

Ms [REDACTED]  
Person with Management or Control  
YWCA Canberra  
RE: YWCA Majura School Age Care  
Email: [REDACTED]@ywca-canberra.org.au

Dear Ms [REDACTED]

**Decision to Issue Administrative Action RE: NOT-00026124**

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-00026124) relating to YWCA Majura School Aged Care SE-00009691 (the Service) operated by YWCA Canberra PR-00005876 (the Provider).
2. The notified incident was submitted on 10 April 2024 and advised that on 9 April 2024 a child, [REDACTED] [REDACTED] left the Service without being noticed and rode his bike home.
3. The Authority is satisfied that the Provider has not complied with provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) in this instance. Web addresses for the *Law* and the *Regulations* are provided for your convenience at the end of this decision.

**Facts**

4. On 10 April 2023, the Authority received a Notification of Incident (NOT-00026124) from the Provider advising that, on 9 April 2024, an enrolled child, known to be [REDACTED] [REDACTED] was accounted for at the Service at 3.15pm at the Lego table located inside the hall. Around 4pm, the Service received a call from the child's mother (who had been notified by [REDACTED] grandmother) stating that [REDACTED] had ridden his bike home. [REDACTED] was able to leave the Service through the foyer and past an educator. Refer Attachment A – Copy of Notification & Supporting Document

**Law**

5. Provisions of the *Law* relevant to the notification assessment are:

**Section 165 - Offence to inadequately supervise children**

- (1) 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

### **Obligations upon Regulatory Authority**

6. 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; ...’*
7. 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.
8. 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*.
9. 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*.
10. 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**

11. Upon considering all evidence for assessment, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under section 165 of the *Law* in this instance.
12. The Authority is satisfied that inadequate supervision contributed to [REDACTED] being able to leave the Service without being noticed and subsequently remain unaccounted for until 4pm on 9 April 2024.
13. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps taken by the Provider to mitigate risk of a similar incident, the Authority has decided to issue this administrative action rather than statutory compliance actions.

14. This Decision is intended to bring to your attention the need to ensure that the Provider meets its obligations under the *Law*, in particular the obligation to always supervise children and ensure that every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury.
15. Furthermore, this Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children and educators alike.
16. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
17. The Regulatory Authority requests that the Provider takes steps to review their policies to ensure:
  - a. That a process is implemented to ensure that Nominated Supervisors and Educators at the Service feel confident in their capability to adequately supervise children, in particular to prevent children from absconding;
  - b. All educators have the knowledge and capacity to respond to situations where a child is missing or unaccounted for;
  - c. That processes for ensuring all children are accounted for at all times are in place and that educators feel confident and capable with these processes;
  - d. That these processes are embedded in Service provision;
  - e. That all staff have continued currency of knowledge of adequate supervision policies and that this is monitored by the Provider on a regular basis.
18. While you are not required to report on this Decision, the Decision will be recorded on the Service's file and may 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 associated *Regulations* be found.

### **Legislation**

19. 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>.
20. 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>

21. If you have any questions in relation to this Decision, please contact me by email at [nicole.withers@act.gov.au](mailto:nicole.withers@act.gov.au).

Yours sincerely



Nicole Withers  
Assistant Director  
Children's Education and Care Assurance  
Education and Care, Regulation and Support

10 May 2024