

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

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Action RE: NOT-40968736

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, assessed a Notification of Incident (NOT-40968736) relating to Harrison OSHClub SE-40013142 (the Service) operated by OSHCLUB PTY LTD PR-40004402 (the Provider).
2. The notification of incident advised that on 19 March 2024, [REDACTED] suffered a hot water burn sourced from an inadequately supervised boiling water tap, this cup was poured by Child A.
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) in this instance. Web addresses to the Law and the associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 20 March 2024, a notification of incident (NOT-40968736) was submitted to the Authority by the Provider advising that on 19 March 2024, two children, [REDACTED] (7yr old) and Child A were left alone in a kitchenette area. Whilst there, Child A was able to access a boiling hot water tap, obtained water and subsequently, accidentally poured boiling water onto [REDACTED] resulting in a hot water burn to her shoulder. Refer copy of the NOT-40968736 at Attachment A.
5. Additional information submitted with NOT-40968736 included the following:
 - Head Counts 19th of March;
 - Incident Report;
 - Supervision map;
 - Supervision plan; and
 - WDWC log 19 March.

Refer Attachment B.

6. Additional documents submitted by the Provider on 2 April 2024 in a response to Request for Information from the Authority, included the following:
- Photographs of the sink and tap relevant to the incident; and
 - A mud map indicating the location of staff in relation to the incident.

Refer Attachment C.

7. The Notification of Incident further advised that steps taken by the Provider to prevent or minimise a similar incident included:
- The roller door to the sink area has been shut and will not be opened until the hot water has been disconnected or turned off.
 - Request to school to disable the hot water in this sink.
 - The service supervision map and plan have been reviewed and updates will be made by the service to outline supervision of this and all areas of the service.
 - The service Risk management plan will be updated to reflect the risk of this situation and communicated to educators.
 - The team have been booked in for incident response training on 3rd April 2024.
 - Discussions with Child A and their parents have begun and will continue to support the child's understanding of the situation.

Law

8. The Notification engaged the following provisions 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.

Penalty: \$11 400, in the case of an individual
\$57 400, 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: \$11 400, in the case of an individual
\$57 400, in any other case.

Decision

9. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to support an offence under section 165 and section 167 of the *Law* in this instance.
10. In relation to section 165 and section 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure that all children were adequately supervised at all times, nor did they protect children from any harm or hazard, while in the care of the Service on 20 March 2024.
11. The Authority is satisfied that the very nature of the matter notified, and additional information submitted by the Provider supports, on balance of probabilities, the offence being substantiated.
12. The Authority is satisfied that ■■■ (Age 7) and Child A were not adequately supervised when they poured water from a kitchenette water tap, resulting in ■■■ being burned by boiling hot water. This water tap was missing a 'safety switch' function (child lock), which would be seen as a reasonable precaution to take to protect children from any harm or hazard. Adequate supervision is likely to have prevented this incident.
13. 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.
14. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the advised of steps taken by the Provider to mitigate risk of a similar occurrence, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliance.
15. This decision services to remind the Provider of their obligations and responsibilities under the *Law*, and to ensure that staffing and supervisory processes and educator practice is monitored regularly to ensure ongoing compliance with the *Law* and encourage continual improvements for outcomes for children.
16. 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.

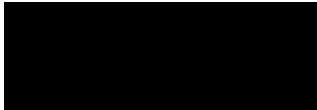
Legislation

17. 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>.

18. Should you have any questions about this Decision please contact me at nicole.withers@act.gov.au.

Yours Sincerely,



Nicole Withers
Team Leader Investigations
Regulation and Compliance
Education Directorate

2 August 2024