

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

Email: [REDACTED]

Dear Mr [REDACTED]

Decision to issue Administrative Action RE: 40533491

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-40533491) relating to the operation of YMCA Gowrie After School Care SE-00009717 (the Service), operated by Young Men's Christian Association of Canberra Inc PR-00005888 (the Provider).
2. 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 decision.

Facts

3. On 28 April 2021, the Authority received a Notification of Incident (NOT-40533491) from the Provider, advising that on 27 April 2021, multiple educators failed to attend a rostered shift resulting in staffing arrangements not meeting minimum required ratio levels between 3pm and 3.45pm. Refer NOT-40533491 at [Attachment A](#)

Law

4. Relevant provisions of the Law engaged by the notification are as follows:

Section 169 of the Law – offence relating to staffing arrangements

- (1) An 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 no less than the number prescribed for this purpose.

Reasons

5. Upon considering all evidence for assessment the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence, by the very nature of the notification and admission of the Provider, to substantiate an offence under section 169(1) of the Law in this instance.
6. 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 *Regulation 123* and the Services compliance history.
7. In addition, the Authority took into consideration that adequate numbers of staff were originally rostered, and risk and supervision strategies were implemented to mitigate risk to children whilst the Service was not meeting minimum regulated ratio level.

8. In consideration of all relevant information, the Authority has determined in this instance not to initiate statutory compliance action regarding the substantiated contravention of section 169(1) of the *Law*, but rather issue this Administrative decision to address the non-compliances.
9. The Authority encourages the Provider to have strategies in place to ensure that staffing arrangements are not determined solely on minimum regulated ratio levels, but that considerations are made, and contingency plans are in place, to mitigate risk of not meeting compliance expectations under the *Law* and *Regulation*, especially in relation to staffing arrangements.
10. This decision will be recorded on the Service's file and may be considered in any future applications for approvals, amendments, or waivers. This decision may also be considered in determining any future regulatory action, should there be future breaches of the *Law* or *Regulations*.

Legislation

11. The *Law* applies to you as an approved provider and any approved service that the Provider operates.
12. 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>.
13. 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>
14. 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

17 May 2021