




Person with Management or Control  
Young Mens Christian Association of Canberra Inc  
RE: YMCA Weetangera After School Care

Email: @ymca.org.au

Dear Mr 

**Decision to issue Administrative Action RE NOT-40589507**

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40589507) relating to the operation of YMCA Weetangera After School Care, SE-00009732 (the Service), operated by Young Mens Christian Association of Canberra Inc, PR-00005888 (the Provider).
2. The Notification related to the Service operating outside of minimum prescribed ratio requirements.
3. Web addresses to the *Education and Care Services National Law Act (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**

4. On 2 November 2021, the Authority received a Notification of Incident from the Provider in relation to the Service being unable to fill an afternoon shift on 1 November 2021, resulting in the Service operating with 5 educators and 57 children until 4:45pm. The notification was made within the prescribed time. Refer Notification and accompanying incident report at Attachment A.
5. On 2 November 2021, the Authority requested additional information from the Provider, which was received on 5 November 2021. The additional information included child attendance records and working directly with children records. Refer Attachment B:

**Law**

6. The following provisions of the *Law* were relevant to the assessment:

**Section 169(1) of the *Law* - Offence relating to staffing arrangements**

An Approved Provider of an education and care service must ensure that, whenever children are being educated and cared for by a service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000, in the case of an individual  
\$50 000, in any other case.

**Regulation 123 (1) and (2) –Educator to child ratio-centre – based service**

(1) The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios—

(a) for children from birth to 24 months of age—1 educator to 4 children;

(a) for children over 24 months and less than 36 months of age—1 educator to 5 children;

(b) for children aged 36 months of age or over (not including children over preschool age)—1 educator to 11 children;

(c) for children over preschool age, 1 educator to 15 children.

(2) If children being educated and cared for at a centre-based service are of mixed ages the minimum number of educators for the children must meet the requirements of subregulation (1) at all times.

**Regulation 122 –Educators must be working directly with children to be included in ratios**

An educator cannot be included in calculating the educator to child ratio of a centre- based service unless the educator is working directly with children at the service.

**Regulation 13 – Meaning of *working directly with children***

For the purpose of these Regulations a person is working directly with children at a given time if at that time the person –

- a) is physically present with the children; and
- b) is directly engaged in providing education and care to the children.

**Reasons and Decision**

7. The Authority has considered all the information supplied by the Provider and is satisfied that, on 1 November 2021, the Provider failed to ensure that minimum prescribed staffing levels were met during all times that children were being educated and cared for by the Service.
8. The evidence submitted by the Provider supports an offence under section 169(1) of the *Law* being substantiated on the balance of probabilities.
9. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue you this Administrative Decision.

10. In determining this action, the Authority considered that:
- a. The Provider promptly advised the Authority of the non-compliance;
  - b. All efforts were made to attempt to fill the shift during the morning;
  - c. All children were kept in one space to ensure adequate supervision was maintained.
11. The Authority takes this opportunity to remind the Provider of the need to have contingency plans in place for when minimum prescribed staffing levels cannot be met.
12. This decision will be recorded on the Service's file and may be considered in any future applications for approvals, amendments, or waivers. This decision may also be considered in determining any future regulatory action, should there be future breaches of the *Law* or *Regulations*.

**Legislation**

13. The Education and Care Services National Law applies to you as a 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>.
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. Should you have any questions about this Decision please contact Janine Fairburn at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au)

Yours Sincerely,



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

12 November 2021