

[REDACTED]  
Person with Management or Control  
World of Learning Pty Ltd  
RE: Gold Creek World of Learning

Email: [REDACTED]

Dear [REDACTED]

### Decision to Issue Compliance Notice to the Service Approval

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA). 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 relating to Gold Creek World of Learning SE-00009779 (the Service) operated by Word of Learning Pty Limited PR-00009779 (the Provider), which engage suspected offences being contravened.
3. The Regulatory Authority is satisfied that the Provider was 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 18 August 2023, the Authority sent the Provider a Show Cause Notice (the Notice), advising the Provider that the Authority had determined there was sufficient evidence to support a case to answer for the Provider regarding a suspected offence under the *Law*.
5. The Notice outlined the grounds for issue, relevant evidence supporting the suspected contravention of the *Law*, and potential compliance actions being considered if the allegation was 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 the allegation of an offence under the *Law* as follows:
  - a. It is alleged that, on 21 March 2023, the Provider failed to ensure that no child being educated and cared for by the service was subjected to any discipline that was unreasonable in the circumstances in that a child, known as [REDACTED] [REDACTED] was disciplined by way of being dragged across the floor, picked up and placed down on the ground in a manner contravening section 166(1) of the *Law*.

- b. It is alleged that, by failing to ensure that no child being educated and cared for by the service was subjected to any discipline that was unreasonable in the circumstances on 21 March 2023, the Provider has failed to take reasonable steps to protect children from harms and hazards likely to cause injury or illness, in contravention of s167(1) of the *Law*.
7. On 29 August 2023, the Provider submitted a response with attachments. A copy of the response is provided at Attachment B.
8. Within the Notice response, the Provider acknowledges, deeply regrets for the event and submits the following main points:
  - a. The Provider stated their expectation that team members treat children with respect, dignity and understanding consistent with the United Nations Conventions on the Rights of the Child.
  - b. That upon a mandatory annual review of Child Protection Statement of Commitment training, ██████████ completed the biannual requirement to undergo (5) mandatory child protection training modules, including *Child Protection Physical Abuse* on 9<sup>th</sup> October 2021.
  - c. That the Provider has engaged risk mitigation strategies at Gold Creek World of Learning, including the installation of CCTV; an induction and onboarding programme; the appointment of Child Protection Champions at each Service; the implementation of Environment and Child Protection Risk Assessments; and conducts annual policy reviews and mandatory training.
  - d. G8 Education's Child Protection Program incorporates strategies to support team member's wellbeing and the management of challenging child behaviours.
  - e. The Provider's internal investigation substantiated three (3) breaches of serious misconduct by ██████████ that occurred on 21 March 2023 and reported to the Authority as required under the *Law*.
  - f. That ██████████ was issued with a written warning and a Performance Improvement Plan was put in place for the educator.
  - g. The Approved Provider submits that robust policies and procedures were in place at the time of the incident and adequate training had been provided to ██████████ to understand her duty of care in relation to these policies.
9. The Authority notes the annexures, attachments and photos attached to the response outlining key areas for improvement.

## Law

10. In relation to the non-compliance identified, the following provisions of the Law are engaged:

### **Section 166(1) of the Law - Offence to use inappropriate discipline**

The approved provider of an education and care service must ensure that no child being educated and cared for by the service is subjected to—

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

Penalty: \$10 000, in the case of an individual  
\$50 000, in any other case.

### **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.

## **Obligations upon Regulatory Authority, Providers and Services**

11. 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*".
12. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific 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.*
13. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
  - (c) *to monitor and enforce compliance with this law;*
14. 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*.
15. 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.
16. 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

17. The Authority has considered all evidence gathered via the investigation process, inclusive of the providers response to the Notice, and is satisfied, on the balance of probabilities, that the Provider has contravened sections 166(1) and 167(1) of the Law.
18. The Authority is satisfied that on 21 March 2023, the provider failed to ensure that no child being educated and cared for by the Service was subjected to any discipline that was unreasonable in the circumstances in that a child, known as [REDACTED] [REDACTED] was disciplined by way of being dragged across the floor, picked up and placed down on the ground.
19. The Authority is satisfied that on 21 March 2023, by failing to ensure that no child being educated and cared for by the service was subjected to any discipline that was unreasonable in the circumstances on 21 March 2023, the Provider has failed to take reasonable steps to protect children from harms and hazards likely to cause injury or illness.
20. In this instance, the Authority has determined that an offence under section 166(1) and 167(1) of the Law is substantiated.
21. Considering the evidence obtained, including material submitted by the Provider, and the level of seriousness of the contravention, and the objectives and guiding principles of the Law, I have decided that issuing a Compliance Notice is appropriate and in the best interests of children. In making this decision, I have also taken into consideration the status of the Service's and that it is no longer operating.
22. The Authority has also taken into consideration that people and entities that choose to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case the Provider chose and consented to participating in the education and care of children and has a responsibility to comply with the standard of care under the Law.
23. The Authority is empowered to issue a compliance notice under section 177 of the Law:

### **Section 177 of the Law– Compliance notices**

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this Law.
- (2) The Regulatory Authority may give the approved provider a notice (a **compliance notice**) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.  
Penalty: \$6 000, in the case of an individual  
\$30 000, in any other case.

24. The Compliance Notice is provided as Attachment C to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions. You must produce

evidence of the steps required by the times indicated for each step within the Notice at Attachment C.

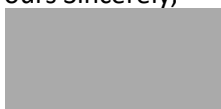
### Review Rights

25. A decision to issue a compliance notice and a decision to impose a condition on a service approval are **reviewable decisions** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).
26. An application for review may be made by completing the form *AR01 Application for Internal Review of Reviewable Decision* which can be obtained from the ACECQA website.

### Legislation

27. The Education and Care Services National *Law* applies to you as an approved provider and any service you operate. 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.cecqa.gov.au/national-law>, and
  - <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
29. Should you have any questions about this Decision or Compliance Notice please contact Authorised Officer Nicole Withers via email at [nicole.withers@act.gov.au](mailto:nicole.withers@act.gov.au).

Yours Sincerely,



Jo Williams  
Director – Regulatory Operations  
Children’s Education and Care Assurance  
Education and Care Regulation and Support

9 October 2023