



Ms [REDACTED]
Person with Management or Control
Affinity Education Group Limited
RE: Papilio Early Learning Barton

Email: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance (CECA).
2. As you are aware, 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* (the *Law*). One of the Authority’s roles is to investigate suspected offences under the *Law*.
3. The Authority is currently investigating an allegation which engage suspected offences at Papilio Early Learning Barton SE-00009874 (the Service) operated by Affinity Education Group Limited PR-40001112 (the Provider). 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 notice.
4. Authorised Officers have obtained evidence from other sources and the Authority has determined that the Provider has a case to answer regarding suspected offences of the *Law*. However, the Authority’s investigation is not complete until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority.
5. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the allegations may constitute offences under sections 167 and 174 of the *Law*. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities (or any combination of them) it will need to consider whether compliance action is required.
7. Where offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Further details regarding potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

8. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas:
 - a. Failure to protect children from harms and hazards.
 - b. Fail to notify Regulatory Authority

Facts

9. On 28 August 2023, the Authority received a complaint from a member of the public alleging that an educator was intoxicated while working with children on 28 August 2023. Refer Attachment A.
10. Due to the risk of harms and hazards likely to cause injury if children are being educated and cared for by educators who are under the influence of drugs or alcohol, the Authority determined to investigate the matter, which engaged suspected offences under sections 167(1), and 174(2) of the *Law*.

First set of grounds – protection from harm.

Allegation One

11. On 28 August 2023, the Provider failed to ensure that every reasonable precaution was taken to ensure that children being educated and cared for by the service were free from harm or any hazard likely to cause injury by allowing educator, [REDACTED] to work directly with children while intoxicated, in breach of *Regulation 83* and engaging a contravention of section 167(1) of the *Law*.

Legislation Relevant to the Allegation One

12. The following provisions of the *Law* and *Regulations* are relevant to the Allegation:

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.

Regulation 82 - Tobacco, drug and alcohol-free environment

The approved provider of an education and care service must ensure that children being educated and cared for by the service are provided with an environment that is free from the use of tobacco, illicit drugs and alcohol.

Regulation 83(1) - Staff members and family day care educators not to be affected by alcohol or drugs

The approved provider of an education and care service must ensure that a nominated supervisor or a staff member of, or volunteer at, the service is not affected by alcohol or drugs (including prescription medication) so as to impair the person's capacity to supervise or provide education and care to children being educated and cared for by the service.

Penalty: \$2200.

Evidence relevant to the Allegation

13. On 25 October 2023 documents were furnished by the provider, pursuant to a Notice issued under section 215 of the *Law* (215 Notice), issued on 18 October 2023, and included the following relevant documents:

- a) Staff Training & Induction Records
- b) Record of Responsible Person
- c) Nominated Supervisor Records
- d) Child Attendance Records

Refer Attachment B - for relevant documents.

14. Service Staff Training and Induction Records (at Attachment B) indicate the name of training undertaken by some personnel. However, the appropriateness and purpose of this training is unknown. As such, the Authority cannot determine if current policies, procedures, training and/or induction processes ensure that staff have the requisite knowledge to deal with an emergency.

15. During the investigation, the Authority obtained witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the specific circumstances surrounding the alleged offences, witnesses are identifiable from the content of their evidence.

16. Please note that educator witness statements were obtained utilising powers under section 215 of the *Law*, imposing an obligation to attend before the Authority and provide relevant evidence under questioning by an Authorised Officer. It is an offence to fail to comply.

17. Relevant extracts from Witness A's statement include:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

18. Relevant extracts from Witness B's statement include:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

the Service.

Legislation relevant to Allegation Two.

22. The following provisions of the *Law* are relevant to the Allegation:

Section 174(2) of the Law – Fail to notify certain information to Regulatory Authority

The Approved Provider of an education and care service must notify the Regulatory Authority of the following information in relation to an approved education and care service-

- (a) any serious incident at the approved education and care service;
- (b) any complaints alleging—
 - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
 - (ii) that this Law has been contravened;
- (c) information in respect of any other prescribed matters.

Penalty: \$4500, in the case of an individual.

\$22 900, in any other case.

Section 174(4) of the Law – Fail to notify certain information to Regulatory Authority

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 175(2)(c) – Prescribed information to be notified to the Authority

For the purposes of section 174(2)(c) of the Law, the following matters are prescribed-

- (c) Any circumstance arising at the Service that poses a risk to the health, safety or wellbeing of children attending the service.

Regulation 176(2)(b) – Time to notify certain information to regulatory Authority

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.
- (c) In any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

Evidence relevant to the allegation

23. To date, the Provider has not made a notification via the ACECQA NQAITs Portal about this incident. However, upon initiation from the Regulatory Authority regarding the incident, the Provider did supply information on 22 September 2023, approximately one month after the alleged incident.

24. Evidence gathered appears to support contravention of section 174(2) of the *Law*.

Potential Compliance Action

25. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions if an offence is substantiated. Potential compliance actions include:
- a. Non-statutory Administration Action (similar to a caution) with no further action;
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced; or
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*.
 - d. Imposing of Conditions on the Service’s approval under section 51 of the *Law*.
 - e. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.
 - f. Cancellation of the service approval under section 79 of the *Law*.
26. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.
27. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.

Right of response

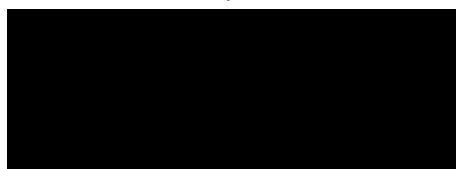
28. As mentioned previously, this is the Provider’s opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a written submission for the Authority’s consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
29. At Attachment C to this Notice is a ‘4 Step Guide to Responding to a Show Cause Notice’ to assist in the development of your submission. Please direct your written submission via email to nicole.withers@act.gov.au or by post to:

Children’s Education and Care Assurance (CECA)
Education Directorate
Attention: Nicole Withers
GPO Box 158, Canberra ACT 2601.

Caution

30. I am informing you that the excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.
31. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
32. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
33. 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>.
34. 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>
35. Should you have any questions about this Show Cause Notice please contact Nicole Withers on nicole.withers@act.gov.au.

Yours Sincerely



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

29 January 2024