



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

Email: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance. As you are aware, the Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law (the Law)*. One of the Authority’s roles is to investigate suspected offences under the *Law*.
2. Authorised Officers are currently investigating an allegation that an educator, known to be [REDACTED], inappropriately disciplined a child being educated and cared for on 28 June 2022 by holding a child’s wrists tightly down on a table, restricting the child’s movement at Harrison OSHClub SE-40013142 (the Service) operated by OSHCLUB PTY LTD PR-40004402 (the Provider).
3. Authorised Officers are also currently investigating allegations that educators are not being inducted by the Service has failed to take reasonable steps to protect children from harms and hazards likely to cause injury or illness.
4. Web addresses to the *Law* and the *Education and Care Services National Regulations (the Regulations)* are provided for your convenience at the end of this notice.
5. Authorised Officers have now finished obtaining evidence (unless further lines of enquiry emerge) and the Authority has determined that the Provider has a case to answer regarding suspected offences. However, the Authority’s investigation is not complete until the Provider has had an opportunity to respond to the allegation/s and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
6. Detailed instructions of how to respond appear at the end of this Notice.
7. If substantiated, the allegation/s may constitute an offence under sections 166 and 167 of the *Law*. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, it will need to consider whether compliance action is required.

8. If any offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Further details regarding potential compliance actions appear at the end of this Notice.

Background

9. On 30 June 2022, the Authority received a notification from the Provider alleging that on 28 June 2022 an educator, known to be [REDACTED], held a child's wrists tightly down on a table, restricting the child's movement. Refer Attachment A for documentation relevant to the notification.
10. On 1 July 2022, the Authority received additional information from the Provider, including a notification of stand down issued to [REDACTED] dated 1 July 2022. Refer Attachment B.
11. On 13 July 2022, the Authority received three emails containing the Providers internal investigation. Refer Attachment C.
12. Due to the risk to children if inappropriately disciplined, the Authority determined to investigate the allegation.

Allegations – Section 166 and 167 of the *Law*

13. It is alleged that, on 28 June 2022, the Provider failed to ensure that no child being educated and cared for by the service is subjected to any discipline that was unreasonable in the circumstances in that a child, known as [REDACTED], was disciplined by way of holding of a wrist down on a table by Ms [REDACTED] in contravention of section 166(1) of the *Law*.
14. It is alleged that, by failing to ensure that no child being educated and cared for by the service is subjected to any discipline that was unreasonable in the circumstances on 28 June 2022, the Provider has failed to take reasonable steps to protect children from harms and hazards likely to cause injury or illness, in contravention of s167(1) of the *Law*.
15. It is alleged that, by failing to ensure that educators were properly inducted at the Service, the Provider has failed to take reasonable steps to protect children from harms and hazards likely to cause injury or illness, in contravention of s167(1) of the *Law*.

Legislation Relevant to Allegations

16. The following provision of the *Law* is relevant to Allegations One:

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.

Evidence Relevant to Allegations

17. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*.

18. Records produced by the Provider supported the following:

- a) The Service was operating on 28 June 2022;
- b) [REDACTED] was an educator at the Service and working directly with children on 28 June 2022;
- c) [REDACTED] was enrolled at the Service and signed into the Service on 28 June 2022;
- d) Staff induction of multiple educators but not all.

Refer evidence at Attachment D.

19. As part of the investigation, the Authority obtained statements from witnesses, relevant excerpts from which are included below. Please note that all witness statements were obtained exercising powers under section 215 of the *Law*. To clarify, all witnesses were compelled by notice to attend before Authorised Officers and provide evidence. Failure to comply is an offence under the *Law*, as is obstructing or hindering the Authority's investigation.

20. Relevant excerpts of Witness A's statement are as follows:

- a. [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

21. Relevant excerpts of Witness B's statement are as follows:

a. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22. Relevant extracts from Witness C's statement are:

a. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Contraventions Supported by Allegations

23. Evidence gathered appears to support contraventions of section 166(1) and 167(1) of the *Law*.

Potential Compliance Action

24. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions, if any offences are substantiated. Potential compliance actions include:

- a. Non-statutory Administration Action (similar to a caution) with no further action;
- b. Non-statutory Administrative Action with measures to be taken and evidence produced; or
- c. A Compliance Notice under section 177 of the *Law*; or
- d. Imposing of Conditions on the Service’s approval under section 51 of the *Law*.

25. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.

Right of response

26. As mentioned previously, this is the Provider's opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.

27. At Attachment E to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Please direct your written submission via email to Vittorio.Colosimo@act.gov.au or by post to:

Children's Education and Care Assurance
Attention: Vittorio Colosimo
GPO Box 158, Canberra ACT 2601.

Caution

28. I am informing you that the excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.

29. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.

30. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.

31. 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>.

32. 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>

33. Should you have any questions about this Show Cause Notice please contact Vittorio Colosimo on Vittorio.Colosimo@act.gov.au.

Yours Sincerely



Director
Early Childhood Policy and Regulation

21 April 2023