



Mr [REDACTED]
Person with Management or Control
Extend (Australia) Pty Ltd
RE: Orana Steiner OSHC- Extend

Em [REDACTED]
Cc: [REDACTED]

Dear Mr [REDACTED]

Decision to Suspend Service Approval

- 1) I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance.
- 2) The Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law (ACT)* (the Law), together with receiving and investigating complaints arising under the Law.
- 3) As you may be aware, the Authority recently issued you a Show cause Notice relating to a compliance audit undertaken on 27 August 2024 at Covenant Christian College OSHC - Extend SE-40011723 (the Service) operated by Extend (Australia) Pty Ltd PR-00002530 (the Provider).
- 4) The Authority is satisfied that the Provider has not complied with the provisions of the Law in this instance. Web addresses to the Law and the associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

- 5) On 17 October 2024, the Authority issued the Provider a Compliance Notice (Attachment A). The Provider responded to the Compliance Notice on 4 November 2024. The response included 29 supporting attachments.
- 6) On 17 December 2024, the Authority sent the Provider a Show Cause Notice (the Notice), advising that the Authority had determined there was sufficient evidence to support a case to answer regarding suspected offences under the Law. Refer to a copy of the Notice at Attachment B.
- 7) The Notice outlined the grounds for issue, relevant evidence supporting the suspected contraventions of the Law, and advised the Provider of potential compliance actions, including suspension of service approval as one of the considerations if the allegations were substantiated.
- 8) The Notice set out four allegations for the Provider response:

Allegation One

It is alleged that the Provider operated the service with persons not employed by the Provider on 9, 12 and 13 August 2024, in contravention of s169(1) of the *Law*.

Allegation Two

It is alleged on 21 August 2024, that the Provider failed to adequately staff the service for the number of children enrolled compromising supervision arrangements failing to protect children from harm and hazard, in contravention of s165(1) s167(1), s169(1) of the *Law* and regulation 260.

Allegation Three

It is alleged that during the month of August 2024, the Provider failed to meet general qualifications for children over and under preschool age, in contravention of s169(1) of the *Law* and regulation 262.

Allegation Four

It is alleged that the service did not operate the morning on 12 August 2024, between 7:00-9:00am, failing to notify the Authority of the change, in contravention of S174(2) of the *Law* and Regulation 175(2).

- 9) The Provider was afforded 30 days to respond to the Notice, in the interests of procedural fairness and as required under section 71 of the *Law*.
- 10) On 17 January 2025, the Provider's response to the Notice was received by the Authority. The response consisted of a response letter. Refer to copy of the Providers response Attachment C.

Law

- 11) Provisions of the *Law* and *Regulations* engaged by the matter, and as outlined via the Notice, can be referred to at Attachment B.

Obligations upon Regulatory Authority

- 12) 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*".
- 13) The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific application in this instance, being:

(a) that the rights and best interests of the child are paramount; ...

(f) that best practice is expected in the provision of education and care services.

14) 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.

15) 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*.

16) 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.

17) 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.

Reasons and Decision

18) The Authority has considered all evidence gathered via its regulatory functions, the show cause process, inclusive of the Provider's response to the Notice, the Provider's compliance history, the compliance history of the services operated by the Provider, and the objectives and guiding principles of the *Law*.

19) The Authority is satisfied on the balance of probabilities, all allegations are proven, therefore substantiating contravention of section 51 of the *Law* in breach of the conditions of the service approval. In addition, substantiating contraventions of section 169(1), Section 169(2), section 165, section 167, section 174(2) and breaches of Regulation 175(2), and Regulation 260.

20) The Authority is satisfied the Provider's response does not contest the occurrence of the non-compliance nor expressly denies the allegations as specified in the Notice. However, the Provider's response acknowledges the contraventions and appeared to explain the circumstances and the preventative measures taken by the Provider to rectify matters of non-compliance put to them.

21) Regarding allegation one to three, a Provider's obligation under the *Law* is positively and strongly framed

- a) Section 169(1) - 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; and
- b) Section 169(2) - An 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.

- 22) The Authority is satisfied that the Provider failed to meet compliance for allegation one to three. The Provider, by not complying with the minimum requirements of the *Law* when children are being educated and cared for by the Service, has failed to meet compliance:
- a) by allowing persons not employed by the Provider to operate the service on 9, 12 and 13 August 2024; and
 - b) failing to adequately staff the service on 21 August 2024; and
 - c) failing to meet qualifications for First Qualified within an Out of School Hours education and care setting; and
 - d) failing to meet educator qualifications for education and care of preschool age children.
- 23) The Authority is satisfied that the Provider failed to meet compliance for allegation four, section 174(2) of the *Law*. The provider, by not complying with the minimum requirements of the *Law*, failed to notify the Authority the service was closed morning of 12 August 2024, between 7:00 am - 9:00 am.
- 24) The Authority is satisfied that, by not complying with the minimum requirements of the *Law* when children are being educated and cared for by the Service, the Provider has failed to meet compliance with section 51 of the *Law* in these instances.
- 25) The Authority has considered the seriousness of the Provider's failure to meet compliance under section 169(1), section 169(2) and section 174(2) of the *Law*.
- 26) The Authority in its decision-making notes that a previous audit, undertaken at the Service on 17 November 2022, identified [REDACTED] qualification (Diploma of Art) was not sufficient to be considered as first qualified nor did the qualification align with the Australian Capital Territory OSHC qualification for an educator to provide education and care to preschool aged children within an Out of School Hours education and care setting, in contravention of section 169(2) of the *Law*.
- 27) Considering the findings of regulatory visits to the Service during 17 November 2022 and 27 August 2024, the Authority is satisfied that the above substantiated offences support that the Provider is not complying with the conditions of a service approval held, as required by section 51(5) and section 51(8) of the *Law*.
- 28) A service approval is granted subject to the condition that the education and care service is operated in a way that –
- a) Section 51(5) of the *Law* is framed - A service approval is granted subject to any other conditions prescribed in the national regulations or imposed by— (a) this *Law*; or (b) the Regulatory Authority; and
 - b) section 51(8) is framed - An approved provider must comply with the conditions of a service approval held by the approved provider.
- 29) The findings of the compliance audit process satisfy the Authority decision and evidence supports that the Provider's governance and oversight responsibilities were insufficient to have identified any of these failings prior to the matters being raised by the Authority.

- 30) The Authority is satisfied that the Provider's response to the Notice did not contain sufficient evidence to demonstrate that the Provider was ensuring the ongoing safety of the environment that children were being educated and cared in.
- 31) The Authority is satisfied that the Provider was not ensuring staffing arrangements and relevant qualifications requirements were monitored effectively. The Provider is responsible to ensure not only children's safety but also educator awareness and understanding is consistent with the expectations of the *Law* and *Regulations*.
- 32) People and entities that choose to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case, as an approved provider, you chose and consented to participating in the education and care of children and have a responsibility to comply with ensuring the service is adequately staffed and the service meets the qualification requirements under the *Law*.
- 33) Considering all the evidence obtained, the level of seriousness of the contraventions, the Provider's response in its entirety, and previous compliance history of the Provider, the Authority has decided that suspension of the Service's approval is appropriate and in the best interests of children based on grounds outlined under section 70(a) and (c) of the *Law*.
- 34) The Authority is empowered to suspend a service approval under section 72 of the *Law*. Refer relevant provisions of the *Law* relating to service approval suspensions at Attachment D.
- 35) As required pursuant to section 74 of the *Law*, the Service Approval Suspension Notice is at Attachment E to this Decision. The suspension of the service approval takes effect 14 days after the date of this decision.
- 36) The Authority has determined that the timeframe for the suspension will be 14 days from time of effect.
- 37) The Authority determines the length of time determined for suspension to be appropriate to allow the Provider to put into place action plans for ensuring compliance moving forward, undertake a review of current educator practices and implement staff training, review the safety and appropriateness of service premises and resources, and make decisions regarding how the Service's approval will be maintained after this timeframe.

Review Rights

- 38) A decision to suspend a service approval under section 72 of the *Law* is a **reviewable decision** as defined in Section 192(b)(iii) of the *Law*.
- 39) Pursuant to section 193 of the *Law*, a person who is the subject of a reviewable decision for external review may apply to the relevant tribunal or court for a review of the decision. An application must be made, to the relevant tribunal or court, within 30 days after the day on which the applicant is notified of the decision that is to be reviewed.

Legislation

40) The *Law* applies to you as an approved provider and any service you operate.

The *National 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>.

41) The *National Law* is made up of an Act and Regulations which can be viewed at:

- <http://www.acecqa.gov.au/national-law>, and
- <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

42) Should you have any questions about this decision please contact me via email at

jo.williams@act.gov.au

Yours sincerely



Jo Williams
Director, Regulatory Operations
Education and Care Regulation and Support
ACT Education Directorate

17 March 2025