

Mr [REDACTED]  
Person with Management and Control  
Young Mens Christian Association of Canberra Inc

Email: [REDACTED]  
Cc: [REDACTED]

Dear Mr [REDACTED]

**Decision to Issue Compliance Notice**

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted a risk audit at Young Men's Christian Association (YMCA) Weetangera After School Care (ASC) -SE-00009732 (the Service), operated by Young Men's Christian Association of Canberra Inc-PR-00005888 (the Provider).
2. I am satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations), due to inadequate staffing and supervision and failure to take reasonable steps to protect children from harm or hazard.
3. Web addresses for the Law and the Regulations are provided for your convenience at the end of this notice.

**Background Facts**

4. On 20 March 2012, a provider approval was granted by the Authority for Young Men's Christian Association of Canberra Inc -PR-00005888. A copy of the provider approval is at Attachment A to this decision.
5. On 25 January 2012 a service approval was granted for YMCA Weetangera After School Care, SE-00009732. A copy of the service approval is at Attachment B to this decision.
6. On 13 July 2020, the Authority received a direct complaint in relation to the operation of the Service. Allegations raised via the complaint included inadequate staffing and supervision on multiple dates between 6 July and 17 July 2020.
7. On 17 July 2020, Authorised Officers (AO) attended the service to undertake a Risk Audit and took photos of the following documents:
  - an incident record for [REDACTED] dated 10 July 2020;
  - attendance records of children for 9 July 2020;

- children’s support plans for [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED];
  - Staff shift times for 9 and 10 July 2020;
8. Utilising the records obtained during the audit; ratio analysis was carried out for 9 July 2020. (Attachment C).
  9. On its face, such evidence supported the following allegations, related to staffing, supervision and protecting children from harm or hazard.
    - a. It was alleged that, on 9 July 2020 the Provider failed to ensure adequate staffing at all times during which children were being educated and cared for, in contravention of section 169(1) of the *Law*, engaging contraventions of sections 165(1) and 167(1) of the *Law* (Allegation One);
    - b. It was alleged that, on 9 July 2020, that the Provider has failed to take reasonable precautions to ensure the needs of children were met by ensuring staffing was adequate to meet the needs of children requiring additional support. Therefore, adequate supervision was not constant or readily available to individual children or groups of children to protect children from harm and from hazards likely to cause injury, in contravention of section 165 (1) of the *Law* engaging section 167(1) of the *Law* (Allegation Two).

## **Law and Regulations**

### Legislative Provisions Relevant to Allegation One

#### **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 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 260 – Educator to child ratios – children over preschool age – centre-based service**

- 1) This regulation applies in place of regulation 123(1)(d).
- 2) The educator to child ratio for children over preschool age at a centre-based service is 1 educator to 11 children.

**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

Legislative Provisions Relevant to Allegation Two

**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.

**Regulation 155 – Interactions with children**

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that—

- a) encourages the children to express themselves and their opinions; and
- b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- c) maintains at all times the dignity and rights of each child; and
- d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

## Reasons

### Allegation One – Evidence – Staffing arrangement

10. In relation to Allegation One (inadequate staffing numbers), a ratio analysis was completed for the 9 July 2020 (Attachment C) by the Regulatory Authority from the documents obtained which indicates that minimum regulated staffing arrangements were not being met at the service in contravention of Section 169(1) of the Law. The following anomaly's of ratio were identified:
- a) 9:30 am – 12noon identified five educators, educating and caring for 60 children, including four children with support plans and one child who identifies having attachment issues.
  - b) 1:15 – 2pm identified five educators, educating and caring for 60 children, including four children with support plans and one child who identifies having attachment issues.
  - c) 2:30pm and 3 pm identified five educators, educating and caring for 60 children, including four children with support plans and one child who identifies having attachment issues.

### Allegation Two – Evidence- Supervision and protecting children from harm and hazard

11. In relation to Allegation Two, it was found through records obtained, for 9 July 2020 there were 66 children enrolled and 60 children in attendance, with five children who required additional support. (Attachment D). The maximum number of educators present at any point in time on 9 July 2020, was 7 educators, however on numerous occasions throughout the day there were 5 educators to 60 children. A contravention of section 169(1) of the Law, which engages contraventions of Section 165(1) and 167(1) of the Law.
12. One of these children attending the service, requires additional support and has a positive behaviour support plan in place. The child does not have a medical diagnosis but identifies with [REDACTED] and requires one-on-one support and a strong connection with an educator. (Attachment E)
13. The other four children requiring additional support who attended the service on 9 July 2020, had support plans (Attachment D) which identified the following:
- a. [REDACTED], both children can have tendency to abscond, both children's support plans identified a safe place for the children and required an educator to shadow children when utilising their designated safe place.
  - b. The children both have notes on their support plans identifying that they should not play with each other or with another child who also has a support plan in place.
  - c. One child who identifies as [REDACTED]  
[REDACTED] The child requires staff to shadow and accompany the child to their safe spot as the child tends to abscond; and

- d. One of the children did not have a support plan at the time as it was currently with the parents for review, however the [REDACTED] (Attachment D).
20. On reviewing the information, Authorised Officers identified that the Service was educating and caring for a high number of children who required additional supervision to meet their individual needs.

## Decision

21. Having considered the evidence relevant to Allegation One, I am satisfied that the allegation has been substantiated on the balance of probabilities. I am satisfied that the Provider contravened Section 165(1), 167(1) and 169(1) of the *Law*, by failing to ensure adequate staffing at all times that children were educated and cared for at the service on 9 July 2020.
22. In relation to Allegation Two, the evidence obtained supports that the provider on 9 July 2020, did not consider children's support plans, the requirement for some children to have one to one supervision or individual children's wellbeing. I am satisfied that adequate supervision was not provided to minimise the risk of harm to children being educated and cared for by the Service.
23. Considering the evidence obtained, the Provider's compliance history (Attachment G) in the ACT, and the objectives and guiding principles of the *Law*, I have determined that issuing a compliance notice would be appropriate and in the best interests of children.
24. The Authority is empowered to issue a compliance notice under section 177 of the *Law*.

### 177 – 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.

- d) The compliance notice is Attachment H to this Decision letter. You are required to take the steps directed in the Notice to comply with the relevant provisions.
- e) You must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment H**.

## Rights of Review

- f) A decision to issue a compliance notice as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of the 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).

- g) 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

- h) The *Law* applies to you as a provider and any service you operate. 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>.
- i) 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>
- j) Should you have any questions about this Decision or the Compliance Notice please contact Authorised Officer, Nicola Atherton, on telephone (02) 6205 0375 or email [Nicola.atherton@act.gov.au](mailto:Nicola.atherton@act.gov.au)

Yours Sincerely



Clare Brookes  
Senior Director  
Children's Education and Care Assurance  
Early Childhood Policy and Regulation  
ACT Education Directorate

19 August 2020