

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

Email: [REDACTED]

Dear [REDACTED]

### Decision to Suspend Service Approval

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 allegations relating to staffing and supervision arrangements at Gold Creek World of Learning SE-00009779 (the Service) operated by World of Learning Pty Limited PR-00000937 (the Provider), which engaged suspected offences of the *Law* being contravened.
3. The 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 8 June 2023, the Authority sent the Provider a Show Cause Notice (the Notice) advising the Provider that the Authority had determined that there was sufficient evidence to support a case to answer for the Provider 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, the Provider 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(1) of the *Law*, and engaging section 167(1) of the *Law*.

***Allegation Two***

It is alleged that between December 2022 and May 2023, the Provider failed to ensure that all children were adequately always supervised while in the care of the Service, in contravention of section 165(1) of the *Law*, and engaging section 167(1) of the *Law*.

***Allegation Three***

It is alleged that the Provider, by not ensuring compliance with sections 165 and 169 of the *Law* between December 2022 and May 2023, is not meeting the conditions of the Provider's service approval which is placing children at increased risk of harms and hazards likely to cause injury or illness, in contravention of sections 51(8) and 167(1) of the *Law*.

7. On 17 July 2023, the Provider submitted to the Authority, a response to the Notice with attached supportive evidence. Refer a copy of the response (minus attachments due to size, noting they can be produced again on request) at Attachment B.
8. It is noted that in the Response the Provider stated the following:
  - (a) The Approved Provider has made the difficult decision to cease operating Gold Creek on 29th July 2023 due to the challenges faced with critical sector wide staff shortages, specifically in ACT.
  - (b) Despite the pending closure of Gold Creek, the Approved Provider acknowledges that we have a continued responsibility to ensure the safety, wellbeing and health of all children attending services operated by the Approved Provider.
  - (c) While the Approved Provider has established very strong policies, procedures, training, and verification methods to support all services in the provision of protecting children from harm and hazard, including policies and procedures to support all team members, it has taken the opportunity to review how implementation and embedding compliance can be improved. The Embedding Quality Program released June 2023, has revitalised and re-set expectations of all G8 team members and formalised work routines, reporting and accountability.
  - (d) The Approved Provider acknowledges that the Regulatory Authority is considering taking compliance action to reinforce its responsibility for the administration of the National Quality Framework.

- (e) The Approved Provider requests leniency in applying compliance action as we will cease operating Gold Creek on 29th July 2023. The Approved Provider will execute remediation actions noted in this response across all other services in ACT.
- (f) The relationship between the Approved Provider and the Authority supports strong and open communications. The Approved Provider embraces the continuation of this relationship to support better outcomes for children.
- (g) The investigation by the Approved Provider was initiated to establish facts regarding allegations of breaches of Law, specifically s165, s167, s169 and s51 between December 2022 and May 2023 – The Approved Provider submits that following an investigation and despite having robust policies and procedures, situational circumstances, most notably under performance of the Nominated Supervisor at Gold Creek resulted in some contravention of the Law as identified:
- Section 165 (1) of the Law – Offence to inadequately supervise children.
  - Section 167 (1) of the Law – Offence relating to protection of children from harm and hazard.
  - Section 169 (1) of the Law – Offence relating to staffing arrangements
  - Section 51 of the Law – Conditions of Service Approval
- (h) The investigation identified:
- i. Long-term permanent team members had displayed adequate knowledge of policies and procedures, specifically their responsibilities for the supervision of children.
  - ii. Permanent team members were provided with an adequate induction in line with G8's Managing Team Member Onboarding and Induction Procedures.
  - iii. Inconsistent evidence supports inadequate induction of Agency team members. It is considered that if all Agency team members had been provided adequate support and mentorship by the Nominated Supervisor and permanent educators, the probability of serious incidents occurring at the service involving Agency team members inadequate supervision practices could likely have been avoided.
  - iv. Failures by the Nominated Supervisor to comply with responsibilities under the National Law and National Regulations contributed to contraventions of the Law.
  - v. Minimal evidence supports identified rectification actions post incident and feedback from around centre support teams (Education Practice Partner and Quality Assurance Partner) were partially or not implemented by the Nominated Supervisor.

- vi. Whilst there is evidence that the service did participate in policy reviews and Approved Provider lead training, specifically Supervision, accountability to comply with the requirements under the relevant policies were not enforced.
- vii. The service experienced a turnover of experienced team between January 2023 and May 2023, seven long-term team members resigned from their positions for a variety of reasons, including relocation, not returning after maternity leave and change of career. This situation provided challenges for the service in a sector wide shortage of experienced educators. The Approved Provider:
  - Immediately commenced recruitment, offering above award wages and flexible working arrangements.
  - Contacted Ranstad to prioritise agency team members as required.

## Law

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

### **Section 51 – Conditions on Service Approval**

- (1) A service approval is granted subject to the condition that the education and care service is operated in a way that –
  - (a) Ensures the safety, health and wellbeing of the children being educated and cared for by the service; and
  - (b) Meets the educational and developmental needs of the children being educated and cared for by the service.
- (5) 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.
- (8) An approved provider must comply with the conditions of a service approval held by the approved provider.

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

\$50 000, in any other case

### **Section 165(1) of the *Law* - Offence to inadequately supervise children**

The Approved Provider 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.

**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.

**Section 169(1) of the Law - Offence relating to adequate staffing arrangements**

An approved provider 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.

**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 its investigation, inclusive of the Provider's response to the Notice, and is satisfied that, on balance of probabilities, all allegations are substantiated, being contravention of sections 165(1), 167(1), s169(1) and s51(8) of the *Law*.
17. In relation to Allegation One, the Authority is satisfied that, during December 2022 and February 2023, the Provider 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(1) of the *Law*, and engaging section 167(1) of the *Law*.
18. In relation to Allegation Two, the Authority is satisfied that, between December 2022 and May 2023, the Provider failed to ensure that all children were always adequately supervised while in the care of the Service, in contravention of section 165(1) of the *Law*, and engaging section 167(1) of the *Law*.
19. In relation to Allegation Three, the Authority is satisfied that, by not ensuring compliance with sections 165 and 169 of the *Law* between December 2022 and May 2023, is not meeting the conditions of the Provider's service approval which is placing children at increased risk of harms and hazards likely to cause injury or illness, in contravention of sections 51(8) and 167(1) of the *Law*.
20. The Authority is satisfied that evidence obtained via regulatory investigation supports the offences being substantiated, on balance of probabilities. The Authority is not satisfied that the Provider's response to the Notice mitigates or disproves the credibility of the evidence put to the Provider by way of the Notice.
21. The Authority notes the Provider's statements that they determined that the failures of the Nominated Supervisor and educators contributed to the non-compliances, however, the Provider's own investigation and subsequent response to the Notice indicates that the Provider's governance and oversight responsibilities were insufficient to have identified any of these failings prior to the matters being raised by the Authority.
22. 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. In regard to Allegations One, Two and Three, a Provider's obligations under sections 165, 167 and 169 of the *Law* is positively and strongly framed – the Provider must ensure that adequate supervision and meeting minimum regulated ratio levels are the minimum threshold that must be met to ensure compliance and are viewed as reasonable precautions to be taken to protect children from harm and hazard likely to cause injury or illness.
24. Staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children and educators alike. 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.
25. Considering all the evidence obtained, the level of seriousness of the contraventions, the Provider's response in its entirety, and previous compliance history of both the Service and the Provider, I have decided that suspension of the Service's approval is appropriate and in the best interests of children based on grounds outlined under section 70(a), (b) and (c) of the *Law*.
26. The Authority is empowered to suspend a service approval under section 70 and 72 of the *Law*:

**Section 70 of the *Law*– Grounds for suspension of service approval**

A Regulatory Authority may suspend a service approval if—

- (a) the Regulatory Authority reasonably believes that it would not be in the best interests of children being educated and cared for by the service for the service to continue; or
- (b) a condition of the service approval has not been complied with; or
- (c) the service is not being managed in accordance with this *Law*; or
- (d) the service has operated at a rating level as not meeting the National Quality Standard and—
  - i. a service waiver or temporary waiver does not apply to the service in respect of that non-compliance; and
  - ii. there has been no improvement in the rating level; or
- (e) the approved provider has contravened this *Law* as applying in any participating jurisdiction; or
- (f) the approved provider has failed to comply with a direction, compliance notice or emergency order under this *Law* as applying in any participating jurisdiction in relation to the service; or
- (g) the approved provider has—

- i. ceased to operate the education and care service at the education and care service premises for which the service approval was granted; and
  - ii. within 6 months of ceasing to operate the service, has not transferred the service to another approved provider; or
- (h) the approved provider has not, within 6 months after being granted a service approval, commenced ongoing operation of the service; or
- (i) the approved provider has not paid the prescribed annual fee for the service approval.

**Section 71 of the *Law*– Show cause before suspension**

- (1) This section applies if the Regulatory Authority is considering the suspension of a service approval under section 70.
- (2) The Regulatory Authority must first give the approved provider a notice (***show cause notice***) stating—
- (a) that the Regulatory Authority intends to suspend the service approval; and
  - (b) the proposed period of suspension; and
  - (c) the reasons for the proposed suspension; and
  - (d) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed suspension.

**Section 72 of the *Law*– Decision in relation to suspension**

After considering any written response from the approved provider received within the time allowed by section 71(2)(d), the Regulatory Authority may—

- (a) if the suspension was proposed on the ground referred to in section 70(a), (c) or (d), accept an undertaking from the approved provider under section 179A; or
  - (b) in any case—
    - i. suspend the service approval for a period not more than the prescribed period; or
    - ii. decide not to suspend the service approval.
27. As required pursuant to section 74 of the *Law*, the Service Approval Suspension Notice is at Attachment C to this decision letter.
28. The Authority has determined that the timeframe for the suspension will be two months (8 weeks) from time of enforcement – being 14 days after the date of this decision.
29. The *Law* stipulates that prior to a suspension the provider must be provided two weeks’ notice (14 days). Noting the current circumstances, the Authority would be agreeable to an

immediate suspension of the Service. The Provider must respond in writing to the Authority if they wish to waive the two weeks' notice and agree to an immediate suspension – being the date of this decision.

30. The Authority acknowledges that the Provider has advised that families and educators have been notified that the Service is closing as of 29 July 2023. The Authority further notes that the Provider has not submitted a surrender of service approval to coincide with this closure.
31. Therefore, the Authority determines the length of time determined for suspension to be appropriate to allow the Provider to make decisions regarding how the service approval will be maintained after this timeframe.

### **Review Rights**

32. A decision to issue a compliance notice is a **reviewable decision** as defined in Section 192 of the *Law*. Under section 193 of the *Law*, you may apply for an external review of this decision. Any application must be lodged within 30 days after you are notified of the decision to the relevant tribunal.

### **Legislation**

33. 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>.
34. 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>
35. Should you have any questions about this Decision please contact me via email at [jo.williams@act.gov.au](mailto:jo.williams@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