



[REDACTED]
Nominated Supervisor
Blooming Buds Early Education Centre

Email: [REDACTED]

Dear [REDACTED]

Show Cause Notice – Potential Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance. As you are aware, the Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law* (the Law). One of the Authority’s roles is to investigate suspected offences under the Law.
2. Authorised Officers are currently investigating multiple suspected offences at Blooming Buds Early Learning Centre SE-40015122 (the Service) operated by Bright Bees Early Learning (Nicholls) Pty Limited PR- 40011902 (the Provider).
3. The Authority’s records indicate that you consented to being a nominated supervisor at the Service on 17 May 2019, and that you were an acknowledged current nominated supervisor at the Service during the relevant time period of allegations between January 2022 and March 2022 inclusive.
4. Web addresses to the Law and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.
5. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge) and the Authority has determined that you as Nominated Supervisor have a case to answer regarding suspected offences. However, the Authority’s investigation is not complete until you have had an opportunity to respond to the allegation/s and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
6. Detailed instructions of how to respond appear at the end of this Notice.
7. If substantiated, the allegations may constitute offences under section 167 of the Law (or any combination of them). If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, it will need to consider whether compliance action is required.

8. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions include the following (further details appear at the end of this Notice):
 - a. The Authority issuing you with an official caution;
 - b. An Enforceable Undertaking pursuant to section 179A of the *Law*;
 - c. Prohibition from acting in a role as Nominated Supervisor (or conditions being imposed on being in that role) pursuant to section 182(3) of the *Law*.

Grounds for issuing Show Cause Notice

9. The evidence obtained during the investigation support an offence under the *Law* within the area of failing to protect children by taking reasonable precautions.
10. On 27 March 2021, the Authority received a direct complaint relating to the operation of the Service and in particular, allegations that COVID 19 cases were going unreported.
11. Specifically, the complaint alleged that between January and March 2022, appropriate government authorities, families and staff were not being informed of positive or suspected COVID 19 cases within the Service.
12. Due to the risk of children being exposed to harms and hazards resulting from failures in communicating with relevant stakeholders of reported COVID 19 cases, the Authority determined there was reasonable grounds to investigate suspected offences under section 165 of the *Law*.
13. During the investigation, information was gathered that provided reasonable grounds for an additional offence under section 167 of the *Law*, relating to Working with Vulnerable Person registration.
14. The Authority is considering action based on the evidence gathered that indicate contraventions of the *Law*. Specifically, evidence gives grounds to support the following allegations:

Allegation One

15. It is alleged that between 7 February 2022 and 31 March 2022 inclusive, you as Nominated Supervisor failed to protect children attending the Service from harm and hazard by way of inadequately informing government authorities, families or staff of confirmed cases of COVID 19, complying with legislative reporting requirements and Provider's COVID-19 policy and procedures, contravening Section 167(2) of the *Law*.

Allegation Two

16. It is alleged that between March 2021 and April 2022 inclusive, you as Nominated Supervisor failed to protect children attending the service from harms and hazards by failing to ensure that all staff working at the Service were authorised persons, possessing a current and valid ACT Working with Vulnerable People check, in contravention of 167(2) of the *Law*.

Legislation relevant to Allegation One and Two

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

- (2) The 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: \$10 000, in the case of an individual

Section 170 of the *Law*– unauthorised persons on education and care service premises

- (1) This section applies to an education and care service operating in a participating jurisdiction that has a working with children law.
- (2) The approved provider of the education and care service must ensure that a person does not remain at the education and care service premises while children are being educated and cared for at the premises, unless-
- (a) The person is an authorised person-
 - (b) The person is under the direct supervision of an educator or other staff member of the service.

Penalty: \$1000, in the case of an individual

\$5000, in any other case.

- (5) In this section-

authorised person means a person who is-

- (a) A person who is holds a current working with children check or working with children card;
- (e) A person who is permitted under the working directly with children law of this jurisdiction to remain at the education and care service premises without holding a working with children check or a working with children card.

Legislation Relevant to Working with Vulnerable People (Background Checking) Act 2011

12 When is a person required to be registered?

- (1) A person is required to be registered—
- (a) to engage in a regulated activity
- (2) However, a person is not required to be registered to engage in a regulated activity if the person is—

- (c) registered under a corresponding law and—
 - (i) the activity is substantially similar to a regulated activity the person is allowed to engage in under the corresponding law; and
 - (ii) the person is engaged in the activity for not more than 28 days in any 12-month period;

17 Application for registration:

(3) A registered person may apply to the commissioner, not later than the day the person's registration expires, to renew the person's registration.

(4) If a person applies to renew their registration, the person's registration remains in force until the application is decided.

Evidence Relevant to Allegation One

- 17. On the 13 April 2022, the Authority issued a Notice allowable under section 215 of the *Law* (215 Notice) requiring the production of COVID 19 related documentation.
- 18. On 17 April 2022, the Authority received twelve written Notifications, and a further written Notification on the 18 April 2022, in relation to confirmed COVID cases occurring between 7 February and 6 April 2022. Refer Attachment A.
- 19. On 29 April 2022, the Provider responded to the 215 Notice furnishing the following relevant documents:
 - a. COVID positive staff and children's details.
 - b. COVID 19 Policy and procedure.
 - c. Working Directly with Children Records (WDWC).
 - d. Service COVID communications.Refer to Attachment B - (WDWC not included. Can be supplied upon request)
- 20. An analysis of ACECQA NQA ITS data based identified the Service did not provide written notification of COVID 19 cases prior to 17 April 2022. Refer to Attachment C.
- 21. Authority records identify you as a Nominated Supervisor at he time of the alleged offences. Refer to Attachment C1.
- 22. It is the view of the Authority, where positive cases are identified within a Service, relevant information be communicated in line with legislative requirements under the *Law* and shared with families and staff of the Service to mitigate risk of harm to children.

[REDACTED]

26. Relevant excerpts from statement of Witness B include:

[REDACTED]

Contravention supported by the Allegation:

27. In relation to the management and communication of Covid-19 risks, evidence gathered support allegations of a contravention of section 167(2) of the *Law*.

Evidence Relevant to Allegation Two

28. Documents furnished by the Provider pursuant to the 215 Notice on 29 April 2022, included two staff detail records labelled 20220414 Staff Record and 20220414 Staff Details. Both forms incorporated Working with Vulnerable People (WWVP) numbers and expiry dates, for all staff. Comparison of the two documents indicated WWVP expiry dates were updated with the term renewal for three staff. Refer to Attachment D.
29. On 2 May 2022, the Provider responded to Authority enquiries in relation to provision of current WWVP documentation to comply with the 215 Notice, furnishing further WWVP staff records. Refer to Attachment E.
30. In relation to the renewal for educator, Ms [REDACTED], it was determined that she commenced working at the Service on 27 January 2021 and was a holder of a NSW Working with Children check with an NSW expiry of 9 February 2022. About March 2021, and in consideration of relevant WWVP Law, the NSW check expired with Ms [REDACTED] appearing to be an unauthorised person working at the Service until making an application for an ACT WWVP registration on 29 April 2022. Refer to Attachment F.
31. Educator records identified that WWVP registration expiry for Nominated Supervisor, [REDACTED], was 16 March 2022 and then updated to renewal. Further documents provided, identify that an application for WWVP registration was submitted on 21/04/2022. It appears that you were an unauthorised person for in excess of a month. Refer to Attachment G.
32. Records for Nominated Supervisor, [REDACTED], identify an expiry date for WWVP registration as 17 March 2021 prior to being updated to the status of renewal. Further documents provided an application for WWVP registration completed on 14 April 2022 but did not include an extension notification. Refer to Attachment H.
33. Excerpts from Witness A's statement include the following:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Contravention supported by the Allegation:

34. In relation to the ensuring that only authorised persons holding current and valid WWVP registrations worked directly with children, evidence gathered supports an allegation of a contravention of section 167(2) of the *Law*.

Potential Compliance Action

35. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions, if any offences are substantiated and/or the Authority finds that you do not meet the fitness and propriety requirements to be a nominated supervisor. Potential compliance actions are under Part 7 of the *Law*, and include:
- a. Non-statutory action such as a formal caution letter;
 - b. Enforceable undertaking under section 179A of the *Law*; or
 - c. Prohibition from acting in a role as Nominated Supervisor.
36. Relevant legislation for enforceable undertakings and partial prohibition appears below. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, or advising the Authority of any proposed change in employment.
37. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector as a whole. It may prevent you from being in a role as nominated supervisor if the Authority finds that you are not fit and proper, or it may place conditions on you being in such a role if you are fit and proper but do not possess all the required skills and knowledge. It is not always permanent, and the partial prohibition must be cancelled by the Authority if it is satisfied that there is not a sufficient reason for the it to remain in force.

Section 179A - Enforceable undertakings

- (1) This section applies—
- (a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this *Law*; or
 - (b) in the circumstances set out in section 27(a), 72(a) or 184(3).

- (2) If subsection (1)(a) applies, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.
- (3) If subsection (1)(b) applies in relation to the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the education and care service.
- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to an education and care service.
- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

Section 182(3) - Grounds for issuing a prohibition notice

- (3) The Regulatory Authority may give a prohibition notice to a person to –
 - (a) Prohibit the person from being a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
 - (b) Impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

Right of response

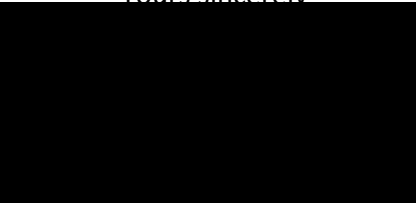
38. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
39. At Attachment I to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Please direct your written submission via email to brian.cropper@act.gov.au or by post to:

Children's Education and Care Assurance -
Attention Brian Cropper
GPO Box 158, Canberra ACT 2601.

Caution

40. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation are protected disclosures under section 296 of the *Law*.
41. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
42. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
43. 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>.
44. 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>
45. Should you have any questions about this Show Cause Notice please contact Senior Investigator Brian Cropper, on telephone (02) 62071104 or email
brian.cropper@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

26 July 2022