



Australian Children's  
Education & Care  
Quality Authority

# **ACECQA Excellent Rating and Second Tier Review Conflict of Interest Policy**

May 2022

## **ACECQA Excellent Rating and Second Tier Review Conflict of Interest Policy**

This policy aims to ensure ACECQA staff and/or delegated decision makers are not influenced, or perceived to be influenced, by an association or affiliation with any persons when making decisions on Excellent rating and second tier review applications.

A conflict of interest, perceived or actual, can cause bias in the decision-making process and lead to an invalid decision by an ACECQA delegate.

The rules of procedural fairness, otherwise known as natural justice, which apply to the Excellent rating and second tier review decision making processes, require decisions be made by unbiased decision makers. Any decision where there is perceived or actual bias could amount to a breach of procedural fairness.

### **Conflict of interest test**

The test to establish whether a conflict of interest exists is an objective one — whether a reasonable member of the public, properly informed, would conclude that inappropriate factors could influence an official action or decision, and that the conflict is unacceptable.

### **Types of conflicts of interest**

The nature of ACECQA's work means that the organisation, and therefore ACECQA delegates, will have close relationships with some members of the sector who apply for an Excellent rating or second tier review. Critical relationships include (but are not limited to) current and former:

- members of the ACECQA Board
- Ratings Review Panel pool members
- ACECQA staff members or contractors; and
- ACECQA stakeholders

### **Conflict of interest processes for Excellent rating and second tier review decisions**

The following processes help ensure independence in the assessment and decision-making processes for the Excellent rating and second tier review. The processes in this policy will take effect where a potential conflict of interest (perceived or otherwise), has been identified.

## **Excellent Rating**

### **Delegations**

The power to award or refuse the Excellent rating is vested in the ACECQA Board under the National Law. The Board has delegated this power to the Chief Executive Officer who has the ability to sub delegate the power to award or refuse the Excellent rating to another member of the ACECQA Executive.

Powers of the ACECQA Board delegated to the CEO may be delegated only to members of ACECQA's staff. This means only the ACECQA Board and staff members may decide on applications for the Excellent rating; it is not possible to contract an independent decision maker to perform this role.

### **Managing conflicts of interest**

A conflict of interest may arise when applicants are closely related to ACECQA as an organisation or when applicants are known to the delegate or members of the assessment team through positions they have held at other organisations or within regulatory authorities. Members of the assessment team are required to advise whether a conflict of interest (perceived or otherwise) exists prior to commencing review of an application and where a conflict is present the Senior Manager will ensure the application for the Excellent rating is completed by another member of the assessment team. The Senior Manager will remove themselves from the application process if there is a conflict of interest (perceived or otherwise).

Similarly, where a conflict of interest (perceived or otherwise) exists, or may exist, between an ACECQA delegate and an applicant because of the applicant's relationship with the delegate or with ACECQA as an organisation, ACECQA will follow the same administrative processes as for any other application and ensure that the decision is made by a delegate without a conflict/direct relationship.

If necessary, before the application appears before the delegate for decision, an independent adviser may be engaged to review and provide comment on the assessed application. The independent adviser should not have any association with the applicant and should appear to the reasonable person to be without bias.

While the ACECQA delegate will be the final decision-maker (as required by the National Law), adding an extra layer of review should ensure some level of independence in the assessment and decision-making process.

Advisers will be engaged on a fee for service basis and will be a recognised international or Australian expert, for example, with relevant age-appropriate expertise in wellbeing, learning and development research or practice.

Whether or not it is necessary to engage an adviser will depend on the strength of the association between ACECQA and the applicant (including whether the application is from an individual or an organisation and whether the association ACECQA has is with the individual or the organisation) and will be determined on a case by case basis. Where a reasonable person,

properly informed would conclude that inappropriate factors could influence an official action or decision, and that the conflict is unacceptable, this policy will take effect.

## **Second Tier Review**

### **Conditions that may give rise to a conflict of interest**

Second tier review decisions are made by Ratings Review Panels (Panels) in accordance with the National Law. Panels have up to three members, including a chair, each appointed from the Ratings Review Panel pool. The panel pool contains some members who are also ACECQA staff members, however it is not compulsory that an ACECQA staff member be included on every panel, nor will an ACECQA staff member ever be appointed as a panel chair. A conflict of interest may arise if an applicant is closely related to ACECQA – an ACECQA staff member should not be included on a panel where this is the case.

If a panel member is approached by an applicant in any capacity once the panel has been convened and prior to the panel's decision, they should notify ACECQA and the panel chair as soon as possible. ACECQA and the panel chair will consider whether a conflict exists.

### **Managing conflicts of interest**

Panelists are asked about potential conflicts of interest in relation to the applicant (approved provider and service) before formal appointment to a Ratings Review Panel. Panel members are again asked to declare any conflicts at the start of individual panel meetings. Panel members must act in accordance with this policy. The Guidelines for second tier review advise that ACECQA will convene panels in such a way as to avoid or minimise conflicts of interest.

Second tier review decisions are made by a Panel of three and, while Panels must seek to make decisions by consensus, a majority decision is the final decision. To manage perceived conflicts of interest, ACECQA staff will not serve on any Panels reviewing applications from providers who are ACECQA Board members. Furthermore, as Ratings Review Panel pool members are also remunerated by ACECQA for their role, ACECQA staff will not serve on panels where an application for a second tier review is from a provider or service who is a member of the Ratings Review Panel pool.

## **Identifying conflicts of interest**

ACECQA staff and/or delegated decision-makers will take personal responsibility for the management of their own actual or perceived conflicts of interest and apply a 'common sense' approach in identifying and managing these. If in doubt, the person should raise the potential conflict with their manager and discuss the manner in which it should be handled.

## **Declaring conflicts of interest**

When a conflict of interest, potential or otherwise, becomes apparent, it must be declared by contacting the Chief Operating Officer who maintains a record of the details of such declarations.