

Ms [REDACTED]
Nominated Supervisor
Harrison OSHClub

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Formal Caution

1. As you are aware, the ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance (CECA), investigated suspected offences relating to an educator, known to be [REDACTED] inappropriately disciplining a child being educated and cared for on 28 June 2022, Harrison OSHClub SE-40013142 (the Service) operated by OSHCLUB PTY LTD PR-40004402 (the Provider).
2. The Authority is satisfied that you, whilst in the capacity as the Nominated Supervisor of the Service, have contravened provisions of the *Education and Care Services National Law (ACT)* (the Law).
3. 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

4. On 30 June 2022, the Authority received a notification from the Provider alleging that on 28 June 2022 an educator, known to be [REDACTED], held a child's wrists tightly down on a table, restricting the child's movement.
5. Due to the risk of harm and hazards to children, likely to cause injury resulting from inappropriate discipline, the Authority determined to investigate.
6. On 21 April 2023, because of evidence gathered throughout the investigation that supported contraventions of the Law, the Authority sent you a Show Cause Notice (SCN). Refer copy of the Notice (minus attachments) at Attachment A.
7. The SCN outlined the grounds for issue, and the evidence relied on by the Authority supporting the allegation that, you, in the capacity of Nominated Supervisor, contravened section 166(2) of the *Law*, giving rise to a contravention of Section 167(2) of said *Law*.
8. In addition, the SCN outlined the compliance actions being considered by the Authority should the allegation be substantiated.

9. On 10 May 2023 you emailed the Authority your response to the SCN. Refer copy of response at Attachment B.

Allegations

10. It is alleged that, on 28 June 2022, you, as the Nominated Supervisor, failed to ensure that no child being educated and cared for by the service is subjected to any discipline that was unreasonable in the circumstances in that a child, known as [REDACTED], was disciplined by way of holding of a wrist down on a table by [REDACTED] in contravention of section 166(2) of the *Law*.
11. It is alleged that, by failing to ensure that no child being educated and cared for by the service is subjected to any discipline that was unreasonable in the circumstances on 28 June 2022, you, as the Nominated Supervisor, has failed to take reasonable steps to protect children from harms and hazards likely to cause injury or illness, in contravention of s167(2) of the *Law*.
12. It is alleged that, by failing to ensure that educators were properly inducted at the Service, you, as the Nominated Supervisor, has failed to take reasonable steps to protect children from harms and hazards likely to cause injury or illness, in contravention of s167(2) of the *Law*.

Law

13. The following provisions of the Law were engaged by the investigation and Decision.

Section 166(2) of the *Law* – Offence to use inappropriate discipline

A nominated supervisor of an education and care service must ensure that no child being educated and cared for by the service is subjected to -

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards

A nominated supervisor 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.

Evidence and Submission

14. The Authority's records indicated that you were the nominated supervisor of the Service at the relevant time.
15. Evidence gathered relevant to the allegation consisted of:
- a. prescribed records furnished by the Provider pursuant to a notice issued under section 215 of the *Law*.
 - b. Witness statements obtain under section 215 of the *Law*.

16. In your written response, you advised that on the 28 June 2023 you were undertaking a mandatory seven-day isolation period due to testing positive to COVID 19.
17. You did not deny or provide an admission to the allegations put forward to yourself but provided information to the circumstance around the allegation. The information provided did not demonstrate what measures you put in place as Nominated Supervisor to ensure the incident would not occur, but rather the information provided was by way of mitigation and explanation.
18. Under section 167(2) of the *Law*, it is a nominated supervisor's responsibility to ensure that every possible precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.
19. Ensuring educators have been properly inducted and are aware of the policies and procedures of the Service is a reasonable precaution to protect children from harm and from hazards likely to cause injury, engaging an offence under section 167(2).
20. It is imperative that any person working in the early education and care sector, who accept the responsibilities of a nominated supervisor, are fully aware of their responsibilities and obligations, regardless of performing other roles, duties or when absent from the Service.

Obligations upon Regulatory Authority

21. 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; ...'
22. 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.
23. 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.
24. 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*.

25. 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

26. After careful consideration of your response and all available evidence, the Authority is satisfied that, on the balance of probabilities, there is sufficient evidence to substantiate a contravention of section 167(2) of the *Law* namely-

- a. Failing to take every reasonable precaution to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury on, in contravention of section 167(2) of the *Law*.

27. Considering the evidence, the objectives and guiding principles of the *Law*, the fact that you have no previous compliance history, and your immediate actions taken to mitigate risk of re-occurrence of the incident, the Authority has decided to issue this Caution rather than statutory compliance action.

28. This Decision serves a reminder to you as a Nominated Supervisor of your obligations under the *Law* to ensure that all reasonable precautions are taken to ensure no child is subjected to inappropriate discipline when being educated and cared for.

29. As a Nominated Supervisor, it is imperative to ensure that educators, at all times, are aware of and understand the policies, procedures and expectations of yourself and the Provider in relation to how they interact with children, and in their roles of educating and caring for children.

30. Details of this decision will be recorded and may be considered should any further similar non-compliances be identified moving forward regarding your role as a Nominated Supervisor.

Legislation

31. 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>.

32. 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>

33. If you have any questions relating to this letter, please contact Senior investigator Vittorio Colosimo by way of email at Vittorio.Colosimo@act.gov.au.

Yours sincerely



Jo Williams
Director
Children's Education and Care Assurance
Education and Care Regulation and Support

21 June 2023