

Ms [REDACTED]  
Person with Management or Control  
OSHCLUB PTY LTD  
RE: Harrison OSHClub

Email: [REDACTED]

Dear Ms [REDACTED]

### Decision to issue Administrative Action

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 investigated an allegation that an educator, known to be [REDACTED], inappropriately disciplined a child being educated and cared for on 28 June 2022 at Harrison OSHClub SE-40013142 (the Service) operated by OSHCLUB PTY LTD PR-40004402 (the Provider).
2. The Authority additionally investigated allegations that educators were not being inducted into the Service, resulting in a failing to take reasonable steps to protect children from harms and hazards likely to cause injury or illness.
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*) and the *Education and Care Services National Regulations (the Regulations)* in this instance. Web addresses to the *Law* and the *Regulations* are provided for your convenience at the end of this Decision.

### Facts

4. On 21 April 2023, the Authority sent the Provider a Show Cause Notice (The Notice) advising the Provider that the Authority had determined that there was sufficient evidence to support a case to answer for the Provider regarding suspected offences under the *Law*.
5. The Notice outlined the grounds for issue, relevant evidence supporting suspected contraventions of the *Law*, and potential compliance actions being considered if allegations were substantiated. Refer copy of Notice (minus attachments) at Attachment A.
6. On 05 May 2023, the Provider submitted a response via email. Refer copy of Response (minus attachments) at Attachment B.

## Law

7. Provisions of the *Law* relevant to the investigation are:

### **Section 166(1) of the *Law* – Offence to use inappropriate discipline**

The approved provider of an education and care service must ensure that no child being educated and cared for by the service is subjected to—

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

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**

8. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. 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; ...’*

9. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:

- (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.

10. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:

- (c) to monitor and enforce compliance with this *Law*;
- (d) to receive and investigate complaints arising under this *Law*.

11. 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*.

12. 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.

### **Decision**

13. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to ground an offence under section 167 of the *Law*.
14. In relation to section 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider failed to ensure all reasonable precautions were undertaken to protect children, by not ensuring that educators were properly inducted.
15. 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.
16. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the demonstrated steps taken by the Provider to mitigate risk of a similar incident, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliances.
17. In relation to substantiated breaches engage by the Provider under section 167 of the *Law*, the Authority requests the Provider to submit the following evidence to support risk mitigation actions have been undertaken:
  - a. Provide evidence that appropriate processes are in place to ensure lead coordinators are conducting their tasks appropriately.
18. Requested information outlined in paragraph 17 can be submitted to Authorised Officer Vittorio Colosimo at [Vittorio.Colosimo@act.gov.au](mailto:Vittorio.Colosimo@act.gov.au). The Authority requests this to occur within 14 days of receipt of this decision.
19. This Decision serves as a reminder that, as a Provider, it is imperative to ensure that nominated supervisors and educators, at all times, are aware of and understand the policies, procedures and expectations of the Provider, and the *National Law*, in relation to the operation of the Service, and in their roles of educating and caring for children.
20. 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

21. 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>.
22. Should you have any questions about this Decision please contact Authorised Officer Vittorio Colosimo at [Vittorio.Colosimo@act.gov.au](mailto:Vittorio.Colosimo@act.gov.au).

Yours Sincerely,



Jo Williams  
Director  
Children's Education and Care Assurance  
Education and Care Regulation and Support

21 June 2023