



[REDACTED]

Person with Management or Control

OSHCLUB PTY LTD

RE: St John the Apostle OSHCLUB

Email: [REDACTED]

Dear [REDACTED],

Show Cause Notice – Proposed Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA).
2. As you may be 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* (the *Law*). One of the Authority's roles is to investigate suspected offences under the *Law*.
3. The Authority is currently investigating multiple suspected offences at St John the Apostle OSHClub - SE-40008497 (the Service) operated by OSHCLUB PTY LTD – PR-40004402 (the Provider). 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 notice.
4. Authorised Officers have obtained evidence from other sources and the Authority has determined that the Provider has a case to answer regarding suspected offences. However, the Authority's investigation is not complete until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
5. If substantiated, the allegations may constitute offences under sections 166 and 167 of the *Law*. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities (or any combination of them) it will need to consider whether compliance action is required.
6. Where offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Further details regarding potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

7. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas: Inappropriate discipline and Protection of children from harm and hazards.

Facts

1. On 29 January 2024, the ACT Regulatory Authority (the Authority) received a notification alleging an educator, being [REDACTED], shouted at and pushed a child, believed to be [REDACTED] 11, on 25 January 2024.
Refer Attachment A
2. Due to the risk of harms and hazards likely to cause injury if children are inappropriately disciplined, the Authority determined to investigate the matter, which engaged suspected offences under section 166 and section 167 of the *Law*.

Allegations

Allegation One

3. It is alleged that on 25 January 2024, the Provider failed to ensure that no child being educated and cared for by the Service, was subjected to any form of corporal punishment, in that, a child believed to be [REDACTED] (11) was forcefully pushed and shouted at by an educator, contravening section 166(1) of the *Law*.

Allegation Two

4. It is alleged that on 25 January 2024, the Provider failed to ensure that every reasonable precaution was taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury, contravening 167(1) of the *Law*.

Legislation Relevant to the Allegations

5. The following provisions of the *Law* are relevant to the Allegation:

Section 166(1) of the Law - Offence to use inappropriate discipline

The Approved Provider of an education and care service must ensure that no child being educated and cared for by a service is subjected to-

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

Penalty: \$11 400, in the case of an individual

\$57 400, in any other case.

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Contraventions Support Allegations

24. Evidence gathered appears to support that on 25 January 2024 [REDACTED] was subjected to corporal punishment, in that he was pushed and shouted at by an educator due to his behaviour, contravening section 166(1) of the *Law*.
25. Evidence gathered appears to support that on 25 January 2024 the Provider failed to take every reasonable precaution to protect children being educated for by the service from harm and hazard, in that a child was pushed and yelled by an educator and while displaying heightened behaviour grabbed a knife and yelled at other children, contravening section 167(1) of the *Law*.

Potential Compliance Action

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 an 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*.
27. 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.
28. 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

29. 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.
30. At Attachment D 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 declan.barbagallo@act.gov.au or by post to:

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

Caution

31. 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*.
32. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.

33. 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.
34. 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>.
35. 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>
36. Should you have any questions about this Show Cause Notice please contact Declan Barbagallo on declan.barbagallo@act.gov.au.

Yours sincerely,



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

20 February 2025.