

Mr [REDACTED]
Person with Management or Control
Young Men's Christian Association of Canberra Inc
RE: YMCA Kaleen After School Care

Email: [REDACTED]
[REDACTED]

Dear Mr [REDACTED]

Decision to issue Administrative Action RE: NOT-40688333

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 a Notification of Incident (NOT-40688333) relating to staffing arrangements effecting the operation of YMCA Kaleen After School Care, SE-00009719 (the Service) operated by Young Men's Christian Association of Canberra Inc, PR-00005888 (the Provider) on 7 April 2022.
2. Assessment related to whether the Provider failed to ensure every reasonable precaution was taken to protect children from harm and hazard likely to cause injury, resulting from the Provider not ensuring 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 8 April 2022, the Authority received a Notification of Incident (NOT-40688333) from the Provider, advising that on 7 April 2022, the Service was not meeting minimum regulated ratio requirements due to an educator calling in sick, and additional educators unable to cover the shift due to Covid-19 isolation requirements. Refer notification at Attachment A.

Law

5. Provisions of the *Law* engaged by the notification of incident include:

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

The 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 not 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 the Provider was issued an Administrative Decision in August 2021 for a similar contravention of *Law*, where it was strongly suggested to the Provider, by the Authority, to have 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*.
9. The Authority also took into consideration the how the sectors workforce has been impacted on by the Covid-19 pandemic.
10. 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*.
11. However, the Authority, again, strongly suggests the Provider have 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*.
12. In addition, the Authority strongly suggests 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.
13. In addition, 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.

Legislation

14. The *Law* applies to you as a Provider engaged within the early education and care sector. 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>.
15. 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>
16. This Decision will be recorded on your Service 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 *Regulations* be found.
17. 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
ACT Education Directorate

28 April 2022