



██████████  
Person with Management or Control  
The Young Women's Christian Association of Canberra  
RE: Winyu Early Childhood Service

Email: ██████████ ██████████

Dear Ms ██████████

**Decision to issue Administrative Action RE NOT-40653473**

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Complaint (NOT-40653473) relating to the operation of Winyu Early Childhood Service, SE-40004361 (the Service), operated by The Young Women's Christian Association of Canberra, PR-00005876 (the Provider).
2. The Notification related to a parent complaint that their child, ██████████, was observed crying and unsupervised in the outdoor space of the Service on 8 February 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 Decision.

**Facts**

4. On 23 February 2021, the Authority emailed the Provider advising that a direct complaint had been received in relation to a child being observed crying and unsupervised in the outdoor space of the Service on 8 February 2022. Refer Correspondence at Attachment A.
5. On 24 February 2022, the Authority received a Notification of Complaint (NOT-40653473) from the Provider, as requested (refer Attachment B). Additional information submitted with the Notification included:
  - a) Working directly with children records and ratio check records for 8 February 2022;
  - b) Formal complaint and record of conversation between complainant and ██████████). Refer Attachment C;
  - c) ██████████ diary notes for 8 and 14 February 2022 RE: Supervision reminders to staff;
  - d) Educator meeting minutes for 8 February 2022; and
  - e) Emails sent to educators dated 27 January 2022 and 24 February 2022 RE: Enhancing supervision and effective communication.

## Law

6. The following provisions of the *Law* were relevant to the assessment:

### **Section 165(1) of the *Law* - Offence to inadequately supervision 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 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.

### **Section 174(2) and (4) of the *Law* offence of fail to notify certain information to Regulatory Authority.**

- (2) The approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider-

- a) any serious incident at the approved education and care service;
- b) Any complaint alleging-
  - I. That a serious incident has occurred while a child was or is being educated and cared for by the approved education and care service; or
  - II. That this Law had been contravened.

Penalty: \$4000, in the case of an individual  
\$20 000, in any other case.

- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to—

- (a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates

### **Regulation 176(2)(b) – Time to notify certain information to Regulatory Authority**

- (2) For the purposes of section 174(4) of the Law, a notice must be provided—  
(b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident.

## Reasons and Decision

7. The Authority has considered all the information supplied by the Provider and is satisfied that, on 8 February 2022, the Provider failed to ensure adequate supervision of all

children being educated and cared for by the Service, in that ■ was located by his parent alone, unsupervised and upset in the outdoor area.

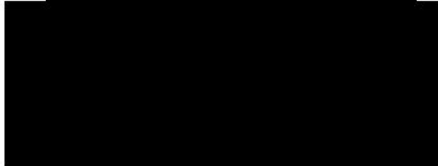
8. Furthermore, the Authority is satisfied that the Provider has not notified the Authority of a complaint alleging the *Law* was contravened within 24 hours as required by *Regulation 174(2)(b)*, in contravention of section 174(4) of the *Law*.
9. The evidence and correspondence submitted by the Provider supports the substantiated offences on the balance of probabilities.
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. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue you this Administrative Decision.
11. In determining this action, the Authority took into consideration the following:
  - a. The Service's compliance history;
  - b. ■ was indicated as being unsupervised for a short period of time;
  - c. Actions already undertaken by the Provider to mitigate risk of a similar complaint/incident; and
  - d. Considerations in relation to Service being affected by, and managing associated risks relating to, identified Covid-19 cases at the time notification of the complaint was required.
12. This Decision is issued to remind the Provider that staffing and supervision levels must meet the emotional, developmental, and physiological needs of all children being educated and cared for at all times. Staffing levels may need to be above minimum regulated ratio levels to ensure adequate supervision and to ensure every reasonable precaution is taken to protect children from harm and hazard likely to cause injury – both physically and psychologically.
13. This Decision will be recorded on the Service's file and may be considered in determining any future regulatory action, should there be future similar breaches of the *Law* or *Regulations*.

#### **Legislation**

14. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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 on [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).

Yours Sincerely,



Janine Fairburn  
Assistant Director  
Children's Education and Care Assurance  
Education Care Regulation and Support  
ACT Education Directorate

11 March 2022