

██████████  
Person with Management or Control  
Bright Bees Early Learning (Nicholls) Pty Limited  
RE: Blooming Buds Early Learning Centre

Email: ██████████

Dear ██████████,

**Show Cause Notice – Potential Compliance Action**

1. As you may be aware, Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance, are investigating suspected offences under the *Education and Care Services National Law (ACT) (the Law)* relating to the operation of Blooming Buds Early Learning Centre SE-40015122 (the Service) operated by Bright Bees Early Learning (Nicholls) Pty Limited PR- 40011902 (the Provider).
2. 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.
3. The Authority has determined that there is sufficient evidence to support a case to answer for the Provider regarding suspected offences under the *Law*. However, the Authority’s final determinations will not be made until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
4. If substantiated, the allegations may constitute offences under sections 167, 170, 174 of the *Law* and 177 of the *Regulations* (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.
5. If any offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions in this instance include the following (further details appear at the end of this Notice):
  - a. Non-statutory Administrative Action (similar to a caution) with no further action;
  - b. Non-statutory Administrative Action with measures to be taken and evidence produced: or
  - c. Compliance Notice.

**Grounds for issuing Show Cause Notice**

6. The evidence obtained during the investigation support offences under the *Law* within the following areas of:
  - a. failing to take every reasonable precaution to protect children, from harm and from any hazard likely to cause injury.
  - b. Failing to notify the Regulatory Authority.
  - c. Failing to ensure staff working at the Service are authorised persons.
7. 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.
8. 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.
9. 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 to investigate.
10. During the investigation, information was gathered that supported further suspected offences relating to Working with Vulnerable Person checks and inaccuracies in staff records.
11. The Authority is considering compliance action based on the evidence gathered that indicate contraventions of the *Law*. Specifically, evidence gives grounds to support the following allegations:

**Allegation One**

It is alleged that between 7 February 2022 and 31 March 2022 inclusive, the Provider 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(1) of the *Law*.

**Allegation Two**

It is alleged that between February 2022 and April 2022 inclusive, the Provider failed to notify of prescribed matters, in that COVID-19 positive staff and children who had attended the Service, were not notified to the Regulatory Authority within the specified

timeframe, being 7 days, under Regulation 176(2)(b), contravening Section 174(2)(c) of the *Law*.

Allegation Three

It is alleged that between March 2021 and April 2022 inclusive, the Provider 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 ACT Working with Vulnerable People check, in non-compliance with section 170(2) and raising a contravention of 167(1) of the *Law*.

Allegation Four

It is alleged that between March 2021 and May 2022 inclusive, the Provider failed to ensure that staff were authorised to remain at the Service while children were educated and cared for, in that [REDACTED], [REDACTED] and [REDACTED] at certain times while working at the service, did not possess a current and valid ACT Working with Vulnerable People registration deeming them as unauthorised persons, contravening s170(2), of the *Law*.

Allegation Five

It is alleged that between March 2021 and May 2022 inclusive, the Provider failed to ensure that staff and Nominated Supervisor records were in compliance with *Regulation* 145(2)(a) and 145(2)(b), in that a current Working with Vulnerable Persons registrations identifying number and expiry date, were not documented for all staff, contravention 177(2) of the *Regulations*.

**Allegations One and Two - section 167 and 174.**

Allegation One

12. It is alleged that between 7 February 2022 and 31 March 2022 inclusive, the Provider 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(1) of the *Law*.

Allegation Two

13. It is alleged that between February 2022 and April 2022 inclusive, the Provider failed to notify of prescribed matters, in that COVID-19 positive staff and children who had attended the Service, were not notified to the Regulatory Authority within the specified timeframe, being 7 days, under Regulation 176(2)(b), contravening Section 174(2)(c) of the *Law*.

**Legislation relevant to Allegation One and Two**

**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 174 of Law - Offence to fail to notify certain information to Regulatory Authority**

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—
- (a) any serious incident at the approved education and care service;
  - (b) any complaints alleging—
    - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service;
- or
- (ii) that this Law has been contravened;
  - (c) information in respect of any other prescribed matters.

Penalty: \$4 000, in the case of an individual  
\$20 000, in any other case.

**Regulation 175 – Prescribed information to be notified to Regulatory Authority**

- (2) For the purposes of section 174(2)(c) of the Law, the following matters are prescribed-
- (c) Any circumstance arising at the service that poses a risk to the health, safety or wellbeing of a child or children attending the service.

**Evidence Relevant to the Allegation One and Two.**

14. 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.
15. On 17 April 2022, the Authority received twelve written Notifications, and a further written Notification on the 18 April 2022, relating to confirmed COVID-19 cases occurring between 7 February and 6 April 2022. Refer Attachment A.
16. On 29 April 2022, the Provider furnished records pursuant to the 215 Notice including the following relevant documents:
  - a. COVID-19 positive staff and children’s details.

- b. COVID-19 Policy and procedure.
- c. Working Directly with Children Records (WDWC).
- d. Service COVID-19 communications.

Refer to Attachment B - (WDWC not included. Can be supplied upon request)

- 17. An analysis of ACECQA NQA ITS data based identified the Provider did not furnish written notification of COVID-19 cases prior to 17 April 2022. Refer to Attachment C.
- 18. Review of the Service’s Confirmed Case Procedure (Covid-19) and Plan furnished by the Provider indicate that a notification be lodged with the Regulatory Authority for each case, in line reporting requirements 175(2)(c) of the *Law* for each positive COVID-19 cases attending the Service and posing a risk of harm to children.
- 19. Notifications submitted by the Provider with COVID positive case details, indicate the following occurring during the week Tuesday 15 March to Friday 18 March 2022 inclusive (noting Monday 14/03/2022 was a public holiday):
  - a. 15/03/2022 Two children and three staff reported ill.
  - b. 16/03/2022 One child reported ill.
  - c. 18/03/2022 Two children reported ill.
- 20. During the investigation, the Authority also obtained evidence from a witnesses with relevant excerpts appearing below. Due to the specific circumstances of the allegation, it is likely the witnesses can be identified from the content of the excerpts. Please note that the statement was obtained using powers under section 215 of the *Law*, compelling the witnesses to provide relevant evidence to an Authorised Officer.
- 21. Relevant excerpts from statement of Witness A include:

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

**Contravention supported by Allegation One and Two**

23. Evidence gathered appears to support allegations of a contravention of section 167(1) and 174(2)(c) of the *Law*.

**Allegations Three, Four and Five – section 167-170 and regulation 177**

**Allegation Three**

24. It is alleged that between March 2021 and April 2022 inclusive, the Provider 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 ACT Working with Vulnerable People check, in non-compliance with section 170(2) and raising a contravention of 167(1) of the *Law*.

**Allegation Four**

25. It is alleged that between March 2021 and May 2022 inclusive, the Provider failed to ensure that staff were authorised to remain at the Service while children were educated and cared for, in that [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] at certain times while working at the service, did not possess a current and valid ACT Working with Vulnerable People registration deeming them as unauthorised persons, contravening s170(2), of the *Law*.

**Allegation Five**

26. It is alleged that between March 2021 and May 2022 inclusive, the Provider failed to ensure that staff and Nominated Supervisor records were in compliance with *Regulation* 145(2)(a) and 145(2)(b), in that a current Working with Vulnerable Persons registrations identifying number and expiry date, were not documented for all staff, contravention 177(2) of the *Regulations*.

**Legislation relevant to Allegations Three, Four and Five**

**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.

**Regulation 177 – Prescribed enrolment and other documents to be kept by approved provider-**

- (1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider –
  - (e) In the case of a centre-based service, a staff record as set out in regulation 145
- (2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in sub regulation (1) are accurate.

Penalty: \$2000

**Regulation 145 – Staff Record**

- (1) The approved provider of a centre-based service must ensure that a staff record is kept for that service in accordance with this Division
- (2) The staff record must include-
  - (a) the information about a nominated Supervisor set out in regulation 146; and
  - (b) the information about a staff members set out in regulation 147

**Regulation 146 – Nominated supervisor**

The staff record must include the following information in relation to each nominated supervisor-

- (d) if the education and care service is located in a jurisdiction with a working with children law or a working with vulnerable people law, a record of the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless paragraph (e) applies;
- (e) if the nominated supervisor is a teacher registered under the education law of a participating jurisdiction and has provided proof of that registration, a record of the identifying number of the teacher registration and expiry date of that registration

**Regulation 147 – Staff members**

The staff record must include the following information in relation to staff members-

- (d) if the education and care service is located in a jurisdiction with a working with children law or a working with vulnerable people law, a record of the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless paragraph (e) applies;
- (e) if the nominated supervisor is a teacher registered under the education law of a participating jurisdiction and has provided proof of that registration, a record of the identifying number of the teacher registration and expiry date of that registration

**Relevant sections of 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; or
- (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 the Allegation Three, Four and Five**

- 27. 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.
- 28. On 2 May 2022, current WWVP documentation was furnished by the provider upon the Authority's request and in compliance with the 215 Notice. Refer to Attachment E.
- 29. In relation to the renewal for educator, [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. In March 2021 as a result of WWVP Law, the NSW check expired with [REDACTED] therefore an unauthorised person working at the Service until making an application for an ACT WWVP registration on 29 April 2022. Refer to Attachment F.
- 30. Educator records identified that WWVP registration expiry for Nominated Supervisor, [REDACTED], was 16 March 2022 and also noted as renewal. Further documents provided, identify an application for WWVP registration was submitted on 21/04/2022. It appears that [REDACTED] was an unauthorised person for in excess of a month. Refer to Attachment G.
- 31. 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.
- 32. Excerpts from Witness A's statement include the following:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Potential Compliance Action**

33. 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. Potential compliance actions include:
- a) Non-statutory Administration Action (similar to a caution) with no further action;
  - b) Non-statutory Administrative Action with measures to be taken and evidence produced;
  - c) A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*; or
  - d) Conditions on Service Approval under section 55 of the *Law*.
34. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.
35. A compliance notice requires specific steps to be undertaken by the Provider to demonstrate to the Authority how compliance with the *Law* and *Regulations* will be achieved and maintained. It is tailored in each circumstance to address the specific non-compliance identified as a result of the investigation.
36. In your response, you may wish to make suggestions as to how this can be demonstrated. The Authority is not bound by any suggestions but will consider them as part of the Authority's case management process. Alternatively (or additionally), the Authority may place a condition on the Service Approval to address the specific non-compliance identified as a result of the investigation.

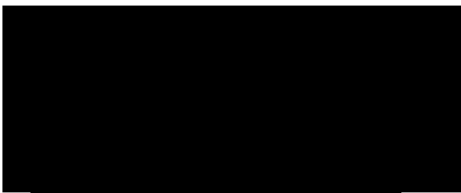
**Right of response**

37. 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.
38. 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](mailto: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**

39. 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*.
40. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
41. 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.
42. 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>.
43. 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>
44. 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](mailto:brian.cropper@act.gov.au).



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

26 July 2022