



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

Email: ██████████@ymca.org.au

Dear ██████████,

**Decision to issue Administrative Action RE: NOT-00055602**

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-00055602) relating to YMCA Early Learning Centre Holder SE-40002119 (the Service) operated by Young Men's Christian Association of Canberra PR-00005888 (the Provider).
2. The notification of incident advised that on 18 July 2024, inadequate supervision of children resulted in two children leaving the Service, unaccompanied.
3. The Authority is satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the Law) in this instance. Web addresses to the Law and the associated *Regulations* are provided for your convenience at the end of this Decision.

**Facts**

4. On Thursday 18 July 2024, a Notification of Incident (NOT-00055602) was submitted to the Authority by the Provider advising that two children, ██████████ (4yrs old) and ██████████ (3yrs old) were witnessed jumping on an outdoor emergency gate. This caused a screw from the gate to dislodge, opening the exit and allowing both children to leave the fenced area. Refer copy of the NOT-00055602 at Attachment A.
5. On 31 July 2024, the Provider submitted additional documents in response to a request for further information from the Authority, including:
  - Information of the children involved;
  - Supervision Plan;
  - Supervision Policy;
  - Staff meeting – Notes;
  - Tax Invoice (Fence Repair);
  - Working Directly with Children log;
  - YMCA Incident Report (██████████);
  - YMCA Incident Report (██████████)

Refer Attachment B.

6. The Provider also submitted information advising of the steps taken to prevent or minimise a similar incident occurring, including:
  - The Service staff held a meeting to review supervision practices on 24 July 2024;
  - The fence and gate referenced above were repaired on 29 July 2024.

### Law

7. The Notification engaged the following provisions of the *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: \$11 400, in the case of an individual  
\$57 400, in any other case.

### Decision

8. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to support an offence under section 165 of the *Law* in this instance.
9. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure that all children were adequately supervised at all times in that children had made multiple attempts at escaping without being stopped by supervising educators, resulting in two children leaving the Service unaccompanied.
10. The Authority understands that while the gate has now been fixed, the Provider needs to ensure that active and current supervision policies, practices and procedures are in place and embedded in Service delivery at all times.
11. 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.
12. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the advised of steps taken by the Provider to mitigate risk of a similar occurrence, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliance.
13. This decision serves to remind the Provider of their obligations and responsibilities under the *Law*, and to ensure that staffing and supervisory processes and educator practice is monitored regularly to ensure ongoing compliance with the *Law* and encourage continual improvements for outcomes for children.

14. This Decision will be recorded on the Service’s file and may 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 associated Regulations be found.

**Legislation**

15. 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> . 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 [nicole.withers@act.gov.au](mailto:nicole.withers@act.gov.au).

Yours Sincerely,



**Nicole Withers**  
Team Leader Investigations  
Regulation and Compliance  
Education Directorate

31 July 2024