



Mr [REDACTED]

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 conducted an investigation into a suspected contravention of the *Education and Care Services National Law (ACT)* (the *Law*) occurring at Blinky Bill Early Childhood Centre SE-00009751 (the Service) operated by G8 Education Limited PR-00000898 (the Provider) on 26 August 2020.
2. 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.
3. I am considering compliance action on the basis of alleged conduct that engages inappropriate discipline and may pose an unacceptable risk of harm to children. As a delegate of the Authority, I am considering compliance action under Part 7 of the *Law*.
4. Specifically, I am considering issuing a Prohibition Notice under section 182(1) of the *Law*.

Grounds for issuing Show Cause for Compliance Action

5. Grounds for issuing this Notice arise from a notification of complaint received by the Authority on 27 August 2020. The subsequent investigation indicates that you subjected a child, being educated and cared for by the Service on 26 August 2020, to inappropriate discipline which is in contravention of section 166(3) of the *Law*.
6. “Discipline” is any strategy employed by an educator with the intention of changing a child’s behaviour. Discipline that is inappropriate within the meaning of the *Law* includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child, such as unreasonable restraint, physically dragging a child, smacking or yelling, isolating, or humiliating children.
7. It is the Authority’s view that the alleged conduct indicates that you pose a risk to children. It is inappropriate for any person to engage in such conduct with a child, particularly a person who is engaged in the provision of education and care to children. It demonstrates a concerning lack of judgment with regard to appropriate interactions with children.

8. Educators are placed in a position of trust to educate and care for one of the most vulnerable members of society – children. One of the Authority's functions is to monitor and enforce compliance with the *Law*, which includes assessment of risk of harm to children that may be posed by an individual if permitted to participate in the early education and care sector.

Allegations

9. It is alleged that, at approximately 11:30am on Wednesday 26 August 2020, whilst employed by the Provider as an educator at the Service, you held a child, known to be [REDACTED] (aged five years), you were witnessed by a member of the public to have had both hands on the child's collar and forcibly pushed him downwards. The force of the push caused the child's back to hit the fence.
10. Furthermore, it is alleged that you were witnessed to have gripped the child's collar and shook him back and forth about six times, causing the child's back to make continuous contact with the fence. In response, the child used a mat to hit you on the side of his face, and you continued to forcibly shake the child back and forth two more times.

Evidence Relevant to Allegations

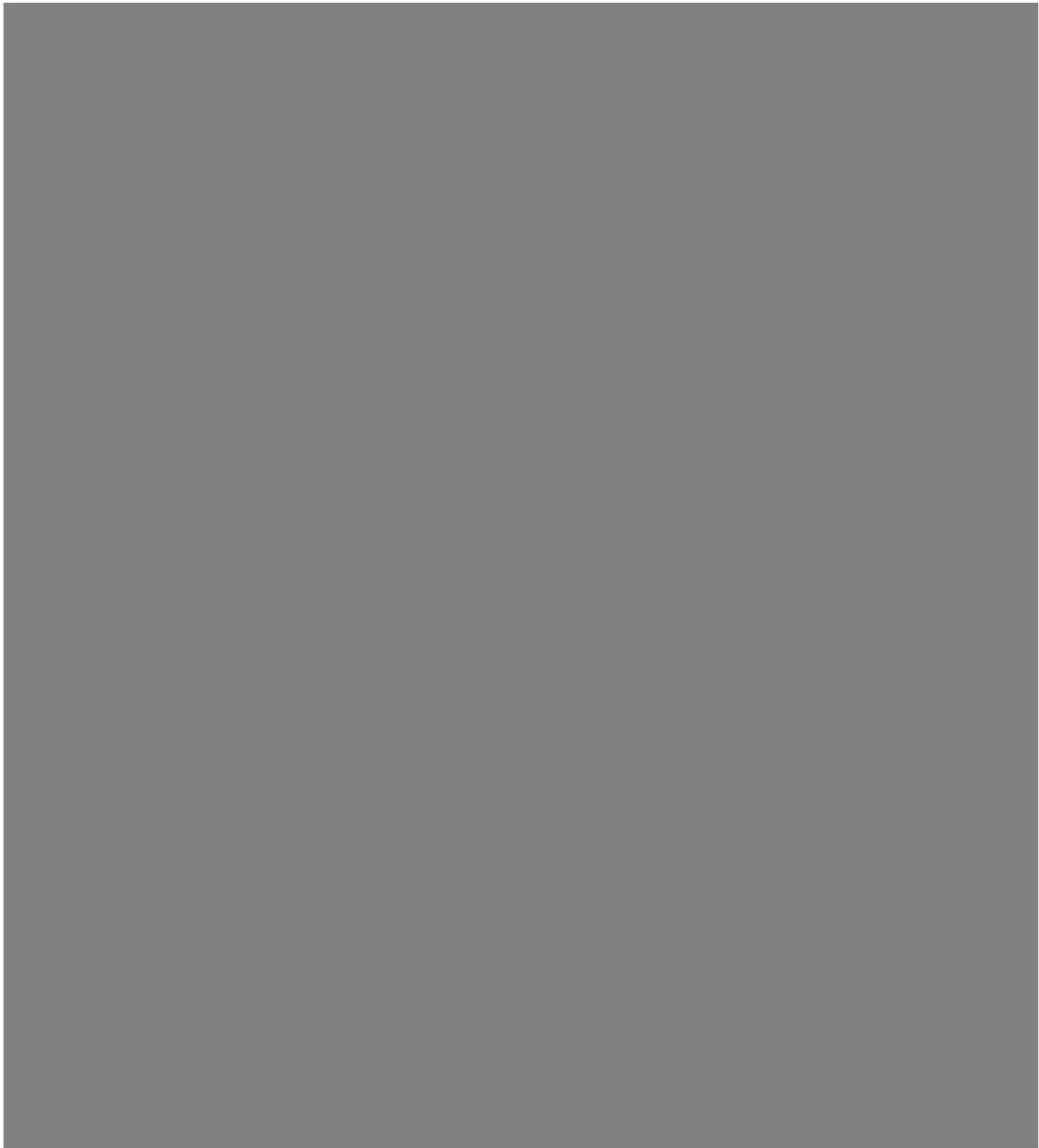
11. On 27 August 2020, the Authority received a Notification of Complaint (NOT-40466868) from the Provider, notifying that on 26 August 2020, a member of the public lodged a complaint alleging that they had witnessed you shaking a child violently against a fence multiple times.
12. Additional information submitted as part of the Notification, included an emailed account of events witnessed by the complainant, statements obtained from other educators at the Service, and advise that the Provider was conducting an internal investigation into the allegations. Refer relevant redacted information at Attachment A.
13. In addition, the Provider submitted a handwritten statement that you provided them on 26 August 2020. This statement is included within Attachment A.
14. Due to the risk posed to children when inappropriately disciplined, the Authority investigated the allegations.
15. On 2 September 2020, the Authority issued the Provider with a Notice allowable under section 215 of the *Law*. Documents and information obtained via this Notice identified that:
 - a) You commenced employment with the Provider on 15 January 2018 and worked at Gungahlin Kinder Haven. You transferred to the Service on 14 June 2020;
 - b) In November 2018 you received a first warning from the Provider for falling asleep while supervising at Gungahlin Kinder Haven Centre;
 - c) You are also known by the name [REDACTED]

- d) You were educating and caring for children in the Preschool on 26 August 2020 at the Service at the time of the alleged conduct occurring;
- e) [REDACTED] was in attendance as an enrolled child in the Preschool at the Service at the time of the alleged conduct occurring;
- f) You were arrested on 1 September 2020 and subsequently charged with assault by ACT Policing;
- g) No other educator at the Service appeared to witness the alleged conduct;
- h) An educator stated to the Provider that although they did not witness the alleged conduct, they had seen [REDACTED] looking upset, and that [REDACTED] had informed them that he was not happy because the educator was holding him against the fence and put him down on the ground.
- i) Another educator stated to the Provider that a lady passing by approached them through the fence she complained and pointed to [REDACTED] and she told the educator that she would go to the office.
- j) The Provider's internal investigation substantiated allegations that your conduct on 26 August 2020 constituted serious misconduct resulting in your employment being terminated. The conduct substantiated included:
 - You restrained the child by holding him against his will over the fence with enough force to prevent him being able to leave your grip.
 - You then proceeded to put the child onto the ground with enough force to continue to restrain and hold him in place.
 - You only released the child when the passer-by outside of the fence raised the alarm towards the actions being taken against the child.
 - The allegations of ill treatment and inappropriate restraint of a child with force is substantiated. The allegation of carrying out the physical and forceful action in the presence of other children is substantiated.

16. On 3 September 2020, the Authority obtained a redacted Statement of Facts from ACT Policing, pursuant to section 863CA of the *Child and Young People Act 2008 (ACT)*. Refer Attachment B.

17. On 7 September 2020, a witness account was obtained from the complainant. Relevant excerpts of this account are as follows:

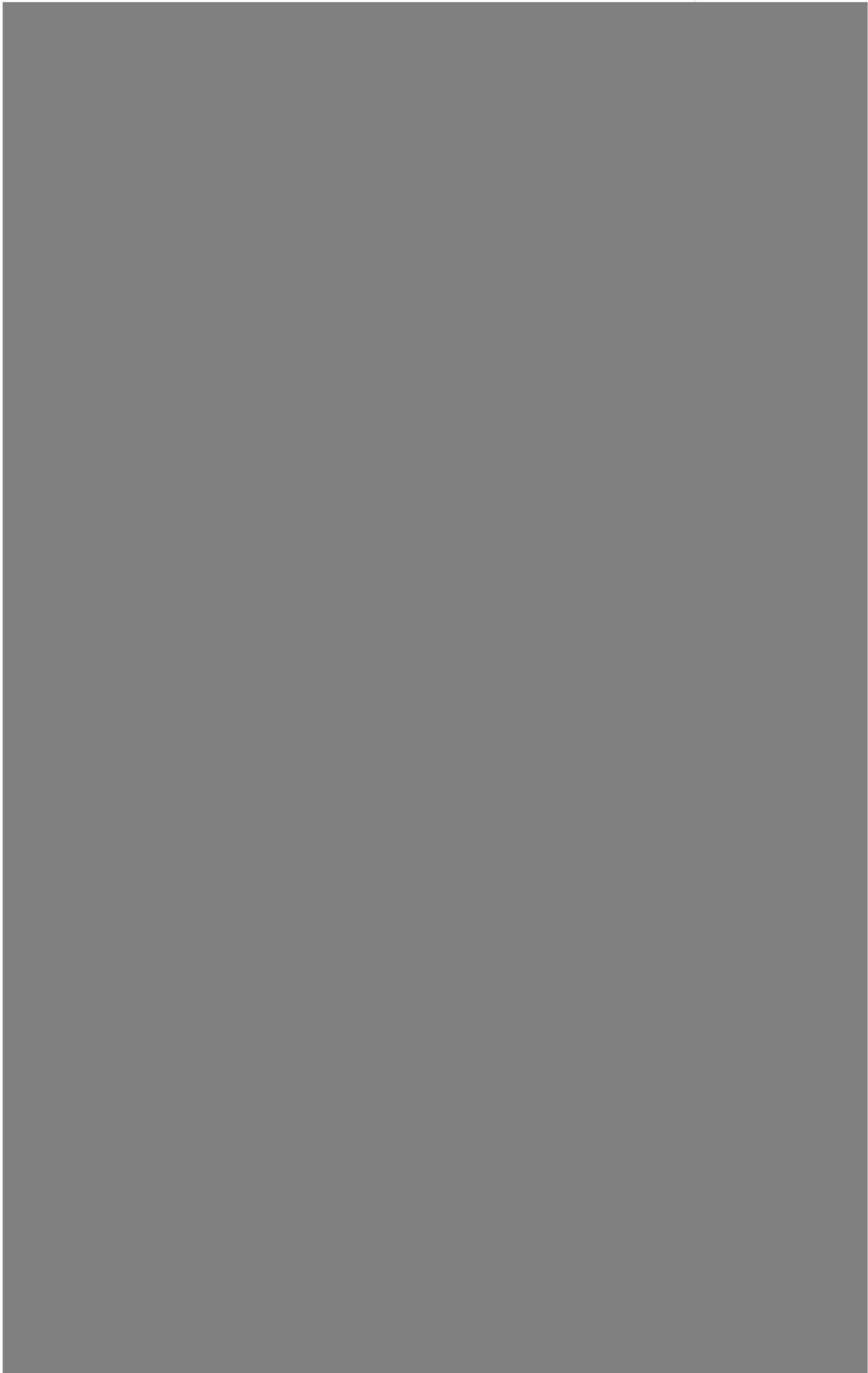





18. On 17 September 2020, ACT Policing provided the Authority with a copy of the statement obtained by them from the complainant. The information was provided by ACT Policing to the Authority pursuant to section 863CA of the *Child and Young People Act 2008 (ACT)*.

19. Relevant excerpts of this statement are as follows:







Contravention Supported by Allegation

20. The evidence obtained by the Authority supports a contravention of the following section of the *Law*:

Section 166 – Offence to Use Inappropriate Discipline

- (3) A staff member of, or a volunteer at, an education and care service must not subject any child being educated and cared for by the service to-
- (a) any form of corporal punishment; or
 - (b) any discipline that is unreasonable in the circumstances.

Compliance Actions Available to the Authority

21. The compliance action being considered by the Authority is:

Section 182 of the Law – Grounds for issuing prohibition notice

- (1) The Regulatory Authority may give a prohibition notice to a person who is in any way involved in the provision of an education and care service if it considers that there may be an unacceptable risk of harm to a child or children if the person were allowed-
- a) To remain on the education the education and care service premises; or
 - b) To provide education and care to children.
- (2) For the purposes of subsection (1), a person may be involved in the provision of an approved education and care service as any of the following –
- a) An approved provider;
 - b) A nominated supervisor;
 - c) An educator;**
 - d) A family day care educator;
 - e) An employee;
 - f) A contractor;
 - g) A volunteer;
 - h) A person who was formerly a person referred to in paragraph (a) to (g) in relation to the approved education and care service or in any other capacity.**

Section 185 of the Law – Content of Prohibition notice

- (1) A prohibition notice given to a person under section 182(1) must state that the person is prohibited from doing one or more of the following –
- (a) Providing education and care to children for an education and care service;

- (b) Being engaged as an educator, family day care educator, employee, contractor or staff member of, or being a volunteer at, an education and care service;
- (c) Carrying out any other activity relating to an education and care service.

Effect of a Prohibition Notice

22. Should a decision be made to issue a Prohibition Notice, pursuant to section 182 of the *Law*, you would be immediately prohibited from doing one or more of the activities specified in section 185(1) of the *Law*, which appear above.

Right of response

23. You have a right to respond to the allegations set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
24. At Attachment C 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 Authorised Officer, Janine Fairburn at janine.fairburn@act.gov.au or by post to:

Janine Fairburn
Authorised Officer
Children's Education and Care Assurance
GPO Box 158
CANBERRA ACT 2601

Caution

25. I am informing you that the details of the Provider's internal investigation were obtained as part of the Authority's investigation and have been provided in the interests of procedural fairness. All information obtained during the course of 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 Education and Care Services National Law applies to you as an educator. 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>.

29. 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>

30. Should you have any questions about this Show Cause Notice please contact Janine Fairburn on telephone (02) 6205 4390 or email janine.fairburn@act.gov.au

Yours Sincerely



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

22 October 2020