

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

Email: [REDACTED]@g8education.edu.au  
[REDACTED]@g8education.edu.au

Dear Mr [REDACTED]

**Decision to Issue Compliance Notice**

1. As you may already be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment into a Notification of Incident (NOT-40472614) relating to the operation of Blinky Bill Early Childhood Centre, SE-0009751 (the Service), operated by G8 Education Limited, PR-00000898 (the Provider).
2. The Notification (NOT-40472614) related to a child, known to be [REDACTED] [REDACTED] (aged four years), exiting the Service premises by climbing over a fence on 16 September 2020.
3. I am satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations).
4. Web addresses for the Law and the Regulations are provided for your convenience at the end of this notice.

**Facts**

5. On 17 September 2020, the Authority received a Notification of Incident (NOT-40472614) from the Provider, advising that, on 16 September 2020, a four-year-old child had climbed over a fence, unseen by educators, and was returned to the Service by a parent from Gowrie Primary School at 4:45pm. Refer NOT-40472614 at Attachment A.
6. In addition to the Notification, the Provider also submitted supporting documentation (Refer Attachment B) consisting of the following:
  - a) Correspondence notes between Ms [REDACTED] and [REDACTED] parent Ms [REDACTED];

- b) Incident record, photographs of relevant area, educator qualifications, working with vulnerable person registration cards, and email correspondence relating to the hedges;
  - c) Educator witness statements;
  - d) Child attendance records for the Preschool and Toddler rooms;
  - e) Working Directly with Children (WDWC) records and ratio check records for the Preschool and Toddler rooms;
  - f) Play Areas Risk Assessment and supervision plan/map; and
  - g) Policies and Procedures relevant to supervision, incidents and health and safety.
7. Educator statements provided indicate that there were no educators directly supervising the back area of the outdoor yard near the hedges or obstacle course at the time that [REDACTED] was able to climb over the fence.
  8. WDWC records indicate that there were three preschool educators and two toddler educators working directly with children at the time of the incident – educators being [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].
  9. Child Attendance records indicate that between 4:35pm and 4:45pm there were 17 preschool children and 11 toddler children being educated and cared for at the Service.
  10. The risk assessment and supervision map/plan indicate that the back area of the play area where the hedges and obstacle course are located are deemed a high-risk area requiring active supervision.

**Law**

11. Evidence submitted via the Notification of Incident and supporting documentation engages the following sections of the *Law* and the *Regulations*:

**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.

**Regulation 151 –Record of educators working directly with children**

The approved provider of a centre-based service must keep a record of educators working directly with children that includes the following information -

- a) The name of each educator who works directly with children being educated and cared for by the service;
- b) The hours that each educator works directly with children being educated and cared for by the service.

**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.

**Regulation 177 – Prescribed enrolment and other documents to be kept by approved provider**

- (1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider-
  - (h) in the case of a centre-based service, a record of educators working directly with children as set out in relation 151;
- (2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

**Authority Considerations of evidence**

- 12. The Authority notes that within the educator statements and notification of incident, the time of 4:45pm is the time that ██████ was returned to the Service by the parent of the Primary School – there appears to be no educator who has been able to establish when ██████ was last seen prior to climbing over the fence.
- 13. The Authority notes discrepancies in relation to WDWC records, educator statements, the risk assessment and the supervision plan/map provided as outlined:
  - a) WDWC records indicate that ████████████████████ is working directly with children at the time of the incident, yet Ms ██████████ has stated that she was in the kitchen doing dishes, therefore not considered to be working directly with children to be included in ratio;

- b) The supervision plan/map indicates that an educator, known to be [REDACTED], was supervising children on the other side of the outdoor play area near the cubby house and monkey bars around the time of the incident, yet WDWC records indicate [REDACTED] as finishing at 3:35pm; and
- c) The risk assessment identifies that the hedges in the outdoor play area are a high risk requiring active supervision, yet no educator appears to have been actively or adequately supervising this area. Rather, all educators appeared to have been on the opposite side of the play area, and the educator identified as closet to the hedges, being at the sandpit, was facing in the opposite direction to the hedges towards the Toddler room.

#### **Previous compliance considerations**

- 14. The Authority notes that on 14 July 2020, an Administrative Decision was issued to the Provider in relation to inadequate supervision contributing to another child, known to be [REDACTED], being able to exit the Service on 15 and 17 June 2020. Refer Administrative Decision at Attachment C.

#### **Obligations upon Regulatory Authority**

- 15. The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. Relevant to this decision is the objective at section 3(2)(a), namely:  
*"to ensure the safety, health and wellbeing of children attending education and care services"*.
- 16. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:  
*(c) to monitor and enforce compliance with this law;*  
*(d) to receive and investigate complaints arising under this law.*
- 17. The *Law* works to protect a particularly vulnerable group in our society – children – when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
- 18. A key objective of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.
- 19. The *Law* is predominantly a protective law and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

20. People and entities that choose and consent to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case the Provider has chosen and consented to participating in the education and care of children. Ultimately the Provider holds the responsibility for complying with the *Law*.

### **Reasons**

21. Having considered the evidence of the assessment and documents submitted by the Provider; I am satisfied that the Provider has failed to comply with the *Law* and associated *Regulations*.
22. I am satisfied that, sections 165(1) and 167(1) of the *Law* were contravened on 16 September 2020. Sections 165 and 167 of the *Law* were engaged by educator accounts and by documentation obtained from the Provider.
23. Information gathered engaged the obligation that the Provider must ensure that all children being educated and cared for by the service were adequately supervised at all times that the children are in the care of that Service, as required by section 165 of the *Law*.
24. Information gathered supports that the Provider, by not ensuring adequate supervision of children, has not appeared to ensure that every reasonable precaution was taken to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury, in contravention of section 167 of the *Law*.
25. The fact that a four-year-old child could climb over a fence in an identified high risk area of the play area, and exit the Service unnoticed by educators, and not be identified as missing until such time as a member of the public returned the child to the Service further supports the contraventions of sections 165 and 167 of the *Law*.
26. It is noted that, should the member of the public's motives had not been in the best interests of [REDACTED] safety, the potential consequences for this scenario could have been catastrophic.
27. Furthermore, it is unclear, should the scenario have been different, how long it would have taken for an educator to have noticed that [REDACTED] was not present in the outdoor area.
28. This incident, along with the matter relevant to the Administrative Decision issued 14 July 2020, indicate an apparent systemic issue surrounding the Service's inability to adequately supervise children especially in the outdoor environments.
29. The Authority is empowered to issue a compliance notice under section 177 of the *Law*

### **Section 177 – Compliance notices**

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this Law.
- (2) The Regulatory Authority may give the approved provider a notice (a **compliance notice**) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.  
Penalty: \$6 000, in the case of an individual  
\$30 000, in any other case.

### **Decision**

30. Considering the evidence obtained from the Provider, and the objectives and guiding principles, I have determined that issuing a compliance notice would be appropriate and in the best interests of children.
31. The compliance notice is Attachment D to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions.
32. You must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment D.**

### **Appeal Rights**

33. A decision to issue a compliance notice is a **reviewable decision** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).
34. An application for review may be made by completing the form AR01 Application for Internal Review of Reviewable Decision which can be obtained from the ACECQA website.

### **Legislation**

35. The Education and Care Services National Law applies to you as a provider and any service you operate. 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>.

36. 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>
37. Should you have any questions about this Decision or Compliance Notice please contact Assistant Director, Janine Fairburn, on telephone (02) 6205 4390 or email [janine.fairburn@act.gov.au](mailto: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

2 October 2020