

Ms [REDACTED]
Person with Management or Control,
OSHCLUB PTY LTD.
Re: Nicholls OSHCLUB

By email to [REDACTED]

Dear Ms [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 may be aware, the Authority is the regulator of education and care services in the ACT and is responsible for monitoring and enforcing compliance with the *Education and Care Services National Law (ACT)* (the Law). One of the Authority’s roles is to investigate suspected offences under the Law.
2. Authorised Officers are currently investigating multiple allegations regarding failing to notify the Authority certain information, supervision issues and protecting children from hazards and harms, involving children, [REDACTED] (7.8) and [REDACTED] (7.2), while attending Nicholls OSHCLUB, SE-00009722 (the Service) operated by OSHCLUB PTY LTD, PR-40004402 (the Provider).
3. Web addresses to the *Education and Care Services National Law (ACT)* (the Law), and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.
4. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge). However, the Authority’s investigation is not complete until you have had an opportunity to respond to the allegation and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
5. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the alleged conduct may constitute inadequate supervision, which is an offence under section 165(1), giving rise to section 167(1) of the Law, ensuring that every reasonable precaution is taken to protect children from harm and from any hazard likely to cause injury.
7. If, after considering all available evidence, the Authority finds an offence has occurred, it will need to consider whether compliance action is required. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Details relating to possible compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

8. The evidence obtained during the investigation to date supports offences under the *Law* within the following area:
 - a) Ensuring that all children being educated and cared for by the service are adequately supervised at all times.
 - b) Precautions reasonably taken to protect children from harms and hazards likely to cause injury or illness.
 - c) Notifying the Regulatory Authority of certain information.

Background

9. In September 2024, the Authority received a direct complaint stating a child, [REDACTED], had run out of the Service after becoming heightened. A parent located [REDACTED] in the carpark of the Service, stating he was hysterical and unattended.
10. In September 2024, the Authority received a direct complaint stating a child, [REDACTED], had been subject to numerous assaults from her peers while attending the Service.
11. Due to the risk of harm to children when subjected inadequately supervised, the Authority determined to investigate the matter.
12. On 9 December 2024, the Provider furnished documents to the Authority pursuant to section 215 of the *Law*.

Allegations of non-compliance

13. **Allegation one** - About 1:59pm, 17 June 2024, [REDACTED], was placed in a headlock and tackled to the ground by a peer, causing her to feel unsafe.
14. **Allegation two** - About 7:51am, 6 August 2024, [REDACTED], was handcuffed to another child by a peer, causing her to injure her wrist.
15. **Allegation three** - About 8:12am, 10 September 2024, [REDACTED], was hit over the head with a metal "toy" cooking pan by a peer.
16. **Allegation four** - Sometime during August 2024, [REDACTED], was located unattended in the Service carpark.
17. **Allegation five** – Checks conducted via the National Quality Agenda IT System (NQAITS), revealed the Provider had not made notification of complaint to the Authority in relation to a parent complaint to the Service, as required by Section 174(2)(b)(i) of the *Law*.

18. **Allegation Six** – On 25 September 2024, the Provider failed to notify the Authority that the Service was placed in lockdown for undisclosed reasons, as required by Section 174(2)(a) of the *Law*.

Legislation Relevant to Allegations

19. The following provision of the *Law* is 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 cared 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.

Section 174 of the Law - Offence to fail to notify certain information to Regulatory Authority.

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—
- (b) any complaints alleging—
 - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
 - (ii) that this Law has been contravened.

Penalty: \$4500, in the case of an individual.
 \$22 900, in any other case.

Evidence relevant to the Allegations

20. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Records produced by the Provider supported the following:
- a. The Service was operating between June 2024 and September 2024.

- b. Incident reports ██████████ attended the Service between June 2024 and September 2024.

Refer Attachment A – ██████████ Incident Reports.

- c. Child attendance records show that both ██████████ and ██████████ both attended the Service between June 2024 and September 2024.

Refer Attachment B – CAR.

- d. Relevant excerpts from the Junior Adventurers Group (OSHCLUB) “Incident Management Procedure” are.

- i. Junior Adventures Group is committed to providing a safe and positive environment in which children and young people can participate in a broad range of experiences and learning opportunities. To facilitate this, all employees have a duty of care to identify, respond and manage the instance of an incident, injury, trauma, or illness.
- ii. Contact parents to inform of the incident. Provide Health and wellbeing check with the child’s family within 48 hrs if child has not returned to care. Inform your Regional Manager / Service Manager of all serious/reportable incidents.
- iii. 4.2. Regulatory Authority Notification 1. Notification within 24 hours of incident or complaint;
 - (a) Log into NQAITS and complete the relevant online Form. Attach any relevant supporting documents as provided by the Service Leader
 - (b) Submit the draft of relevant form to the Regional Director for review.
 - (c) Submit the completed form on NQAITS within 24 hours of the issue being raised.
 - (d) Attach the completed form to the relevant open complaint or incident on the Complaints Register and log the date of submission.
- iv. Incidents Notifiable to the Regulatory Authority.
 - (a) Any incidents that seriously compromise the safety, health or wellbeing of children are notifiable to the Regulatory Authority.
 - (b) An Approved Provider must notify the Regulatory Authority of:
 - any serious incident
 - any complaints alleging
 - that a serious incident has occurred or is occurring
 - that this law has been contravened
 - information regarding any other prescribed matters

Refer Attachment C – Incident Management Procedure

[REDACTED]

24. Relevant excerpts from Witness C's statement are:

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

Contravention Supported by Evidence

- 25. Evidence gathered via the initial assessment of direct complaint and subsequent regulatory investigation appears to support contraventions of section 165(1), 167(1) and 174 of the *Law*.

Potential Compliance Actions

- 26. 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 any offences are 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*; or
- 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*.

Right of response

- 27. As mentioned previously, this is the Provider's 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.
- 28. The Authority is aware that the Provider no longer operates Nicholls OSHCLUB but notes that allegations occurred while the Provider was operating the Service.
- 29. At Attachment E 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 Jarrod.Reid@act.gov.au or by post to:

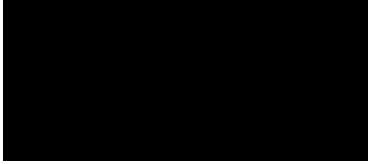
Jarrold REID
 Children's Education and Care Assurance
 Attention: Jarrold REID
 GPO Box 158, Canberra ACT 2601.

Caution

- 30. I am informing you that the excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.
- 31. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
- 32. 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.
- 33. 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>.
- 34. 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>

35. Should you have any questions about this Show Cause Notice please contact Authorised Officer Jarrod REID at Jarrod.Reid@act.gov.au.

Yours sincerely,



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

24 March 2025