



Mr [REDACTED]
Person with Management or Control
Affinity Education Group Limited

Email: [REDACTED]
[REDACTED]

Dear Mr [REDACTED]

Decision to Issue Administrative Action

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment of an incident, advised of via Notification of Incident (NOT-40491538), occurring at Papilio Early Learning Barton SE-00009847 (the Service) operated by Affinity Education Group Limited PR-40001112 (the Provider).
2. NOT-40491538 advised that a one-year old child fell off structured outdoor play equipment sustaining scratches to her forehead on 30 November 2020.
3. The Regulatory Authority is satisfied that the Provider has not complied with provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) and the *Education and Care Services National Regulations 2011* (the *Regulations*) in this instance.
4. Web addresses for the *Law* and the *Regulations* are provided for your convenience at the end of this letter.

Facts

5. On 1 December 2020, the Authority received notification from the Provider of an incident, which took place at the Service on 30 November 2020, where a child ([REDACTED]) fell from a slide onto the ground, sustaining scratches to her forehead. Various documents were also included with the notification. Refer copy of NOT-40491538 at Attachment A.
6. On 1 December 2020, additional enquiries were made by the Authority with the Provider and additional information and documents were submitted in response by the Provider between 3 December 2020 and 10 December 2020. Refer correspondence at Attachment B.

Law

7. Provisions of the *Law* relevant to the incident occurring 30 November 2020 are:

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.

Reasons

8. After carefully considering evidence gathered throughout the notification assessment process, the Authority finds contravention of section 167(1) of the *Law* has been substantiated.
9. Information supplied by the Provider between 3 and 10 December 2020 supports that appropriate soft fall was not located around the slide that [REDACTED] was utilising, noted as being a requirement of the risk assessment for the equipment. The Authority is satisfied that the Provider did not ensure implementation of this risk mitigation strategy and that this did contribute to the injuries sustained by the child on 30 November 2020.
10. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps taken by the Provider to ensure future compliance, the Authority has decided to issue this Administrative action rather than statutory compliance actions.
11. In information submitted by the Provider, it is noted that the following strategies were advised of as implemented to ensure compliance. Those strategies are:
 - a. Removal (unknown if permanent or temporary) of the orange slide.
 - b. The incident was discussed with all staff via a staff meeting along with all staff going outdoors to physically set up the yard and safety mats around equipment (it is noted that staff meeting document provided on 10/12/2020 was draft agenda only).
 - c. Photos have been taken of the equipment and added to the opening checklist, there have also been more mats ordered to ensure the safety.
12. In relation to the substantiated offence of section 167 of the *Law*, the Authority requires the Provider to produce evidence demonstrating the above strategies have occurred by close of business on Friday 8 January 2021. Additional time has been provided in consideration for the time of year.
13. Evidence to demonstrate the above is requested to be provided and submitted to me via email at janine.fairburn@act.gov.au or by post to:

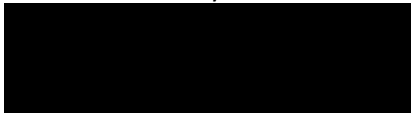
Children's Education and Care Assurance,
Attention Janine Fairburn,
GPO Box 158, Canberra ACT 2601.

14. This Decision is also to remind the Provider of its obligation to ensure reasonable precautions to protect children from harm and from hazards likely to cause injury are taken at all times.
15. This Decision has been recorded on the Service file and may be taken into account by the Authority when considering any further applications for service approvals in the ACT.

Legislation

16. 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>.
17. 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>
18. If you have any questions in relation to this letter, please contact me by email at Janine.fairburn@act.gov.au.

Yours sincerely



A handwritten signature in blue ink, appearing to be 'J. Fairburn'.

Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

18 December 2020