

Ms [REDACTED]
Person with Management or Control
The Young Women's Christian Association of Canberra
RE: YWCA Majura School Age Care

Email: [REDACTED]@ywca-canberra.org.au

Dear Ms [REDACTED]

Decision to Issue Compliance Notice

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance. 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 (ACT) (the Law)*, together with receiving and investigating complaints arising under the *Law*.
2. As you are aware, the Authority has recently investigated matter relating to YWCA Majura School Age Care - SE-00009691 (the Service) operated by The Young Women's Christian Association of Canberra PR-00005876 (the Provider), which engage suspected offences being contravened.
3. The Regulatory Authority is satisfied that the Provider was not complying with the provisions of the *Law* in respect to this matter. Web addresses to the *Law* and associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 14 February 2023, the Authority sent the Provider a Show Cause Notice (the Notice), advising the Provider that the Authority had determined there was sufficient evidence to support a case to answer for the Provider regarding a suspected offence under the *Law*.
5. The Notice outlined the grounds for issue, relevant evidence supporting the suspected contravention of the *Law*, and potential compliance actions being considered if the allegation was substantiated. Refer copy of Notice (minus attachments due to size, noting they can be produced on request) at Attachment A.
6. The Notice advised that evidence obtained during the investigation supported the allegation of an offence under the *Law* as follows:

It is alleged that on 10 October 2022, the Provider failed to ensure all children were adequately supervised at all times, in that a child, believed to be [REDACTED] was missing and unaccounted for between 4.15pm and 4.55pm, after leaving the Service,

crossing a road, attending shops and returning back to the Service unnoticed, contravening section 165(1) of the *Law* and engaging section 167(1) of said *Law*.

7. On 28 February 2023, the Provider submitted a response with attachments. A copy of the Response (minus attachments due to size) is provided at Attachment B.
8. The response included the following attachments:
 - a) 2 x Jpeg images
 - b) Playscape supervision map
 - c) Kindergarten supervision map
 - d) Irvine playground supervision map

Legislation Relevant to the Allegation

9. Provisions of the *Law* relevant to the investigation include the following:

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.

Obligations upon Regulatory Authority, Providers and Services

10. The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. 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*".
11. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific application in this instance, being:
 - (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.*
12. 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.*

13. The *Law* works to protect a particularly vulnerable group in 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*.
14. A key objective 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.
15. The *Law* is predominantly a protective *Law* and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

Reasons and Decision

16. The Authority has considered all evidence gathered via the investigation process, inclusive of the response to the Notice, and is satisfied, on the balance of probabilities, on 10 October 2022, the Provider failed to ensure all children were adequately supervised at all times, in that a child, believed to be [REDACTED], [REDACTED] was missing and unaccounted for between 4.15pm and 4.55pm, after leaving the Service, crossing a road, attending shops and returning back to the Service unnoticed, contravening section 165(1) of the *Law* and engaging section 167(1) of said *Law*.
17. Within the Notice response, the Provider acknowledges the incident took place and submits the following main points:
 - a) Educators at the Service have been afforded an opportunity to review, analyse and reflect upon current supervision practices and protocols.
 - b) New routine measures have been implemented at the Service embedded in service routine and educator practice.
 - c) Program manager called a mandatory meeting where individual supervision maps of each area were reviewed.
 - d) The Service continue to work with the school to ensure adequate supervision methods and measures, given the size and layout of school grounds.
 - e) The Service is a well-managed Service which is demonstrated by the recent Assessment and Rating (A&R) process undertaken in November 2022 indicating the Service was meeting the NQS, inclusive of supervision practices.
18. The Authority notes both Nominated Supervisors were in attendance and working on 10 October 2022 with the Audit and Risk review conducted after the incident involving [REDACTED]
19. The Authority acknowledges that photos depict kindergarten children dressed in high visibility vests, setting out boundary cones, however, there is no accompanying Service policy or procedure.

20. A Provider's obligation under section 165 of the *Law* is positively and strongly framed– the provider must ensure that all children being educated and cared for by the Service are adequately supervised at all times and is a reasonable precaution to take to protect children from harm and any form of hazard likely to cause injury.
21. In this instance, the Authority has determined that an offence under section 165(1) and 167(1) of the *Law* is substantiated.
22. Considering the evidence obtained, including material submitted by the Provider, and the level of seriousness of the contravention, I have decided that issuing a Compliance Notice is appropriate and in the best interests of children. In making this decision, I have also taken into consideration the Service's previous compliance history.
23. The Authority is empowered to issue a compliance notice under section 177 of the *Law*:

Section 177 of the *Law*– Compliance notices

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this *Law*.
 - (2) The Regulatory Authority may give the approved provider a notice (a **compliance notice**) requiring the approved provider to take the steps specified in the notice to comply with that provision.
 - (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.
Penalty: \$6 000, in the case of an individual
\$30 000, in any other case.
24. The Compliance Notice is provided as Attachment C to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions.
25. You must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment C**.

Review Rights

26. A decision to issue a compliance notice is a **reviewable decision** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).
27. An application for review may be made by completing the form *AR01 Application for Internal Review of Reviewable Decision* which can be obtained from the ACECQA website.

Legislation

28. The Education and Care Services National *Law* applies to you as an approved provider and any service you operate. The National *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 *National Law* is made up of an Act and Regulations which can be viewed at:

- <http://www.acecqa.gov.au/national-law>, and
- <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

30. Should you have any questions about this Decision or Compliance Notice please contact Authorised Officer Brian Cropper via email at brian.cropper@act.gov.au.

Yours Sincerely,



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

18 April 2023