

[REDACTED]
Person with Management or Control

OSHCLUB PTY LTD

RE: St Peter and Paul OSHClub

Email: [REDACTED]

Dear [REDACTED],

Show Cause Notice – Potential 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 (ACT) (the Law)*.
2. Web addresses to the *Law* and the *Education and Care Services National Regulations 2011 (the Regulation)* are provided for your convenience at the end of this notice.
3. The Authority has recently assessed submitted Notifications of Incident and Complaint relating to the operation of St Peter and Paul OSHClub SE-00009708 (the Service) operated by The OSHCLUB PTY LTD PR-40004402 (the Provider).
4. Assessment of NOT-40951379 and NOT-40952013 have raised suspected offences relating to an alleged failure by the Provider to ensure adequate supervision of a child, and an alleged failure to ensure reasonable precautions were taken to protect this child from harms and hazards as required by the *Law*.
5. The Authority has determined that the information submitted by the Provider via NOT-40951379 and NOT-40952013 constitutes sufficient evidence to support a case to answer regarding the suspected offences under the *Law*.
6. However, in the interests of procedural fairness and natural justice, until the Provider has had an opportunity to respond to the allegations and relevant evidence, the Authority's assessment of the notifications is not complete. This is the reason for sending this Show Cause Notice (Notice) to you as a delegated Person with Management or Control of the Provider.

7. Detailed instructions of how to respond appear at the end of this Notice.
8. If substantiated, the allegations may constitute offences under sections 165(1) and 167(1) of the *Law* (or any combination of them). 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.
9. Where any offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action with the focus being on ensuring future compliance and improved outcomes for children, rather than punishment.
10. Potential compliance actions that may be considered in this instance appear at the end of this Notice.

Grounds for issuing Show Cause Notice

11. The evidence obtained during the investigation to date supports offences under the *Law* relating to the following areas: Adequate supervision and Protection of children from harms and hazards.

Facts

12. On 6 February 2024, the Authority received notified complaint NOT-40951379, from the Provider, advising that a child, [REDACTED] ([REDACTED]) was left unattended and unaccounted for in the carpark of the Service between 3.10pm and 3.30pm on 1 February 2023. Refer notification and additional documents at Attachment A – NOT 40951379.
13. On 9 February 2024, the Authority received notified incident NOT-40952013 from the Provider regarding a complaint made by the Principal of St Peter and Paul (in addition to the above notification) advising that a child was booked into the Service and not accounted for at pick-up on 1 February 2024.
14. Accompanying the notification was:
 - a) A copy of the Provider's Investigation Summary
 - b) Incident Response Non-Arrival and Missing Children Runsheet;
 - c) Incident Response Delivery and collection of Children Runsheet;

- d) A Responsible Person Record for the period 29/01/2024 and 05/02/2024;
- e) Training Attendance Form.

Refer notification and additional documents at Attachment B – NOT -40952013

- 15. It was determined by the Authority that there are reasonable grounds to suspect that offences have, or may have, occurred at Service engaging section 165(1) and 167(1) of the *Law*.

Allegation

- 16. The following allegations engaging the *Law* is raised by evidence obtained via the assessment process:

Allegations

It is alleged that on 1 February 2024, inadequate supervision resulted in a child, believed to be [REDACTED], being left unattended and unaccounted for between 3.10pm and 3.30pm after he did not transition to the Service as per his booking, engaging a contravention of section 165(1) of the *Law*.

It is alleged, that by not ensuring that policies and procedures were being followed by staff or that booking system correctly identified all kindy children booked in, the Provider has not ensured reasonable steps were undertaken to protect a child, believed to be [REDACTED], from harm and hazards likely to cause injury, engaging a contravention of section 167(1) of the *Law*.

Legislation Relevant to the Allegation

- 17. The following provisions of the *Law* are relevant to the allegation:

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: \$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

18. Evidence supporting the allegations is at Attachments A and B of this notice.
19. Relevant excerpts from Provider's Investigation Summary include:
 - a) █████ reported that during the kindergarten pickup, it was noticed that █████ was not on the printed kindy list for the Outside School Hours Care (OSHC) program.
 - b) At approximately 3:30 PM on the same day, a friend of █████ mother dropped off █████ at the OSH Club, stating that he was supposed to be booked in and was waiting at the school pickup area.
 - c) █████'s parents were contacted by the family friends before being brought to OSHClub. Shortly after arriving to OSH, both █████ parents arrived to pick him up.
 - d) At approximately 3pm, █████ (educator) collected the kindy children, using a printed list generated at 11am of the kindy tagged children. Allegedly a schoolteacher asked if █████ was booked in, █████ responded no as they were not on her roll.
 - e) █████'s parents were contacted by their family friends. The service did not contact █████'s guardians. At approximately 3:30pm, █████ was seen at the parent car pick up with teachers on duty by a family friend who brought █████ to OSHClub.
 - f) Coordinator claims they created a booking for █████ at this time. █████ was collected approximately 20 minutes later (approx. 3:55pm) by both of his parents. █████'s parents were very upset upon collection, reportedly acting abusive toward the education team.
 - g) The parents raised concern over █████ not being collected and provided screenshots showing the booking was created and deleted. The coordinator claimed there was no booking.
 - h) █████ asked the Senior Coordinator to engage in a investigation. Upon investigation the below was found:

Coordinator claims █████ was never on the role on the 01.02.2024, our systems show the booking for █████ was created on the 17.01.2024 Our records show that █████ was signed in at 3:35 by coordinator. No sign out time is shown. Booking was deleted at 4:43pm. The coordinator states they are unsure how this occurred. Our systems show the booking was deleted by the St Peter and Paul Service Coordinator login.

- i) *Through investigation it is determined the root cause was [REDACTED] not having a Kindy tag on his kidsoft account, causing the collecting educator to be unaware he was booked in. The service Coordinator failed to follow delivery and collection, and Absent and Missing Children policy and procedures.*

Contraventions supported by evidence.

32. Evidence gathered appears to support that inadequate supervision resulted in a child, believed to be [REDACTED], being left unattended and unaccounted for between 3.10pm and 3.30pm after he did not transition to the Service as per his booking, engaging a contravention of section 165(1) of the *Law*.
33. Evidence gathered appears to support that that by not ensuring that policies and procedures were being followed by staff or that booking system correctly identified all kindy children booked in, the Provider has not ensured reasonable steps were undertaken to protect a child, believed to be [REDACTED], from harm and hazards likely to cause injury, engaging a contravention of section 167(1) of the *Law*.

Potential Compliance Action

34. 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 the offence is 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*, if the Authority is satisfied that the Service is not complying with the *Law*.
- d. Imposing of Conditions on the Service's approval under section 51 of the *Law*.
- e. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.

f. Cancellation of the service approval under section 79 of the *Law*.

35. 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.
36. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.

Right of response

37. As mentioned previously, this notice is your 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.
38. At Attachment C 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 nicole.withers@act.gov.au or by post to:

Children's Education and Care Assurance (CECA)
Education Directorate
Attention: Nicole Withers
GPO Box 158, Canberra ACT 2601.

Caution

39. 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.
40. 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>.
41. 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>

42. Should you have any questions about this Show Cause Notice please contact me via email at nicole.withers@act.gov.au

Yours sincerely



Nicole Withers
Senior Investigator A/g Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support

28 February 2024