



Excellent Rating and Second Tier Review Conflict of Interest Policy

This policy aims to ensure ACECQA 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 demonstrate bias in the decision-making process and lead to an invalid decision by the 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. A decision made by ACECQA 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 forum members

Conflict of Interest Processes for 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

Conditions which may give rise to a conflict of interest

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 also sub delegated the power to the General Manager, Strategy & Operations and the National Educational Leader.

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.

A conflict of interest may arise when applicants are closely related to ACECQA as an organisation.

Managing conflicts of interest

Where a conflict of interest (perceived or otherwise) exists, or may exist, between ACECQA delegates and an applicant because of the applicant's relationship to ACECQA as an organisation, ACECQA will follow the same administrative processes as for any other application. However, before the application appears before the delegate for decision, an independent adviser will be engaged to assess and provide comment on the application. The 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 assessment 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 early 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 which 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 comprise of up to three members, each appointed from the Ratings Review Panel pool. Four ACECQA staff members have been appointed to the ratings review panel pool. An ACECQA staff member serves on every panel to ensure consistency of decisions, and although ACECQA staff do not chair the panels, a conflict of interest may arise if an applicant is closely related to ACECQA.

Managing conflicts of interest

Ratings Review Panel members are required to declare conflicts of interest upon appointment to the Ratings Review Panel pool. Panel members must also declare any conflicts prior to reviewing specific applications. Panel members must act in accordance with the Ratings Review Panel Conflicts of Interest 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. On such occasions, the Panel will consist of three independent Panel members from the Ratings Review Panel pool.

Where an ACECQA staff member has a personal connection to a provider or service seeking review, an alternate staff member will serve on the Panel.

Identifying Conflicts of Interest

ACECQA 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 the Chief Operating Officer and discuss the manner in which it should be handled.

Declaring Conflicts of Interest

Where 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.