

Ms [REDACTED]
Person with Management or Control
YWCA Canberra
RE: YWCA Majura School Age Care

Email: [REDACTED]@ywca-canberra.org.au

Dear Ms [REDACTED]

Decision to Issue Compliance Notice

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA). The Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law (ACT)* (the *Law*), together with receiving and investigating complaints arising under the *Law*.
2. As you are aware, the Authority has recently assessed notification of incident (NOT-00126465) & (NOT-00136378) relating to a children being unsupervised at YWCA Majura School Age Care – SE-00009691 (the Service) operated by YWCA Canberra – PR-00005876 (the Provider), on 3 March 2025 and 17 March 2025 respectively.
3. The Authority is satisfied that the Provider was not complying with the provisions of the *Law* in respect to this matter. Web addresses to the *Law* and associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 4 March 2025, the Authority received a notification of serious incident (NOT-00126465) alleging that on 3 March 2025, a child known to be [REDACTED], left the Service unsupervised and unaccompanied and walked to her home address.
5. On 18 March 2025, the Authority received another notification of serious incident (NOT-00136378) alleging that on 17 March 2025, a child known to be [REDACTED], left the Service, accompanied by staff, and walked to her home address.
6. Due to the risk of harms and hazards likely to cause injury if children are inappropriately supervised, the Authority determined to assess the matter, which engaged suspected offences under sections 165 and 167 of the *Law*.

Law

7. Provisions of the *Law* relevant to the matters raised in the Notice include the following:

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.

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: \$11 400, in the case of an individual

\$57 400, in any other case.

Obligations upon Regulatory Authority

8. The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. 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. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific application in this instance, being:
 - (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 group in 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 objective 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.
13. The *Law* is predominantly a protective *Law* and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

Reasons and Decision

14. The Authority has accepted the admission, through the notification of incident, that [REDACTED] left the Service unsupervised and unaccompanied, walking to her home address. Therefore, substantiating contraventions of sections 165(1) and 167(1) of the *Law*.
15. The Education and Care Services National law and National Regulations require approved providers to ensure that all children being educated and cared for are adequately supervised at all times and are protected from harm and hazards.
16. However, the Authority acknowledges statements and supportive documents submitted by the Provider to further support strategies in mitigating risk to children from a reoccurrence of a similar incident and communication held with parent regarding incident.
17. A Provider's obligation under section 165 of the *Law* is positively and strongly framed– the Provider must ensure that all children being educated and cared for by the Service are adequately supervised at all times when children are in care of that service.
18. Ensuring that children are adequately supervised, via regular monitoring and mentoring of educator practice, and understanding and awareness of expectations set out in policy and procedure is viewed as being a reasonable precaution to take to protect children from harm likely to cause injury in compliance with section 167 of the *Law*.
19. People and entities that choose to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case the Provider chose and consented to participating in the education and care of children and has a responsibility to comply with the standard of care under the *Law*.
20. Considering the information submitted by the Provider, the level of seriousness of the contravention, and the objectives and guiding principles of the *Law*, the Authority has decided that issuing a Compliance Notice is appropriate and in the best interests of children.
21. The Authority is empowered to issue a compliance notice under section 177 of the *Law*:

Section 177 of the *Law*– Compliance notices

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this *Law*.
 - (2) The Regulatory Authority may give the approved provider a notice (a **compliance notice**) requiring the approved provider to take the steps specified in the notice to comply with that provision.
 - (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.
Penalty: \$6 800, in the case of an individual
\$34 400, in any other case.
22. The Compliance Notice is provided at Attachment A to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions. You must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment A.**

Review Rights

23. A decision to issue a compliance notice is a **reviewable decision** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).
24. An application for review may be made by completing the form *AR01 Application for Internal Review of Reviewable Decision* which can be obtained from the ACECQA website.

Legislation

25. The Law applies to you as an approved 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>
26. The *National Law* is made up of an Act and Regulations which can be viewed at:
- <http://www.acecqa.gov.au/national-law>, and
 - <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
27. Should you have any questions about this Decision or Compliance Notice, please contact Authorised Officer Vittorio Colosimo via email at Vittorio.Colosimo@act.gov.au.

Yours sincerely,



Vittorio Colosimo
A/g Assistant Director
Children's Education and Care Assurance
Education and Care, Regulation and Support
9 April 2025