

██████████  
Person with Management or Control  
Young Men's Christian Association of Canberra Inc  
RE: YMCA Early Learning Centre Jamison

Email: ██████████@ymca.org.au

Dear ██████████

**Decision to issue Administrative Letter RE: NOT-40713750**

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40713750) relating to the operation of YMCA Early Learning Centre Jamison SE-00009861 (the Service), operated by Young Men's Christian Association of Canberra Inc PR-00005888 (the Provider).
2. The Notification advised that there were inadequate staffing arrangements at the Service on 18 May 2022.
3. Web addresses to the *Education and Care Services National Law Act (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 23 May 2022, the Authority received NOT-40713750 (the Notification) from the Provider advising that, on 18 May 2022, the Service had the service had several staff absent at the last minute due to isolation and illnesses. This led to being over ratio by up to 3 children at several times during the day.
5. Specifically, the Notification advised the following:
  - a) Between 11:00 am and 11:30am there were an additional two 2-year old's and one additional 1 year old.
  - b) Between 11:30 am and 13:35 pm there were an additional one under 2 and one 2-year-old.
  - c) Between 13:35 pm and 15:08 pm there was an additional under 2-year-old.

Refer Attachment A for copy of Notification.

**Law**

6. The following provision of the *Law* is relevant to the facts as outlined in the Notification:

### **Section 169(1) of the Law - Offence relating to staffing arrangements**

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.

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

### **Decision**

7. The Authority has considered all the information supplied by the Provider and is satisfied that the failure to ensure that staffing was sufficient to meet the minimum prescribed number of educators constitutes an offence under section 169(1) of the *Law*.
8. The very nature of the admissions made within the notification further support the substantiation of the offence.
9. However, in mitigation, the Authority does acknowledge that the breach was caused by a number of staff absent at the last minute due to isolation and illnesses, and that steps were taken to ensure adequate supervision and reduce possible risks during the relevant times that minimum regulated ratio levels were not being met.
10. 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.
11. In this circumstance, the Authority has determined to issue this Administrative Letter rather than any statutory action.
12. This decision is to remind the Provider that appropriate contingency plans need to be in place to manage such instances of educator absence to ensure compliance with the *Law*. This may include, if unsuccessful in engaging educators to meet ratio, taking options to reduce the number of children being educated and cared for on these days.
13. Please be aware that the contravention of *Law* has been recorded on the Service file and may be considered in the instance of any future similar incidents.

### **Legislation**

14. The *Law* applies to you as a provider and any service you operate. 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>.
15. 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>

16. Should you have any questions about 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 June 2022