



Mr [REDACTED]
Person with Management and Control
G8 Education Limited
RE: Blinky Bill Early Childhood Centre

Email: [REDACTED]

Dear Mr [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated allegations regarding inadequate supervision of children at Blinky Bill Early Childhood Centre SE-00009751 (the Service), operated by G8 Education Ltd PR-00000898 (the Provider).
2. Web addresses to the *Education and Care Services National Law Act (ACT)* (the *Law*) and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this notice.
3. I am considering compliance action based on various suspected contraventions of the *Law* and the *Regulations* arising from the investigation regarding alleged inadequate supervision, and failure to take reasonable precautions to protect children from harm and from hazard.
4. During the course of the investigation, the Authority also received documentation which raised suspected contraventions regarding staffing levels. As a delegate of the Authority, I am considering compliance action under Parts 3 or 7 of the *Law* including the suspension of service approval.

Grounds for issuing Show Cause for Compliance Action

5. The Authority is considering compliance action based on evidence that suggests two sets of grounds that support offences under the *Law* arising from the Authority’s investigation.
6. The first set of grounds relates to supervision and protecting children from harm or hazards. The second set of grounds relates to staffing.

Facts

7. On 28 October 2020, the Authority was notified (NOT-40482699) by the Provider of a serious incident involving a child ([REDACTED], 2.5 years) who was unaccounted for over an unknown period of time on 27 October 2020. Refer Attachment A.1 for documents relevant to NOT-40482699.

8. In addition, on 28 October 2020, the Provider notified (NOT-40482881) the Authority of a parent complaint regarding the incident notified in NOT-40482699. Refer Attachment A.2 for documents relevant to NOT-40482881.
9. On 2 November 2020, the Authority received a further complaint via email regarding the incident notified by the Provider in NOT-40482699.
10. Due to the risk to children when inadequately supervised, the Authority determined to investigate suspected offences of inadequate supervision and failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury.
11. On 3 November 2020, the Provider notified (NOT-40484245) the Authority of a parent complaint regarding supervision and other concerns. This complaint was linked to the Authority's existing investigation. Refer Attachment A.3 for documents relevant to NOT-40484245.
12. On 13 November 2020:
 - a. the Provider notified (NOT-40487156) the Authority of a further serious incident involving ████████ who was unaccounted for over an unknown period of time on 12 November 2020. This notification was linked to the Authority's existing investigation. Refer Attachment A.4 for documents relevant to NOT-40487156.
 - b. the Provider notified (NOT-40487407) the Authority of a parent complaint regarding the incident notified in NOT-40487156. This notification was linked to the Authority's existing investigation. Refer Attachment A.5 for documents relevant to NOT-40487407.
 - c. the Authority received a further complaint via email regarding the incident notified by the Provider in NOT-40487156. This complaint was linked to the Authority's existing investigation.

First set of grounds –supervision and protection from harms

Allegation One – Inadequate Supervision on 27 October 2020

13. On 27 October 2020 at approximately 3:30pm, the Provider failed to ensure adequate supervision of ████████ in that he was unaccounted for over an unknown period of time, in contravention of section 165(1) of the *Law*, engaging a contravention of section 167(1) of the *Law*.

Legislation Relevant to Allegation One

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

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.

[REDACTED]

[REDACTED]

[REDACTED]

Contraventions Supported by Allegation One

20. Evidence gathered appears to support the following contraventions of the *Law* by the Provider:

- (a) Failing to ensure adequate supervision of all children being educated and cared for by the Service at all times on 27 October 2020, in contravention of section 165(1) of the *Law*;
- (b) Failing to take reasonable precautions to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury on 27 October 2020, in contravention of section 167(1) of the *Law*.

Allegation Two – Inadequate Supervision on 12 November 2020

21. On 12 November 2020 at approximately 2:30pm, the Provider failed to ensure adequate supervision of [REDACTED] in that he was unaccounted for over an unknown period of time, in contravention of section 165(1) of the *Law*, engaging a contravention of section 167(1) of the *Law*.

Legislation Relevant to Allegation Two

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

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 Two

23. On 24 November 2020, a supplementary notice, allowable under section 215 of the *Law* (Supplementary 215 Notice) was issued to the Provider requiring production of documents by 1 December 2020.

24. Relevant documents produced by the Provider on 1 December 2020 included witness statements from educators and another staff member, both as part of the initial notification (see Attachment A.4) and as part of the documentation required under section 215. Refer Attachment C.

25. During the investigation, the Authority obtained witness statements, relevant extracts from which appear below.

26. Relevant extracts from Witness A's statement are:

[REDACTED]

27. Relevant extracts from Witness B's statement are:

[REDACTED]

[REDACTED]

28. Relevant extracts from Witness C's statement are:

[REDACTED]

[REDACTED]

29. Relevant extracts from Witness D's statement are:

[REDACTED]

Contraventions Supported by Allegation Two

30. Evidence gathered appears to support the following contraventions of the *Law* by the Provider:

- (c) Failing to ensure adequate supervision of all children being educated and cared for by the Service at all times on 12 November 2020, in contravention of section 165(1) of the *Law*;
- (d) Failing to take reasonable precautions to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury on 12 November 2020, in contravention of section 167(1) of the *Law*.

Second Set of Grounds – Staffing arrangements

Allegation Three

31. The Provider failed to ensure adequate staffing at all times between 26 October 2020 and 13 November 2020 during which children were being educated and cared for at the Service, in

contravention of section 169(1) of the *Law*, engaging contraventions of sections 165(1) and 167(1).

Legislation Relevant to Allegation Three:

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.

Section 169(1) of the *Law* - Offence relating to staffing arrangements

An Approved Provider of an education and care service must ensure that, whenever children are being educated and cared for by a service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Regulation 123 (1) and (2) –Educator to child ratio-centre –based service

(1) The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios—

- (a) for children from birth to 24 months of age—1 educator to 4 children;
- (a) for children over 24 months and less than 36 months of age—1 educator to 5 children;
- (b) for children aged 36 months of age or over (not including children over preschool age)—1 educator to 11 children;
- (c) for children over preschool age, 1 educator to 15 children.

- (2) If children being educated and cared for at a centre-based service are of mixed ages the minimum number of educators for the children must meet the requirements of subregulation (1) at all times.

Regulation 122 –Educators must be working directly with children to be included in ratios

An educator cannot be included in calculating the educator to child ratio of a centre- based service unless the educator is working directly with children at the service.

Regulation 13 – Meaning of *working directly with children*

For the purpose of these Regulations a person is working directly with children at a given time if at that time the person –

- a) Is physically present with the children; and
- b) Is directly engaged in providing education and care to the children.

Evidence Relevant to Allegation Three

32. In the course of the investigation, the Authority obtained prescribed documents from the Provider under section 215 of the *Law*, including working directly with children records and child attendance records.
33. Ratio analysis was carried out utilising child attendance and working directly with children records produced under section 215. Refer Attachment D for analysis of records, which indicated as follow.
 - a. Monday 26 October 2020 – staffing appeared adequate;
 - b. Tuesday 27 October 2020 – throughout most of the day, the Service had up to three educators fewer than the prescribed minimum;
 - c. Wednesday 28 October 2020 – intermittent short periods of up to 30 minutes during which the Service had one educator fewer than the prescribed minimum;
 - d. Thursday 29 October 2020 – intermittent short periods, together with 1.5 hours in the later afternoon, during which the Service had up to two educators fewer than the prescribed minimum;
 - e. Friday 30 October 2020 – intermittent short periods, together with 1.25 hours in early afternoon, during which the Service had one educator fewer than the prescribed minimum;
 - f. Monday 9 November 2020 – staffing appeared adequate;
 - g. Tuesday 10 November 2020 – intermittent short periods throughout the day, during which the Service had one educator fewer than the prescribed minimum;
 - h. Wednesday 11 November 2020 – one hour in the middle of the day, during which the Service had one educator fewer than the prescribed minimum;

- i. Thursday 12 November 2020 – 45 minutes early in the afternoon during which the Service appeared to have one educator fewer than the prescribed minimum;
- j. Friday 13 November 2020 – 45 minutes later in the afternoon, during which the Service appeared to have one educator fewer than the prescribed minimum.

Contravention supported by Allegation Three

34. Evidence gathered appears to support a contravention of section 169(1) of the *Law*, engaging further contraventions of sections 165(1) and 167(1) of the *Law*.

Proposed Compliance Action

35. The Authority is proposing compliance action under Parts 3 or Part 7 of the *Law*, should the Authority find that any or all of Allegations One to Three are substantiated on the balance of probabilities. Potential compliance actions include:
- a. Suspension of Service Approval;
 - b. Amendment of the Service Approval under section 55 of the *Law* to impose an appropriate condition;
 - 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. Non-statutory action.
36. Alternatively, the Authority may suspend the decision on compliance action pending a six month review of effectiveness of the conditions imposed on the service approval in the decision of 5 March 2021.

Right of response

37. You have a right to respond to the allegations set out in this notice. You may, within 30 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
38. At Attachment E 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 tanya.masterman@act.gov.au or by post to:

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

Caution

39. 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*.
40. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
41. 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.
42. 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>.
43. 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>
44. Should you have any questions about this Notice please contact Senior Investigator Tanya Masterman, on telephone (02) 6205 2012 or email tanya.masterman@act.gov.au

Yours sincerely



Clare Brookes
Senior Director
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate

31 March 2021