

██████████ |  
Person with Management or Control  
Young Men's Christian Association of Canberra Inc  
RE: YMCA Sacred Heart After School Care

Email: ██████████@ymca.org.au  
██████████@ymca.org.au

Dear Mr ██████████

**Decision to Issue Administrative Action RE: NOT-40857976**

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40857976) relating to 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. Assessment related to whether the Provider failed to ensure that prescribed minimum regulated staffing levels are being always maintained.
3. 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 letter.

**Facts**

4. On 19 May 2023, the Authority received Notification of Incident (NOT-40857976) from the Provider advising that, on 17 May 2023, the Service did not maintain minimum regulated ratio levels between 3.27pm and 4.42pm. Refer NOT-40875976 at Attachment A.

**Law**

5. Provisions of the *Law* relevant to the notification assessment are:

**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**

6. Upon considering all evidence gathered via the notification, the Authority is satisfied, that there is sufficient evidence to substantiate that the Provider has contravened section 169(1) of the *Law*. The very nature of the Notification supports the substantiation of offences in this instance.
7. In deciding if compliance action should be taken, the Authority has considered all relevant information supplied by the Provider, length of time advised of that the Service was not meeting minimum regulated ratio levels pursuant to the *Regulations*, and the Services compliance history.
8. The Authority notes that a similar matter occurred 8 March 2023, notified to the Authority on 9 March 2023, and was addressed via an Administrative Decision issued 5 April 2023.
9. In consideration of all relevant information, the Authority has determined not to initiate statutory compliance action regarding the substantiated offence of section 169(1) of the *Law*.
10. However, the Authority requests evidence be submitted to demonstrate that the Provider has proactive 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*.
11. Furthermore, the Authority requests evidence be submitted to demonstrate that the Provider have contingency plans in place in anticipation on what actions need to be taken to manage and rectify non-compliance with section 169(1) of the *Law* if it occurs.
12. Information requested above can be submitted, within 7 days of receipt of this decision, directly to me via email at [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au), or via post at:

Children's Education and Care Assurance  
Attention Janine Fairburn  
GPO Box 158, Canberra ACT 2601.

13. 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.
14. This Decision will be recorded on the Service's file and may 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 associated *Regulations* be found.

**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 questions in relation to this Decision, please contact Authorised Officer Janine Fairburn by email at [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au) .

Yours sincerely



Janine Fairburn  
Assistant Director  
Children's Education and Care Assurance  
Education and Care, Regulation and Support

6 June 2023