



Mr [REDACTED]
Person with Management and Control
Affinity Education Group Limited
RE: Papilio Early Learning Turner

Email: [REDACTED]
[REDACTED]

Dear Mr [REDACTED]

Decision to Issue Administrative Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance. 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 (ACT) (the Law)*, together with receiving and investigating complaints arising under the *Law*.
2. As you are aware, the Authority, has recently investigating suspected inadequate supervision at Papilio Early Learning Turner SE-40007193 (the Service) operated by Affinity Education Group Limited PR- 40001112 (the Provider) on 23 November 2022.
3. The Regulatory 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 15 February 2023, the Authority sent the Provider a Show Cause Notice (the Notice) advising the Provider that the Authority had determined that there was sufficient evidence to support a case to answer for the Provider regarding suspected offences under the *Law*. However, the Authority's final determinations would not be made until the Provider had an opportunity to respond to the allegations and evidence obtained by the Authority.
5. The Notice outlined the grounds for issue, relevant evidence supporting suspected contraventions of *Law*, and potential compliance actions being considered if allegations were substantiated. Refer copy of Notice (minus attachments due to size, noting on request can be produced again) issued at Attachment A.
6. On 01 March 2023, the Provider submitted to the Authority, via email, a response to the Notice. Refer Response (minus attachments due to size, noting on request can be produced again) at Attachment B.

7. Evidence submitted by the Provider as part of the response, and demonstrating actions undertaken as a result of the incident occurring 23 November 2022, included:
 - a) Appendix A - POL 2-P25 Supervision Procedure;
 - b) Appendix B – Manage Supervision Compliance;
 - c) Appendix C – Active Supervision Course (Index);
 - d) Appendix D - Active Supervision PP Turner;
 - e) Appendix E1, 2 and 3 – Records of Counselling;
 - f) Appendix F, G, H – Photographs supervision maps, procedures and lanyards;
 - g) Appendix J – Supervision Risk Assessment and Management Plan;
 - h) Appendix K – Outdoor Environment Risk Assessment and Management Plan

Law

8. Provisions of the *Law* relevant to the this Decision and the Investigation engaged the following:

Section 165(1) of *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: \$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, and the nominated supervisor, 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.

Obligations upon Regulatory Authority, Providers and Services

9. 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”.
10. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have particular 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.*
11. 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.*

12. 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*.
13. 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.
14. 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

15. The Authority has considered all the information supplied by the Provider and is satisfied that on 23 November 2023, on balance of probabilities, the Provider has contravened sections 165(1) and 167(1) of the *Law*.
16. In relation to substantiated contraventions of sections 165 and 167 of the *Law* the Authority is satisfied that records submitted by the Provider, as well as CCTV footage and educator accounts, and admission to the allegations in the Provider's response to the Notice support the substantiation of the offences in this instance.
17. Admissions noted in the Provider's response to the Notice of acknowledged non-compliance with the *Law* and *Regulations* further supports the Authority's substantiation of non-compliance.
18. The Authority acknowledges the actions undertaken by the Provider to mitigate risk of a similar incident occurring.
19. 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.
20. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children and educators alike. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
21. This Decision will be recorded on the Service's 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 associated *Regulations* be found.

Legislation

22. The Education and Care Services National 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>.
23. 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>
24. Should you have any questions about this Decision please contact me via email janine.fairburn@act.gov.au.

Yours Sincerely



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

6 April 2023