



Ms [REDACTED]  
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 are currently investigating an alleged incident regarding a child, known to be [REDACTED], who was found asleep with their jumper on in a room unsupervised by educators resulting in illness on 27 February 2023 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. Authorised Officers have now finished obtaining evidence (unless further lines of enquiry emerge) and the Authority has determined that the Provider has a case to answer regarding suspected offences. However, the Authority's investigation is 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, 167 and 174 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.

### **Grounds for issuing Show Cause Notice**

8. The evidence obtained during the investigation to date supports offences under the Law within the following areas:
  - a) Supervision and protection from harms; and
  - b) Notification requirements.

### **Background**

9. In March 2023, the Authority received a direct complaint alleging that on 27 February 2023, a child known as [REDACTED] was found asleep with their jumper on in a side room unsupervised by educators resulting in illness.
10. In April 2023, the Authority received additional information that a complaint had been made to the Provider on 1 March 2023, alleging non-compliance of the Law by way of inadequate supervision, allowing a child to overheat due to excess clothing, and unsafe sleep practices. Refer copy of email chain at Attachment A.
11. It is noted that on 21 February 2023, the Provider notified the Authority of a serious incident (NOT-40825637) involving [REDACTED] which resulted in an Administrative Decision being issued to the Provider on 22 March 2023. Refer decision at Attachment B.
12. Due to the risk to children if inadequately supervised, the Authority determined to investigate the allegation.

### **Allegations**

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

13. It is alleged that, on 27 February 2023, the Provider failed to ensure that all children being educated and cared for by the service were adequately supervised at all times as a child known as [REDACTED] was advised to be asleep in a side room for an unknown length of time unsupervised, in contravention of s165(1) of the Law.
14. It is alleged that on 27 February 2023, by not ensuring adequate supervision and allowing a child to sleep in excess clothing on a hot day, the Provider failed to ensure that every reasonable precaution was taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury or illness, in contravention of s167(1) of the Law.

#### Allegation Three – Section 174 of the Law

15. It is alleged that, on 1 March 2023, the Provider received a complaint via email alleging contravention of the Law, that was not notified to the Authority, in contravention of section 174 of the Law.

### **Legislation Relevant to Allegations**

16. 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.

**Section 174(2) of the Law - Offence to fail to notify certain information to Regulatory Authority**

An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—

- (a) any serious incident at the approved education and care service;
- (b) any complaints alleging—
  - i. that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
  - ii. that this Law has been contravened;
- (c) information in respect of any other prescribed matters

Penalty: \$4 000, in the case of an individual  
\$20 000, in any other case.

Evidence Relevant to Allegations One, Two and Three

17. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Records produced by the Provider supported the following:

- a) The Service was operating on 27 February 2023;
- b) ██████████ was enrolled at the Service and signed into the Junior Toddlers on 27 February 2023;
- c) On 27 February 2023, there were a total of 12 children – 5 children under two years of age and 7 children over two years of age.

Refer evidence at Attachment C.

18. As part of the investigation, the Authority obtained statements from the complainant. The complainant also provided a copy of an email (Attachment A) indicating that they had raised the allegation with the Service.

19. Relevant excerpts of Witness A's statement are as follows:



20. During the investigation, the Authority obtained numerous other witness statements. Witness statements were obtained utilising powers under section 215 of the *Law*, imposing an obligation to attend before the Authority and provide relevant evidence. The Authority notes that no witness evidence corroborated the allegation as detailed.

Contraventions Supported by Allegations

21. Evidence gathered from the complainant raises suspicion of contraventions of section 165(1), s167(1) & 174(2) of the *Law*.

### **Potential Compliance Action**

22. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation 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*.
23. 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.
24. 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**

25. 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.
26. At Attachment D 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 [Vittorio.Colosimo@act.gov.au](mailto:Vittorio.Colosimo@act.gov.au) or by post to:

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

### **Caution**

27. I am informing you that the excerpt of Witness A’s account taken for the Authority’s investigation is included in the interests of procedural fairness. The statement taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.

28. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
29. 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.
30. 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>.
31. 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>
32. Should you have any questions about this Show Cause Notice please contact Vittorio Colosimo on [Vittorio.Colosimo@act.gov.au](mailto:Vittorio.Colosimo@act.gov.au).

Yours Sincerely



Jo Williams  
Director – Regulatory Operations  
Children’s Education and Care Assurance  
Education and Care Regulation and Support

18 August 2023