ACT Government
Education

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

Email: [redacted]@ymca.org.au

Dear [redacted],

Decision to issue Administrative Action RE: NOT-40896847

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-40896847) relating to YMCA Early Learning Centre Holder - SE-40002119 (the Service) operated by Young Mens Christian Association of Canberra Inc - PR-00005888 (the Provider).

2. The notified incident advised that a child ([redacted]) was unaccounted for/unattended indoors for more than 10 minutes but less than 30 minutes.

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.

4. 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 Decision.

Facts

5. On 30 August 2023, the Authority received a notification of incident (NOT-40896847) from the Provider advising that on 29 August 2023 a child ([redacted]) was unaccounted for/unattended indoors for more than 10 minutes but less than 30 minutes.

6. The notification further advised that the Service had casual and trainee educators as the majority of educators in ratio in the Preschool and Toddler rooms that day. The notification advised that the parent had arrived to collect the child at 4:00pm and requested the help of the educators as the parent was unable to locate the child. The child was found 20 minutes later in the kitchen pantry eating an apple. Refer copy of NOT-40896847 at Attachment A.

Law

7. Provision of the *Law* relevant to the assessment of the notification are:

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.

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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.

Obligations upon Regulatory Authority

8. Section 3 of the *Law* sets out objectives and guiding principles of the Law. Relevant to this decision is the objective at section 3(2)(a), namely

   'To ensure the safety, health and wellbeing of children attending education and care services; ...'

9. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:

   (a) that the rights and best interests of the child are paramount; …

   (f) that best practice is expected in the provision of education and care services.

10. Section 260 of the Law sets out the functions of the Regulatory Authority, which includes:

    (c) to monitor and enforce compliance with this Law;

    (d) to receive and investigate complaints arising under this Law.

11. The *Law* works to protect a particularly vulnerable part of our society — children — when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.

12. A key object of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the Law requires, which is also inherently in the best interests of children.

Decision

13. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to ground an offence under section 165 and 167 of the *Law*.

14. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider failed to ensure children being educated and cared for by the service were adequately supervised at all times that children were in the care of the service in that [redacted] was unable to be located for 20 minutes after their parent arrived a requested assistance to find [redacted]

15. In relation to section 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider failed to ensure all reasonable precautions were undertaken to protect children, by not knowing the location of the child [redacted], and therefore not ensuring the health, safety and wellbeing of the children.

16. 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.

17. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the demonstrated steps taken by the Provider to mitigate risk of a similar incident, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliances.

18. In relation to the substantiated breach engaged by the Provider under section 165 and 167 of the *Law*, the Authority requests the Provider to submit the following evidence to support risk mitigation actions have been undertaken:

    a. Provide evidence to demonstrate how the Provider is ensuring adequate supervision of all children at all times.
    b. Provide evidence on how the Provider's expectations regarding supervision are communicated to educators, reinforced and practices are monitored to ensure educators are following the Provider's supervision policy and procedures.

19. Requested information outlined in paragraph 18 can be submitted to Authorised Officer Janine Fairburn at Janine.Fairburn@act.gov.au. The Authority requests this to occur within 14 days of receipt of this decision.

20. This Decision serves as a reminder that, as a Provider, it is imperative to ensure that children are adequately supervised at all times when in the care of the Service and Provider to ensure they are not at risk of harm or hazard.

21. 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

22. 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.

23. Should you have any questions about this Decision please contact Authorised Officer Janine Fairburn at Janine.Fairburn@act.gov.au.

Yours Sincerely,

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

18 October 2023