

██████████
Person with Management or Control
Insight Early Learning Throsby Pty Ltd
RE: Insight Early Learning Throsby

Email: ██████████

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 a complaint relating to the operation of Insight Early Learning Throsby SE-40016977 (the Service) operated by Insight Early Learning Throsby Pty Ltd PR-40020627 (the Provider).
2. The complaint related to failure to take reasonable precautions to protect children from harm and hazards, on 9 February 2021.
3. Web addresses for the *Education and Care Services National Law Act (ACT)* (the *Law*) and the *Education and Care Services National Regulations 2011* (the *Regulations*) are provided for your convenience at the end of this letter.

Background

4. On 12 February 2021, the Authority received a direct complaint that a child ██████████ (aged 19 months), had sustained a facial injury (bruising, swelling and potential fracture) on 9 February 2021 that was unwitnessed, did not appear to be appropriately managed, and had not been notified to the Authority.
5. Due to the risk occasioned to children when injuries are not appropriately managed, it was determined to investigate suspected offences of failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury, and failure to notify prescribed matters to the Authority.
6. Throughout the course of the investigation, the Authority obtained evidence from numerous sources, including documentation and witness statements obtained under section 215 of the *Law*, and voluntary witness statements.
7. Such evidence suggested four allegations that supported offences under the *Law* as follows:

- a. The first allegation was that, on 9 February 2021, the Provider failed to take reasonable precautions to protect children from harm and from hazards likely to cause injury in that [REDACTED], sustained an unwitnessed significant facial injury, no first aid treatment was given and contact not made promptly with parent/authorised nominee, in contravention of section 167(1) of the *Law*;
 - b. The second allegation was that the Provider failed to implement appropriate strategies to ensure that [REDACTED] was appropriately supervised and protected from harm, resulting in an unwitnessed significant facial injury, in contravention of section 167(1) of the *Law*;
 - c. The third allegation was that the Provider failed to notify the Regulatory Authority of a serious incident on 9 February 2021, a complaint that a serious injury occurred on 9 February 2021, and an outbreak of Hand Foot and Mouth at the Service, in contravention of section 174 of the *Law*.
 - d. It is alleged that the Provider failed to take reasonable steps to ensure that a prescribed record (being working directly with children records for 9 February 2021) was accurate, in contravention of Regulation 177(2).
8. On 17 June 2021, the Authority issued the Provider with a Show Cause Notice (SCN). Refer [Attachment A](#) for the SCN. Due to size, attachments to the SCN have not been included with this Administrative Letter.
 9. On 1 July 2021, the Authority received a response to the SCN from the Provider (SCN Response). Refer [Attachment B](#).

Reasons

Allegations One and Two – Protection from Harm and Hazards

10. With regards to the Allegations One and Two, the Authority has carefully considered all available evidence, including the submissions of the Provider in the SCN Response regarding witness evidence concerning the appearance of the injury at the time. The Provider also noted that additional work was required around mandatory reporting and noting injuries to children upon intake, having expressed concern regarding ongoing facial injuries sustained by [REDACTED]
11. It has been determined by the Authority that there is insufficient evidence to substantiate any offence under section 167(1) of the *Law* on the balance of probabilities.

Allegation Three – Failure to Notify

12. With regards to Allegation Three, the Authority has carefully considered all available evidence, including the Provider's response concerning the lack of information regarding medical

attention being sought, that the injury did not appear serious, and the misunderstanding regarding hand, foot and mouth. The Authority also notes the Provider's response that it will work on improving communication with parents to ensure continuity of care (and the Authority notes steps taken in that regard), and that it was not previously appreciated that hand, foot and mouth outbreaks were reportable.

13. It has been determined by the Authority that there is insufficient evidence to substantiate any offence under section 174 of the *Law*.

Allegation Four – Inaccurate Records

14. With regards to Allegation Four, the Provider has admitted that the working directly with children records produced under section 215 of the *Law* were inaccurate, noting that educators did at times fail to sign in and out, and that the Provider will work with the Nominated Supervisor of the Service to ensure stronger compliance and adherence to requirements. The Provider stated that it was an oversight when producing the records to the Authority and expressed remorse.
15. It has been determined by the Authority that an offence under Regulation 177(2) has been substantiated on the balance of probabilities.
16. The Authority notes the additional information produced by the Provider regarding a Corrective Action Plan being implemented, including the following focus areas:
 - a. Revisiting inductions
 - b. Updated playground risk assessment
 - c. Communication
 - d. Incident, injury, trauma, and illness procedures
 - e. Supervision and risk management
 - f. Review and update first aid policies
 - g. Revisiting safe hands training and mandatory reporting
 - h. Accuracy of prescribed records, including audits, reviewing, and performance management if continued issues.
17. The *Law* works to protect a particularly vulnerable part of 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*.
18. A key object 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.
19. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance, for example fines or compliance notices through to suspension of your

service approval and/or prosecution. Many of these options allow the Authority to publish details of your non-compliance.

Decision

20. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps taken in implementing the Corrective Action Plan, the Authority has decided to issue this Administrative Action rather than statutory compliance actions.
21. The Authority is satisfied that the steps taken by the Provider as outlined in the Corrective Action Plan will satisfy the Authority's expectations and no further action or documentation is required by the Authority.
22. However, the Authority takes the opportunity to encourage the Provider to reflect on the process of assessing readiness of children to move from infants' rooms to Gang Gangs room, given the risks associated with sharing a playground with children up to five years of age, with equipment that may not be appropriate for the physical capability of an 18- month- old child.
23. The substantiated breach of Regulation 177(2) has been recorded on your file and may be taken into account by the Authority when considering any further applications for service approvals in the ACT or in the event of further similar contraventions.

Legislation

24. 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>.
25. 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>
26. If you have any questions in relation to this letter, please contact Authorised Officer Tanya Masterman on (02) 6205 2012 or by email at tanya.masterman@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Education and Care Regulation and Support
ACT Education Directorate
9 August 2021.