



Ms [REDACTED]
Person with Management or Control
Young Mens Christian Association of Canberra Inc
RE: YMCA Gungahlin Early Learning Centre

Email: [REDACTED]@ymca.org.au

Dear Ms [REDACTED]

Decision to issue Administrative Action

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA), investigated suspected offences relating to the operation of YMCA Gungahlin Early Learning Centre SE-40003109 (the Service) operated by Young Mens Christian Association of Canberra Inc PR-00005888 (the Provider).
2. The Authority is satisfied that the Provider has not complied with provisions of the *Education and Care Services National Law Act (ACT)* (the Law) in these instances. Web addresses for the Law and the Regulations are provided for your convenience at the end of this decision.

Facts

3. On 13 December 2022, the Authority received a Notification of Incident from the Provider advising that, on 12 December 2022, a parent had entered the Service with 3 children that were found in the exit airlock unsupervised.
4. Due to the risk of harm and hazards to children, likely to cause injury resulting from inadequate supervision, the Authority determined to investigate.
5. On 4 May 2023, because of evidence gathered throughout the investigation that supported contraventions of the Law, the Authority sent you a Show Cause Notice (SCN). Refer copy of the Notice (minus attachments) at Attachment A.
6. The SCN outlined the grounds for issue, and the evidence relied on by the Authority supporting the allegation that, you, in the capacity of Nominated Supervisor, contravened section 165(1) of the Law, giving rise to a contravention of Section 167(1) of said Law.
7. In addition, the SCN outlined the compliance actions being considered by the Authority should the allegation be substantiated.
8. On 10 May 2023, the Regulatory Authority received the Providers response to the SCN within the required timeframe. Refer to a copy of the response (minus attachments) at Attachment B.

Law

Section 165(1) of the Law – Offence to inadequately supervise children

The approved provider of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service

Penalty: \$10 000, in the case of an individual

\$50 000, in any other case.

Section 167(1) of the Law – Offence relating to protection of children from harm and hazards

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.

Obligations upon Regulatory Authority

9. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. Relevant to this decision is the objective at section 3(2)(a), namely
‘To ensure the safety, health and wellbeing of children attending education and care services; ...’
10. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:
 - (a) that the rights and best interests of the child are paramount; ...
 - (f) that best practice is expected in the provision of education and care services.
11. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
 - (c) to monitor and enforce compliance with this *Law*;
 - (d) to receive and investigate complaints arising under this *Law*.
12. The *Law* works to protect a particularly vulnerable part of our society — children — when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
13. A key object of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.

Decision

14. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to ground an offence under section 165 and 167 of the *Law*.
15. The Authority is satisfied that inadequate supervision has contributed to the children being able to exit spaces unseen and not noticed as initially missing by educators. The Authority is further satisfied that by not always ensuring adequate supervision of all children, the Provider has not taken reasonable precautions to protect children from harms and hazards likely to cause injury in these instances.
16. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider failed to ensure all children being educated and cared for by the service were adequately supervised at all times that the children were in the care of the service.
17. In relation to section 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider failed to ensure all reasonable precautions were undertaken to protect children.

18. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children.
19. In consideration of all relevant information, and actions already undertaken by the Provider to mitigate risk of similar incidents occurring the Authority has determined not to initiate statutory compliance action regarding the substantiated contraventions of sections 165(1) and 167(1) of the *Law*, but rather issue this Administrative Decision to address the non-compliances.
20. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of all children at all times. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
21. This Decision will be recorded on your Service file and may also 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.

Legislation

22. The *Law* applies to you as an approved provider and any approved service that the Provider operates.
23. 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>.
24. 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>
25. If you have any queries regarding this Decision, please contact Authorised Officer Vittorio Colosimo at Vittorio.Colosimo@act.gov.au.

Yours sincerely



Jo Williams
Director
Children's Education and Care Assurance
Education and Care, Regulation and Support

4 July 2023