

Ms [REDACTED]
Person with Management or Control
OSHCLUB PTY LTD
RE: St John the Apostle OSHClub

Email: [REDACTED]
[REDACTED]

Dear Ms [REDACTED]

Decision to Issue Administrative Action RE: NOT-40823244

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-40823244) relating to St John the Apostle OSHClub SE-40008497 (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 on 14 February 2023.
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 14 February 2023, the Authority received a Notification of Incident (NOT-40823244) from the Provider advising that, on 14 February 2023, the Service did not maintain minimum regulated ratio levels during the afternoon session. Refer copy of notification at Attachment A.
5. On 15 February 2023, additional information, by way of the Service roster and the sign in and out report for 14 February 2023 was forwarded to the Authority, supporting that 47 children were in attendance on the day with only four educators working directly with the children. Refer correspondence at Attachment B.

Law

6. 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

7. 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.
8. 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.
9. 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 to ensure minimum regulated ratio levels are always met. Meeting this requirement is viewed as a reasonable precaution to undertake to ensure every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury.
10. The Provider is expected to have contingency plans in place to ensure ratio requirements are always met – this could include rostering additional staff on above minimum regulated ratio levels or lowering the number of children accepted on any day that the staffing arrangements will not support minimum requirements being met.
11. 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

12. 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>

13. If you have any questions in relation to this Decision, please contact me by email at janine.fairburn@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care, Regulation and Support

10 March 2023