



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

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

Dear Mr [REDACTED]

**Decision to Impose Condition on Service Approval**

1. As you are aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently issued a Compliance Notice (the Notice) in respect to the operation Blinky Bill Early Childhood Centre, SE-0009751 (the Service), operated by G8 Education Limited, PR-00000898 (the Provider).
2. I am satisfied that the Provider has not complied with the provisions of the *Education and Care Services National Law Act (ACT)* (the Law) in regard to this Compliance Notice.
3. Web addresses for the Law and the *Regulations* are provided for your convenience at the end of this notice.

**Facts**

4. On 2 October 2020, the Authority issued the Provider a compliance notice in respect to substantiated offences of the Law. Refer Decision Letter and the Notice at Attachment A. Please note that due to size, Attachments A, B and C of the Decision are not included in this attachment, but can be made available on request.
5. The Provider responded to elements of the Notice on various dates between 13 October 2020 and 22 October 2020 as follows:
  - a) 13, 14 and 16 October 2020 – Refer Attachment B;
  - b) 22 and 23 October 2020 – Refer Attachment C;
6. The response received 13 October 2020 was within the timeframe of 14 days as required by the Notice, and that an extension was granted for further elements of Regulation 151 to be complied with. This extension for response was agreed as 22 October 2020.
7. On 23 October 2020, the Authority assessed the Providers response to those actions required to be responded to within 14 days of receipt of the Notice. The Authority noted that only two elements of the Notice were satisfied, being that an appropriate consultant had been engaged by the Provider, and that the Nominated Supervisor had read and reviewed policies related to supervision.

8. It was advised to the Provider on 23 October 2020 that the following elements of the Compliance Notice had not been satisfied within the timeframes provided, and the Authority offered an additional opportunity to comply by 6 November 2020:
- (a) Actions related to ensuring that the Nominated Supervisor was aware of and understood the expectations and obligations of being a Nominated Supervisor, as well as actions requiring the Nominated Supervisor to have a contingency plan in place to mitigate risk of inadequate supervision as a result of high-risk environments;
  - (b) Actions related to ensuring that staffing levels are determined, not just on minimum regulated ratio levels, but on ensuring adequate supervision at all times, taking into account individual needs of each child, the environment, and the experience levels of educators employed;
  - (c) Demonstration of actions implemented to ensure that all educators (inclusive of the Nominated Supervisor) are aware of, and understand, the expectations of the National Law and Regulations in respect to when they can and cannot be included in ratio.
9. The Authority also reminded the Provider of additional requirements in the Notice and the associated timeframes provided to respond, being:
- The approved provider will engage a suitably qualified external education and care consultant to assist the service in developing educator practices to ensure the service is adequately managed, across all areas relating to adequate and active supervision, to meet the minimum requirements of the National Law and Regulations. To satisfy this condition the Provider will need to ensure:*
- b. The approved provider must provide a report, written by the consultant, outlining the assessment of processes and practices at the Service, and recommendations to the Regulatory Authority by 30 November 2020; and*
  - c. The approved provider must provide evidence to demonstrate that the recommendations of the consultant are implemented at the Service by 30 December 2020.*
10. On 6 November 2020, the Provider submitted additional responses that address the elements of the Compliance Notice which had not been satisfied within the timeframes provided, as advised on 23 October 2020. However, no information was provided in relation to the further elements detailed in paragraph 9 above. Refer correspondence at Attachment D.
11. On 13 January 2021, the Authority contacted the Provider to query why a final response in line with Notice timeframes had not been received. The Provider responded by asking for an extension until 14 January 2021 to provide requested documentation, which was agreed to by the Authority. Refer to correspondence at Attachment E.
12. The Provider submitted its response on 14 January 2021. Between 15 January 2021 and 18 January 2021, the Authority liaised with the Provider in regard to the evidence. The Authority advised the Provider on 29 January 2021 that the Compliance Notice was still not satisfied

and requested the Provider submit a detailed response as to why they had not complied with the Notice – the Provider responded via email on 1 February 2021. Refer correspondence at Attachment F.

### **Additional Related Matters**

13. On 27 November 2020, the Provider submitted a notification of serious incident (NOT-40491063) to the Authority. The notification advised that a four year old child was missing/unaccounted for between 10 and 30 minutes on 26 November 2020. Refer NOT-40491063 at Attachment G.
14. On 2 December 2020, the Authority requested additional information from the Provider in relation to NOT-40491063 for the purpose of conducting an initial assessment of the incident. Additional information was received in full on 24 February 2021, and included records relating to the Provider's internal investigation, findings and outcomes which identified that the Provider had acknowledged inadequate supervision by educators as a contributing factor to the incident.
15. In addition, the Authority acknowledges that the Provider issued the educators involved with written warnings, relating to inadequate supervision and not following policy and procedures. Refer Attachment H.
16. On 28 January 2021, the Provider submitted a notification of incident (NOT-40505723) to the Authority. The notification advised that a two year old child was left unattended on a nappy change table on 27 January 2021, resulting in the child falling to the floor without sustaining serious injury. Refer NOT-40505723 at Attachment I.

### **Law and Regulations**

#### Legislative Provisions engaged by Provider response to the Notice:

#### **Section 177(3) of the Law – Compliance notices**

An approved provider must comply with a compliance notice under subsection(2) within the period (being no less than 14 days) specified in the notice.

Penalty: \$6000, in the case of an individual  
\$30 000, 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 165(1) of the Law - Offence relating to inadequate supervision**

An approved provider of an education and care service must ensure that all children being educated and cared for by a 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.

### **Obligations upon Regulatory Authority**

17. 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"*.
18. 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.*
19. 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*.
20. 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.
21. 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.

### **Compliance History**

22. In determining appropriate compliance action, I have considered the compliance history of the Service, as well as the Provider's other services in the ACT, and the services held by the Provider's associated entities.

### **Decision**

23. Considering the recent notifications submitted by the Provider indicating that adequate supervision is an ongoing concern, the Provider's inability to satisfy the requirements of the Notice, despite extensions to timeframes, the Provider's and the Service's compliance history in the ACT, and the objectives and guiding principles of the *Law*, I have determined that imposing conditions on the service approval would be appropriate and in the best interests of children.

24. I am satisfied that the Provider, due to the Provider's inability to satisfy the requirements of the Compliance Notice issued 2 October 2020 within the determined timeframe, as well as the Provider's own admission to not having met the requirements, has not complied with the Compliance Notice issued 2 October 2020, in contravention of section 177(3) of the *Law*.
25. I am satisfied, on balance of probabilities, and by the admissions in the notifications, that inadequate supervision contributed to the incidents advised of via NOT-40491063 and NOT-40505723, in contravention of section 165(1) of the *Law*, and engaging a contravention of section 167(1) of the *Law*.
26. The Authority is empowered to amend a service approval under section 55 of the *Law*

**55 – Amendment of service approval by Regulatory Authority**

- (1) The Regulatory Authority may amend a service approval at any time without an application from the approved provider.
  - (2) Without limiting subsection (1), an amendment may vary a condition of the service approval or impose a new condition on the service approval.
  - (3) The Regulatory Authority must give written notice of the amendment to the approved provider.
  - (4) An amendment under this section has effect:
    - (a) 14 days after the Regulatory Authority gives notice of the amendment under subsection (3); or
    - (b) If another period is specified by the Regulatory Authority, at the end of that period.
  - (5) The Regulatory Authority must amend a service approval to the extent that it relates to an associated children's service in accordance with any direction by the children's services regulator if that direction is given in accordance with the children's services law of this jurisdiction.
27. The Service Approval is hereby amended by imposing the following conditions:
1. **For each day on which the Service is educating and caring for children, the Provider must roster two additional educators, who are in excess of the educators required to meet the minimum number prescribed by Regulation 123 including provision of cover for all breaks or other times an educator is not working directly with children as defined by Regulation 13.**
  2. **For each day on which the Service is educating and caring for children, the Provider must have, at minimum, two educators working directly with children in each room at all times to ensure adequate supervision.**
  3. **The approved provider will engage a suitably qualified education and care consultant to assist the service in developing policies and procedures to ensure the service is adequately managed, across all areas relating to ensuring adequate staffing arrangements and supervision, and to ensure that the service is able to meet the minimum requirements of the National Law and Regulations. To satisfy this condition the Provider will need to ensure:**
    - a) **The consultant must be engaged by the approved provider and approved by the Regulatory Authority by 30 March 2021;**

- b) **The approved provider must provide a detailed and comprehensive report, written by the consultant, outlining the assessment of processes and practices at the Service, and recommendations to the Regulatory Authority by 1 May 2021; and**
  - c) **The approved provider must provide evidence to demonstrate that the recommendations of the consultant are implemented at the Service by 1 June 2021.**
28. These conditions are to address outstanding matters of the Compliance Notice not yet addressed, and to minimise the risk that inadequate resourcing of staff is contributing to inadequate supervision which may result in children not be protected from harm and hazard likely to cause injury or illness. The conditions come into effect fourteen (14) days from the date of receipt of this Decision.
29. An Amended Service Approval is Attachment J to this Decision.
30. The Authority will also be increasing 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**

31. A decision to issue a compliance notice and a decision to impose a condition on a service approval are **reviewable decisions** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of these decisions or either of them. 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).
32. 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**

33. 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>.
34. 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>
35. Should you have any questions about this Decision, or the Condition please contact Assistant Director, Janine Fairburn via email at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au)

Yours Sincerely



Clare Brookes  
Senior Director  
Early Childhood Policy and Regulation  
ACT Education Directorate  
5 March 2021