

[REDACTED]
Person with Management or Control
Wonderschool (Conder) Pty Ltd
RE: Wonderschool Conder

Email: [REDACTED]

Dear [REDACTED]

Decision to Issue Compliance Notice

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA). The Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law (ACT) (the Law)*, together with receiving and investigating complaints arising under the *Law*.
2. As you are aware, the Authority has recently assessed a notification of incident (NOT-40898824) relating to Wonderschool Conder SE-40018302 (the Service) operated by Wonderschool (Conder) Pty Ltd PR-40022037 (the Provider).
3. The notified incident advised that an agency educator had left six children outside from 12:36pm to 1:00pm on 4 September 2023.
4. The Authority is satisfied that the Provider was not complying with the provisions of the *Law* in respect to this matter. Web addresses to the *Law* and associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

5. On 5 September 2023, the Authority receive a notification of incident (NOT-40898824) from the Provider, advising that an agency educator had left six children outside unattended and unsupervised from 12:36pm to 1:00pm on 4 September 2023. Refer Attachment A.
6. On 7 September 2023, the Provider submitted additional information to the Authority including:
 - Working Directly with children records and children attendance records for the Service for 4 September 2023
 - A link to a copy of CCTV video footage relevant to notificationRefer copy of correspondence at Attachment B.
7. The CCTV footage clearly supported the incident occurring as described in the notification and identified the six children playing unsupervised for a length of time long enough for two children to have toileting accidents whilst outside, and also for two of the children to independently serve, and eat, leftover food that was sitting on a bench outside in open containers in the sun by educators.

Law

8. In relation to the non-compliance identified, the following provisions of the Law are engaged:

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.

Obligations upon Regulatory Authority, Providers and Services

9. 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*".
10. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific 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.*
11. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
- (c) *to monitor and enforce compliance with this law;*
12. 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*.
13. 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.
14. 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.

Decision

15. The Authority has considered all information supplied by the Provider and is satisfied that there is sufficient evidence to ground an offence under section 165(1) engaging 167(1) of the *Law*.
16. In relation to the substantiated offences under sections 165(1) and 167(1) of the *Law*, the Authority is satisfied, on the balance of probabilities that the Provider failed to ensure all children being educated and cared for by the Service were adequately supervised at all times that the children were in the care of the Service, in that six children were left outside unsupervised from 12:36pm to 1:00pm on 4 September 2023.
17. Furthermore, it is considered a reasonable precaution to ensure that staffing and supervision levels always meet the emotional, developmental, and physiological needs of children and educators alike. 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.
18. A Provider's obligations under sections 165(1) and 167(1) of the *Law* is positively and strongly framed – the Provider must always ensure adequate supervision, and 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 or illness. Provision of adequate supervision is viewed as a reasonable precaution to be taken to protect children from harm and hazard likely to cause injury or illness.
19. Considering the information submitted by the Provider, and the level of seriousness of the contravention, and the objectives and guiding principles of the *Law*, the Authority has decided that issuing a Compliance Notice is appropriate and in the best interests of children.
20. The Authority has also taken into consideration that people and entities that choose to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case the Provider chose and consented to participating in the education and care of children and has a responsibility to comply with the standard of care under the *Law*.
21. 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.

22. The Compliance Notice is provided as Attachment C to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions. You must produce evidence of the steps required by the times indicated for each step within the Notice at Attachment C.

Review Rights

23. A decision to issue a compliance notice and a decision to impose a condition on a service approval are **reviewable decisions** 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).

24. 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

25. The Education and Care Services National *Law* applies to you as an approved 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>.

26. 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>

27. Should you have any questions about this Decision or Compliance Notice please contact Authorised Officer Vittorio Colosimo via email at 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