

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

Email: [REDACTED]

Dear Mr [REDACTED]

Decision to issue Administrative Action RE: NOT-40563145

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 (NOT-40563145) 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).
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 6 August 2021, the Authority received a Notification of Incident (NOT-40563145) and documents from the Provider, advising that on 5 August 2021, an agency staff member failed to attend the Service leaving 6 educators to educate and care for 74 children for approximately 45 minutes until a further educator arrived from another Service. Refer notification at Attachment A.

Law

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

Section 167 of the *Law* – Offence relating to protection of children from harm and hazards

- (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 hazard likely to cause injury.
Penalty: \$10 000, in the case of an individual.
\$50 000, in any other case.

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

- (1) 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* giving rise to a contravening of 167(1) of said *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 regarding the Provider's management of the incident, length of time the Service was not meeting minimum regulated ratio levels pursuant to the *Regulations*, and the Services compliance history.
8. In consideration of all relevant information, the Authority has determined not to initiate statutory compliance action regarding the substantiated offences of 169(1) and 167(1) of the *Law*.
9. However, the Authority strongly suggests the Provider 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*.
10. 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

11. 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>.
12. 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>
13. 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.
14. If you have any queries regarding this Decision, please contact Brian Cropper on (02) 6207 1104 or alternatively at brian.cropper@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

20 August 2021