



[REDACTED]  
Previous Nominated Supervisor  
Papilio Early Learning Turner

[REDACTED]  
[REDACTED]  
Email: [REDACTED] [REDACTED]

Dear Ms [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* (the *Law*). One of the Authority’s roles is to investigate suspected offences 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. The Authority’s records indicate that you were the nominated supervisor at the relevant time, having commenced in that role on 15 July 2022 and ceasing 02 December 2022. Refer Attachment A.
4. 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.
5. 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 you as the Nominated Supervisor regarding the suspected offences under the *Law*. However, the Authority’s investigation is not complete until you have had an opportunity to respond to the allegation/s and evidence obtained by the Authority.
6. 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.
7. If substantiated, the allegation may constitute offences under sections 165 and 167 of the *Law* (or any combination). If, after considering all available evidence, the Authority finds any offences are substantiated, 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.

8. The Authority considers many factors when determining appropriate compliance 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. The Authority issuing you with an official caution;
  - b. An Enforceable Undertaking pursuant to section 179A of the *Law*;
  - c. Prohibition from acting in a role as Nominated Supervisor (or conditions being imposed on being in that role) pursuant to section 182(3) of the *Law*.

### **Background**

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 B.
10. On 28 November 2022, an email was sent to the Provider requesting further information. On 30 November 2022 the Provider responded (Attachment C) with the following information:
  - a) Incident Forms and the Provider's internal investigation report (Refer Attachment D1 and D2);
  - 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 the Service and a decision was made to investigate suspected offences of inadequate staffing and supervision, and failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury.

### **Allegation – Sections 165 and 167.**

12. It is alleged that, on 23 November 2022, you as Nominated Supervisor 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 sections 165(2) and 167(2) of the *Law*.

### **Legislation Relevant to Allegation**

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

#### **Section 165(2) of the *Law* – Offence to inadequately supervise children**

A nominated supervisor 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

**Section 167(2) of the Law - Offence relating to protection of children from harm and hazards**

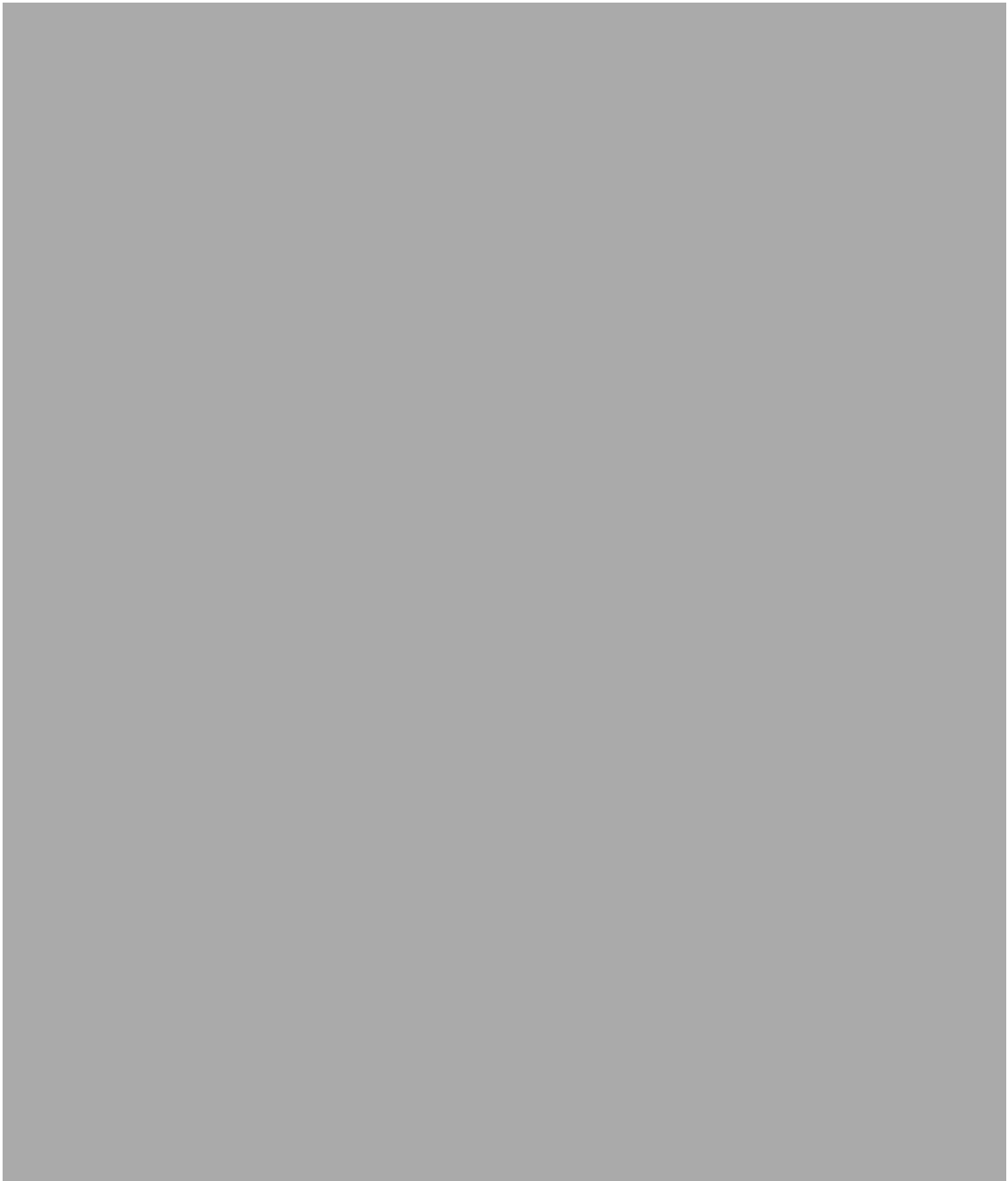
A nominated supervisor of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury.

Penalty: \$10 000

Evidence Relevant to Allegation

14. Records from the National Quality Authority ITS database indicate that you were the nominated supervisor at the time, having commenced in that role on 15 July 2022 and ceasing 02 December 2022. Refer Attachment A
15. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. 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 D2;
  - 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:





Contraventions Supported by Allegation

18. Evidence gathered appears to support contraventions of sections 165(2) and 167(2) of the *Law*.
19. The Authority's view is that adequate supervision is a reasonable precaution to take to protect children from harm and from hazards likely to cause injury. Accordingly, a contravention of section 165(2) results in a substantiation of an offence under section 167(2) of the *Law*.

**Fitness and Propriety as Nominated Supervisor**

20. Regulation 117C provides some guidance on minimum requirements for a nominated supervisor, being that they must:

- a. be over 18 years of age;
  - b. have adequate knowledge and understanding of the provision of education and care to children; and
  - c. have the ability to effectively supervise and manage an education and care service.
21. The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the particular position and may change over time to meet social and political expectations.
  22. At minimum, fitness and propriety includes honesty, knowledge and ability.
  23. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection from harm and hazards, and educational programs. Specific obligations are contained in both the *Law* and the *Regulations*. Accordingly, to be a fit and proper person to be appointed as nominated supervisor, the person must be honest, have a deep knowledge and understanding of the National Quality Framework (including compliance responsibilities), and also possess the ability to manage educators and any other staff, service premises and relationships with families.
  24. This evidence raises a concern about your ability to manage and supervise an education and care service.
  25. The purpose of this Show Cause Notice is to provide you with an opportunity to respond to the evidence outlined above, and to specifically address the point of your fitness and propriety to be a nominated supervisor.

### **Potential Compliance Action**

26. 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 and/or the Authority finds that you do not meet the fitness and propriety requirements to be a nominated supervisor. Potential compliance actions are under Part 7 of the *Law*, and include:
  - a. Non-statutory action such as a formal caution letter;
  - b. Enforceable undertaking under section 179A of the *Law*; or
  - c. Prohibition from acting in a role as Nominated Supervisor.
27. Relevant legislation for enforceable undertakings and partial prohibition appears below.
28. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
29. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector as a whole. It may prevent you from being in a role as nominated supervisor if the Authority finds that you are not fit and proper, or it may place conditions on you being in such a role if you are fit and proper but do not possess all the required skills and knowledge. It

is not always permanent, and the partial prohibition must be cancelled by the Authority if it is satisfied that there is not a sufficient reason for the it to remain in force.

#### **Section 179A - Enforceable undertakings**

- (1) This section applies—
  - (a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law; or
  - (b) in the circumstances set out in section 27(a), 72(a) or 184(3).
- (2) If subsection (1)(a) applies, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.
- (3) If subsection (1)(b) applies in relation to the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the education and care service.
- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to an education and care service.
- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

#### **Section 182(3) - Grounds for issuing a prohibition notice**

- (3) The Regulatory Authority may give a prohibition notice to a person to –
  - (a) Prohibit the person from being a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
  - (b) Impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

#### **Right of response**

30. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice, in addition to the question of fitness and propriety. 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.

31. 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](mailto: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**

32. 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*.
33. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
34. 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.
35. The *Law* applies to you as a nominated supervisor and to any service you are engaged at. 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>.
36. 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>
37. Should you have any questions about this Show Cause Notice please contact Authorised Officer Janine Fairburn at [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au).

Yours sincerely



Jo Williams  
Director  
Education and Care Regulation and Support

15 February 2023