

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

Em [REDACTED]
Cc: [REDACTED]

Dear Mr [REDACTED]

Show Cause Notice – Potential Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance.
2. As you are aware, 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*) and the *Education and Care Services National Regulations* (the *Regulations*). One of the Authority’s roles is to monitor compliance with the *Law* and the *Regulations*.
3. Web addresses to the *Law* and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this notice.

Facts

4. On 27 August 2024, the Authority conducted a compliance audit at Covenant Christian College OSHC – Extend, SE-040011723 (the *Service*) operated by to Extend (Australia) Pty Ltd PR-00002530 (the *Provider*).
5. On 17 October 2024, the Authority issued a Compliance Notice to the *Provider* for not complying with the provisions of the *Law* and the *Regulations*. The decision was made based on the evidence the authorised officers gathered during the compliance audit. The Compliance Notice detailed contraventions of sections 166(1), 167 (1) and 169(1) *Law* as well as a breach of Regulation 123 and several other regulations. The compliance notice is at **Attachment A**.
6. The *Provider*’s response was received by the Authority on 4 November 2024. The response was assessed and determined as not satisfying the requirements of the Compliance Notice.
7. On 21 November 2024, the *Provider* was offered another opportunity to address the elements of the Compliance Notice that were not satisfactory in the first response. A copy of the communication has been provided at **Attachment B**.
8. The *Provider* submitted a second response to the compliance notice on 6 December 2024. The response was assessed and deliberated at Case Management on 12 December 2024.
9. Evidence submitted by the *Provider* on 4 November 2024 included a compliance notice response at **Attachment C**. The *Providers* response stated: *Please note that from 9 August to*

13 August the school principal [REDACTED] provided staffing to run the service and ensure the continuity of care.

10. The roster for August 2024, was received as part of the Provider's response on 4 November 2024 and can be viewed at **Attachment D**.
11. It is unclear if the service was operating on Monday 12 August 2024, from 7:00-9:00am, as there was no notification submitted via the NQAIT system advising the Authority of the closure nor was the Authority notified the service was operating in absence of persons employed by the Provider.
12. The roster identified the school operated the service in absence of the Provider's employees on:
 - a. Friday 9 August 2024, from 14:15 – 18:00pm.
 - b. Monday 12 August 2024, 14:15 -18:00pm.
 - c. Tuesday 13 August 2024, 07:00 – 9:00am.
 - d. Tuesday 13 August 2024, 14:15 – 18:00pm.
13. Attendance records were provided as part of the Provider's response on 4 November 2024. Records have been attached and can be viewed at **Attachment E**. The attendance records identified the number of children in education and care at the Provider's service on 9, 12 and 13 August 2024 as follows:
 - a. 9th August 2024 – 3 children in care signed in from 7:24am
 - b. 9th August 2024 – 6 children in attendance the youngest 4 years of age, first child signed in at 15:22am and last child signed out 17:54pm.
 - c. 12 August 2024 – 6 children in attendance the youngest being 5 Years of age, first child signed in from 15:20pm and the last child signed out at 17:51pm.
 - d. 13 August 2024 – 1 child in attendance signed in at 7:06am, aged 5 years old.
 - e. 13 August 2025 – 8 children in attendance the youngest being 5 years of age from 15:07pm to 17:58pm.
14. In addition, on the 21 August 2024 between 15:27pm and 17:45pm the roster identified 12 children were in attendance as young as 4 years of age and two children as young as 5 years of age with one educator. The educator [REDACTED] as noted below does not meet ACT Qualifications
15. The Provider's employee rostered for the month of August 2024, [REDACTED], does not meet the ACT qualification requirements to provide education and care to preschool aged children nor does she meet the ACT qualifications for 1st qualified in an Out of School Hours Care service.
16. [REDACTED] qualifications were submitted by the Provider via the Australian Children's Education Care Quality Authority (ACECQA) NQAIT system on 6 December and 9 December 2022 (NOT-40800682 and NOT- 40802439).

17. Copies of [REDACTED] qualifications have been included at **Attachment F, Attachment G** and a copy of the correspondence to the Provider from ACECQA, regarding assessment of [REDACTED] qualification is attached at **Attachment H**.
18. During the month of August 2024, the Provider had not applied for a waiver even though the Provider was aware [REDACTED] qualifications did not meet the ACT qualification requirements for the education and care of preschool children and was advised by ACECQA (**Attachment H**). [REDACTED] qualifications were assessed as being second qualified.
19. The Authority acknowledges the Provider applied for a temporary waiver on 2 September 2024 and to date the Authority has not assessed the application due to the current compliance action being undertaken.
20. The Authority is satisfied that evidence presented within **Attachments C-H** supports a case to answer for regarding suspected offences under the *Law* and breaches to the *Regulations*.
21. However, the Authority's decision process regarding potential compliance actions to be taken is not complete until you have had an opportunity to respond to the allegations and evidence provided to the Authority. This is the reason for sending this Show Cause Notice (the Notice) to you, as a person with management or control of the Provider.
22. Detailed instructions of how to respond appear at the end of this Notice.
23. If substantiated, the allegations may constitute an offence under section 166(1), 167(1) and 169(1) of the *Law* and breaches to the regulations mentioned in this notice. If, after considering all available evidence, the Authority finds any offence is substantiated, it will need to consider whether compliance action is required.
24. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children. Potential compliance actions include the following (further details appear at the end of this Notice):
 - a) Suspension of Service Approval; and
 - b) Possible assessment of fitness and propriety.

Grounds for issuing Show Cause Notice

25. The evidence submitted by the Provider in response to the Compliance Notice on 4 November 2024 supports an offence under the *Law* as follows:
 - a) The service is not being managed in accordance with the *Law*.
 - b) Failure to meet staffing requirements.
 - c) Failure to protect children from harms and hazards likely to cause injury.
 - d) Failure to adequately supervise children.
26. The evidence obtained supports a breach of the regulations as follows:
 - a) Qualification requirements were not met for preschool aged children; and

- b) Qualifications for working with children over preschool age within the Australian Capital Territory were not met by a first qualified educator.
- c) Failure to notify the Authority if the service hours and / or days of operation change will change.

Allegation relating to Law and Regulations – Assessment and Rating

27. The evidence submitted by the Provider in response to the Compliance Notice raises the following allegations of offence under the *Law* and breaches of the *Regulations* –

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).

Legislation Relevant to Allegations

28. The following provisions of the *Law* and *Regulations* are relevant to the allegations:

Section 165(1) of the Law - Offence to inadequately supervise children

- (1) 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: \$11 400, in the case of an individual.
\$57 400, in any other case

Section 167(1) of the Law - Offence relating to protection of children from harm and hazards

- (1) 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: \$11 400, in the case of an individual
\$57 400, in any other case.

Section 169(1) of the Law - Offence relating to staffing arrangements

- (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.

Penalty: \$11 400, in the case of an individual.
\$57 400, in any other case.

260 Educator to child ratio—children over preschool age—centre-based services

- (1) This regulation applies in place of regulation 123(1)(d).
(2) The educator to child ratio for children over preschool age at a centre-based service is 1 educator to 11 children.

262 Required qualifications to be a qualified educator for children over preschool age

- (1) The first educator required to meet the qualified educator to child ratio for children over preschool age must—
- (a) hold a qualification that is published under regulation 137(2) in the list of approved qualifications for the first qualified educator working with children over preschool age for the Australian Capital Territory; or
 - (b) comply with the following—
 - i. be enrolled in a course for a qualification that is included in the list referred to in paragraph (a); and
 - ii. be able to demonstrate that he or she is continuing to study for that qualification; and
 - iii. be approved by the Regulatory Authority to work as a qualified educator for children over preschool age.
- (2) All other educators required to meet the qualified educator to child ratio must—
- (a) hold any qualification that is included in the list referred to in subregulation (1)(a); or
 - (b) hold a qualification that is published under regulation 137(2) in the list of approved qualifications for the second and subsequent qualified educators working with children over preschool age for the Australian Capital Territory.
- (3) The Regulatory Authority may, on application, grant an approval for the purposes of subregulation (1).

175 Prescribed information to be notified to Regulatory Authority

- (2) For the purposes of section 174(2)(c) of the Law, the following matters are prescribed—
- (a) any change to the hours and days of operation of the education and care service.

Potential Compliance Action

29. The Authority reiterates that no decision has been made at this time – this notice is a step in the assessment of compliance process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions if the offence is substantiated. Potential compliance actions include:
- a) Suspension of the service approval pursuant to sections 70, 71 and 72 of the Law. Any proposed suspension would be in effect 14 days from the time the Provider has been notified of the decision for a duration to be determined, but not exceeding 12 months.

- b) Reassessment of fitness and propriety in pursuant to Section 21 of the Law. Any reassessment of fitness and propriety undertaken by the Authority is on the grounds that the Authority reasonably believes that a person is not a fit and proper person to be involved in the provision of an education and care service and would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by the education and care service.
30. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.

Right of response


31. As mentioned previously, this notice is your opportunity to respond to the allegations and evidence set out in this Notice. You may, within 30 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
32. At **Attachment I** to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Please direct your written submission via email to nicola.atherton@act.gov.au or by post to:

Children's Education and Care Assurance
Attention: Nicola Atherton
GPO Box 158, Canberra ACT 2601.

Caution

33. Please be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
34. The *Law* applies to you as an approved Provider and to any service the approved Provider operates. 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>.
35. 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>
36. Should you have any questions about this Show Cause Notice please contact Nicola Atherton , Authorised Officer via email at nicola.atherton@act.gov.au

Yours sincerely



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

17 December 2024