



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

Email: ██████████

Dear ██████████

**Decision to Issue Compliance Notice**

1. As you are aware, Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance, recently conducted compliance audit on 2 December 2020 at Kindy Patch Bonython, SE-00009841 (the Service), operated by Oorama Operations Pty Limited, PR-40001489 (the Provider).
2. The unannounced audit was undertaken as a result of a complaint being received by the Authority alleging that minimum regulated staff ratio levels were not being maintained at the Service, which was compromising the supervision of attending children on 2 December 2020.
3. The Authority also noted that the Provider had been issued an Administrative Action on 18 November 2020 as a result of substantiated contraventions of s165(1), s167(1) and s169(1) of the *Law*. This action was issued as a result of the Provider notifying the Authority on two occasions that the Service was not meeting minimum regulated staff ratio levels.
4. I am satisfied that the Provider is not complying with the provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) and the *Education and Care Services National Regulations* (the *Regulations*).
5. Web addresses for the *Law* and the *Regulations* are provided for your convenience at the end of this Decision.

**Facts**

6. On 18 November 2020, the Authority issued the Provider an Administrative Action as a result of substantiated contraventions of s165(1), s167(1) and s169(1) of the *Law*. This action was issued as a result of the Provider notifying the Authority on two occasions that the Service was not meeting minimum regulated staff ratio levels. Refer Attachment A (Administrative Decision attachments not included in this Decision due to size but can be provided upon request). The Authority notes the date on the Administrative Decision from 18 November 2020 being recorded incorrectly as 18 August 2020.
7. On 1 December 2020, the Provider responded to the Administrative Decision. Refer response at Attachment B (supportive documents attached not included in this Decision due to size but can be provided upon request).

8. On 2 December 2020, the Authority received a complaint via telephone alleging that minimum regulated ratio levels were not being maintained at the Service, which was compromising the supervision of attending children at 8:50am on 2 December 2020.
9. Due to the risk of harm to children when a service is inadequately staffed, and children are not being adequately supervised, the Authority determined to conduct an unannounced compliance visit to the Service.
10. Evidence gathered during the compliance visit consisted of photographs of rosters and working directly with children (WDWC) records. Further documentation was requested at the time of the compliance visit which was submitted via email on 3 December 2020. Refer email correspondence and photographs at Attachment C.
11. Records identified the following for the morning of 2 December 2020:
  - a) Educators and children group between 7am and 8:30am.
  - b) Educator's [REDACTED] and [REDACTED] signed in at 7am, Educator [REDACTED] was next identified at signing in at 8:30am.
  - c) The staff roster identified Educator [REDACTED] was rostered on at 8am. This educator was noted as having telephoned in sick. A Randstad educator was due to start at 7:30am but did not start till 8:30am and was not identified as signing into the WDWC record. It is noted that the Authorised Officer did sight this educator at the time of the visit.
  - d) An additional two educators started at 9am [REDACTED] and [REDACTED] and an additional educator from another service arrived to assist at 9:30am. The area manager arrived at 9:15am [REDACTED].
12. The Authorised Officer conducting the compliance visit observed child attendance records for the morning of 2 December 2020, and identified the following:

Time	Nursery 1:4	Toddlers 1:5	Preschool 1:11	Required Educators	Actual Educators
7am- 7:15am	0	0	1	1	2
7:15am - 7:30am	1	0	1	1	2
7:30am – 7:45 am	3	2	3	2	2
7:45am – 8am	5	4	7	4	2
8am- 8:15am	5	4	7	4	2
8:15am – 8:30am	6	5	9	4	2
8:30 am – 8:45 am	6	5	14	5	4
8:45 am – 9am	7	5	16	5	4

13. This analysis indicated that between 7:45am and 9am on 2 December 2020, the Service was not meeting minimum regulated staff ratio levels, in contravention of section 169(1) of the *Law*. This analysis corroborates the complaint received by the Authority on 2 December 2020.
14. Additional child attendance records and WDWC records provided via email on 3 December for the week ending 27 November 2020 were assessed for the purpose of performing a ratio analysis. Ratio analysis was unable to be performed as WDWC records were identified as being inaccurate due to educators being recorded as WDWC in multiple rooms at the same time as follows:
  - a) Monday 23/11/2020 – ██████████ was recorded as WDWC in both Nursery and Preschool between 1pm and 3pm;
  - b) Tuesday 24/11/2020 ██████████ was recorded as WDWC in all rooms at the same time at varying intervals between 8am and 3:15pm;
  - c) Wednesday 25/11/2020 – ██████████ was recorded as WDWC in both Toddler and Preschool between 8:45 and 9am;
  - d) Wednesday 25/11/2020 – ██████████ was recorded as WDWC in both Toddler and Preschool between 9am and 12pm;
  - e) Wednesday 25/11/2020 – ██████████ was recorded as WDWC in both Toddler and Preschool between 8:30 and 9am;
  - f) Friday 27/11/2020 – ██████████ was recorded as WDWC in both Nursery and Toddler between 1pm and 1:15pm;
  - g) Friday 27/11/2020 – ██████████ was recorded as WDWC in both Toddler and Preschool between 8:30 and 9am.

## **Law**

15. The facts as outlined 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 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 relation 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.

### **Assessment of Provider’s response to the Administrative Decision**

16. In relation to substantiated contraventions of the *Law* outlined in the Administrative Decision of 18 November 2020, the Provider was 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.  
***The Provider’s response did not demonstrate what processes are undertaken, or what considerations are made when determining rosters on any given day 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).  
***The Provider’s response did not demonstrate what actions are undertaken in the event that a relief educator cannot be engaged, or what actions are undertaken by the Provider during the time that an educator does not arrive at work and when a relief educator is engaged to be compliant with s169(1) of the Law.***
- 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.  
***The Provider’s response did satisfy this component.***

17. Having considered the Provider's response to the Administrative Decision, I am satisfied that the Provider has not satisfied all components of the Administrative Decision, therefore I am satisfied, on the balance of probabilities, that the Provider is not complying with the *Law*.

### **Obligations upon Regulatory Authority**

18. 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"*.

19. 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.*

20. 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*.
21. 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.
22. 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.

### **Compliance History**

23. In determining appropriate compliance action, I have considered the compliance history of the Service, and the Provider – inclusive of the compliance backgrounds of approved services operated by the Provider within the ACT.

### **Decision**

24. I am satisfied, taking into consideration the facts as outlined, that the Provider is failing to comply with sections 165(1), 167(1) and 169(1) of the *Law* and *Regulation* 177(2).
25. Considering the evidence obtained and observations made at the compliance visit on 2 December 2020, the Provider's response to the Administrative Decision, the Provider's compliance history, and the objectives and guiding principles of the *Law*, I have determined that issuing a compliance notice would be appropriate and in the best interests of children.
26. The Authority is empowered to issue a compliance notice under section 177 of the *Law*

### Section 177 of the *Law* – Compliance notices

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this Law.
- (2) The Regulatory Authority may give the approved provider a notice (a **compliance notice**) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.  
Penalty: \$6 000, in the case of an individual  
\$30 000, in any other case.

27. The compliance notice (the Notice) is at Attachment D to this Decision letter. You are required to take the steps directed in the Notice to comply with the relevant provisions.
28. You must produce evidence of the steps required by **the time indicated within the Notice at Attachment D**.
29. The Authority will also be maintaining its auditing of the Service, along with all approved services operated by the Provider, to ensure compliance is appropriately monitored, to ensure the health, safety and wellbeing of children being educated and cared for.

### Rights of Review

30. A decision to issue a compliance notice is a **reviewable decision** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).
31. An application for review may be made by completing the form AR01 Application for Internal Review of Reviewable Decision which can be obtained from the ACECQA website.

### Legislation

32. 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>.
33. 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>
34. Should you have any questions about this Decision or the Compliance Notice please contact Janine Fairburn via email at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).

Yours Sincerely



Clare Brookes  
Senior Director  
Early Childhood Policy and Regulation  
ACT Education Directorate

17 December 2020