

[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-40482654**

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 a Notification of Complaint (NOT-40482654) 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 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**

3. On 28 October 2020, the Authority received NOT-40482654 (the Notification) from the Provider. Refer Notification and supportive documentation at Attachment A.
4. The Notification advised that, on 16 October 2020, the Provider received a complaint from a parent, known to be [REDACTED] alleging that lack of communication from educators relating to her children's sleep and medication was compromising their health, safety and wellbeing.
5. On 29 October 2020, additional information was requested from the Provider which was submitted on 30 October 2020 and 6 November 2020. Refer Attachment B.

**Law**

6. The facts as outlined in the Notification engage the following legislative considerations:

**Section 167(1) and (2) of the Law** provides that the Approved Provider and a nominated supervisor 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.

**Section 174(2)(b)(ii) of the Law** provides that an approved provider must notify the Regulatory Authority of any complaints alleging that this Law has been contravened.

**Section 174(4)(a) of the Law** provides that a notice under subsection (2) must be in writing and be provided within the relevant prescribed time to the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

**Regulation 176(2)(b)** provides that for the purposes of section 174(4) of the Law, a notice must be provided - in the case of a notice under section 174(2)(b), within 24 hours of the complaint or incident.

#### **Reasons**

7. The Authority is satisfied that the Provider has not notified of a complaint alleging that the Law had been contravened within the prescribed timeframe of 24 hours, which engages a contravention of section 174(2)(b) of the Law.
8. The notification clearly identifies that the complaint was received on Friday 16 October 2020, and was responded to by the Services nominated supervisor on Monday 19 October 2020, yet was not notified to the Authority until 28 October 2020, outside of regulated timeframes outlined in Regulation 176(2)(b).
9. The parents complaint alleges that the due to inadequate communication between educators, and educators inability to ensure that her child slept during the day, that the Provider and nominated supervisor had not taken reasonable precautions to protect her children from harm and hazard, engaging an allegation against section 167 of the Law.
10. In this instance, the Authority is not satisfied that the Provider or Nominated Supervisor has contravened s167 of the Law as it is reasonable that a child will not sleep every day and cannot be forced to sleep by educators.
11. In relation to the miscommunications around administration and communication of medication, evidence appears to indicate that medication was appropriately administered, and that the administration of medication was not communicated effectively to the parent.
12. In deciding if compliance action should be taken, the Authority has taken into account that there have been no similar identified non-compliances in relation to late notification within the previous 12 months. The Authority determined that due to this, the Authority will not be initiating statutory compliance action in this instance.
13. The Authority does acknowledge that an Administrative Decision was issued to the Provider on 11 August 2020 in relation to the administration of medication.
14. This Decision, however, is intended to bring to your attention the need to ensure that all notifiable incidents, complaints, and circumstances, as outlined under the Law and Regulations are notified by the Provider within the regulated timeframes.
15. In addition, this Decision is intended to remind the Provider of the necessity of effective communications to parents about their children's days at the Service – lack of processes to ensure effective communications between parents and staff would not be deemed by the Authority as protecting children from harms and hazards likely to cause injury.

16. This Decision will be recorded on your service file and may be considered in any future applications for approvals, amendments or waivers. Should further breaches of the *Law* or *Regulations* be identified, this Decision will be taken into account to determine if stronger enforcement actions are required.

**Legislation**

17. 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>.
18. 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>
19. Should you have any queries regarding this letter please contact me on (02) 6205 4309 or email [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au).

Yours Sincerely,



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

18 August 2020