



Ms [REDACTED]  
Person with Management or Control  
OORAMA OPERATIONS PTY LIMITED  
RE: Symonston Kinder Haven

Email: [REDACTED]

Dear Ms [REDACTED]

### Decision to issue Administrative Action

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA), investigated suspected offences relating to the operation of Symonston Kinder Haven SE-00009842 (the Service) operated by OORAMA OPERATIONS PTY LIMITED PR-40001489 (the Provider).
2. The Authority is satisfied that the Provider has not complied with a provision of the *Education and Care Services National Law Act (ACT)* (the Law) in this instance. Web addresses for the Law and the associated *National Regulations* are provided for your convenience at the end of this decision.

### Facts

3. In March 2023, the Authority received a direct complaint alleging that on 27 February 2023, a child known as [REDACTED], was found asleep, with excessive clothing, in a side room unsupervised by educators resulting in heat related illness.
4. Due to the risk of harm and hazards to children, likely to cause injury resulting from inadequate supervision, the Authority determined to investigate.
5. On 18 August 2023, because of evidence gathered throughout the investigation of suspected contraventions of the Law, the Authority sent a Show Cause Notice (the Notice) to the Provider. Refer copy of the Notice (minus attachments) at Attachment A.
6. The Notice outlined the grounds for issue, and the evidence relied on by the Authority the allegations raised for response. In addition, the Notice outlined the compliance actions being considered by the Authority should the allegation be substantiated.
7. The allegations raised were detailed as follows:

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

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.

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

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*.

8. On 8 September 2023, the Regulatory Authority received the Providers response to the Notice within the required timeframe. Refer to a copy of the response at Attachment B.

### Law

9. The following provision of the *Law* are relevant to the matters raised via the Notice:

#### **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.

### Obligations upon Regulatory Authority

10. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. 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; ...’*

11. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:

- (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.
12. 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*.
13. The *Law* works to protect a particularly vulnerable part of 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*.
14. A key object 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.

### **Decision**

15. The Authority has carefully considered all the evidence gathered through the investigation process, including the Provider's response to the Notice, and is not satisfied that there is sufficient weight of evidence supporting Allegations One and Two, as detailed, to substantiate offences under section 165 or 167 of the *Law* in this instance.
16. However, the Authority is satisfied that there is sufficient evidence supporting Allegation Three to substantiate an offence under section 174 of the *Law*.
17. The Authority is satisfied that a complaint was received by the Provider alleging contravention of the *Law* and was not reported to the Authority. The Provider's own admission of this within its response to Notice further supports the substantiated offence.
18. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children.
19. In consideration of all relevant information, and actions already undertaken by the Provider to mitigate risk of similar incidents occurring the Authority has determined not to initiate statutory compliance action regarding the substantiated contraventions of section 174(2) of the *Law*, but rather issue this Administrative Decision to address the non-compliances.
20. This Decision is issued to remind the Provider, that is the responsibility of the Provider to ensure that processes are in place to notify of all serious incidents, complaints, and other prescribed matters within the expectations of the *Law*.
21. This Decision will be recorded on your Service file and may also be considered in any future applications for approvals, amendments, or waivers. It may also be considered in determining the action to be taken, should further breaches of the *Law* or *Regulations* be found.

### **Legislation**

22. The *Law* applies to you as an approved provider and any approved service that the Provider operates.

23. 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>.

24. 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>

25. If you have any queries regarding this Decision, please contact Authorised Officer Vittorio Colosimo at [Vittorio.Colosimo@act.gov.au](mailto:Vittorio.Colosimo@act.gov.au).

Yours sincerely



Janine Fairburn  
Assistant Director  
Children's Education and Care Assurance  
Education and Care, Regulation and Support

27 October 2023