

Mr [REDACTED]
Person with Management or Control
Young Men's Christian Association of Canberra Inc
Re: YMCA Weetangera After School Care

Email: [REDACTED]@ymca.org.au
[REDACTED]@ymca.org.au

Dear Mr [REDACTED]

Decision to issue Administrative Action RE: 40525280

1. As you are aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment into Notification (NOT-40525280) advising that minimum regulated ratio levels were not being met at YMCA Weetangera After School Care SE-00009732 (the Service), operated by Young Men's Christian Association of Canberra Inc PR-00005888 (the Provider) on 29 March 2021.
2. Web addresses to the *Education and Care Services National Law (ACT) (the Law)* and the *Education and Care Services National Regulations 2011 (the Regulations)* are provided for your convenience at the end of this Decision.

Facts

3. On 30 March 2021, the Authority received a Notification (NOT-40525280) from the Provider, advising that the Service did not maintain minimum regulated ratio levels on 29 March 2021, due to two educators calling in sick prior to 9am. The service's staffing arrangements were not meeting required ratio levels between 3pm and 4pm. Refer Attachment A

Law

4. Relevant sections of the *Law* engaged by the notification are:

Section 169 of the Law – offence relating to staffing arrangements

- (1) An approved provider of an education and care service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Reasons

5. Upon considering all evidence for assessment, inclusive of Provider supplied information, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under section 169 of the *Law*. The very nature of the notification supports the offence as outlined.
6. In deciding if compliance action should be taken, the Authority has considered all relevant information supplied by the Provider regarding the Provider's management of the circumstance, length of time the Service was not meeting minimum regulated ratio levels outlined via the *Regulations*, and the Services compliance history.

Decision

7. In consideration of all relevant information, the Authority has determined not to initiate statutory compliance action regarding the substantiated contravention of section 169(1) of the *Law*, but rather issue this Administrative decision to address the non-compliance.
8. 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 that minimum regulated ratio levels are met at all times to ensure every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury.
9. The Authority strongly encourages the Provider have appropriate strategies in place to ensure that staffing arrangements are not determined solely on minimum regulated ratio levels, but that considerations are made to mitigate risk of not meeting compliance expectations under the *Law* and *Regulation*.
10. Strategies may include rostering additional educators above minimum regulated ratio or not accepting children when maximum numbers have been reached dependant on number of educators working directly with children at any given time.
11. This Decision will be recorded on your Service file and may also 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 *Regulations* be found.

Legislation

12. The *Law* applies to you as an approved provider and any approved service that the Provider operates.
13. 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>.
14. 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>
15. If you have any queries regarding this Decision, please contact me at janine.fairburn@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate

13 April 2021