

## Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2020-182

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	30
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From:
To: CMTEDD FOI
Subject: FOI Request

**Date:** Tuesday, 15 September 2020 10:03:10 PM

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

#### Dear Sir/Madam

I seek copies of all documents and correspondence related to, in any way, WorkSafe ACT's review and investigation (however described) of breaches of the Work, Health and Safety Act 2011 (ACT) (WHS Act) and the Work, health and Safety Regulation 2011, by Brindabella Christian Education Limited (trading as Brindabella Christian College (BCC)) for the period January 2020 to-date (September, 2020).

This includes, but not limited to, documents relating to the following:

- 1. Information, documents and correspondence relevant to the Six Improvement Notices issued in November, 2019.
- 2. Any and all complaints made to ACT Worksafe or brought to their attention through other government agencies such as but not limited to, CMTEDD, Education Directorate, HRC, etc. ie complaints by staff, parents or students or other third parties.
- 3. All ingoing and outgoing correspondence by ACT Worksafe to any other government agency or regulator or Commissioner or agent regarding Brindabella Christian College or its Board of Directors, specifically Board Chairman Greg Zwajgenberg or Principal, Suzanne Power or employees or students or parents or the welfare of same.
- 4. Any additional notices or action taken against the College,
- 5. Any information sharing requests to ACT Worksafe regarding the college or its Board
- 6. For the purpose of this request "document" means any email, letter, report, notice, record of information or report, anything in writing basically.
- 7. Any documentation or correspondence referring to compliance and/or non-compliance with the Improvement Notices issued in November, 2019 and any subsequent Notices issued.
- 8. Any documentation or correspondence with WMG Legal or HWL Ebsworth Lawyers.
- 9. Records and notes documenting meetings with representatives of the school and ACT Worksafe representatives.

Given the significant public interest over the last twelve - eighteen months and significant media reporting, I believe it is in the interest of parents and the community to be updated on the progress of these Improvement Notices and especially as decisions need to be made regarding schooling choices for children next year and education is a public matter.

With thanks



Our ref: CMTEDDFOI 2020-182

via email:		

#### FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 15 September 2020, in which you sought access to documents relating to the investigation by WorkSafe ACT into Brindabella Christian College (BCC).

Specifically, you are seeking: "I seek copies of all documents and correspondence related to, in any way, WorkSafe ACT's review and investigation (however described) of breaches of the Work, Health and Safety Act 2011 (ACT) (WHS Act) and the Work, health and Safety Regulation 2011, by Brindabella Christian Education Limited (trading as Brindabella Christian College (BCC)) for the period January 2020 to-date (September, 2020).

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- 4. Any additional notices or action taken against the College,
- 5. Any information sharing requests to ACT Worksafe regarding the college or its Board
- 6. For the purpose of this request "document" means any email, letter, report, notice, record of information or report, anything in writing basically.
- 7. Any documentation or correspondence referring to compliance and/or non-compliance with the Improvement Notices issued in November, 2019 and any subsequent Notices issued.
- 8. Any documentation or correspondence with WMG Legal or HWL Ebsworth Lawyers.

9. Records and notes documenting meetings with representatives of the school and ACT Worksafe representatives."

On 16 September 2020, you clarified the scope by adding that material already included on the CMTEDD Disclosure Log for CMTEDDFOI 2020-033 was not required.

#### **Authority**

As an appointed Information Officer under section 18 of the Act, I am authorised to make a decision on access or amendment to government information in the possession or control of CMTEDD.

#### **Timeframes**

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 14 October 2020 however, following on from third party consultations, the due date is now 4 November 2020.

#### **Third Party Consultation**

In making this decision, third party consultation was completed in accordance with section 38 of the Act. The views of the relevant third parties were taken into consideration when making this decision.

#### **Decision on access**

Searches were completed for relevant documents and five documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided to grant partial access to five documents relevant to your request.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as **Attachment B** to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

#### Statement of Reasons

In reaching my access decisions, I have taken the following into account:

- the Act;
- the content of the documents that fall within the scope of your request;
- the Human Rights Act 2004.

#### **Exemption claimed**

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

#### Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and non-disclosure.

In Hogan v Hinch (2011) 243 CLR 506, [31] French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and purpose" of the enactment in which it appears'. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the 'public interest'.

#### Factors favouring disclosure in the public interest:

- (a) disclosure of the information could reasonably be expected to do any of the following:
  - (b) (xiii) contribute to the administration of justice generally, including procedural fairness.

Having considered the factors identified as relevant in this matter, I consider that release of the information contained in the document may contribute to procedural fairness by allowing you to have a copy of the documents that fall within the scope of your request.

#### Factors favouring nondisclosure in the public interest:

- (a) disclosure of the information could reasonably be expected to do any of the following:
  - (b) (ii) Prejudice the protection of an individual's right to privacy or other rights under the Human Rights Act 2004;

Having reviewed the documents, I consider that the protection of an individual's right to privacy, especially in the course of dealings with the ACT Government is a significant factor as the parties involved have provided their personal information for the purposes of working with the ACT Government. This, in my opinion, outweighs the benefit which may be derived from releasing the personal information of the individual's involved in this matter.

Individuals are entitled to expect that the personal information they have supplied as part of this process will be dealt with in a manner that protects their privacy. Considering the type of information to be withheld from release, I am satisfied that the factors in favour of release can still be met while protecting the personal information of the individuals involved. I therefore weight the factor for non-disclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information (email addresses, mobile numbers, identifying details and names of individuals not employed by the ACT Public Service) could prejudice their right to privacy under the *Human Rights Act 2004*.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

#### Charges

Processing charges are not applicable for this request the number of pages to be released to you is below the charging threshold of 50 pages.

#### Online publishing - Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log after three working days after the date of my decision. Your personal contact details will not be published.

You may view CMTEDD disclosure log at <a href="https://www.cmtedd.act.gov.au/functions/foi/disclosure-log-2020">https://www.cmtedd.act.gov.au/functions/foi/disclosure-log-2020</a>.

#### **Ombudsman Review**

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

We recommend using this form *Applying for an Ombudsman Review* to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman GPO Box 442 CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

#### **ACT Civil and Administrative Tribunal (ACAT) Review**

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal Level 4, 1 Moore St GPO Box 370 Canberra City ACT 2601 Telephone: (02) 6207 1740

## http://www.acat.act.gov.au/

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email <a href="mailto:CMTEDDFOI@act.gov.au">CMTEDDFOI@act.gov.au</a>.

Yours sincerely

Philip Dachs

Information Officer

**Information Access Team** 

Chief Minister, Treasury and Economic Development Directorate

28 October 2020



# FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.	
I seek copies of all documents and correspondence related to, in any way, WorkSafe ACT's review and investigation (however described) of breaches of	CMTEDDFOI 2020-182	
the Work, Health and Safety Act 2011 (ACT) (WHS Act) and the Work, health and Safety Regulation 2011, by Brindabella Christian Education Limited		
(trading as Brindabella Christian College (BCC)) for the period January 2020 to-date (September, 2020).		

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-2	Complaint – email to WorkSafe	2 Mar 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
2	3-6	Workplace Visit Report	15 Apr 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
3	7	Email to BCC requesting meeting	1 Apr 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
4	8	Internal email to organise meeting with BCC	2 Apr 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
5	9	Email to BCC requesting meeting dates	2 Apr 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes

Total No of Docs

5

From: White, Donna on behalf of CMTEDD WorkSafe

To: <u>Davis, MattE</u>

Subject: RE: Brindabella Christian College Complaint
Date: Monday, 2 March 2020 8:10:00 AM

#### **UNCLASSIFIED**

Hi Matt,

For your information.

**Kind Regards** 

**Donna-maree White** | Administration officer

Phone: 620 71871 | Email: donna.white@act.gov.au

**Workplace Protection** 

WorkSafe ACT | Access Canberra | ACT Government

CHIEF MINISTER, TREASURY AND ECONOMIC DEVELOPMENT DIRECTOR

My working days and times this week are: 7am-3:30pm

Mon	Tues	Wed	Thurs	Fri
✓	✓	✓	✓	✓

From: Sch 2.2(a)(ii)

Sent: Friday, 28 February 2020 10:32 PM

To: CMTEDD WorkSafe < CMTEDDWorkSafe@act.gov.au>

Subject: Brindabella Christian College Complaint

#### Hi Worksafe

I understand you are currently investigating Brindabella Christian College (BCC). While I am not a teacher, I thought I would share my sad story of my involvement at BCC and unfortunately I am not alone.

By way of background, Sch 2.2(a)(ii) in Sch 2.2(a)(ii) In own have kids of my own, and decided in Sch 2.2(a)(ii), that my children would be educated at BCC. My sch 2.2(a)(ii) started P3 (3 year old preschool) in Sch 2.2(a)(ii) at the Lyncham campus. Then in Sch 2.2(a)(ii) started P3.

In 2017, aspects of the school were in disarray as outlined in the Canberra Times article dated 29 November 2017 and 30 November 2017. This turmoil boiled over into 2018 and 2019 with more Canberra Times articles written on 24 July 2019, 23 August 2019, 8 October 2019, 14 December 2019 and 17 December 2019. The articles can be found doing a simple search on the Canberra Times website (https://www.canberratimes.com.au/).

Our experience at the school has been appalling and as such, we removed our children from the school at the end of Term 2 in During our time at BCC:

- We were refused counselling to my Sch 2.2(a)(ii) because was apparently too young. Other staff at the College later told us there was no such policy.
- Our Sch 2.2(a)(ii) attended one session with the counsellor. However, shortly after that session, in response to an enquiry about why wasn't offered more, we were informed by BCC that the Counsellor was not properly qualified and would no longer be providing services. It was understandably shocking to us that a counsellor employed by the College was not qualified to provide that service, particularly in circumstance where we had paid a substantial amount of school fees to educate our children at the College and so that our children could access the College's services

We raised concerns with BCC in relation to our Sch 2.2(a)(ii) readiness to commence

kindergarten. These concerns were based on the fact that we had identified that our was struggling academically and socially. Despite us raising our concerns with respect to progress, BCC placed into kindergarten in circumstances where BCC was aware that would likely be unable to meet the requirements of the class. BCC failed to ensure smooth transition from the Early Learning Centre at BCC to kindergarten, in breach of BCC's duty to educate our children with due care and skill.

- BCC failed to keep us informed of our Sch 2.2(a)(ii) progress in class. We were not notified when was placed on an Individual Learning Plan and were not made aware that was facing difficulties until Term 2, when kindergarten teacher informed us that would need to repeat the year due to being so far behind.
- Furthermore, due to BCC's poor management practices (which include very public and serious allegations of intimidation and bullying), the principal, deputy principal, business manager, junior school pastoral care head teacher and kindergarten teacher of the College resigned from their roles in the span of just a few months. BCC failed to fill these vacancies within a reasonable period and did not provide adequate relief teachers. At times two classes were taught together by one teacher and students were forced to be supervised by unqualified parents.
- We were denied access to a stable school environment with competent and consistent teachers and executive staff, as promised under the Enrolment Contract. This was particularly detrimental to our and our children's emotional and mental well-being.
- We attempted on numerous occasions to utilise the College's complaints policy and our complaints were not acknowledged by BCC, contrary to BCC's commitment to communicate with us. We wrote a letter of complaint dated Sch 2.2(a)(ii) a petition signed by the parents of BCC dated 24 July 2019 and a response to the final demand for payment dated 7 January 2020 went unanswered by BCC.

Since pulling out kids out, we have been threatened, harassed and bullied with regards to alleged outstanding school fees. At a time when we were settling our children into their new school and moving on with our lives, this has caused us significant stress and anxiety. BCC has sent lawyers after us and has applied to ACAT to resolve the civil dispute. While we have attempted to engage with BCC on multiple occasions in a reasonable and polite manner, BCC only resolves issues through the legal mechanism of court or ACAT.

Brindabella Christian College should be mandated to use parents' school fees and government funding to educate the children enrolled there. As you can see, it instead funds a series of lawyers and legal threats designed to protect its reputation and harm those that the school should be protecting – the most vulnerable – the children. We are aware of a number of other families being treated this way, receiving legal threats and summoning those families to ACAT.

The BCC Board is impenetrable, uncontactable, untouchable and unregulated. We have concerns about governance arrangements. It has been impossible to get any information from the BCC Board. It is near impossible for people to join the BCC Board and the BCC Board is not representative of the wider school community. The BCC Board does not have any members with an educational qualifications or background.

All the best for your investigation

Sch 2.2(a)(ii)

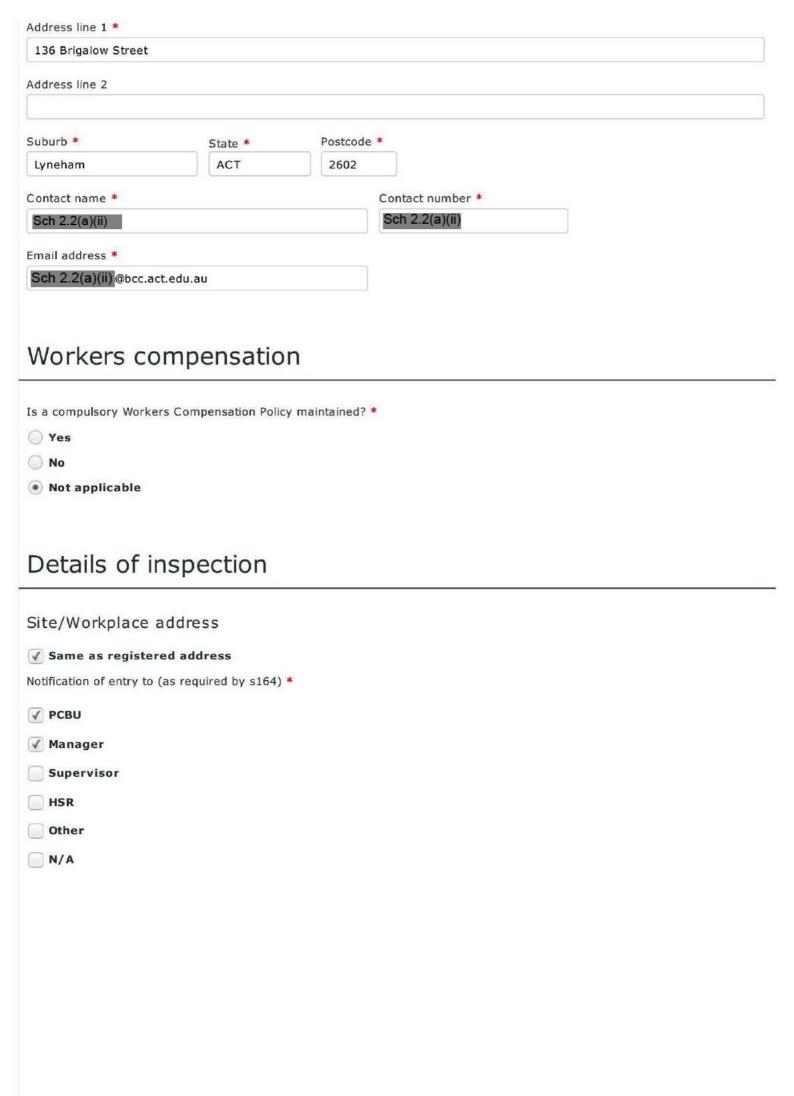




# Initial information

Workplace Visit			
Inspector ID *			
P32662			
Inspection number	Event number		
WPV-P32662-X71IEH			
Lead inspector *			
MattE Davis			
Is there any accompanying in:	spectors *		
Yes		•	No
Date *	Time commenced *		
15 Apr 2020	12:30		
Type of WPV *			
Proactive		•	Reactive
Purpose of WPV *			
Complaint			
Legislation *			
Work Health and Safety Act	2011		
Is this a joint inspection? *			
Yes		•	No
Name of individual or registered company *			
Other	,		
Name of individual or register	ed company *		
Brindabella Christian Educati	on Limited		
ABN	ACN		
21100229669			
Business or trading name (if d	lifferent)		
Brindabella Christian College		7	

Registered company address



On the 15 April 2020 at 12:30 Assistant Director Davis attended Brindabella Christian College (BCC) to confirm that BCC had
complied with Improvement Notices issued by Inspector Woolgar on the 12 December 2019. Present at the meeting were Greg
Zwajgenberg - Chairman of Board, Brindabella Christian Education Limited, Brendon Major - Board Secretary, CFO (Acting),
Brindabella Christian Education Limited & Sch 2.2(a)(ii) Christina Gailey – Sch 2.2(a)(ii)  (previously Business Manager Brindabella Christian College), Suzanne Power – Principal (Acting), Brindabella Christian
College, Steven Gavagna – Legal Partner, WMG Legal and Bede Gahan – Legal Partner, HWL Ebsworth.
BCC has implemented the Complispace system to implement the BCC Work Health and Safety Management System
(WHSMS), Christina Gailey –Sch 2.2(a)(ii) demonstrated how BCC were using the system to manage
all aspects of their WHSMS.
The Notices related to BCC Work Health and Safety Management System, details of each notice and the action taken to
comply are as follows:
1. IN-W-P39355-VMFEBE-1 - Complied with, the BCC Systems Improvement Consultant was able to demonstrate that BCC
was transferring the physical and psychosocial hazards into the risk management module within Complispace. This include
demonstrating how to report hazards and covered the different areas of the BCC.  2. IN-W-P39355-VMFEBE-2 – Complied with, BCC has embedded their existing policies and procedures into Complispace
including using that system to report Psychological hazards. BCC are using training and competency matrixes in the back end
of the program for complaint handling and escalation.
3. IN-W-P39355-VMFEBE-3 - Complied with, BCC use Complispace to manage who can respond to complaints, the system
tracks and ensure these positions are trained to manage complaints. PeaceWise is used for complaint escalation and whistle
blower support.
4. IN-W-P39355-VMFEBE-4 - Complied with, BCC are using the functionality of Complispace to route safety information
including communication of hazards, provision and tracking of WHS Induction. Workers have access through the portal so have readily available access to control measures.
5. IN-W-P39355-VMFEBE-5 – Complied with, consultation has been set up through WHS Committees.
6. IN-W-P39355-VMFEBE-6 - Complied with, BCC send the key duty holders on WHS training annually.
WorkSafe ACT acknowledges that the Complispace system had only been active for 1 month before it was viewed by the
inspector but I was satisfied that BCC have made significant headway shifting from a WHSMS that relied on corporate
knowledge to a system that all workers/others at BCC have access to.
Further action
Further action

Further action required? *		
○ Yes	No	
Previous notice/s issued?		
Yes	○ No	
Notice number/s		
1. IN-W-P39355-VMFEBE-1 2. IN-W-P39355-VMFEBE-2 3. IN-W-P39355-VMFEBE-3 4. IN-W-P39355-VMFEBE-4 5. IN-W-P39355-VMFEBE-5 6. IN-W-P39355-VMFEBE-6		

## Finalisation details

Photos	
Other attachments (documents)	
WPV for asbestos related issue *	
○ Yes	No
Industry group *	
Education and Training	
Time finished *	
14:30	
Disclaimer:	
Health and Safety Regulation 2011, Dangerous Subs	indicative of compliance with the Work Health and Safety Act 2011, Work stance Act 2004 and Workers Compensation Act 1951 on the date of the spection, it does not remove the obligation of any person to comply with any description.
Lead inspector email address *	
MattE.Davis@act.gov.au	
How many other email addresses would you like to s	send this to? *
1	
Email 1 *	
Sch 2.2(a)(ii) @bcc.act.edu.au	

## Privacy notice

The information collected for the purpose of the Work Health and Safety Act 2011 and is in accordance with the Information Privacy Act 2014. WorkSafe ACT prevents any unreasonable intrusion into person's privacy in accordance with the Privacy Act 1988 (C'With) and Information Privacy Act 2014. WorkSafe ACT provides identifiable information which can be disclosed to other law enforcement agencies and authorised organisations that have legal authority to request information under prescribed circumstances.

From: Woolgar, Andrew

To: Sch 2.2(a)(ii) <u>@bcc.act.edu.au</u>

Subject: Seeking to organise a meeting between BCC and WorkSafe ACT

Date: Wednesday, 1 April 2020 8:41:00 AM

Attachments: image001.png

#### UNOFFICIAL

Gid day Sch 2 2(a)(ii)

Please contact WorkSafe ACT as soon as possible so we can organise a time and place to have a meeting in regards to the Improvement Notice which were issued to BCC.

Please contact me

#### Andrew J WOOLGAR | Inspector | WorkSafe ACT

Phone: 02 620 73989 | Mobile: 0468 544 028 | Email: andrew.woolgar@act.gov.au

Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government

Dame Pattie Menzies House, 16 Challis St, Dickson | GPO Box 1908, Canberra ACT 2601 | www.act.gov.au/accesssCBR



From: Woolgar, Andrew
To: Davis, MattE

Subject: Seeking some times to meet BCC
Date: Thursday, 2 April 2020 8:07:00 AM

Attachments: image001.png

#### UNOFFICIAL

Matt,

Can you please give me some times next week you will be available for a meeting with BBC and their Lawyers

I then I will forward these to Sch 2.2(a)(ii) and start the process of to organise a meeting

#### Andrew J WOOLGAR | Inspector | WorkSafe ACT

Phone: 02 620 73989 | Mobile: 0468 544 028 | Email: andrew.woolgar@act.gov.au

Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government

Dame Pattie Menzies House, 16 Challis St, Dickson | GPO Box 1908, Canberra ACT 2601 | www.act.gov.au/accesssCBR



From: Woolgar, Andrew

To: Sch 2.2(a)(ii) bcc.act.edu.au

Cc: Davis, MattE

Subject: Seeking time to meet at BCC re Improvement Notices

Date: Thursday, 2 April 2020 8:27:00 AM

Attachments: image001.png

#### UNOFFICIAL

Gid day Sch 2.2(a)(ii)

Matt Davis assistant Director, Workplace Safety Operations Team Manager and myself are available to meet with you on the following days:

Tuesday 07/04/2020 after 11:00, or Thursday 09/04/2020 after 11:00

Please confirm which day and time would appropriate to meet at BCC.

Please contact me if you require further information

#### Andrew J WOOLGAR | Inspector | WorkSafe ACT

Phone: 02 620 73989 | Mobile: 0468 544 028 | Email: andrew.woolgar@act.gov.au

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