



Ms [REDACTED]
Person with Management or Control
Affinity Education Group Limited
Re: Milestones Early Learning Macquarie

Email: [REDACTED]

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 investigated suspected offences relating to a child being forcefully moved and held down and a child being lifted by the wrists and dropped by an educator at Milestones Early Learning Macquarie SE-00009808 (the Service) operated by Affinity Education Group Pty Limited PR-40001112 (the Provider).
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 25 January 2024 the ACT Regulatory Authority (the Authority) received a notification alleging that an educator at the Service [REDACTED] used force to redirect a child known to be [REDACTED] 2:10, on 24 January 2024, pushing the child by the arms onto the ground. It was further alleged that on the 25 January 2024 [REDACTED] picked up a child, known to be [REDACTED] 3, by the wrists and dropped him from approximately 50cm.
5. A copy of the Notification is at Attachment A.
6. Due to the risk of harms and hazards likely to cause injury if children are inappropriately disciplined, the Authority determined to investigate the matter, which engaged suspected offences under section 166 of the *Law*.
7. On 30 July 2024, the Authority sent the Provider a Show Cause Notice (the Notice), advising the Provider that the Authority had determined there was sufficient evidence to support a case to answer for the Provider regarding suspected offences under the *Law*.

8. The Notice outline the grounds for issue, relevant evidence supporting the suspected contravention of the *Law*, and potential compliance actions being considered if the allegations were substantiated. Refer copy of Notice at Attachment B (minus attachments due to size, can be provided upon request).

9. The Notice set out the following allegations to the Provider for response:

10. Allegation One

It is alleged that on 24 January 2024, the Provider failed to ensure that no child being educated and cared for by the Service, was subjected to any form of corporal punishment, in that, a child believed to be [REDACTED] 2:10) was forcefully move to the ground and help by an educator, contravening section 156(1) of the *Law*.

11. Allegation Two

It is alleged that by 25 January 2024, the Provider failed to ensure that no child was subjected to any form of corporal punishment, in that, a child believed to be [REDACTED] 3:3) was lifted by his wrists and dropped by an educator, contravening section 166(1) of the *Law*.

12. On 13 August 2024, the Provider submitted a response by email to the notice within timeframe (the Response). The Response included a letter of response, along with 7x attachments as follows:

- Work Place Investigation Report
- Relationships with Children Policy
- Code of Conduct
- Letter of Engagement – [REDACTED]
- Critical Policies Table of Contents, [REDACTED]
- Mandatory Training Completion Report
- [REDACTED] – Resignation Letter

Refer to a copy of the Response at Attachment C (minus attachments due to size, can be provided again upon request).

Law

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

Section 166(1) of the Law - Offence to use inappropriate discipline

The Approved Provider of an education and care service must ensure that no child being educated and cared for by a service is subjected to-

- (a) Any form of corporal punishment ; or
- (b) Any discipline that is unreasonable under the circumstances.

Penalty: \$11 400, in the case of an individual
\$57 400, in any other case.

Obligations upon Regulatory Authority

14. 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*".
15. 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.*
16. 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.*
17. 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*.
18. 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.
19. 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

20. The Authority has considered all evidence gathered via the investigation process, inclusive of the Provider's response to the Notice, and is satisfied on the balance of probabilities, all allegations are proven, therefore substantiating contraventions of section 166(1) of the *Law*.
21. Discipline is defined as any strategy employed by an educator with the intention of changing a child's behaviour. Discipline that is inappropriate within the meaning of section 166 of the *Law* includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child. Examples include smacking, yelling, physically dragging a child, unreasonable restraint of a child, using threatening or humiliating language, isolating, or shaming children.
22. This finding is supported by the evidence gathered via witness accounts describing [REDACTED] and [REDACTED] being subjected to inappropriate discipline by educator [REDACTED] whilst enrolled at the Service, thus supporting the allegations as detailed.

23. Within the Response, the Provider makes admissions to offences under section 166 of the *Law*, in that allegations against Ms [REDACTED] were substantiated and outlining the following:
- Policies and procedures relevant to interactions with children.
 - The Promapp centralised platform to access policies and procedures.
 - Code of Conduct.
 - Employment Requirements.
 - Mandatory Online Training.
 - Workplace investigation conducted by Provider.
24. 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.
25. The Provider's obligation under section 166 of the *Law* is positively and strongly framed – the Provider must ensure that all children being educated and cared for by the Service are not subjected to inappropriate conduct amounting to discipline.
26. People and entities that choose to participate in regulated activities have 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*.
27. 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.
28. 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.

29. The Compliance Notice is provided at Attachment D 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 D.**

Review Rights

30. 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).
31. An application for review may be made by completing the form *ARO1 Application for Internal Review of Reviewable Decision* which can be obtained from the ACECQA website.

Legislation

32. 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>
33. 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>
34. Should you have any questions about this Decision or Compliance Notice, please contact Authorised Officer Declan Barbagallo via email at declan.barbagallo@act.gov.au.

Yours sincerely,



Vittorio Colosimo
A/g Assistant Director Investigations
Children's Education and Care Assurance
Education and Care, Regulation and Support
22 October 2024