



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

Email: [REDACTED]

Dear [REDACTED]

Decision to issue Administrative Action RE NOT-40485426 and NOT-40485225

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment of two Notifications of Incident (NOT-40485426 and NOT-40485225) relating to the operation of Kindy Patch Bonython, SE-00009841 (the Service), operated by Oorama Operations Pty Limited, PR-40001489 (the Provider).
2. The Notifications advised that, on 4 and 5 November 2020, the Service had insufficient educators working directly with children at specific times on these days.
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 letter.

Facts

4. On 5 and 6 November 2020, the Authority received NOT-40485426 and NOT-40485225 (the Notifications) from the Provider. Refer Notification's at Attachment A.
5. Supporting Documentation provided with the Notification's included Team Member to Child Ratio Check (TMCRC) records, which advised the following:
 - a) On 4 November 2020, the Notification and TMCRC advised that the Service was out of ratio between the hours of 10:00am and 12:00pm as well as between 2:15pm and 3:00pm. The service had nine children under two years of age and two staff working directly with children; and
 - b) On 5 November 2020, the Notification advised that Service was out of ratio between the hours of 4:00pm and 4:30pm in the nursery, and between 12:30pm and 1:30pm in the toddler room. The nursery had five children with only one staff member working directly with children. The toddler room had five children with one educator only one staff member working directly with children.
 - c) On 5 November 2020; the TMCRC advised that Service was out of ratio between the hours of 10am and 2pm in the toddler room. The toddler room had six children with only one staff member working directly with children.

Law

6. The facts as outlined in the Notification support contravention of 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 169(1) of the *Law* – Offence relating to staffing arrangements

An approved provider of an education and care service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

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

Regulation 13 – Meaning of *working directly with children*

For the purpose of these Regulations a person is working directly with children at a given time if at that time the person –

- a) Is physically present with the children; and
- b) Is directly engaged in providing education and care to the children.

Decision

7. Having considered the information provided in the Notification, the Authority is satisfied that the Provider failed to comply with the *Law*. The information contained in the Notification's is an admission of a breach of section 169(1) of the *Law*, which engages contraventions of section 167(1) of the *Law*.
8. Additionally, it can be safely inferred that the Provider had rostered the absolute minimum number of educators to educate and care for children on these days at the Service. Accordingly, minimum ratio is not necessarily sufficient to meet the Provider's obligation to provide adequate supervision under section 165 of the *Law* and take reasonable precautions against harm and hazard under section 167 of the *Law*.

9. In deciding if compliance action should be taken, the Authority has taken into account that the Notifications advise that the Provider is seeking a new agency to provide additional casual staff and that staffing rosters will be reviewed, and that admissions by the Provider did not indicate that ratios were not being met for the duration of the entire day.
10. Accordingly, the Authority has determined that it will not be initiating statutory compliance action in this instance.
11. This decision, however, is intended to bring to your attention the need to ensure that the Provider meets its obligations under the *Law*, in particular the obligations to ensure that the Service is adequately staffed at all times, that all children are adequately supervised at all times and to ensure every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury.
12. In relation to substantiated contraventions of the *Law*, the Provider is requested to submit evidence demonstrating the following:
 - a) That the Service is appropriately staffed to not only just meet minimum regulated staffing arrangements at all times, but to also ensure adequate supervision of children and to support child development in each age group.
 - b) There is contingency staffing plans in place to accommodate for unforeseen educator absence as well as accommodate for adequate educator programming time, personal development, leave entitlements, breaks and any task that the Provider expects educators to perform outside of working directly with children (i.e. cleaning and laundry tasks).
 - c) That all educators regardless of employment status (i.e. permanent, casual, temporary, and agency) are informed of the services policies and procedures and are inducted to ensure that they understand and are aware of their roles and responsibilities when working directly with children and maintaining, at minimum, regulated ratio requirements.
13. Evidence to demonstrate the above is requested to be provided within 14 days of receipt of this Decision, and submitted to me via email at janine.fairburn@act.gov.au or by post to:

Children's Education and Care Assurance,
Attention Janine Fairburn,
GPO Box 158, Canberra ACT 2601.
14. This decision will be recorded on your service 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

15. 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>.
16. 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>
17. Should you have any queries regarding this letter please contact me on (02) 6205 4309 or email Janine.fairburn@act.gov.au.

Yours Sincerely,



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

18 August 2020