



Person with Management or Control
OORAMA OPERATIONS PTY LIMITED
RE: Symonston Kinder Haven

Email: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance. 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). One of the Authority's roles is to investigate suspected offences under the Law.
2. Authorised Officers have recently assessed multiple notifications, submitted by the Provider via NQA ITS, which give rise to suspected inadequate supervision and educator interactions at Symonston Kinder Haven SE-00009842 (the Service) operated by OORAMA OPERATIONS PTY LIMITED PR-40001489 (the Provider).
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.
4. The Authority has determined that the Provider has a case to answer regarding suspected offences engaged under the Law. However, the Authority's assessment of these matters are not complete until the Provider has had an opportunity to respond to the allegation/s and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
5. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the allegation/s may constitute an offence under sections 165 and 167 and of the Law. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, it will need to consider whether compliance action is required.
7. If any offences under the Law are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Further details regarding potential compliance actions appear at the end of this Notice.

Facts

8. On 9 August 2023, the Authority received a notification of Incident from the Provider (NOT-40889098). The notification advised that on 8 August 2023, three enrolled children (3 and 4 yrs of age) at the Service were identified to have eaten the contents of an ice pack. Refer NOT-40889098 and submitted supportive documents at Attachment A.
9. On 9 August 2023, the Authority received a notification of Complaint from the Provider (NOT-40889104). The notification advised of a parent complaint alleging:
 - a) When the parent arrived to collect her child she found another child alone in the preschool room
 - b) An incident involving her child where children were able to eat the contents of an ice pack
 - c) supervision and incidents occurring.Refer NOT-40889104 and submitted supportive documents at Attachment B.
10. On 9 August 2023, the Authority received a notification of Incident from the Provider (NOT-40889109). The notification advised that on 8 August 2023, a parent had walked into the preschool room and identified a 2yr old child alone unsupervised. The child was returned to the outdoor space where team members were. Refer NOT-40889109 and submitted supportive documents at Attachment C.
11. On 14 August 2023, the Authority received a notification of Incident from the Provider (NOT-40890403). The notification advised that on 10 August 2023, an educator was sitting in the nursery room with a 7mth old child on her leg, and she was on her phone. As she got up, she shook the child off her leg (resulting in the child falling to floor) and said, "I have to go now" and proceeded to walk out of the room. Refer NOT-40890403 and submitted supportive documents at Attachment D.
12. On 14 August 2023, the Authority received a notification of Incident from the Provider (NOT-40890686). The notification advised that while reviewing CCTV for another matter, the Provider identified that on 9 August 2023, there were multiple occasions where children have been left unsupervised. Refer NOT-40890686 and submitted supportive documents at Attachment E.
13. On 17 August 2023, additional information was requested from the Provider relevant to NOT-40890686. Additional information via CCTV footage was forwarded 17 August 2023 – Refer correspondence at Attachment F.

Allegations

Allegations One and Two – Section 165 and 167 of the Law

14. It is alleged that, on multiple occasions on 8 and 9 August 2023, the Provider failed to ensure that all children being educated and cared for by the service were adequately supervised at all times, in contravention of s165(1) of the *Law*.

15. It is alleged that, on multiple occasions on 8 and 9 August 2023, the Provider failed to ensure that the reasonable precaution of ensuring adequate supervision at all times that children were being educated and cared for, was taken to protect children from harm and hazard likely to cause injury or illness, in contravention of s167(1) of the *Law*.

Allegation Three – Section 167 of the *Law*, engaged by Regulation 155

16. It is alleged that, on 10 August 2023, the Provider by not ensuring appropriate interactions by educators towards children, has not taken reasonable precautions to protect children from harms and hazards likely to cause injury, in breach of Regulation 155, and engaging a contravention of section 167 of the *Law*.

Legislation Relevant to Allegations

17. The following provisions of the *Law* are engaged by the allegations:

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.

Regulation 155 – Interactions with children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that –

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

Evidence Relevant to Allegations One, Two and Three

18. Please refer to Attachments A through F for evidence relating to the allegations as outlined above.

Contraventions Supported by Allegations

19. Evidence gathered from the notifications submitted by the Provider on 9 and 14 August 2023, along with the provision of CCTV footage identifying further instances of likely inadequate supervision on 9 August 2023 supports contraventions, on balance of probabilities, of sections 165(1) and s167(1) of the *Law*.

Potential Compliance Action

20. The Authority reiterates that no decision has been made at this time – this letter is a step in the assessment process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions, if any offences are substantiated. Potential compliance actions include:
- a. Non-statutory Administration Action (similar to a caution) with no further action;
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced; or
 - c. A Compliance Notice under section 177 of the *Law*; or
 - d. Imposing of Conditions on the Service’s approval under section 51 of the *Law*.
 - e. Suspension of the service approval under section 72 of the *Law*. *The suspension would be from the time that the provider has been notified of the decision until the provider has demonstrated risks have been mitigated.*
 - f. Cancellation of the service approval under section 79 of the *Law*.
21. 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.
22. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.

Right of response

23. As mentioned previously, this is the Provider’s opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 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.
24. At Attachment G 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 me at janine.fairburn@act.gov.au or by post to:

Children’s Education and Care Assurance
Attention: Janine Fairburn
GPO Box 158, Canberra ACT 2601.

Caution

25. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
26. 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>.
27. 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>
28. Should you have any questions about this Show Cause Notice 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

31 August 2023