

[REDACTED]
Person with management or control
Bright Bees Early Learning (Nicholls) Pty Limited

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)* and the *Education and Care Services National Regulations (the Regulations)*. One of the Authority’s roles is to monitor compliance with the *Law* and the *Regulations*.
2. As you may be aware, the Authority recently conducted a compliance audit at Blooming Buds Early Learning Centre SE-40015122 (the Service) operated by Bright Bees Early Learning (Nicholls) Pty Limited PR-40011902 (the Provider).
3. 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.
4. Authorised Officers who conducted the audit gathered evidence and the Authority has determined that there is sufficient evidence to support a case to answer regarding suspected breach under the *Law*.
5. However, the Authority’s decision process regarding potential compliance actions to be taken is not complete until you have had an opportunity to respond to the allegations and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (the Notice) to you as a person with management or control of the provider.
6. Detailed instructions of how to respond appear at the end of this Notice.
7. If substantiated, the allegations may constitute a breach of section 51 of the *Law*. If, after considering all available evidence, the Authority finds any breach is substantiated, 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 appear at the end of this Notice.

Grounds for issuing Show Cause Notice

9. The evidence obtained during the audit process to date supports a breach of the *Law* relating to not meeting the imposed conditions on the service approval. The service approval currently has two conditions imposed by the Authority (Attachment A).

Facts

10. On 28 February 2024, the Authority conducted a compliance audit of the Service.
11. During the compliance audit a suspected breach was identified that relates to the service not meeting the two conditions imposed by the Authority on the service approval.
12. It was determined by the Authority that there were reasonable grounds to suspect that a breach of section 51 of the *Law* occurred, or may have occurred, at the service and a decision was made to issue this show cause.
13. The evidence obtained during the audit process raise the following allegation of a breach of the *Law* –

Allegation One

During a compliance audit visit on 28 February 2024, the Service, was operating four (4) age groups from four (4) playrooms (nursery, Junior Toddlers, Senior Toddlers and Preschool). All playrooms were operating at the time of the audit. All the rooms were fully set up with a variety of activities and appeared to be used for lengthy periods of time engaging a contravention of section 51 (5) of the *Law*.

Allegation Two

During a compliance audit visit to the Service on 28 February 2024, educators working at the time informed Authorised Officers that the main outdoors area is not accessed every day by the 'CR 6 weeks to 18 months' and 'CR18 months to 2 years' groups engaging a contravention of section 51 (5) of the *Law*.

Legislation Relevant to Allegations

14. The following provision of the *Law* is relevant to all three allegations:

Section 51 (5) of the *Law* – Conditions on Service Approval.

A service approval is granted subject to any other conditions prescribed in the national regulations or imposed by—

- (a) this *Law*; or
- (b) the Regulatory Authority

Penalty: \$11 400, in the case of an individual
\$57 400, in any other case.

Evidence Relevant to Allegation One

15. At the time of the audit visit, Authorised Officers were shown around the service by [REDACTED] and [REDACTED], both Nominated Supervisors of the service. Authorised Officers were taken to the infants and Junior toddlers' rooms first which were the 'CR 6 weeks to 18 months' and 'CR 18 months to 2 years' rooms. These are the 2 rooms adjacent to the 'outdoor play area 1'. Children were dropped off and collected from these rooms and these rooms appeared to be being utilised all day for the education and care of children. Furthermore, programs were displayed on the walls for families and children's bags were in these spaces.
16. At the time of the audit visit, the 'CR 6 weeks to 18 months' and 'CR 18 months to 2 years' rooms were set up for children to use for the entire day, with the educational programs displayed, children arriving and departing from those rooms. Authorised Officers observed the children using them throughout the visit. The Nominated Supervisors mentioned that children may not use the rooms if they go out or use the dining space.
17. Evidence in audit report in Attachment B.

Evidence relevant to Allegation Two

18. At the time of the audit visit, Authorised Officers were shown around the service by [REDACTED] and [REDACTED], both Nominated Supervisors of the service. The 'outdoor play area 1' was in use, and the toddlers and infants were using the 'CR 6 weeks to 18 months' and 'CR 18 months to 2 years' rooms off the 'outdoor play area 1'.
19. A nominated supervisor mentioned that children may not use the rooms if they go out in 'outdoor play area 1' and sometimes when they use the larger yard. The Nominated Supervisor told the Authorised Officers that the main outdoor area is not used every day by these age groups but sometimes, maybe once a week.
20. Evidence in audit report in Attachment B.

Contraventions Supported by the Allegations

21. Evidence gathered appears to support contraventions of sections 167(1) and 169 (2) of the *Law*.

Potential Compliance Action

22. The Authority reiterates that no decision has been made at this time – this letter is a step in the assessment of non-compliance process. However, procedural fairness requires that the

Authority take this opportunity to advise you of potential compliance actions if the offence is 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; or
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*.
 - d. Imposing of Conditions on the Service's approval under section 51 of the *Law*.
 - e. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.
 - f. Cancellation of the service approval under section 79 of the *Law*.
23. 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.
24. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.

Right of response

25. As mentioned previously, this notice is your opportunity to respond to the allegations and evidence set out in this Notice. You may, within 30 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.
26. At [Attachment C](#) 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 delphine.coutin@act.gov.au or through the NQAITS.

Caution

27. Please be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
28. The *Law* applies to you as an approved provider and to any service the approved provider operates. 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>.

29. 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>
30. Should you have any questions about this Show Cause Notice please contact Assistant Director Delphine Coutin via email at delphine.coutin@act.gov.au

Yours sincerely



Delphine Coutin
Assistant Director
Education and Care Regulation and Support
ACT Education Directorate

15 April 2024