



[REDACTED]
Person with Management or Control
G8 Education Limited

Email: [REDACTED]
Cc: [REDACTED]

Dear [REDACTED]

Decision to Issue Compliance Notice

1. As you are aware, an Authorised Officer from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted a compliance audit at NurtureOne Holt Children's Centre – SE-40008661 (the Service), operated by G8 Education Limited PR-00000898 (the Provider).
2. I am satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations).
3. Web addresses for the Law and the Regulations are provided for your convenience at the end of this notice.

Facts

4. On 31 August 2022, an Authorised Officer (AO) entered the service to conduct a compliance audit. The audit report has been finalised and it has been determined, based on the evidence collected, that there are contraventions of Section 165(1), 167 (1), 169(1) of the *National Law* and Regulations 77 (1) and(2), 97 (4), 103 (1) and 122 of the *Regulations*.
5. The audit identified lack of consistent supervision resulting in practices failing to protect children from harm and hazards.
 - (a) Educators were task focused and did not effectively supervise children at lunch time. This included not supervising children who had specific dietary requirements and should not have access to food, other than their own. Furthermore, educators did not witness an incident involving two children wrestling with one child becoming upset and crying.
 - (b) The nursery 1 room counted only one educator when another educator was on their lunch break, leaving the educator to manage multiple tasks by themselves to attend to children's needs. This practice resulted in children being left unsupervised in highchairs and eating while the educator attended to other children in the cot room or prepared food in the kitchenette.

6. The audit identified a lack of processes to ensure that every reasonable step was taken to protect children from harm and from any hazard likely to cause injury.
 - (a) Evacuation plans and procedures were not consistently displayed at each exit identified as an emergency exit.
 - (b) Adequate health and hygiene practices were not consistently in place to minimize risks to children. It was observed children placing their feet on the table while waiting for their lunch and no educator cleaning the table afterwards before serving the food.
 - (c) In one of the bathrooms chemicals could be accessed by children and a nappy change mat in the toddler 1 room was ripped making it unhygienic. Furthermore, the magnetic construction resources had some pieces that were cracked and broken exposing small magnets that could potentially be ingested,
7. Working directly with children records were not consistently and accurately completed.
8. On its face, such evidence supported the following breaches of the Law and Regulations listed below.

Law and 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.

Section 169(1) of the Law – Offence relating to required programs

An approved provider of an education and care service must ensure that, whenever children are being educated and cared for by the 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 77 – Health, hygiene and safe food practices

- (1) The approved provider of an education and care service must ensure that nominated supervisors and staff members of, and volunteers at, the service implement—
- (a) adequate health and hygiene practices; and
 - (b) safe practices for handling, preparing and storing food—

to minimise risks to children being educated and cared for by the service.

Penalty: \$2000.

- (2) A nominated supervisor of an education and care service must implement, and ensure that all staff members of, and volunteers at, the service implement—

- (a) adequate health and hygiene practices; and
- (b) safe practices for handling, preparing and storing food—

to minimise risks to children being educated and cared for by the service.

Penalty: \$2000.

Regulation 97 – Emergency and evacuation procedures

- (4) The approved provider of an education and care service must ensure that a copy of the emergency and evacuation floor plan and instructions are displayed in a prominent position near each exit at the education and care service premises, including a family day care residence and approved family day care venue.

- (5)

Penalty: \$2000.

Regulation 103 – Premises, furniture and equipment to be safe, clean and in good repair

- (1) The approved provider of an education and care service must ensure that the education and care service premises and all equipment and furniture used in providing the education and care service are safe, clean and in good repair.

Penalty: \$2000

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

- (1) 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.
- (2) In this regulation, a reference to an educator includes an early childhood teacher or a suitably qualified person who is counted as an educator under regulation 123(3).

Obligations upon Regulatory Authority, Providers and Services

9. 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".
10. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have particular application in this instance, being:

(a) that the rights and best interests of the child are paramount; ...
(f) that best practice is expected in the provision of education and care services.
11. 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.
12. 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*.
13. 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.
14. 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.

Reasons and Decision

15. Considering the evidence obtained, the Service's compliance history, and the objectives and guiding principles of the *Law*, I have determined that issuing a compliance notice would be appropriate and in the best interests of children.
16. The Authority is empowered to issue a compliance notice under section 177 of the *Law*

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.

17. The compliance notice is Attachment A to this Decision letter. You are required to take the steps directed in the Notice to comply with the relevant provisions.
18. You must produce evidence of the steps required by **the time indicated within the Notice at Attachment A.**
19. The Authority will also be maintaining its auditing of the Service to ensure compliance is appropriately monitored, so as to ensure the health, safety and wellbeing of children being educated and cared for.

Rights of Review

20. 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).
21. 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

22. 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>.
23. 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>
24. Should you have any questions about this Decision, or the Compliance Notice please contact delphine.coutin@act.gov.au or by phone on 6207 1114.

Yours Sincerely



Jo Williams
Director
Education and Care Regulation and Support
ACT Education Directorate

20 September 2022