



[REDACTED]

Person with Management or Control
Affinity Education Group Limited
RE: Papilio Early Learning Turner

Email: [REDACTED]

Dear [REDACTED],

Show Cause Notice – Potential Compliance 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. Authorised Officers are currently 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. 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 now finished obtaining evidence from other sources (unless further lines of enquiry emerge), and the Authority is satisfied there is sufficient evidence to support a case to answer for the Provider regarding suspected offences under the *Law*. However, the Authority’s final determinations will not be made 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 allegation may constitute offences under sections 165 and 167 of the *Law* (or any combination of them). If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, it will need to consider whether compliance action is required. All such determinations are made via the Authority’s case management processes, involving a dedicated case management committee.
7. If any 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. Potential compliance actions include the following (further details appear at the end of this Notice):

- a. Non-statutory Administrative Action (similar to a caution) with no further action;
- b. Non-statutory Administrative Action with measures to be taken and evidence produced:
- c. Compliance Notice;
- d. Conditions on Service Approval.

Grounds for issuing Show Cause Notice

- 8. The evidence obtained during the investigation to date supports offences under the *Law* within the following areas: Supervision and protection from harm

Background to Investigation

- 9. On 24 November 2022, the Authority received a notification from the Provider alleging that three children were left unsupervised in a room for six minutes - Refer copy of notification at Attachment A.
- 10. On 28 November 2022, an email was sent to the Provider requesting further information. On 30 November 2022 the Provider responded (Attachment B) with the following information:
 - a) Incident Forms and the Provider's internal investigation report (Refer Attachment C1 and C2);
 - b) Working Directly with Children and Child Attendance records; and
 - c) Copy of CCTV Footage (not attached due to size, but can be produced upon request, noting the Provider already has a copy).
- 11. It was determined by the Authority that there were reasonable grounds to suspect that offences have, or may have, occurred at Service, and a decision was made to investigate suspected offences of inadequate supervision, engaging an additional offence that all reasonable protections were not taken to protect children from harms and hazards likely to cause injury or illness.

Allegation – Sections 165, 167 of the Law

- 12. It is alleged that, on 23 November 2022, between 3:29pm and 3:34pm, the Provider failed to ensure that three children were being adequately supervised for a duration of six minutes, placing them at risk of harms and/or hazards, in contravention of section 165(1) of the *Law*, engaging a further contravention of section 167(1) of the *Law*.

Legislation Relevant to Allegation

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

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: \$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 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.

Evidence Relevant to Allegation

14. On 21 December 2022, the Provider was advised of the investigation and a notice for production of documents, allowable under section 215 of the *Law* (215 Notice), was issued. A response to the 215 Notice was received by the Authority on 11 January 2023. Refer email correspondence at Attachment D.
15. Records produced by the Provider included:
 - a) Staff records and staff contact details;
 - b) Online Staffing Policies, Supervision procedure and grouping of children procedure;
 - c) Responsible Person Register and Induction Program for all staff;
 - d) File Note Statements and Provider's internal investigation report – Attachment E and C2;
 - e) Floor Plans relevant to incident – Attachment F; and
 - f) Compliance Response Template
16. During the investigation, the Authority also obtained a witness statement, relevant extracts from which appear below, with personal information redacted where appropriate. Please note that this witness statement was obtained utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.
17. Relevant extract from the Witness is:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

Potential Compliance Action

20. 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 any offences are 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;
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*; or
 - d. Conditions on Service Approval under section 55 of the *Law*.
21. 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. A compliance notice requires specific steps to be undertaken by the Provider to demonstrate to the Authority how compliance with the *Law* and *Regulations* will be achieved and maintained. It is tailored in each circumstance to address the specific non-compliance identified because of the investigation.
22. In your response, you may wish to make suggestions as to how this can be demonstrated. The Authority is not bound by any suggestions but will consider them as part of the Authority's case management process. Alternatively (or additionally), the Authority may place a condition on the Service Approval to address the specific non-compliance identified because of the investigation.

Right of response

23. As mentioned previously, this letter is your 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.
24. At Attachment H 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 Janine.fairburn@act.gov.au or by post to

Children's Education and Care Assurance
Attention Janine Fairburn
GPO Box 158, Canberra ACT 2601.

Caution

25. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation are protected disclosures under section 296 of the *Law*.

26. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
27. 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.
28. 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>.
29. 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>
30. Should you have any questions about this Show Cause Notice please contact Authorised Officer Janine Fairburn at Janine.fairburn@act.gov.au.

Yours sincerely



Jo Williams

Director

Education and Care Regulation and Support

15 February 2023