

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 Action RE: NOT-40519212

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-40519212) advising that an enrolled child of Harrison OSHClub SE-40013142 (the Service), operated by OSHCLUB PTY LTD PR-40004402 (the Provider), was missing and unaccounted for on 12 March 2021.
2. 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 this notification.
3. Web addresses to the *Law and Education and Care Services National Regulations (the Regulation)* are provided for your convenience at the end of this Decision

Facts

4. On 12 March 2021, the Authority received a Notification of Incident (NOT-40519212) and associated attachments from the Provider. This Notification reported that on 12 March 2021, a six-year-old child, known to be [REDACTED] left the Service unwitnessed by educators, and was located in a street adjacent to the Service by their parent. Refer NOT-40519212 at Attachment A.
5. On 17 and 22 March 2017, additional information was submitted by the Provider to the Authority. Additional information consisted of the following:
 - a) Records of Discussion between the parent and Harrison schoolteacher;
 - b) Educator statements/ accounts;
 - c) Incident report and reflection form;
 - d) Agenda, minutes, and attendance records for staff meeting conducted 17 March 2021.

Law

6. Evidence submitted via NOT-40519212 and supporting documentation engages the following sections 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.

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.

Reasons

7. Having considered all documents submitted by the Provider the Authority is satisfied that the Provider has failed to comply with the *Law*.
8. The Authority is satisfied that sections 165(1) and 167(1) of the *Law* were contravened on 12 March 2021. Sections 165 and 167 of the *Law* were engaged by documentation obtained from the Provider.
9. Information gathered supports that the Provider did not 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, in contravention of section 165 of the *Law*.
10. 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*.
11. The fact that [REDACTED] was able to leave the Service premises unnoticed by educators and was in a street adjacent to the Service when found by his father, without educators noticing that he was not present at the Service, further supports the contraventions of sections 165 and 167 of the *Law*.

Decision

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. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue you this Administrative Decision.
13. 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.
14. 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.

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

Authorised Officer, Janine Fairburn
Children's Education and Care Assurance (CECA)
ACT Education Directorate
PO Box 158, CANBERRA ACT 2601

16. The Authority acknowledges that a similar Administrative action was issued to the Provider on 30 September 2020, for a similar incident and substantiated offences. Please be aware that any further identified contraventions of section 165 of the *Law* will be addressed via stronger statutory action.

17. 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.

18. For your convenience, and to support future compliance, please find web addresses to relevant legislation:

The *Law* applies to you as an approved provider and any service that 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>

19. If you have any queries regarding this Decision, please contact me via email at janine.fairburn@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate
13 April 2021