



**ACT**  
Government

Education and Training

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

Email: [REDACTED] [g8education.edu.au](mailto:[REDACTED]@g8education.edu.au)  
[REDACTED] [@g8education.edu.au](mailto:[REDACTED]@g8education.edu.au)

Dear Mr [REDACTED]

### **Decision to Issue Administrative Action**

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated allegations of inadequate supervision of children at Blinky Bill Early Childhood Centre SE-00009751 (the Service), operated by G8 Education Ltd PR-00000898 (the Provider).
2. The complaints related to inadequate supervision and failure to take reasonable precautions to protect children from harm and from hazards likely to cause injury, on 27 October 2020 and 12 November 2020.
3. Web addresses for the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations 2011* (the Regulations) are provided for your convenience at the end of this decision.

### **Background**

4. 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.
5. In addition, on 28 October 2020, the Provider notified (NOT-40482881) the Authority of a parent complaint regarding the incident notified in NOT-40482699.
6. On 2 November 2020, the Authority received a further complaint via email regarding the incident notified by the Provider in NOT-40482699.
7. 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.

8. On 13 November 2020:
  - a. the Provider notified (NOT-40487156) the Authority of a further serious incident involving [REDACTED] who was unaccounted for over an unknown period of time on 12 November 2020. This notification was linked to the Authority's existing investigation.
  - 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.
  - 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.
9. 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.
10. Throughout the course of the investigation, the Authority obtained evidence from numerous sources, including initial notifications, documentation and witness statements obtained under section 215 of the *Law*, and voluntary witness statements. Such evidence suggested three allegations that supported offences under the *Law*.
11. On 31 March 2021, the Authority issued the Provider with a Show Cause Notice (SCN). Refer Attachment A for the SCN. Due to size, attachments to the SCN have not been included with this Decision but can be produced upon request.
12. On 30 April 2021, the Provider produced a response to the SCN. Refer Attachment B for the Response.
13. In the Response, the Provider requested the Authority to consider current actions being taken in compliance with the condition placed on the Service Approval 5 March 2021. Refer Attachment C for additional documents considered in that regard.

### **Consideration of Response**

#### **Allegations One and Two – Inadequate Supervision**

14. It is alleged that, on 27 October 2020 at approximately 3:30pm, 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*.
15. It is alleged that, 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*.

#### Allegations One and Two – Relevant Legislation

16. Provisions of the *Law* relevant to Allegations One and Two are:

##### **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.

#### Allegations One and Two – Evidence and Submissions

17. Evidence gathered relevant to Allegations One and Two consisted of the Provider's notifications, documents and witness statements obtained under section 215 of the *Law*, and a voluntary statement, relevant extracts (or copies where appropriate) of which were included with the SCN.
18. In the Response, the Provider included material relevant to mitigation, including updated supervision policy and training, supervision plans, documented ratio checks, headcounts, and mandatory policy reviews. Regarding Allegation One, the Provider admitted the lapse of supervision. Regarding Allegation Two, the Provider stated that it was not possible to ascertain what happened, no educators witnessed a child coming from outside through Toddlers and into the foyer. The fact that the incident happened, and no educators was aware of how, substantiates an offence of inadequate supervision.
19. Evidence of steps taken in response to the incident was included with the Response, such as documentation regarding implementation of indoor supervision plans, revised bathroom procedures, removal of free access between the Toddler and Preschool rooms, walkthrough procedures and a staff meeting with presentation on supervision on 13 April 2021.

#### Allegations One and Two – Authority's Finding

20. For the reasons outlined above, the Authority is satisfied that the following contraventions of the *Law* have been substantiated on the balance of probabilities:

- a. Failing to ensure adequate supervision of all children being educated and cared for by the Service 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*;
- c. Failing to ensure adequate supervision of all children being educated and cared for by the Service on 12 November 2020, in contravention of section 165(1) of the *Law*; and
- 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 23 November 2020, in contravention of section 167(1) of the *Law*.

#### Allegation Three– Staffing

- 21. 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).

#### Allegation Three – Relevant Legislation

- 22. The provisions of the *Law* and *Regulations* relevant to Allegation Two is:

##### **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;
  - (b) for children over 24 months and less than 36 months of age— 1 educator to 5 children;
  - (c) for children aged 36 months of age or over (not including children over preschool age)—1 educator to 11 children;
  - (d) 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.

Allegation Three – Evidence and Submissions

23. Evidence relevant to Allegation Three consisted of prescribed records obtained under section 215 of the *Law*, analysed by the Authority, which indicated multiple instances of inadequate staffing.
24. In the Response, the Provider did not produce evidence to refute the allegation, but outlined contributing circumstances, such as educators being suspended due to reportable incidents, and resignation of the Area Manager. It was further stated that working directly with children records were still not compliant despite educator training, and the Provider was unable to determine actual educators working directly with children. However, there were no rosters or other documents produced that may have indicated additional educators not accounted for in the Authority's ratio analysis.

### Allegation Three – Authority’s Finding

25. For the reasons outlined above, the Authority is satisfied that the following contraventions of the *Law* have been substantiated on the balance of probabilities:
- a. Failing 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*;
  - b. Failing to ensure adequate supervision of all children being educated and cared for by the Service between 26 October 2020 and 13 November 2020, in contravention of section 165(1) of the *Law*;
  - c. Failing to take reasonable precautions to protect children being educated and cared for by the Service between 26 October 2020 and 13 November 2020 from harm and from hazard likely to cause injury, in contravention of section 167(1) of the *Law*.

### Reasons

26. For the reasons outlined above, the Authority finds contraventions of sections 165, 167, and 169 of the *Law* have been substantiated. It is therefore necessary that the Authority consider what, if any, compliance action is required to ensure the health, safety and wellbeing of children is protected.

### Obligations upon Regulatory Authority, Providers and Services

27. The starting point for the Authority is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. 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; ...’*
28. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:
- (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.
29. 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.
30. The *Law* works to protect a particularly vulnerable part of 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*.

31. A key object 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.
32. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance, for example fines or compliance notices through to suspension of your service approval and/or prosecution. Many of these options allow the Authority to publish details of your non-compliance.
33. Within the Response, the Provider requested that the Authority consider the conditions placed on the Service Approval and the steps already taken in compliance with those conditions, such as:
  - a. Additional two educators in excess of minimum requirements;
  - b. Adjustment of rosters to ensure minimum of two educators working directly with children in each room at all times;
  - c. Weekly review of rosters by Operations Team;
  - d. Ongoing recruitment;
  - e. Engagement of Early Childhood Consultant.
34. It was requested that the Authority afford the Provider an opportunity to remedy the ongoing compliance issues at the Service, through the requirements of the conditions. The Authority notes that the substantiated offences took place some months before the imposition of the conditions on the Service Approval.
35. The Authority noted that the early childhood consultant had been engaged by the Provider and that a report was submitted to the Authority on 30 April 2021 from the Provider outlining the consultant's observations and recommendations, with advice that these recommendations will be implemented at the Service by 1 June 2021.
36. The Authority further noted that the Provider has also engaged Ms [REDACTED] in a mentoring and training capacity over the following five months to further support training of educators and implementation of the consultant's recommendations.

### **Decision**

37. Considering the evidence, the objectives and guiding principles of the *Law*, and the steps taken by the Provider in compliance with the Service Approval conditions, the Authority has determined to issue this Administrative action at this point, rather than take statutory compliance action.
38. The Authority will review the effectiveness of the conditions in remedying the contraventions of sections 165, 167 and 169 of the *Law*, as of 30 September 2021. In reviewing the effect of the

conditions, the Authority will consider any available relevant evidence, including upcoming Assessment and Rating reporting and results of a compliance audit to take place before 30 September 2021.

39. The Authority reserves the right to issue compliance action in response to the substantiated offences if the non-compliances are not remedied by 30 September 2021. If the non-compliances are remedied by 30 September 2021, the Authority will consider this matter closed and not take any further action. You will be advised of the outcome of the review in October 2021.
40. In the meantime, the substantiated breaches of sections 165, 167, and 174 of the *Law* have been recorded on the Service file and may be considered by the Authority when considering any further applications for service approvals in the ACT.

#### Legislation

41. 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>.
42. 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>
43. If you have any questions in relation to this letter, please contact Authorised Officer Tanya Masterman by email at [tanya.masterman@act.gov.au](mailto:tanya.masterman@act.gov.au).

Yours sincerely



Clare Brookes  
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Education and Care Regulation and Support  
ACT Education Directorate  
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