

██████████
Person with Management or Control
The Trustee for Throsby Childcare Unit Trust
RE: 360 Early Education Throsby

Email: ██████████

Dear ██████████,

Decision to issue Administrative Action RE: NOT-00057737

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed a Notification of Incident (NOT-00057737) relating to 360 Early Education Throsby SE-40027925 (the Service) operated by The Trustee for Throsby Childcare Unit Trust PR-40024969 (the Provider).
2. The notification of incident advised that on 25 July 2024, ██████████ (3:0) was climbing on chair and fell, causing him to hit the back of his head on a table.
3. The Authority is satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the Law) in this instance. Web addresses to the Law and the associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 25 July 2024, a notification of incident (NOT-00057737) was submitted to the Authority by the Provider advising that on 25 July 2024, ██████████ was observed climbing from the chair onto a bench to reach for a stamp, an Educator witnessed this and tapped on a window, asking him to hop down. He then fell backwards, causing him to hit the back of his head on a table. Refer copy of the NOT-00057737 at Attachment A.
5. Additional information submitted with NOT-00057737 included the following:
 - Attendance record (Room: Throsby Centre);
 - Attendance record (Room: Frogs);
 - Attendance record (Room: Geckos);
 - Attendance record (Room: Crocs);
 - Attendance record (Room: Turtles);
 - Attendance record (Room: Joeys);
 - ██████████ – Incident report.

Refer to Attachment B.

6. NOT-00057737 further advised that steps taken by the Provider to prevent or minimise a similar incident included:
 - Explicit teaching around safe use of furniture in group time 25/07/2024, and ongoing.

- Table and chairs moved away from the sinks to reduce the temptation to climb.

Law

7. The Notification 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: \$11 400, in the case of an individual

\$57 400, in any other case.

Decision

8. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to support an offence under section 165 of the *Law* in this instance.
9. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure that all children were adequately supervised at all times while in the care of the Service on 25 July 2024.
10. The Authority is satisfied that the very nature of the matter notified, and additional information submitted by the Provider supports, on balance of probabilities, the offence being substantiated.
11. The Authority is satisfied that [REDACTED] was not adequately supervised or protected from harm, causing his injury via lack of physical intervention by educators responsible for his education and care at the time.
12. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children.
13. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the advised of steps taken by the Provider to mitigate risk of a similar occurrence, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliance.
14. This decision services to remind the Provider of their obligations and responsibilities under the *Law*, and to ensure that staffing and supervisory processes and educator practice is monitored regularly to ensure ongoing compliance with the *Law* and encourage continual improvements for outcomes for children.

15. 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.

Legislation

16. The *Law* applies to you as a provider and any service you operate. 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>. 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>.
1. Should you have any questions about this Decision please contact me at nicole.withers@act.gov.au.

Yours Sincerely,



Vittorio Colosimo
A/g Assistant Director Investigations
Regulation and Compliance
Education Directorate

2 September 2024