

[REDACTED]  
Person with Management or Control  
Wonderschool (Dickson) Pty Limited  
Re: Wonderschool (Dickson) Pty Limited  
Email: [REDACTED]

Dear Ms [REDACTED]

### **Decision to issue Administrative Action**

1. As you are aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated suspected offences at Wonderschool (Dickson) Pty Limited - SE-40019814 (the Service), operated by Wonderschool (Dickson) Pty Limited - PR-40023355 (the Provider).
2. I am satisfied that the Provider was not complying with the provisions of the *Education and Care Services National Law (ACT) Act 2011* (the Law) and the *Education and Care Services National Regulations* (the Regulations).
3. Web addresses to the Law and the Regulations are provided for your convenience at the end of this notice.

### **Background**

4. On 30 January 2023, the Authority issued the Provider a Show Cause Notice (the Notice). The Notice related to a recent investigation, undertaken by the Authority, in response to allegations of inadequate supervision and staffing arrangements at the Service. Refer copy of the Notice (minus attachments due to size) at [Attachment A](#). Please note that attachments can be provided again upon request.
5. The Notice outlined the grounds for issue, relevant evidence and raised the following allegations for response:

### **Allegation One**

It is alleged that between June 2022 and July 2022, the Provider failed to ensure adequate staffing arrangements were in place to support adequate supervision of children at all times that education and care were being provided at the Service in contravention of sections 165(1) and 169(1) of the Law.

### **Allegation Two**

It is alleged that between June 2022 and July 2022, the Provider, by not ensuring adequate staffing arrangements and supervision were in place, failed to ensure

reasonable steps were taken to protect children from harms and hazards likely to cause injury or illness, in contravention of section 167(1) of the *Law*.

### **Allegation Three**

That by 7 July 2022, the Provider failed to notify the Regulatory Authority of a complaint that the *Law* had been contravened, in that an educator emailed the Provider a complaint alleging the service had insufficient educators for the number of children in the Toddler grouping room on 6 July 2022, contravening section 174(2)(b)(ii) of the *Law*.

6. A response to the Notice was received from the Provider on 6 March 2023 within the agreed timeframe. Refer copy of the Provider's response (minus attached supportive documentation due to size) at Attachment B. Please note that attachments can be provided again upon request.
7. The Authority acknowledges the number of attachments accompanying the response to the show cause notice, included:
  - a) Email communications x 8
  - b) Allegation flowchart and Meeting with CECA
  - c) [REDACTED] Hours and Nominated Supervisor SMS
  - d) Leave Notifications

### **Law**

8. The investigation and subsequent Notice engaged the following provisions of the *Law*:

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

An Approved Provider of an education and care service must ensure that, whenever children are being educated and cared for by a service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000, in the case of an individual  
\$50 000, in any other case.

**Section 174 of Law - Offence to fail to notify certain information to Regulatory Authority**

- (2) 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.
- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to –
- (a) The Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

**Regulation 176 – Time to notify certain information to Regulatory Authority**

- (2) For the purpose of section 174(4) of the Law, a notice must be provided:
- (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident;
  - (c) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

**Provider Response**

9. In response to the allegations the Provider refutes the allegations and raises the following points:
- a. OWNA system was introduced in February 2022.
  - b. Nominated Supervisor, [REDACTED], was also new to the Service.
  - c. Ms [REDACTED] had determined the Service met minimum ratio across the Service when complained to by Mr [REDACTED].
  - d. A workplace investigation was being undertaken into educator, Mr [REDACTED]
  - e. Nominated Supervisor, [REDACTED] used hyperbole to make a point in her staff message.
10. The Authority acknowledges evidence submitted by the Provider relating to OWNA system, rostering, supervision and communication prior to June 2022 and July 2022.
11. The Authority takes the opportunity to emphasise that the Provider's obligations under sections 165, 167 and 169 of the Law are strict obligations. They are not alleviated by

staffing changes or implementation of new systems/procedures. Matters such as those may be considered as mitigating circumstances if an offence is proven, but they are not relevant to whether an offence is committed.

12. Within the Provider's response, the Provider contends that Ms [REDACTED] ensured ratios were compliant across the Service. It is often a misconception that ensuring that meeting minimum 'under the roof' ratio is sufficient to ensure adequate supervision of all children being educated and cared for. Multiple factors must be considered when determining whether adequate supervision is provided; adequate staffing (which may exceed prescribed minimums) is one factor.
13. The Authority notes strategies outlined of mixed grouping, where required, to mitigate risk to children and to comply with the 165 and 167 of the *Law*.
14. The Provider's obligations include ensuring staff follow policy/procedure and lawful directives. It is apparent from the Provider's response that a workplace investigation involving Mr [REDACTED] was undertaken for that purpose.
15. Workplace investigations are, generally, outside the scope of the Authority, unless related to the safety of children within the context of the *Law*. Regardless of motivation, Mr [REDACTED] complaint to the Provider did allege non-compliance with regulated ratio requirements and staffing expectations as outlined under the *Law* and *Regulations*.
16. Due to this allegation, the Provider was obliged to notify the Authority of the complaint alleging that that the *Law* had or was being contravened within 24 hours of receipt of the allegation.

### **Decision and Reasons**

17. Having considered the evidence collected during the investigation, including the Provider's response to the Notice, the Authority is satisfied that the Provider has failed to comply with 174(2)(b) of the *Law*.
18. In relation to Allegation One, the Authority is not satisfied, on balance of probabilities, that the Provider failed to comply with sections 165(1) and 169(1) of the *Law* in this instance.
19. In relation to Allegation Two, the Authority is not satisfied, on balance of probabilities, that the Provider failed to comply with section 167(1) of the *Law* in this instance.
20. In relation to Allegation Three, the Authority is satisfied, on balance of probabilities, that the Provider failed to notify the authority within 24 hours of a complaint alleging that the law had been contravened, in breach of section 174(2)(b)(ii) of the *Law*.
21. Considering all the evidence, the objectives and guiding principles of the *Law*, and the compliance history of the Service, I have decided to issue this Administrative Action rather than statutory compliance actions for the substantiated breach of s174 of the Law.

22. This decision is intended to bring to your attention the need to ensure the Provider meets its obligations under the *Law*, in particular the obligation to ensure that complaints relating to contraventions of the *Law* are always met.
23. This finding will be recorded on the Service's file and may be considered in any future in determination, should further breaches of the *Law* or associated *Regulations* be found.

**Legislation**

24. 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>.
25. 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>
26. If you have any questions about the Decision or Notice, please contact me at [jo.williams@act.gov.au](mailto:jo.williams@act.gov.au).

Yours sincerely



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

12 May 2023