provider of a centre-based service must keep a record of educators working directly with children that includes the following information:

- (a) The name of each educator who works directly with children being educated and cared for by the service;
- (b) The hours that each educator works directly with children being educated and cared for by the service.

Regulation 177 – Prescribed enrolment and other documents to be kept by approved provider

(1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider –

- (h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151.

(2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

Penalty: \$2000

Reasons

1. Upon considering all evidence for assessment, inclusive of Provider supplied information and response to the Notice, the Authority is not satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under sections 165, 167 and 169(2) of the *Law* in this instance.
2. However, the Authority is satisfied that the Provider has not ensured that on 8 December 2022, reasonable steps were undertaken to ensure that prescribed working directly with children records were accurate, in breach of *Regulation 177*.
3. In consideration of all relevant information, the objectives and guiding principles of the *Law*, and the Services compliance history, the Authority has determined not to initiate statutory compliance action regarding the breach of Regulation 177, but rather issue this Administrative Decision to address the non-compliance.
4. This Decision will be recorded on your Service file and may also 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.

Legislation

5. The *Law* applies to you as an approved provider and any approved service that the Provider operates.

6. 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>.
7. 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>
8. If you have any queries regarding this Decision, please contact me 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