

Ms [REDACTED]  
Nominated Supervisor  
RE: Blinky Bill Early Childhood Centre

Email: [REDACTED]@gmail.com

Dear Ms [REDACTED]

**ACT Regulatory Authority – Decision not to Prohibit, decision to issue a Caution.**

1. As you are aware, the ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance (CECA), recently investigated suspected offences which may have occurred at Blinky Bill Early Childhood Centre SE-00009751 (the Service) then operated by for Provider G8 Education Limited PR-00000898.

**Facts**

2. On 22 November 2023, the Authority received a notification of complaint from the Provider, advising of an allegation that you, whilst engaged in the role of Centre Director, had inappropriately interacted with a child ([REDACTED]) on 17 November 2023.
3. Due to the seriousness of the allegations and risk of harm to children when subjected to inappropriate discipline, the Authority determined to investigate.
4. Information and evidence obtained by the Authority during the investigation included Provider records and witness accounts, which the Authority obtained under section 215 of the *Education and Care Services National Law (ACT) (the Law)*.
5. On 20 March 2024, the Authority sent you a Show Cause Notice (the Notice) for the purpose of affording you with procedural fairness and ensuring natural justice to respond to the allegation raised. Refer copy of Notice at Attachment A (minus attachments – can be provided again on request).
6. The Notice outlined the grounds for issue, relevant evidence supporting the suspected contraventions of the *Law*, and potential compliance actions being considered if the allegations were substantiated.

**Allegation of Inappropriate Discipline**

7. It is alleged that on 17 November 2023, you, as a staff member of the Service, subjected a child, believed to be [REDACTED], to conduct amounting to inappropriate discipline, unreasonable in the circumstances, in that, you yelled at, cornered, shamed, and restrained him, contravening section 166(3) of the *Law*.
8. It is further alleged, that on 17 November 2023, by not ensuring that a child was not subjected to inappropriate discipline, you, as the nominated supervisor of the Service have not taken every reasonable precaution to protect children from harm and hazard likely to cause injury or illness, in contravention of section 167(2) of the *Law*.

9. On 16 April 2024, you attended the Authority and provided a verbal response to the Show Cause Notice to Authorised Officers. You were given an audio copy of that response.

### Law

10. The following provision of the *Law* was engaged by the allegations:

#### **Section 166(2) of the Law - Offence to use inappropriate discipline.**

A staff member, or volunteer at, supervisor of an education and care service must not subject any child being educated and cared for by a service to-

- (a) Any form of corporal punishment; or
- (b) Any discipline that is unreasonable under the circumstances.

Penalty: \$11 400, in the case of an individual

#### **Section 167(2) of the Law - Offence relating to protection of children from harm and hazards**

A nominated supervisor 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: \$11 400

### **Obligations upon Regulatory Authority**

11. 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*".
12. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific 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.*
13. 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.*
14. 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*.
15. 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.

16. 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.

### **Reason and Decision**

17. The Authority has considered all evidence gathered via the investigation process, inclusive of your response to the Notice and is satisfied, on the balance of probabilities, the allegation is proven as detailed, therefore substantiating contravention of section 166(3) and 167(2) of the *Law*.
18. The Authority has determined your conduct on 17 November 2023, on balance of probabilities, was for the purpose of discipline, to change [REDACTED] behaviour that you found challenging, and this discipline was unreasonable under the circumstances. Cornering, shaming and restraining a child is identified as a form of punishment.
19. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. On this occasion, the Authority has considered:
- a. The conduct of cornering, shaming and restraining a child, and the impact of this on [REDACTED] on 17 November 2023;
  - b. Your length of service in the early education and care sector;
  - c. Your service as a Nominated Supervisor;
  - d. Any previous history of substantiated offences against the *Law*;
  - e. The objectives and guiding principles of the *Law*.
20. In the circumstances, the Authority has decided not to take statutory compliance action, but to issue you with this letter as a formal Caution.
21. This Caution serves to remind you of your obligations, as an educator and Nominated Supervisor, to ensure that your actions in no way compromise the safety, health and wellbeing of children being educated and cared for by you.
22. The Authority strongly encourages you to reflect on this incident or seek further training on how to manage children's behavioural issues in an appropriate manner. To assist you in this, and to ensure that you are aware of and understand how inappropriate discipline is viewed within an education and care setting, please find attached to this letter an ACECQA Fact Sheet at Attachment B and C.
23. In choosing to participate in the education and care sector, you have a responsibility, and obligation, to ensure that at all times, your interactions with children meet the professional standards expected under the *Law* and *Regulations*, to support the health and well-being of all children being educated and cared for by you.
24. The Authority deems this matter now closed unless new relevant information is received to warrant additional enquiries to be made.

25. If you have any questions relating to the investigation findings, please contact Authorised Officer Brian Cropper via email at [Brian.Cropper@act.gov.au](mailto:Brian.Cropper@act.gov.au).

Yours sincerely



Nicole Withers  
Assistant Director  
Children's Education and Care Assurance  
Education and Care, Regulation and Support

29 May 2024