



Mr [REDACTED]
Person with Management and Control
Young Men's Christian Association of Canberra Inc
RE: YMCA Taylor School Aged Care

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

Dear Mr [REDACTED]

Administrative Decision RE: NOT-40474307

1. Authorised Officer's from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment into a Notification of Incident (NOT-40474307) relating to the operation of YMCA Taylor School Aged Care SE-00009731 (the Service), operated by Young Men's Christian Association of Canberra Inc PR-00005888 (the Provider) on 23 September 2020.
2. The Authority is satisfied that the Provider has contravened section 167(1) and section 169(1) of the *Education and Care Services National Law (ACT) (the Law)*.
3. Web addresses to the *Law* and the *Education and Care Services National Regulations 2011 (the Regulations)* are provided for your convenience at the end of this letter.

Facts

4. On 24 September 2020, the Authority received a Notification of Incident (NOT-40474307) (the Notification) from the Provider.
5. The Notification advised that, during the afternoon of 23 September 2020, the Service had insufficient staff and was educating and caring for children more than was allowable under the *Law* and *Regulations*. The Service was out of ratio from approximately 3:10pm until 3:25pm.
6. The breach was, in part, due to a staff member not arriving and an additional educator being unavailable to provide immediate cover. Refer notification at Attachment A.

Law

7. The Notification engages the following provisions of the *Law*

Section 167 of the *Law* - Offence relating to protection of children from harm and hazard

- (1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

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 for Decision

8. Having considered the information provided in the Notification, I am satisfied that the Provider failed to comply with the *Law*.
9. The information contained in the Notification is an admission of a contravention of section 169(1) of the *Law*, which engages an automatic contravention of section 167(1) of the *Law*.
10. Additionally, it can be safely inferred that the Service had rostered the absolute minimum number of educators to educate and care for children that afternoon.
11. Minimum ratio levels are not necessarily sufficient to meet the Provider's obligation to provide adequate supervision under section 165 of the *Law* and take reasonable precautions against harm and hazard under section 167 of the *Law*.
12. In deciding if compliance action should be taken, I have taken into account that the timeframe for non-compliance was minimal, and that there have been no similar non-compliances identified at the Service previously requiring compliance actions to be enforced by the Authority. Accordingly, the Authority will not be initiating statutory compliance action in this instance.
13. This decision, however, is intended to bring to your attention the need to ensure that the Provider meets its obligations under the *Law*, in particular the obligations to ensure that the Service is adequately staffed, that all children are adequately supervised at all times and to ensure every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury.
14. This decision will be recorded on your service 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

15. 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>.
16. 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>

17. If you have any queries regarding this letter please contact me on (02) 6205 4309 or email 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

9 October 2020