

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

Email: ██████████

Dear ██████████

Decision to issue Administrative Action RE: NOT-40790152

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 Incident (NOT-40790152). The notification advised of incident relating to three unsupervised children on 2 November 2022 whilst attending Kindy Patch Bonython SE-00009841 (the Service), operated by Oorama Operations Pty Limited PR-40001489 (the Provider).
2. 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

3. On 3 November 2022, the Authority received a Notification of Incident (NOT-40790152) from the Provider advising that, on 2 November 2022, three children were found unsupervised in a playroom by a parent. Refer relevant submitted documents at Attachment A and B.

Law

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.

Reasons

4. 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 section 165 of the *Law* in this instance, engaging a contravention of s167 of the *Law*.

5. The Authority is satisfied that inadequate supervision of has contributed to the children being able to exit the Toddler room unseen and not noticed as missing by educators. The Authority is further satisfied that by not ensuring adequate supervision of all children at all times, the Provider has not taken reasonable precautions to protect children from harms and hazards likely to cause injury in these instances.
6. 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 substantiated contraventions of sections 165(1) and 167(1) of the *Law*, but rather issue this Administrative Decision to address the non-compliances.
7. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of all children at all times. 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.
8. 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

9. The *Law* applies to you as an approved provider and any approved service that the Provider operates.
10. 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>.
11. 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>
12. 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
ACT Education Directorate

25 November 2022