

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

Email:

Dear ,

Decision to issue Administrative Action

1. As you are aware, the ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance, investigated suspected offences relating to the operation of St Peter and Paul OSHClub SE-00009708 (the Service) operated by The OSHCLUB PTY LTD PR-40004402 (the Provider).
2. 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 decision.

Facts

3. On 6 and 9 February 2024, the Authority received two notifications of incident (NOT- 40951379 and NOT-40952013 relating to the operation of the Service. Both notifications were assessed by the Authority, and it was determined by the Authority, that there were reasonable grounds to suspect that offences have, or may have, occurred at Service engaging section 165(1) and 167(1) of the Law.
4. On 28 February 2024, the Authority sent the Provider a Show Cause Notice (the Notice) for the purpose of affording opportunity to respond to the allegation and to ensure procedural fairness. Refer copy of the Notice (minus attachments due to size, noting these can be provided to you again upon request) at Attachment A.
5. The Notice outlined the grounds for issue, and the evidence relied on by the Authority advising of the allegations. In addition, the Notice outlined the compliance actions being considered by the Authority should the allegation be substantiated.

Allegations

6. The allegations were noted as follows:

Allegation One

It is alleged that on 1 February 2024, inadequate supervision resulted in a child, believed to be 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.

Allegation Two

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*.

7. On 13 March 2024, the Authority received the Providers response to the Notice along with supportive documentation (Attachments A through K). Refer to a copy of the response (minus attachments due to size which can be provided again upon request) at Attachment B.

Law

8. 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: \$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.

Obligations upon Regulatory Authority

9. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. Relevant to this decision is the objective at section 3(2)(a), namely
*'To ensure the safety, health and wellbeing of children attending education and care services;
...'*
10. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:
 - (a) that the rights and best interests of the child are paramount; ...
 - (f) that best practice is expected in the provision of education and care services.
11. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
 - (c) to monitor and enforce compliance with this *Law*;
 - (d) to receive and investigate complaints arising under this *Law*.
12. The *Law* works to protect a particularly vulnerable part of our society — children — when they are in the care of people other than their parents or guardians. The *Law* authorises providers and

services to participate in a regulated environment and requires those participants to comply with the *Law*.

13. A key object of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.

Decision

14. After careful consideration of the Providers response and all available evidence, the Authority is satisfied that, on the balance of probabilities, there is insufficient evidence to substantiate a contravention of section 165(1) of the *Law* against the Provider in this instance.
15. However, the Authority is satisfied, on balance of probabilities, that there is sufficient evidence to support substantiation of section 167(1) of the *Law*.
16. Regarding Allegation One, the Authority is satisfied that the evidence did not weight sufficiently to the elements of the offences to support substantiating a case of inadequate supervision occurring.
17. When coming to this decision, the Authority acknowledged that the child had not actually been signed into the Service, however the Authority disagrees with the argument by the Provider that the child was supervised by teachers from school at all times which mitigates the offence, as it was more by luck then by design that the teachers remained with the child and subsequently took the child to the service after 30min.
18. Regarding Allegation Two, the Authority is satisfied, in this instance, that the Provider failed in ensuring that policies and procedures were being followed by staff or that booking systems correctly identified all kindy children booked in. The Authority is satisfied that 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, the Provider contravened section 167(1) of the *Law*.
19. The Provider's admissions in relation to Allegation Two, via the Provider's Investigation Summary that the Provider determined the root cause of the incident was [REDACTED] not having a Kindy tag on his kidsoft account, causing the collecting educator to be unaware he was booked in, and that the service Coordinator failed to follow delivery and collection, and Absent and Missing Children policy and procedures further supports the breach.
20. The Authority acknowledges evidence submitted by the Provider, in response to the Notice, that demonstrates numerous actions subsequently taken by the Provider to improve compliance at the Service and mitigate risk of similar non-compliance moving forward.
21. 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.

22. In consideration of all relevant information, and actions already undertaken by the Provider to mitigate risk of similar incidents occurring the Authority has determined not to initiate statutory compliance action regarding the substantiated breaches of the Law and Regulations, but rather issue this Administrative Decision to address the non-compliances.
23. The Authority strongly encourages the Provider to review current transition processes with consideration and communication with the school to further support quality and safe transitions of children between the School and the Service.
24. This Decision will be recorded on your Service file and may also 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 Regulations be found.
25. If you have any questions relating to this letter, please contact Authorised Officer Nicole Withers by way of email at nicole.withers@act.gov.au.

Yours sincerely



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

11 April 2024