



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

Email: [REDACTED]
Cc: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Compliance Notice

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted enquiries relating to a Notification of Serious Incident (NOT-40668711) and Notification of Complaint (NOT-40670537) relating to the operation of Wonderschool Throsby SE-40017295 (the Service), operated by Wonderschool (Throsby) Pty Limited, PR-40019138 (the Provider).
2. Both Notifications related to a three-year-old child, known to be [REDACTED] being provided a known allergen on 15 March 2022 whilst being educated and cared for by the Service.
3. The Regulatory Authority is satisfied that the Provider was not complying with the provisions of the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations 2011* (the Regulation) in respect to this matter.
4. Web addresses to the Law and Regulations are provided for your convenience at the end of this Decision.

Facts

5. On 15 March 2022, the Authority received a Notification of Serious Incident (NOT-40668711) submitted by the Provider. The Notification reported that a child, known to be [REDACTED] (3 years old), displayed symptoms of vomiting, suspected to be an allergic reaction to dairy, and that [REDACTED] medical action plan was followed however his medication could not be located. Refer Notification of Incident and attached evidentiary documents at Attachment A.
6. Furthermore, it was noted that the attached Incident, Injury, Trauma and Illness Record advised that gastroenteritis was present at the Service, and that initially it was suspected

that [REDACTED] [REDACTED] was attributed to this rather than an allergic reaction until other symptoms of allergic reaction were noticed.

7. On 16 March 2022, additional information was requested from the Provider. Additional information was submitted on 17 March 2022. Refer correspondence relating to additional information at [Attachment B](#).
8. Additional information submitted by the Provider included:
 - a) Medical Conditions Policy Refer [Attachment C](#));
 - b) Child attendance records, staff logs and ratio logs for Preschool on 15 March 2022;
 - c) Internal Investigation Notes and Meeting notes (Refer [Attachment D](#));
 - d) Copy of email including statements from Incident 150322 (Refer [Attachment E](#));
 - e) Documents and photos relating to medical bags and medication monitoring (Refer [Attachment F](#));
 - f) Copy of Email correspondence with educators and staff (Refer [Attachment G – please note, additional correspondence uploaded by Provider on NQAITS on 21/03/2022 also included in this attachment](#)); and
 - g) Copy of Email from family dated 16/03/2022 (Refer [Attachment H](#)).
9. On 17 March 2022, the Authority received a Notification of Complaint (NOT-40670537) submitted by the Provider. The complaint, from the father of [REDACTED] was in relation to the incident of 15 March 2022. [REDACTED] father alleges that the incident of 15 March 2022 was because of an avoidable oversight and unawareness of educators in the room that [REDACTED] was enrolled in, along with poor management of [REDACTED] allergic reaction as a result of misplaced/unlocatable medication. Refer Notification of Complaint and attached evidentiary documents at [Attachment I](#).
10. On 18 March 2022, additional information was requested from the Provider in relation to the complaint. Additional information was submitted same day and included the Provider's response to the complainant. Refer correspondence and additional information at [Attachment J](#).

Law

11. Provisions of the *Law* relevant to the assessment engaged the following:

Section 167(1) of the *Law* - Offence relating to protection of children from harm and hazards

The approved provider, and the nominated supervisor, 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.

Obligations upon Regulatory Authority, Providers and Services

12. The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. 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”.
13. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have particular application in this instance, being:
 - (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.*
14. 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.*
15. The *Law* works to protect a particularly vulnerable group in 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*.
16. A key objective 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.
17. The *Law* is predominantly a protective law and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

Reasons and Decision

18. The Authority has considered all the information supplied by the Provider and is satisfied that the provision of a known allergen to ██████ on 15 March 2022, resulting in vomiting, runny nose with thick green discharge, developing into stomach cramping and a rash, was not ensuring that every reasonable precaution was taken to protect the child from harm and hazard likely to cause injury or illness, in contravention of section 167(1) of the *Law*.
19. Evidence supporting the substantiation of offences under the *Law* is as follows:
 - a) Notifications of Incident and Complaint submitted by the Provider to the Authority; and
 - b) Additional information via recorded enquiries made by the Provider internally with staff members, correspondence with ██████ father, actions undertaken by

Provider to mitigate risk of a similar incident which were submitted to the Authority.

20. Provider submitted information identified that dairy free meals were prepared on 15 March 2022, and provided to two other children, yet [REDACTED] was provided a pasta dish by educators which contained feta cheese.
21. Additionally, information identified that, with admission, [REDACTED] medication was not taken into the Preschool room upon his transitioning from Toddler to Preschool one day a week, and that whilst [REDACTED] was not in attendance between 28/12/2021 and 15/02/2022, the Preschool class relocated to a new room with new educators and an efficient handover was not conducted.
22. Due to the misplaced medication, allergic symptoms progressed in severity until [REDACTED] father arrived at the Service, noting that initial symptom of vomiting which progressed to spots/hives, stomach cramping/spasm and a rash observed approximately 30 minutes after initial vomit. Furthermore, as a result of medication not being able to be located, [REDACTED] medical management plan was unable to be followed as required.
23. As you are aware, allergic reactions can have catastrophic outcomes to a young child. The fact that [REDACTED] was provided a known allergen, and the allergic reaction could not be adequately managed due to unlocatable medication, further demonstrates that every reasonable precaution was not taken to protect the child from harm and hazard likely to cause injury or illness.
24. Considering the evidence obtained via the Notification's and additional information, the seriousness of the incident and the objectives and guiding principles of the *Law*, the Authority have determined that issuing a Compliance Notice would be appropriate and in the best interests of children.
25. The Authority has also taken into consideration the Services previous compliance history when determining this action to be undertaken, and acknowledge the following:
 - a) Compliance Notice issued 02 December 2020 – section 167 offence substantiated relating to a child being provided a known allergen.
26. The Authority is empowered to issue a compliance notice under section 177 of the *Law*:

Section 177 of the *Law*– Compliance notices

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this Law.
- (2) The Regulatory Authority may give the approved provider a notice (a **compliance notice**) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.

Penalty: \$6 000, in the case of an individual
\$30 000, in any other case.

27. The Compliance Notice is Attachment K to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions.
28. You must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment K**.
29. In addition to addressing the Compliance Notice, the Authority also requests that Provider submit a Notification of Incident via the ACECQA NQAITS, pursuant to *Regulation 175(2)(c)* of the gastroenteritis outbreak as identified via educator statements and the Incident, Injury, Trauma and Illness Record.
30. Educator statements indicate that there were many incidents of gastroenteritis at the Service over the weeks leading up to the incident of 15 March 2022. In addition, it is noted in the Provider's internal investigation findings that this was also the case, described by the Provider as a 'gastro outbreak at the Centre'.
31. The Authority notes that such a circumstance falls in scope of prescribed information requiring notification pursuant to *Regulation 175(2)(c)* and sections 174(2)(c) and 174(4) of the *Law*. The Authority also notes that no such notification has been received by the Authority to date.

Appeal Rights

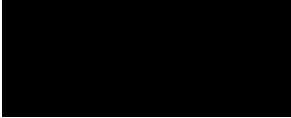
32. A decision to issue a compliance notice is a **reviewable decision** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).
33. An application for review may be made by completing the form AR01 Application for Internal Review of Reviewable Decision which can be obtained from the ACECQA website.

Legislation

34. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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>.
35. The National Law is made up of an Act and Regulations which can be viewed at:
 - <http://www.acecqa.gov.au/national-law>, and
 - <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

36. Should you have any questions about this Decision or Compliance Notice please contact Assistant Director Janine Fairburn via email janine.fairburn@act.gov.au.

Yours Sincerely



Jo Williams
Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

7 April 2022