



Administrative Appeals Tribunal

ADMINISTRATIVE APPEALS TRIBUNAL

GENERAL DIVISION

)
) No: 2021/3753
)

Re: **Brindabella Christian Education Limited**
Applicant

And: **Minister for Education**
Respondent

TRIBUNAL: Senior Member Damien O'Donovan

DATE: 12 April 2023

PLACE: Canberra

In accordance with subsection 42C(1) of the *Administrative Appeals Tribunal Act 1975*:

- A. the parties have reached an agreement as to the terms of a decision of the Tribunal that is acceptable to the parties; and
- B. the terms of the agreement have been reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal; and
- C. the Tribunal is satisfied that a decision consistent with those terms is within the powers of the Tribunal and is appropriate to make.

Pursuant to subsection 42C(2) of the *Administrative Appeals Tribunal Act 1975*, the Tribunal varies the reviewable decision dated 17 May 2021 as follows:

1. The Conditions on Approval and Timeline of Conditions (Attachment A and Attachment B to the reviewable decision, respectively) are deleted and replaced with the conditions set out in the Annexure to this agreement.

.....
[SGD]
Senior Member Damien O'Donovan

ANNEXURE

Conditions on Approval - Brindabella Christian Education Limited

1. In accordance with section 81(1)(a) of the *Australian Education Act 2013*, the following conditions will operate on the approval of Brindabella Christian Education Limited (BCEL) as the approved authority for Brindabella Christian College until 1 August 2024, other than paragraphs [2.3] and [3.7] which are to continue until 1 August 2026 and paragraph [3.19], which is to continue until the debt owing to the Australian Tax Office is repaid.
2. With respect to the loan arrangements of BCEL:
 - 2.1 BCEL is to provide the Minister for Education and Youth (**the Minister**) with the Letter of Offer dated 28 March 2023 from the National Australia Bank (**NAB**) or any more binding documentation concerning its loan arrangements with the NAB, including:
 - (a) NAB Business Markets Loan (account number ending 2832);
 - (b) NAB Business Markets Loan (account number ending 5439); and
 - (c) NAB Business Markets Loan (account number ending 8600),by 6 April 2023.
 - 2.2 By 1 May 2023, BCEL is to ensure that the loans referred to in [2.1] above are reclassified as non-current liabilities and provide to the Minister certification from an independent auditor that they have been so reclassified.
 - 2.3 Within 14 days of receipt, BCEL is to provide the Minister with any notification from NAB or any other lender of a breach of covenant by BCEL.
3. BCEL is to implement the recommendations identified on page 10 in the report from KPMG entitled 'Brindabella Christian Education Limited - Independent Business Review for the National Australia Bank Limited' dated 26 October 2022 (a copy of which is at page 528 of the Minister's Further Evidence) as follows:

Board Structure

- 3.1 Expand the Board's size to not fewer than 5 members by 1 April 2023 and consider further expanding the Board size by 1 December 2023.
- 3.2 Improve gender representation by including not fewer than two women as members of the Board by 1 April 2023.
- 3.3 Expand the Board's skillset with experience and expertise in school education by 1 April 2023.
- 3.4 Expand the Board's skillset with experience in accounting and finance by 31 December 2023.
- 3.5 Expand the Board to include not fewer than one parent of a current student at the school by 1 April 2023.
- 3.6 Ensure that a person with accounting and finance experience, such as Leandre Malan, remains on BCEL's Finance, Risk & Audit Committee until BCEL complies with [3.4] above.
- 3.7 Maintain a Board size of not fewer than 5 members.

- 3.8 By 30 June 2023, the Executive Principal of Brindabella Christian College be:
- (a) appointed a member of the Board of BCEL; or
 - (b) given, subject to exclusion for the proper operation of the Board, a standing invitation and right to attend ordinary meetings of the Board.
- 3.9 BCEL is to engage OrgPsych, or a similar provider, to conduct a survey of parents of students at Brindabella Christian College by 31 December 2023 and the Board of BCEL is to consider the result of that survey.

Accounting and Finance

- 3.10 BCEL is to revisit the capability of the accounting and finance team to produce timely and quality management reporting, by the Board appointing a professionally qualified accountant as permanent CFO or Business Manager. The Board appointed a permanent Business Manager who is a professionally qualified accountant on 20 February 2023.
- 3.11 BCEL, through the Business Manager, is to ensure that the accounting systems / processes include functionality to produce monthly reports and forecasts by:
- (a) Business unit (ELC, Junior school, Secondary school and Cafe); and
 - (b) Campus (Lyneham and Charnwood)
- by 1 April 2023.
- 3.12 BCEL, through the Business Manager, is to reconcile and forecast government funding accurately and on a timely basis by 1 April 2023.
- 3.13 BCEL, through the Business Manager, is to accurately apportion overheads and finance costs across business units/ campuses by 1 April 2023.
- 3.14 BCEL, through the Business Manager, is to reconcile the relationship between debtors and fees in advance by 1 June 2023
- 3.15 BCEL, through the Business Manager, is to reconcile lease liability debt by 1 June 2023.
- 3.16 BCEL, through the Business Manager and the Finance, Risk & Audit Sub-committee, is to improve the quality & timeliness of management reporting by 1 June 2023.
- 3.17 BCEL, through the Finance, Risk & Audit Sub-committee, is to ensure the accounting and finance team can develop and regularly update a three-way integrated financial model by 1 June 2023.
- 3.18 BCEL, through the Business Manager, is to implement more sophisticated assumptions in the forecast for all line items including but not limited to:
- (a) private and government revenue per school student;
 - (b) ELC student numbers and revenue per ELC student;
 - (c) Number of Full Time Equivalent Staff; and

(d) Timing of cash inflows and outflows

by 1 June 2023.

- 3.19 BCEL is to agree a repayment plan with the Australian Taxation Office by 1 May 2023 and ensure that it complies with that plan. BCEL is to provide the Minister with a copy of any repayment plan within 14 days of entering into the plan and notify the Minister within 14 days if BCEL fails to make a payment in accordance with the plan.
 - 3.20 BCEL, through its Board, is to determine by 1 June 2023 a program for market testing over the next twelve months for supply of all major cost items which have not been the subject of a tender process in the last twelve months including, but not limited to, cleaning, CAPEX & advertising and the Business Manager is to implement that program.
 - 3.21 The Board of BCEL is to ensure clear roles and responsibilities of requesting and selecting tenders, through the accounting & finance team and Finance, Risk & Audit Sub-committee by 1 June 2023.
 - 3.22 The Board of BCEL is to identify the breakeven assumptions for the Charnwood campus and track actual performance to forecast in order to identify the viability of the campus by 30 September 2023.
4. BCEL is to implement the recommendations identified in the Saward Dawson 2022 Roadmap, a copy of which is at page 397 of the Minister's Further Evidence:

High Priority

- 4.1 BCEL is to map Financial Questionnaire fields to PC School accounts, prepare and lodge the 2021 Financial Questionnaire by 1 May 2023.
- 4.2 BCEL is to ensure all BAS reporting is up-to-date and liaise with the ATO about lodgements in relation to PAYG withholding given late payments (e.g. spreadsheet of data submitted to ATO) and report to the Board of BCEL on any late lodgement penalties for remission considerations by 1 May 2023.
- 4.3 BCEL is to include in each monthly report to the Board of BCEL a report on the level of PAYG withholding debt and projected timeline for payment from 1 May 2023.
- 4.4 The Board of BCEL is to adopt a compliance checklist developed through the Finance, Risk & Audit Sub-committee and the Business Manager including a monthly reporting pack dealing with monthly quarterly and annual obligations by 31 December 2023.
- 4.5 The Board of BCEL is to implement month end checklist and standard workpapers by 31 December 2023. The Business Manager's reports are to include full month end reconciliations process of all balance sheet accounts and other workpapers identified in checklist.
- 4.6 BCEL is to ensure 31 December 2020 balances agree to the audited financial statements by 1 May 2023. The Business Manager is to develop 2021-year end checklist and timetable by 1 May 2023.
- 4.7 BCEL is to resolve 2021 Fringe Benefit Tax return issues and pay outstanding Fringe Benefit Tax by 1 May 2023.
- 4.8 BCEL is to develop 2023 budget template and workpapers including defining key assumptions and drivers (e.g. enrolments) by 1 June 2023.
- 4.9 BCEL is to report and pay superannuation as required at a minimum on a quarterly basis by 1 May 2023.

4.10 BCEL is to prepare and lodge quarterly BASs by 1 May 2023.

Medium Priority

4.11 BCEL is to prepare for 2022 Fringe Benefits Tax return by 1 June 2023.

4.12 The Board of BCEL is to endorse and implement a pack for Board reporting including KPI and dashboard reporting by 31 December 2023.

4.13 The Business Manager is to undertake a comprehensive GST review and report to the Board of BCEL by 1 July 2023.

4.14 Board of BCEL is to consider and endorse a documented and executed ICT Plan in alignment with the strategic plan by 28 February 2024.

4.15 BCEL is to create bank register and make sure signatories are all up-to-date and delegation of authority is adhered to by 1 May 2023.

4.16 BCEL is to develop debtors reporting including KPIs and prior year comparisons including doubtful debts estimates and bad debt decisions by 1 June 2023.

4.17 Board of BCEL is to build the structure and content of the finance team files and documents, commence documentation of processes by 30 June 2023.

4.18 Board of BCEL is to develop cash flow reporting and incorporate into monthly reporting package by 1 May 2023.

4.19 Board of BCEL is to track and report to the Board on loan covenant compliance by 1 May 2023.

4.20 Board of BCEL is to complete and sign the 2021 financial statements by 1 May 2023.

4.21 Board of BCEL is to complete 2022 Financial Questionnaire and Acquittals by 1 May 2023.

4.22 Board of BCEL is to prepare and submit the 2022 Annual Information Statement by 30 June 2023.

4.23 Board of BCEL is to complete and sign the 2022 financial statements by 30 June 2023.

4.24 Board of BCEL is to complete 2022 Financial Questionnaire and Acquittals by 30 June 2023.

4.25 Board of BCEL is to prepare and submit the 2022 Annual Information Statement by 30 June 2023.

Low Priority

4.26 BCEL is to undertake a land and buildings valuation in 2022 by 31 July 2023.

4.27 BCEL is to complete a lease register, showing when leases will finalise and what will happen with the assets when the leases cease, by 31 July 2023.

4.28 BCEL is to improve the separation of reporting for ELC and school reporting, to ensure that school funding is kept separate, by 31 July 2023.

4.29 BCEL is to undertake a review of current policies and update or create policies by 31 July 2023.

4.30 BCEL is to implement a structured Risk Management Framework by 31 July 2023.

- 4.31 BCEL is to review its strategic plan by 31 December 2023, including identifying key goals and priorities and develop a 10-year forecast to support the strategic plan, including specifically addressing key risks and priorities and setting timeframes.
 - 4.32 BCEL is to review its Capital Management Plan by 31 December 2023 in light of educational objectives and feed this into the strategic plan and 10 year forecast.
 - 4.33 BCEL is to review its Debtors Policy by 31 July 2023.
5. By 1 May in 2023 and 2024, 1 August in 2023 and 2024, 1 November in 2023 and 1 February in 2024, BCEL will provide a report to the Minister in writing, signed off by an independent auditor, on BCEL's implementation and compliance with each of the conditions in paragraphs 2 to 4 above for the period up to one month prior to each such report.