

Person with Management or Control
OSHCLUB PTY LTD
RE: St Peter and Paul OSHClub

Email: _____

Dear Mr _____

Decision to Issue Administrative Action RE: NOT-40795302

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed a Notification of Incident (NOT-40795302) relating to St Peter and Paul OSHClub SE-0009708 (the Service) operated by OSHCLUB PTY LTD - PR-40004402 (the Provider).
2. The notified incident advised that the Service did not maintain minimum regulated ratio levels between 3:20pm and 4:10pm as a casual staff member failed to attend their rostered shift and the service had to arrange for an alternate staff member to attend.
3. The Authority is satisfied that the Provider has not complied with provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) in this instance. Web addresses for the *Law* and the *Regulations* are provided for your convenience at the end of this decision.

Facts

4. On 18 November 2022, the Authority received a Notification of Incident (NOT-40795302) from the Provider advising that, on 18 November 2022, the Service did not maintain minimum regulated ratio levels between 3:20pm to 4:10pm. Specifically from 3:20pm the Service did not meet ratio levels by having 32 children over preschool age, with only 2 staff members present. Refer NOT-40795302 at Attachment A.

Law

5. Provisions of the *Law* relevant to the notification assessment are:

Section 169(1) of the Law – offence relating to staffing arrangements

An approved provider of an education and care service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Reasons

6. Upon considering all evidence for assessment, inclusive of Provider supplied information, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under section 169 of the *Law* in this instance.
7. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the 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.
8. This Decision is intended to bring to your attention the need to ensure that the Provider meets its obligations under the *Law*, in particular the obligation that minimum regulated ratio levels are met at all times to ensure every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury.
9. 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

10. 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>.
11. 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>
12. If you have any questions in relation to this Decision, please contact me by email at Vittorio.Colosimo@act.gov.au.

Yours sincerely



Vittorio Colosimo
A/g Assistant Director
Children's Education and Care Assurance
Education and Care, Regulation and Support
ACT Education Directorate

13 December 2022