



Mr [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 Mr [REDACTED]

Decision to issue Administrative Action RE: NOT-40786549 and NOT-40787841

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted assessments of two Notifications of Incident (NOT-40786549 and NOT-40787841) advising of instances of children being unaccounted for YMCA Gungahlin Early Learning Centre SE-40003109 (the Service) operated by Young Men's 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 24 October 2022, the Authority received a Notification of Incident (NOT-40786549) from the Provider advising that, on 24 October 2022, a three-year-old child was identified as being locked in a staff room. Refer copy of the notification at Attachment A.
4. The Authority noted that additional to the notification, the Provider also submitted evidence, by way of documents and photo's supporting actions undertaken to mitigate the risk of a similar incident occurring
5. On 26 October 2022, the Authority received a Notification of Incident (NOT-40787841) from the Provider advising that, on 26 October 2022, six children had accessed the gates of the Service, unchallenged by educators, with one of those children managing to exit. Families alerted the Director to the incident. Refer copy of the notification at Attachment B.
6. The Authority noted that additional to the notification, the Provider also submitted evidence, by way of documents and photo's supporting actions undertaken to mitigate the risk of a similar incident occurring.
7. On 27 October 2022, additional information was requested of the Provider, which was submitted on 31 October 2022. Refer email correspondence at Attachment C.
8. Additional information submitted included:
 - Completed educator reflections;
 - Outdoor supervision checks and plans, inclusive of educator acknowledgement receipt of plan;

- Child discussion chart and family correspondence; and
- Educator and child attendance records for 26 October 2022.

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.

Reasons

9. Upon considering all evidence for assessment, inclusive of Provider supplied information, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under section 165 of the *Law* in this instance, engaging a contravention of s167 of the *Law*.
10. The Authority is satisfied that inadequate supervision of 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.
11. 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.
12. 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.
13. 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

14. The *Law* applies to you as an approved provider and any approved service that the Provider operates.

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 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

25 November 2022