

Mr [REDACTED]
Person with Management or Control
Young Men's Christian Association of Canberra Inc
RE: YMCA Sacred Heart ASC
Email: [REDACTED]@ymca.org.au
[REDACTED]@ymca.org.au

Dear Mr [REDACTED]

Decision to issue Administrative Action RE: NOT-40832953

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment into Notification of Incident (NOT-40832953) relating to the operation of YMCA Sacred Heart After School Care SE-00009725 (the Service), operated by Young Men's Christian Association of Canberra Inc PR-00005888 (the Provider).
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 9 March 2023, the Authority received Notification of Incident (NOT-40832953) from the Provider advising that the Service was unable to meet minimum regulated ratio levels between 3:15pm and 4:25pm on 8 March 2023. Refer Attachment A

Law

4. Relevant provisions of the Law engaged by the notification are as follows:

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 the 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.

Reasons

5. Having considered all the information provided in the Notification, the Authority is satisfied that the Provider has failed to comply with the Law. The information contained in the Notification, and admission of non-compliance by the Provider supports a contravention of section 169(1) of the Law.
6. In deciding if compliance action should be taken the Authority has taken into consideration that the Provider has advised the Authority voluntarily of the identified non-compliance. In addition, the Authority has taken into consideration the length of time that the Service was non-compliant for,

as well as advised of steps taken to ensure the health, safety and wellbeing of children whilst regulated ratio levels were not being met. Accordingly, the Authority will not be initiating statutory compliance action in this instance.

7. 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 appropriately staffed at all times to meet the developmental and supervision needs of all children at all times. Meeting adequate staffing arrangements and supervision are considered as a reasonable precaution to protect children from harm and any hazard likely to cause injury.
8. The Provider is expected to have contingency plans in place to ensure ratio requirements are always met – this could include rostering additional staff on above minimum regulated ratio levels or lowering the number of children accepted on any day that the staffing arrangements will not support minimum requirements being met.
9. 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

10. The *Law* applies to you as an approved provider and any approved service that the Provider operates. 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>.
11. 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>
12. 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
Education and Care, Regulation and Support

5 April 2023