

[REDACTED]
Nominated Supervisor
Gold Creek World of Learning

Email: [REDACTED]

Dear [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 suspected offences at Gold Creek World of Learning SE-00009779 (the Service) operated by World of Learning Pty Limited PR-00000937 (the Provider).
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 8 June 2023, the Authority sent you, as the Nominated Supervisor, a Show Cause Notice (the Notice) advising that the Authority had determined there was sufficient evidence to support a case to answer for the 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

It is alleged that during December 2022 and February 2023, you, as the Nominated Supervisor of the Service, failed to ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for

the children is no less than the number prescribed for this purpose, in contravention of section 169(3) of the *Law*.

Allegation Two

It is alleged that between December 2022 and May 2023, you, as the Nominated Supervisor of the Service, failed to ensure that all children were adequately always supervised while in the care of the Service, in contravention of section 165(2) of the *Law*.

Allegation Three

It is alleged that, as the Nominated Supervisor of the Service, by not taking reasonable precautions to ensure compliance with sections 169 and 165 between December 2022 and May 2023, you placed children at increased risk of harms and hazards likely to cause injury or illness, in contravention of section 167(2) of the *Law*.

7. On 2 July 2023, you submitted a response to the Notice. The response consisted of a written response to allegations and 42x attachments as supportive evidence. Refer copy of your response (minus attachments due to size, noting they can be produced on request) at [Attachment B](#)

Law

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

Section 169(3) of the *Law* - Offence relating to staffing arrangements.

A nominated supervisor of an education and care service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

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

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
\$50 000, in any other case.

Section 165(2) of the *Law* - Offence relating to inadequate supervision.

A nominated supervisor of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

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

Obligations upon Regulatory Authority, Providers and Services

9. 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”.

10. 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.*
11. 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.*
12. 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*.
13. 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.
14. 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

15. 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 169(3) of the *Law* **substantiated**.
 - b. Allegation Two – section 165(2) of the *Law* **substantiated**.
 - c. Allegation Three – section 167(2) of the *Law* **substantiated**.
16. A Nominated Supervisors’ obligations under section 165, 167 and 169 of the *Law* are positively and strongly framed– the nominated supervisor must ensure that: all children being educated and cared for are adequately supervised at all times; adequate staffing arrangements are maintained at all times; and that reasonable precautions are taken to protect children from harm and hazard likely to cause injury and illness.
17. Regarding the concerns raised relating to your fitness and propriety as a Nominated Supervisor, the Authority is satisfied that evidence submitted mitigates these concerns.

18. In deciding whether compliance action should be enforced in relation to this matter, I considered the following:
 - a) Evidence within, and attached, to your response which demonstrated that you appeared to be actively trying to maintain ratio levels at the Service; and
 - b) The obligations and responsibility of the Provider to ensure that the *Law* and *Regulations* are always being complied with.
19. I have taken into consideration that the *Law* has a protective role, and the Authority must consider the rights of children and best practice.
20. Considering the evidence obtained, inclusive of your response to the Notice, and the mitigating circumstances raised with your responses, I have decided that issuing you a caution rather than Prohibition is appropriate and in the best interests of children in making this decision.
21. This Decision serves a reminder to you as a Nominated Supervisor of your obligations under the *Law* to ensure that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children at all times.
22. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
23. In addition, this is a reminder that as a Nominated Supervisor, it is imperative to ensure that all educators are always aware of, understand and follow the policies, procedures and expectations of the Provider and the *Law* in relation to the operation of the Service.
24. Furthermore, it is expected that if practices occurring at a service, or by a Provider that you are employed with, are identified as not being undertaken in line with the requirements, objectives, and guiding principles of the *Law*, that this would be brought to the attention of the Authority to ensure children are protected.
25. 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

26. 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>.
27. 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>

28. Should you have any questions about this Decision please contact Assistant Director Janine Fairburn via email at janine.fairburn@act.gov.au.

Yours Sincerely



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

28 July 2023