

Ms [REDACTED]

Nominated Supervisor
Blooming Buds Early Education Centre

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Caution Letter

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance. 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 (ACT) (the Law)*, together with receiving and investigating complaints arising under the *Law*.
2. As you are aware, the Authority has recently investigated matters regarding Blooming Buds Early Learning Centre SE-40015122 (the Service) operated by Bright Bees Early Learning (Nicholls) Pty Limited PR- 40011902 (the Provider), which engaged suspected nominated supervisor offences being contravened.
3. The Authority is satisfied that you as the Nominated Supervisor were not complying with the provisions of the *Law* in respect to this matter. Web addresses to the *Law* and associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 26 July 2022, the Authority sent you a Show Cause Notice (the Notice) advising you, as Nominated Supervisor, the Authority had determined there was sufficient evidence to support a case to answer for you as Nominated supervisor regarding suspected offences under the *Law*.
5. The Notice outlined the grounds for issue, relevant evidence supporting suspected contraventions of *Law*, and potential compliance actions being considered if allegations were substantiated. Refer copy of Notice (minus attachments due to size, noting they can be produced on request) at Attachment A.
6. The Notice advised that evidence obtained during the investigation supported allegations of offences under the *Law* as follows:

Allegation One – Section 167

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 – Section 167

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 ACT Working with Vulnerable People check, in contravention of 167(2) of the *Law*.

7. On 5 August 2022, you submitted a response with 6x identified attachments. Refer copy Response (minus attachments due to size, noting they can be produced on request) at Attachment B.
8. Evidence submitted by you as part of the Response via attachments included:
 - a) Letters of reference and copy of Job ready Workplace assessment guide; and
 - b) WWVP communications and copies of educator registration cards.

Law

9. Provisions of the *Law* relevant to the investigation engaged the following:

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: \$10 000, in the case of an individual

Section 170 – 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.

Obligations upon Regulatory Authority, Providers and Services

10. 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"*.
11. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have particular 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.*
12. 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.*
13. 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*.
14. 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.
15. 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.

Reasons and Decision

16. The Authority has considered all the information gathered via the investigation, inclusive of the response to the Notice, and is satisfied that, on balance of probabilities, the following allegations are substantiated/not substantiated on the balance of probabilities as specified:
 - a. Allegation One – section 167(2) of the *Law* **not substantiated**.
 - b. Allegation Two – sections 167(2) of the *Law* **substantiated**.
17. In relation to Allegation One, the Authority is not satisfied, on the balance of probabilities, that you as Nominated Supervisor had not ensured reasonable precautions were taken to protect children from transmission of Covid-19. In addition, the Authority is not satisfied that the Provider failed to communicate identified cases appropriately to educators and families affected by the identified cases therefore no offence is substantiated.

18. In relation to Allegation Two, the Authority is satisfied that you as Nominated Supervisor failed to take reasonable steps to protect children attending the service from harms and hazards by failing to ensure that all staff possessed a current and valid ACT Working with Vulnerable People (WWVP) registration card, engaging a contravention of section 167(2) of the *Law*.
19. In addition, the Authority is satisfied, on balance of probabilities, that educators who did not hold a current and valid WWVP registration card were allowed to remain on the service premises and were not always supervised whilst engaged in working with children,
20. The Authority notes that reminders sent out to individuals by the WWVP unit is performed as a courtesy to assist people in ensuring they maintain valid registrations. The individual holder and the employers operating within regulated activities are ultimately responsible for ensuring currency of registration and can make proactive enquiries to the WWVP unit to ensure this.
21. The Authority acknowledges that at the time relevant, there were many adaptations to the WWVP process which allowed for automatic extension of expiry dates for some WWVP registration card holders. That there may have been some administrative errors experienced by WWVP which could have contributed to the oversight in expiry dates, however, it this does not mitigate the offence being substantiated in this instance.
22. Considering the evidence obtained and the level of seriousness of the contraventions, I have decided that that issuing you a caution rather than Prohibition is appropriate and in the best interests of children in making this decision.
23. The Authority appreciates that the Covid-19 pandemic has impacted 'usual' operation of approved services and government alike since 2020. The Authority has taken additional steps over this time to support and inform the sector of changes in reporting and operation as these changes occur to proactively guide compliance adherence during challenging times. However, compliance with the *Law* is not negated by Covid-19 and ultimately remains the responsibility of those choosing to engage within the education and care sector.
24. This Decision is issued as a reminder to you as a Nominated Supervisor of your obligations under the *Law* to ensure that always, WWVP registration expiry dates must be monitored vigilantly, and proactive steps taken, if necessary, to ensure that all staff hold current and valid ACT WWVP registration cards at all times. These monitoring strategies may need to be adapted to not only rely on reminders, issued as a courtesy, to protect children from harm and hazard likely to cause injury.
25. In addition, this is as a reminder that as a Nominated Supervisor, it is imperative to ensure that educators, at all times, are aware of and understand the policies, procedures and expectations of yourself and the Provider in relation to the operation of the Service, and in their roles of educating and caring for children.

26. Details of this decision will be recorded and may be considered should any further similar non-compliances be identified moving forward regarding your role as a Nominated Supervisor.

Legislation

27. The Education and Care Services National Law applies to you as a Nominated Supervisor and any service you are employed with. The National 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>.
28. The National Law is made up of an Act and Regulations which can be viewed at:
- <http://www.acecqa.gov.au/national-law>, and
 - <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
29. Should you have any questions about this Decision please contact Authorised Officer, Brian Cropper at brian.cropper@act.gov.au.

Yours Sincerely



Jo Williams
Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

12 September 2022