

██████████  
Person with Management or Control  
The Young Women's Christian Association of Canberra  
RE: Spence Children's Cottage

Email: ██████████

Dear ██████████

### **Decision to Issue Administrative Action**

1. As you may be aware, Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance, recently conducted an investigation into allegations relating to inadequate supervision of children at Spence Children's Cottage, SE-00009836 (the Service) operated by The Young Women's Christian Association of Canberra, PR-00005876, (the Provider).
2. The Authority is satisfied that the Provider has contravened provisions of the *Education and Care Services National Law (ACT)* (the Law).
3. Web addresses to 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 16 October 2020, the Authority received multiple Notifications of Incident (NOT-404079892, NOT-40479876 and NOT-40479883) advising that on 16 October 2020, three young persons were able to abscond from the Service, unnoticed, for a period of less than 10 minutes. Refer Attachment A.
5. Due to the risk to children associated when inadequately supervised, and a potential for associated risk of harm and of hazards likely to cause injury, the Authority determined to investigate.
6. On 9 December 2020, Authorised Officers from the Authority attended the Service, allowable under section 199 of the Law, and took a photograph of relevant areas relating to the investigation. Refer photographs taken at Attachment B.
7. On 3 February 2021, because of evidence gathered supporting contraventions of the Law, the Authority sent the Provider a Show Cause Notice (the Notice). Refer copy of the Notice (minus attachments due to size) at Attachment C.
8. The Notice outlined grounds for issue, and the evidence relied on by the Authority supporting the allegations that on 16 October 2020, the Provider was in contravention of sections 165(1), 167(1) and 169(1) of the Law. In addition, the Notice also outlined the compliance actions being considered by the Authority should the allegation be substantiated.
9. On 22 February 2021, noting that an extension to respond was agreed to by the Authority until 24 February 2021, the Provider submitted a response to the Notice. The Response was

received with seven attachments of supportive evidence from the Provider. Refer copy of Response (minus attachments due to size) at [Attachment D](#).

## Law

10. The following provisions of the *Law* were engaged by the investigation and this Decision:

**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.

**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.

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

The 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

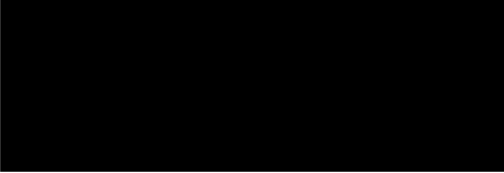
11. After careful consideration of evidence gathered from the Authority's investigation, inclusive of the Provider's response to the Notice, the Authority is satisfied that the Provider has failed to comply with the *Law*.
12. The Authority is satisfied that on 16 October 2020, inadequate supervision contributed to the three enrolled children at the Service being able to leave the premises, unnoticed by educators, in contravention of section 165(1) of the *Law*, and engaging section 167(1) of the *Law*.
13. The very nature of the Notifications of Incident supports the contraventions, and evidence gathered as part of the Authority's investigation corroborates the circumstances resulting in the contraventions.
14. The Authority is further satisfied that by educators performing housekeeping tasks on 16 October 2020, rather than directly supervising and engaging with children, the Provider was not ensuring that minimum regulated ratio levels were being maintained as educators were not working directly with children to be counted in ratio, therefore contravening section 169(1) of the *Law*.
15. However, the Authority did note that as part of the Provider's response to the Notice, the Provider submitted evidence to support that appropriate policies, procedures and practices were now in place to mitigate the risk of a similar incident occurring in the future. Those risk mitigation strategies meet the expectations of the Authority.

16. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. Many of these options allow the Authority to publish details of substantiated non-compliance.
17. The Authority has the flexibility to choose the most appropriate action to support providers to achieve compliance as well as improve outcomes for children. On this occasion, the Authority has determined to issue this Administrative Action rather than impose any statutory compliance actions.
18. In determining whether to issue the Provider with an Administrative Action, the Authority took the following into consideration:
  - a) The Notifications of Incident were submitted within the prescribed timeframe, and the Service's previous compliance history.
  - b) The Provider's response to the Notice did not refute the allegations, but rather focused on rectification of potential risk to children posed by the incident on 16 October 2020.
  - c) The Provider's response to the incident at the time, and implementation strategies, which, if actioned and followed correctly, are deemed appropriate in mitigating risk of a similar incident.
19. Regarding the substantiated offences under sections 169(1), 165(1) and 167(1) of the *Law*, the Authority is satisfied that already demonstrated subsequent strategies implemented by the Provider will meet the expectations of the Authority, and therefore no further action is required.
20. This Decision will be recorded on your Service 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 *Regulations* be found.

#### Legislation

21. 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>.
22. 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. If you have any questions in relation to this Decision, please contact Authorised Officer Brian Cropper on (02) 6207 1104 or by email [at brian.cropper@act.gov.au](mailto:brian.cropper@act.gov.au).

Yours sincerely



Janine Fairburn  
Assistant Director  
Children's Education and Care Assurance  
ACT Education Directorate  
24 March 2021