

Ms [REDACTED]
Person with Management or Control
Wonderschool (Throsby) Pty Limited
RE: Wonderschool Throsby

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Action

1. As you may be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated matters relating to Notification of Incident (NOT-40497607) and regarding the operation of Wonderschool Throsby SE- 40017295 (the Service) operated by Wonderschool (Throsby) Pty Limited PR- 40019138 (the Provider).
2. The Authority is satisfied that the Provider has contravened provisions of the *Education and Care Services National Law (ACT)* (the Law).
3. Web addresses to the Law and the *Education and Care Services National Regulations 2011* (the Regulations) are provided for your convenience at the end of this letter.

Facts

4. On 17 December 2020, the Authority received a Notification of Incident (NOT-40497607) and associated documentation from the Provider. The notification advised that, on 16 December 2020, a child, known to be [REDACTED] (aged four years), at the Service was able to climb up on to the nappy change area, unsupervised, and may have ingested some of the sanitizer spray used for cleaning the nappy change mats. It was further reported that, at the time, educators may have failed to administer appropriate first aid. Refer Attachment A.
5. Due to the risk to children associated with alleged inadequate supervision and a risk of harm and of hazards, the Authority determined to investigate the allegations.
6. In the period 7 January 2021 to 20 January 2021, the Provider forwarded the Authority, unsolicited, further information in relation to the incident. Further information consisted of the following:
 - a) Policies and procedures;
 - b) Meeting minutes and a Quality Area 2 self assessment;
 - c) Notes and Findings relating to the incident of 16/12/2020;
 - d) Evidence of actions undertaken in relation to the incident of 16/12/2020.

7. After an analysis of that additional documentation, on 20 January 2021, the Authority issued a notice allowable under section 215 of the *Law* (215 Notice) to the Provider requiring further information to be supplied. The Provider responded to the 215 Notice on 21 January 2021.
8. Documentation submitted by the Provider in response to the 215 Notice is as follows:
 - a) Working Directly with Children and Child attendance records;
 - b) Evidence associated with educator's awareness and understanding of policies and procedures and additional training; and
 - c) All records related to the Provider's internal investigation of matters regarding NOT-40497607.

Law

9. The investigation 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.

Regulation 170 - Policies and procedures to be followed

- (1) The approved provider of a centre-based service must take reasonable steps to ensure that nominated supervisors and staff members of, and volunteers at, the service follow the policies and procedures required under regulation 168.

Regulation 168 - Education and care service must have policies and procedures

- (2) Policies and procedures are required in relation to the following—
 - (iv) the administration of first aid.

Reasons

10. Having considered the evidence gathered, inclusive of the Provider's response to the 215 Notice and the further information supplied, including accounts given to the Provider by educators present at the time of the incident, the Authority is satisfied that the Provider has failed to comply with the *Law*.

11. The Authority is satisfied that, on 16 December 2020, inadequate supervision contributed to [REDACTED] being able to climb up on to the nappy change area, constituting an offence under section 165(1) of the *Law*.
12. Furthermore, the Authority is satisfied that reasonable precautions, such as ensuring that all educators were aware of and understood policy, procedure and expectations of the Provider in regard to chemical storage and supervision contributed to [REDACTED] being given opportunity to potentially ingest chemicals without educators noticing or being prepared to conduct appropriate precautionary first aid, in contravention of section 167(1) of the *Law*.
13. The Authority noted the Provider submitted evidence to support that appropriate policies, procedures and practices were reviewed and reiterated to educators, and that revised chemical handling and storage practices have been put in place to mitigate the risk of a similar incident occurring in the future. These risk mitigation strategies are agreed to meet the expectations of the Authority.

Decision

14. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. Many of these options allow the Authority to publish details of substantiated non-compliance.
15. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. On this occasion, the Authority has determined to issue you with this Administrative Action rather than impose any statutory compliance actions.
16. In determining whether to issue the Provider with an Administrative Action, the Authority took the following into consideration:
 - a) The Notification of Incident was submitted within the prescribed timeframe;
 - b) The immediate steps taken by the Provider once they became aware of the incident;
 - c) The Provider's further responses and actions implemented after the event; and
 - d) The Provider has advised of strategies which, if continued and followed correctly, are deemed appropriate in mitigating risk of a similar incident.
17. Regarding the substantiated offences under sections 165(1), 167(1) of the *Law*, and Regulation 170(1) of the *Regulations*, the Authority is satisfied the subsequent strategies advised of by the Provider as having been implemented meets the expectations of the Authority, and therefore no further action is required.
18. This Decision will be recorded on your Service file and may 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

19. 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>.
20. 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>
21. If you have any questions in relation to this letter, please contact Authorised Officer Jeff Beaver on (02) 6207 3917 or by email [at jeffrey.beaver@act.gov.au](mailto:jeffrey.beaver@act.gov.au).

Yours sincerely



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

4 March 2021