

██████████
Person with Management or Control
Wonderschool (Throsby) Pty Limited
RE: Wonderschool Throsby

Email: compliance@wonderschool.com.au

Dear ██████████

Decision to Issue Administrative Action

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated allegations raised via a complaint relating to the operation of Wonderschool Throsby SE-40017295 (the Service) operated by Wonderschool (Throsby) Pty Limited PR-40019138 (the Provider).
2. The complaint raised allegations of inadequate supervision and failures to protect children from harm and hazard likely to cause injury or illness.
3. The Authority is satisfied that the Provider has not complied with provisions of the *Education and Care Services National Law Act (ACT)* (the Law) in this instance. Web addresses for the Law and the *Regulations* are provided for your convenience at the end of this decision.

Facts

4. On 24 January 2022, the Authority received a Notification of Complaint (NOT-40628551) from the Provider, advising of a received complaint of 21 January 2022, alleging that inadequate supervision and staffing arrangements had resulted in multiple incidents putting children at risk of injury and harm. Refer submitted Notification of Complaint at [Attachment A](#).
5. Specific allegations raised by the parents’ complaint to the Provider, engaging the National Law not being complied with, were noted as follows:
 - a) “This week (17/01-21/01) I did a drop off where there was one staff member outside with 19 kids (including mine) a child got hurt as it was hit by another kid during this time”;
 - b) “a pickup a few weeks ago I found a single child inside smearing our sunscreen everywhere. There was no educator with her”;
 - c) ██████████ also has a graze on his right cheek and no one knows how or when he got it. A sign he hurt himself and no one was supervising him at the time”;
 - d) “the haircut is also very concerning to us. ██████████ hair is thick and difficult to cut and with the amount of damage I think this would have taken 20-30min. While I recognise kids

cut hair. He was playing with other children and not hiding. I think he would have had to have been unsupervised for a long time.”

6. Due to the associated risks to children who are not adequately supervised, the Authority determined to investigate.
7. On 1 February 2022, a notice, allowable under section 215 of the *Law* (215 Notice), was issued upon the Provider. On 11 February 2022, the Provider furnished documents in compliance with the 215 Notice, with clarification of some documentation provided 16 February 2022. Refer relevant correspondence at Attachment B.
8. Documents submitted by the Provider on 11 February 2022 included:
 - a) Child attendance and Educator working directly with children (WDWC) records for dates between 10 January 2022 to 21 January 2022 inclusive;
 - b) Record of responsible person/s at the Service between 10 January 2022 to 21 January 2022 inclusive; and
 - c) All documentation, correspondence, and actions and investigation undertaken in relation to Notification of Complaint - NOT-40628551.
9. An analysis of submitted Child Attendance and Educator WDWC records for multiple dates between 10 January 2022 to 21 January 2022 was undertaken by the Authority. The analysis indicated that that staffing arrangements appeared compliant across the Service, albeit for 17 January 2021 noting inaccuracies identified with some WDWC records. Refer copy of analysis at Attachment C.
10. Records submitted by the Provider also identified the alleged incident of unsupervised hair cutting had occurred on 18 January 2022. Refer relevant submitted records at Attachment D.
11. It was noted that child attendance records identified the complainants’ children, [REDACTED] and [REDACTED] as being enrolled in the Preschool rooms during January 2022 – Specifically [REDACTED] in Preschool 1 and [REDACTED] being in Preschool 2 with staff member [REDACTED].

Law

12. Provisions of the *Law* relevant to the investigation are:

Section 165(1) of *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.

Reasons

13. After carefully considering evidence gathered throughout the investigation, the Authority finds contraventions of section 165(1), and engaging section 167(1) of the *Law* against the Provider have been substantiated in this instance, specific to 18 January 2022.
14. In relation to section 165 and 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider has not ensured adequate supervision at all times, which contributed in pre-schoolers being able to cut each other's hair unnoticed by educators on 18 January 2022.
15. Furthermore, the Authority is satisfied that the Provider, by not ensuring adequate supervision of pre-schoolers on 18 January 2022, has not ensured all reasonable precautions have been taken to protect children, from harm and hazard likely to cause injury, engaging the substantiated offence under section 167(1) of the *Law*.
16. The very nature of the incident, admissions within the Provider obtained incident accounts and advised of management of matter supports the contravention being determined.
17. In relation to section 169 of the *Law*, the Authority found evidence insufficient to meet the elements of this offence. However, it is noted that prescribed records were inaccurate in relation to educators signing in or out when WDWC – the Authority reminds the Provider of their obligation to ensure prescribed records are accurate in compliance with *Regulation 77*.
18. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps taken by the Provider to mitigate risk of a similar incident, the Authority has decided to issue this administrative action rather than statutory compliance actions.

19. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children at all times. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
20. This Decision will be recorded on the Service’s 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 associated *Regulations* be found.
21. Unless new relevant information is received the Authority determines this investigation closed.

Legislation

22. 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>.
23. 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>
24. If you have any questions in relation to this Decision, please contact me by email at Janine.fairburn@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Children’s Education and Care Assurance
Education and Care, Regulation and Support
ACT Education Directorate

11 March 2022