

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

Email: [REDACTED]

Dear Mr [REDACTED]

Show Cause Notice – Potential Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance. As you are aware, the Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law* (the *Law*). One of the Authority’s roles is to investigate suspected offences under the *Law*.
2. The Authority is currently investigating an allegation that three children were found unsupervised in an air lock, between two gates, by a parent on 12 December 2022 at YMCA Gungahlin Early Learning Centre SE-40003109 (the *Service*) operated by Young Mens Christian Association of Canberra Inc PR-00005888 (the *Provider*).
3. Web addresses to the *Law* and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this notice.
4. Authorised Officers have now finished obtaining evidence (unless further lines of enquiry emerge) and the Authority has determined that the Provider has a case to answer regarding suspected offences. However, the Authority’s investigation is not complete until the Provider has had an opportunity to respond to the allegation/s and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (the *Notice*) to you.
5. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the allegation may constitute an offence under sections 165(1) and 167(1) of the *Law*. If, after considering all available evidence, the Authority finds any offences are substantiated, it will need to consider whether compliance action is required.
7. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Further details regarding potential compliance actions appear at the end of this Notice.

Background

8. On 13 December 2022, the Authority received a notification from the Provider that, on 12 December 2022, a parent had entered the Service with 3 children that were found in the exit airlock unsupervised. Refer Attachment A for documentation relevant to the notification.
9. Due to the risk to children if they are inadequately supervised, the Authority determined to investigate the incident.

Allegation One and Two – Sections 165(1) and 167(1) of the Law

10. It is alleged that, between 9.30am and 10.07am on 12 December 2022, the approved provider failed to ensure children being cared for were adequately supervised at all times. Three children, known to be [REDACTED], [REDACTED], and [REDACTED] were found outside by a parent, stuck in between two gates known as the exit airlock in contravention of s165(1) of the *Law*.
11. It is alleged that, by failing to adequately supervise the three children between 9.30am and 10.07am on 12 December 2022, the approved provider has failed to take reasonable steps to protect children from harms and hazards likely to cause injury or illness, in contravention of s167(1) of the *Law*.

Legislation Relevant to Allegations

12. The following provisions of the *Law* and *Regulations* are relevant to Allegation One:

Section 166(1) of the *Law* - Offence to use inappropriate discipline

The approved provider of an education and care service must ensure that no child being educated and cared for by the service is subjected to—

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

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 care for by the service from harm and from any hazard likely to cause injury.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Evidence Relevant to Allegations

13. On 11 January 2023, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Information obtained including the following:
 - a) Educator/staff records, including details relating to contact details and WWVP status for all educators working at the Service on 12 December 2022;

- b) Working Directly with Children records, Child Attendance records and Responsible Person's records for 12 December 2022;
 - c) Copies of policies and procedures in effect on 12 December 2022, relating to supervision; and Supervision plans in place on 12 December 2022;
 - d) Maintenance report and photo of gate to ensure children cannot get out again; and
 - e) Copies of internal investigation documents relating to NOT-40797965 inclusive of statements, CCTV footage, records of conversations, relevant emails, finding or outcomes, that has not already been provided.
14. A ratio analysis was undertaken by Authorised Officers utilising the educator working directly with children records and child attendance records submitted via the Provider's response to the notice issued under section 215 of the *Law*. The analysis indicates that the Coolibah/Jarrah room had 1 educator signed into the room while having from 13 to up to 23 children between 8:15am to 9:30am on 12 December 2022. Refer analysis at Attachment B.
15. Records produced by the Provider on 11 January 2023 supported the following:
- a) YMCA Gungahlin Early Learning Centre was in operation on between 12 December 2022.
 - b) [REDACTED], [REDACTED], [REDACTED] were signed into the Coolibah room at the Service on 12 December 2022 between 9.30am and 10.07am.
 - c) Educator statements from the incident 12 December 2022.

Refer evidence at Attachment C.

16. As part of the investigation, the Authority obtained statements from witnesses, relevant excerpts from which are included below. Please note that all witness statements were obtained exercising powers under section 215 of the *Law*. To clarify, all witnesses were compelled by notice to attend before Authorised Officers and provide evidence. Failure to comply is an offence under the *Law*, as is obstructing or hindering the Authority's investigation.

17. Relevant extracts from Witness A's statement are:

a.

b.

c.



d.

e.

f.

g.

h.

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j.

k.

l.

m.

n.

18. Relevant extracts from Witness B's statement are:

a.

b.

c.

d.

e.

f.

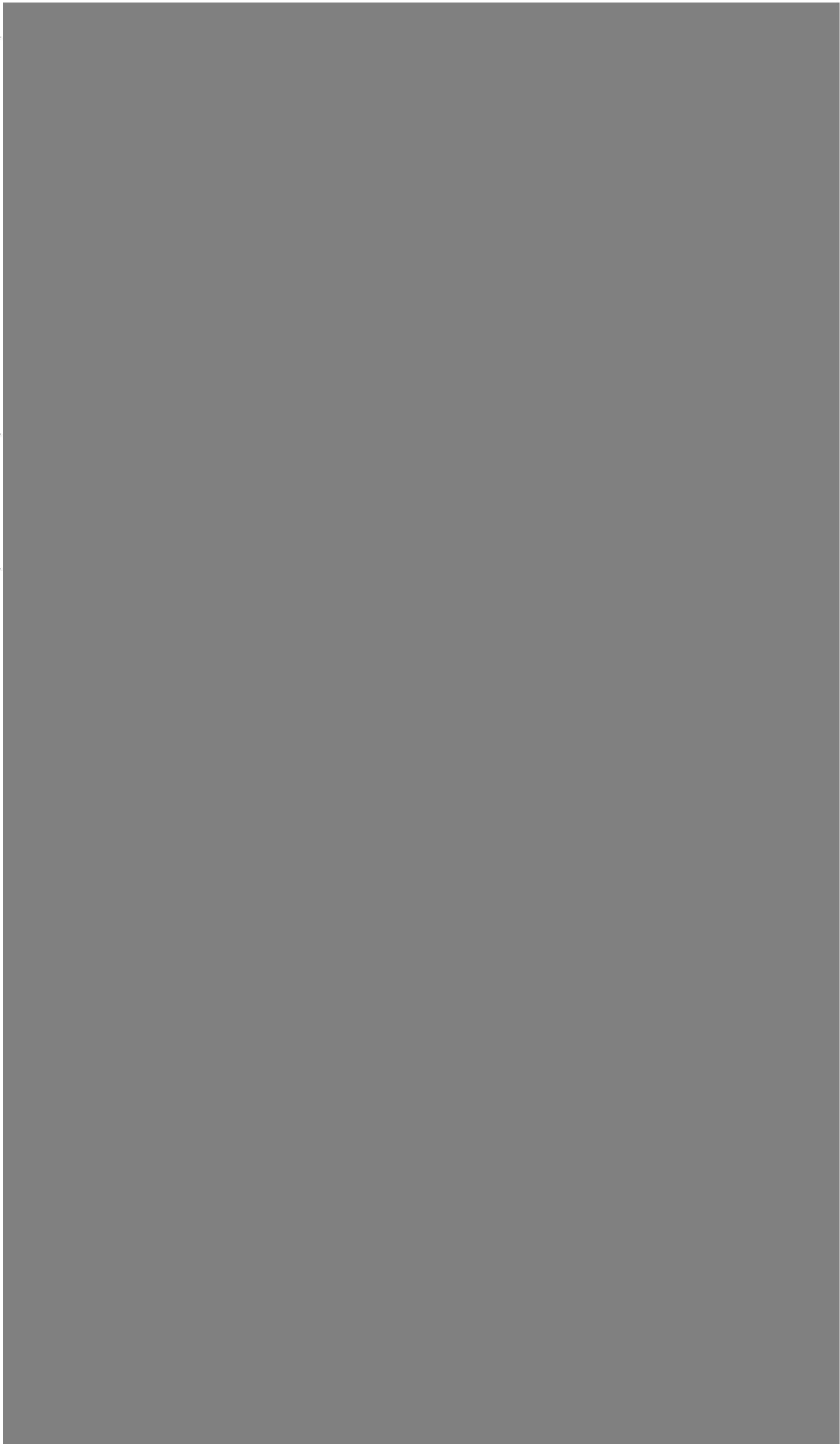
g.

h.

i.

j.

k.



l.

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o.

p.



Relevant extracts from Witness C's statement are:

a.

b.

c.

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g.

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19. Relevant extracts from Witness D's statement are:

b

c

d

e

f

g

h.

i.

j.

k.

Contraventions of Law supported by evidence of allegations.

20. Evidence gathered appears to support contraventions of section 165(1) and 167(1) of the *Law*.

Potential Compliance Action

21. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions, if any offences are substantiated.

Potential compliance actions include:

- a. Non-statutory Administration Action (similar to a caution) with no further action;
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced; or
 - c. A Compliance Notice under section 177 of the *Law*; or
 - d. Imposing of Conditions on the Service's approval under section 51 of the *Law*.
 - e. Suspension of the service approval under section 72 of the *Law*. *The suspension would be from the time that the provider has been notified of the decision until the provider has demonstrated risks have been mitigated.*
 - f. Cancellation of the service approval under section 79 of the *Law*.
22. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.

Right of response

23. As mentioned previously, this letter is the Provider's opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.

24. At Attachment D to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Please direct your written submission via email to Vittorio.Colosimo@act.gov.au or by post to:

Children's Education and Care Assurance
Attention: Vittorio Colosimo
GPO Box 158, Canberra ACT 2601.

Caution

25. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation are protected disclosures under section 296 of the *Law*.
26. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
27. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
28. The *Law* applies to you as a nominated supervisor and to any service you are engaged at. 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>.
29. 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>
30. Should you have any questions about this Show Cause Notice please contact Senior Investigator Vittorio Colosimo on email Vittorio.Colosimo@act.gov.au.

Yours sincerely



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

4 May 2023