

Ms [REDACTED]
Person in Control and Management
The Young Women's Christian Association of Canberra Ltd
RE: YWCA Richardson School Age Care

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative action

1. As you are aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated suspected offences at YWCA Richardson School Age Care SE-40009747 (the Service) operated by The Young Women's Christian Association of Canberra PR-00005876) (the Provider).
2. The Authority determined that there was sufficient evidence to support a case to answer for the Provider regarding suspected offences under the *Law*. However, the Authority's final determinations was not made until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority. This is the reason a Show Cause Notice (Notice) was sent to the Provider.
3. I am satisfied that the Provider was not complying with the provisions of the *Education and Care Services National Law (ACT) Act 2011* (the *Law*) and the *Education and Care Services National Regulations* (the *Regulations*).
4. Web addresses to the *Law* and the *Regulations* are provided for your convenience at the end of this notice.

Facts

5. On 12 September 2022, the Authority issued the Provider a Show Cause Notice (the Notice). Refer copy of the Notice (minus attachments due to size) at Attachment A. Please note that attachments can be provided again upon request.
6. The Notice outlined the grounds for issue, relevant evidence and raised the following allegations for response:

Allegation One

It is alleged that, on 30 June 2022, the Provider failed to ensure that all children were adequately supervised at all times, in that a child, believed to be [REDACTED], suffered significant abrasions to his back as a result of an unchallenged game, contravening section 165(1) of the *Law* and giving rise to a contravention of section 167(1) of the *Law*.

Allegation Two

It is alleged that by 4 July 2022, the Provider failed to notify the Authority within 24 hours of a received complaint that the *Law* had been contravened, in that, a complaint was received by the Provider alleging inadequate supervision, contravening section 174(2)(b) of the *Law*.

Allegation Three

It is alleged that, on 30 June 2022, the Provider failed to ensure that unauthorised persons did not remain on the Service premises while children were being educated and cared for, contravening section 170(2) of the *Law*.

Allegation Four

It is alleged that, that between 20 June 2022 and 1 July 2022 inclusive, the Provider failed to take reasonable steps to ensure the responsible person in day-to-day charge had adequate qualifications, knowledge, understanding and ability to effectively protect children from harm and hazard likely to cause injury through the supervision and management an education and care service, contravening section 167(1) of the *Law*.

7. A response to the Notice from the Provider was received on 4 October 2022. Refer copy of the Provider's response (minus attached supportive documentation due to size) at Attachment B. Please note that attachments can be provided again upon request.
8. The Authority acknowledges the following supportive evidence was submitted by the Provider with the response:
 - a) Statement of Attainment First Aid – [REDACTED] date of issue 31 Aug 2022; and
 - b) Four images of a carpeted area within the school

Law

9. The investigation and Notice engaged the following provisions of the *Law*:

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.

Section 170 – unauthorised persons on education and care service premises

- (1) This section applies to an education and care service operating in a participating jurisdiction that has a working with children law.
- (2) The approved provider of the education and care service must ensure that a person does not remain at the education and care service premises while children are being educated and cared for at the premises, unless-
 - (a) The person is an authorised person-
 - (b) The person is under the direct supervision of an educator or other staff member of the service.
Penalty: \$1000, in the case of an individual
\$5000, in any other case.
- (5) In this section- **authorised person** means a person who is-
 - (a) A person who holds a current working with children check or working with children card;
 - (b) A person who is permitted under the working directly with children law of this jurisdiction to remain at the education and care service premises without holding a working with children check or a working with children card.

Section 174 of 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—
 - (a) any serious incident at the approved education and care service;
 - (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
 - (c) information in respect of any other prescribed matters.
Penalty: \$4 000, in the case of an individual
\$20 000, in any other case.
- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to –
 - (a) The Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

Regulation 176 – Time to notify certain information to Regulatory Authority

- (2) For the purpose of section 174(4) of the *Law*, a notice must be provided:
 - (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident;
 - (c) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

Reasons

10. Having considered the evidence collected during the investigation, including the Provider's response to the Notice, the Authority is satisfied that the Provider has failed to comply with sections 167(1) and 174(2)(b) of the *Law*.

11. In relation to Allegation One, the Authority is not satisfied, on balance of probabilities, that the Provider failed to ensure that all children were adequately supervised at all times, in that a child, believed to be [REDACTED], suffered significant abrasions to his back as a result of an unchallenged game, contravening section 165(1) of the *Law* and also giving rise to a contravention of section 167(1) of the *Law*.
12. In relation to Allegation Two, the Authority is satisfied, on balance of probabilities, that the Provider failed to notify the Authority within 24 hours of a received complaint that the *Law* had been contravened, in that, a complaint was received by the Provider alleging inadequate supervision, contravening section 174(2)(b) of the *Law*.
13. Evidence obtained from the Provider and the complainant, along with admissions made by the Provider via the Notice response supports the substantiation of the offence as detailed.
14. In relation to Allegation Three, the Authority is not satisfied, on balance of probabilities, that the Provider failed to ensure that unauthorised persons did not remain on the Service premises while children were being educated and cared for, contravening section 170(2) of the *Law*.
15. In relation to Allegation Four, the Authority is satisfied that between 20 June 2022 and 1 July 2022 inclusive, the Provider failed to take reasonable steps to ensure the responsible person in day-to-day charge had adequate qualifications, knowledge, understanding and ability to effectively protect children from harm and hazard likely to cause injury through the supervision and management an education and care service, contravening section 167(1) of the *Law*.
16. In response to this allegation, the Provider is acknowledged as refuting the allegation on the basis that the Responsible Person in question, being [REDACTED] is:
 - a) a first qualified educator due to working directly with children since 2019;
 - b) is studying a nursing degree at university since 2018;
 - c) signed a Responsible Person form, has advised they are aware of their responsibilities and duties as a Responsible Person, and has held similar roles at other services operated by the Provider; and
 - d) does hold a first aid qualification, is also trained in anaphylaxis and asthma management training, and has also completed regular mandatory reporting training;
 - e) due to the educator's nursing studies at university, they have extensive knowledge on applying first aid and CPR, and mandatory reporting. They have been formally and extensively trained to provide first aid to patients, including children of all ages, in varying circumstances, scenarios and environments; and
 - f) the educator now also holds a first aid qualification in an education and care setting.
17. Evidence obtained from Witness A, who identifies as being the Responsible Person for the last two weeks before the end of the school term at the Service, supports that inadequate induction was provided to them to ensure that they were aware of children's behaviours or medical needs specific to the Service.

18. Witness A also stated that although they had undertaken certain first aid training, during the time that they were the Responsible Person, they had not done the CPR component of their first aid course.
19. Evidence obtained via Witness A's statement supports that aside from reading Supervision and Incident, injury, trauma and illness policies in 2019, there appeared no further action by Witness A or the Provider to ensure that they were aware of and understood current policies prior to being Responsible Person at the Service.
20. The fact that on 30 June 2022 [REDACTED] was supervising children, and observed the game being played on the carpeted area in the shared hallway yet did not call the enrolled child back to the hall supports that Mr [REDACTED] did not understand the intent of 'shared spaces' at the school whilst the Service was operating. This lack of knowledge, and subsequent inaction in relation to the game has contributed to the incident occurring.
21. The Authority understands that the school toilets are a shared approved space between the Service (located/operated from the hall), and that the carpeted hallway is also a 'shared space' for the purpose of children moving from the hall to the toilets – the carpeted hallway is not a designated playspace of the Service for enrolled children and unenrolled children to liaise.
22. The Authority is satisfied that if the Provider had ensured that Mr [REDACTED] as the Responsible Person, had been made aware of the intent of use of the different spaces approved for the Service, and had Mr [REDACTED] been experienced enough to have foreseen the risks involved with the game being undertaken in an area not approved for regular play, the injury to the child could have been prevented.
23. In deciding if a compliance action should be taken, I have considered the fact that the Provider has provided evidence of improvement strategies, implemented as a result of the incident occurring 30 June 2022.

Decision

24. Considering all the evidence, the objectives and guiding principles of the Law, and the compliance history of the Service, I have decided to issue this Administrative Action to address the non-compliances substantiated.
25. In relation to substantiated offences against section 167 of the Law, the Provider is requested to submit evidence supporting that any new person, nominated to the role of responsible person, is fully inducted to the Service that they will be employed at prior to that employment taking place. This is inclusive of any Responsible person who is moving from one Provider operated approved service to another for any period.
26. The induction process must include how the Provider will ensure that all Responsible Persons are aware of and understand all current policies and procedures, expected usage of school/service shared spaces by enrolled children, and the behavioural and/or medical needs of any enrolled children attending the service whilst that educator holds the role of Responsible Person.

27. Evidence supporting compliance with section 167 of the Law can be submitted to Authorised Officer Vittorio Colosimo at Vittorio.colosimo@act.gov.au . The Authority requests this to occur within 14 days of receipt of this decision.

Legislation

28. 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>.

29. 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>

30. If you have any questions about the Decision or Notice, please contact me at jo.williams@act.gov.au or Authorised Officer Vittorio Colosimo at Vittorio.colosimo@act.gov.au.

Yours sincerely



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

28 November 2022