



Mr [REDACTED]
Person with Management and Control
OSHCLUB PTY LTD
RE: Harrison OSHClub

Email: [REDACTED]@junioradventuresgroup.com.au
[REDACTED]@junioradventuresgroup.com.au

Dear Mr [REDACTED]

Decision to issue Administrative Letter RE: NOT-40470507

1. As you may be aware, Authorised Officers from Children's Education and Care Assurance, also known as the ACT Regulatory Authority (the Authority), recently assessed a Notification of Incident (NOT-40470507) advising that a child was missing/unaccounted for at Harrison OSHClub, SE-40013142, (the Service) operated by OSHCLUB PTY LTD, PR-40013142, (the Provider) on 9 September 2020.
2. The enquiries related to whether inadequate supervision contributed to the child being unaccounted for at the Service.
3. The Authority is satisfied that the Provider was not complying with the provisions of the *Education and Care Services National Law (ACT) (the Law)* in respect to operating and education and care service on 9 September 2020.
4. Web Addresses to *Law* and associated National Regulations are provided for your convenience at the end of this letter.

Facts

5. On 9 September 2020, the Authority received a Notification of Incident (NOT-40470507) from the Provider advising that an eight-year-old child, known to be [REDACTED] was able to leave the Service's premises unnoticed by educators. The notification advises that the child was missing and unaccounted for more than 10 minutes but less than 30 minutes. Refer Attachment A.
6. On 9 September 2020, the Authority requested further information from the Provider. This information was received on 11 September 2020. Refer Attachment B.

Law

7. Evidence submitted via the Notification of Incident and supporting documentation engages the following sections of the *Law* and the *Regulations*:

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.

Reasons

8. Having considered the evidence of the assessment and documents submitted by the Provider; the Authority is satisfied that the Provider has failed to comply with the *Law*.
9. The Authority is satisfied that, sections 165(1) and 167(1) of the *Law* were contravened on 9 September 2020. Sections 165 and 167 of the *Law* were engaged by documentation obtained from the Provider.
10. Information gathered engaged the obligation that the Provider must ensure that all children being educated and cared for by the service were adequately supervised at all times that the children are in the care of that Service, as required by section 165 of the *Law*.
11. Information gathered supports that the Provider, by not ensuring adequate supervision of children, has not appeared to ensure that every reasonable precaution was taken to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury, in contravention of section 167 of the *Law*.
12. The fact that [REDACTED] was able to leave the Service premises unnoticed by educators and go to Woolworths further supports the contraventions of sections 165 and 167 of the *Law*.
13. However, the Authority has acknowledged the communication strategies utilised by the Provider with educators and children on 9 and 10 September 2020 to mitigate the risk of a similar incident occurring.

Decision

14. 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. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue you this Administrative Letter.
15. 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 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.
16. In addition to the above, the Provider is requested to submit documentation and evidence to demonstrate that the Nominated Supervisor and all educators are aware of, and understand, the expectations and obligation to 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, for example, evidence of:

- (a) Evidence of reviewed supervision policies, practices and procedures in relation to the active supervision of children to mitigate risk of a child being unaccounted for or missing.
- (b) Evidence to support that the Nominated Supervisor and all educators are aware of, and understands, policies, procedures and practices relevant to supervision and guiding children's behaviour.
- (c) Evidence of contingency plans in place to mitigate risk of inadequate supervision as a result of high-risk environments and activities.

17. The required evidence should be submitted to the Authority by close of business 14 days from the date of receipt of this letter. Information can be sent by email to janine.fairburn@act.gov.au or by post to:

Janine Fairburn
Authorised Officer
Children's Education and Care Assurance
PO Box 158
CANBERRA ACT 2601

18. The *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>.

19. 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>

20. This Decision will be recorded on your Service 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 *Regulations* be found.

21. If you have any queries regarding this letter or if you require any information in order to understand your obligations under *the Law* and *Regulation*, please contact me on (02) 6205 4390 or alternatively at janine.fairburn@act.gov.au.

Yours sincerely A



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

30 September 2020