



'Approved provider' and Department of Education and Early Childhood Development, Victoria [2014] ACECQARRPstr0009 (16 April 2014)

Applicant:	'Approved provider'
Regulatory authority:	Department of Education and Early Childhood Development, Victoria
Decision date:	16 April 2014
Application reference:	STR0009

Decision

The Ratings Review Panel (the Panel) by consensus decided to confirm that the assessment of elements 1.1.3, 1.1.5, 1.1.6, 1.2.1, 1.2.2, 2.1.1, 2.1.2, 2.3.2, 2.3.3, 3.2.2, 4.1.1, 5.1.1, 5.1.2, 5.2.2 and 7.3.2 remain at 'not met'. The Panel by consensus decided to amend the assessment of elements 2.3.1 and 5.2.3 to 'met'.

As a result, the Panel by consensus confirmed the rating for standards 1.1, 1.2, 2.1, 2.3, 3.2, 4.1, 5.1, 5.2 and 7.3 remain at 'Working Towards NQS'.

The Panel confirmed that the overall rating for the service remains at 'Working Towards NQS'.

Issues under review

1. The approved provider (the provider) sought a review on the grounds that the regulatory authority, in making its determination, failed to take into account or give sufficient weight to special circumstances or facts existing at the time of the rating assessment (section 144(3)(b) *Education and Care Services National Law* (National Law)).
2. The provider sought a review of the following:
 - Quality Area 1, standard 1.1 (elements 1.1.3, 1.1.5 and 1.1.6), standard 1.2 (elements 1.2.1 and 1.2.2)
 - Quality Area 2, standard 2.1 (elements 2.1.1 and 2.1.2), standard 2.3 (elements 2.3.1, 2.3.2 and 2.3.3)
 - Quality Area 3, standard 3.2 (element 3.2.2)
 - Quality Area 4, standard 4.1 (element 4.1.1)
 - Quality Area 5, standard 5.1 (elements 5.1.1 and 5.1.2), standard 5.2 (element 5.2.2 and 5.2.3)
 - Quality Area 7, standard 7.3 (element 7.3.2).

Regulatory authority's view

3. After the initial assessment, the service was rated at 'Working Towards NQS' for standards 1.1, 1.2, 2.1, 2.3, 3.2, 4.1, 5.1, 5.2 and 7.3. The provider applied for first tier review.
4. At first tier review, the regulatory authority confirmed the initial ratings for all the elements and standards under review. Therefore, the rating levels for elements 1.1.3, 1.1.5, 1.1.6, 1.2.1, 1.2.2, 2.1.1, 2.1.2, 2.3.1, 2.3.2, 2.3.3, 3.2.2, 4.1.1, 5.1.1, 5.1.2, 5.2.2, 5.2.3 and 7.3.2 remained unchanged at 'not met'.

Applicant's view

5. The provider states in its application for second tier review that it believes the assessing authorised officer (the assessor) did not consider all evidence available on the day of the assessment and rating visit. In particular, the provider claims that the regulatory authority failed to take into account the evidence submitted by the provider in response to the draft Assessment and Rating Report. The provider also claims that the regulatory authority failed to investigate statements made by the assessor in which 'emotions of children were assumed', and statements and observations were taken out of context.

Evidence before the Panel

6. The Panel considered all the evidence submitted by the provider and the regulatory authority. This included:
 - the application for second tier review and its attachments, including the service's feedback on the draft Assessment and Rating Report (draft Report)
 - the Assessment and Rating Instruments (the Instruments) and the final Assessment and Rating Report (final Report)
 - the regulatory authority's findings at first tier review
 - the regulatory authority's submissions for second tier review, including the service's compliance history
 - the response from the provider to the regulatory authority's submissions for second tier review.
7. The Panel was also provided with advice from ACECQA on the elements, standards and Quality Areas under review.

The law

8. Section 151 of the National Law states that following a review, the Rating Review Panel may:
 - (a) confirm the rating levels determined by the Regulatory Authority; or
 - (b) amend the rating levels.

9. Information on the application of the National Quality Standard is available in the Guide to the National Law and Regulations and the Guide to the National Quality Standard available on ACECQA's website.

The facts

10. The service is a stand-alone, centre-based, combined long day care and out of school hours care service caring for children from birth to school age. The service is approved for a maximum of 99 places in total.
11. The assessment and rating visit at the service took place on 11 and 12 November 2013. There was one authorised officer and one departmental officer (a trainee assessor) present at the visit.
12. The regulatory authority advised that the final Report was sent to the provider on 28 January 2014.
13. The provider applied for first tier review on 5 February 2014. The regulatory authority made its decision on the review on 18 February 2014.

Review of rating levels

14. The Panel considered each standard and elements under review in turn.

Standard 1.1

15. Standard 1.1 is that:
An approved learning framework informs the development of a curriculum that enhances each child's learning and development.
16. It is made up of six separate elements, three of which are under review.

Element 1.1.3

17. Element 1.1.3 requires that:
'The program, including routines, is organised in ways that maximise opportunities for each child's learning'.
18. In the final Report, the regulatory authority states that routines did not consistently provide opportunities for each child's learning or assist children to develop self-help skills. For example, in two of the rooms children were required to line up to wash hands, wait to be seated in a high chair or at the table and waited for an educator to serve lunch or be fed.
19. The Panel noted the provider's claims, in response to the regulatory authority's draft Report, that 'lining up shows an increasing capacity to

understand, self-regulate and manage emotions, and it also shows [children's] increasing awareness of healthy lifestyles and good nutrition'.

20. The Panel also noted that the provider, in refuting the assessor's observations, makes reference to its security camera footage; however this footage was not provided with its application for second tier review.
21. The Panel noted the inconsistency observed by the assessor between different rooms at the service, and agreed that the information provided by the regulatory authority suggests a different level of education and care is provided across the service. The Panel also noted that the provider did not directly address the assessor's observations that children in different rooms had different experiences.
22. The Panel agreed that, based on the evidence provided, it was unable to find that the program, including routines, is organised in ways that maximise opportunities for each child's learning. Therefore, element 1.1.3 remains at 'not met'.

Element 1.1.5

23. Element 1.1.5 requires that:
'Every child is supported to participate in the program'.
24. In the final Report, the regulatory authority states that educators were not consistently responsive to children who required additional support to engage in the program. For example, in one of the rooms, a child was observed standing in the middle of the room holding his ears, unengaged for a significant period of time. The Report states that after approximately 8 minutes, the child picked up a nearby book and sat on the lino; an educator then walked past and moved the child to the mat. The educator picked up the book and began to read the story, however it was observed that after a minute she stood up and moved herself and the book to the other corner of the mat. The child remained on the mat with his hands in his lap, where the educator had left him.
25. The Panel noted the provider's claims, in response to the regulatory authority's draft Report, that its security camera footage shows that the child was unengaged for a period of 60 seconds. The Panel also noted that the provider did not submit any evidence to substantiate its claims. In particular, the security camera footage was not provided with its application for second tier review.
26. The Panel agreed that, while there will be times when children are not interacting with an educator, the example provided did not suggest a period of solitude, but rather that the child was not engaged in the program. Additionally, the interactions with children were observed to be brief.

27. The Panel agreed that based on the evidence provided, it was unable to find that every child is supported to participate in the program. Therefore, element 1.1.5 remains at 'not met'.

Element 1.1.6

28. Element 1.1.6 requires that:
'Each child's agency is promoted, enabling them to make choices and decisions and influence events and their world'.
29. In the final Report, the regulatory authority states that children were not consistently provided with opportunities that encouraged their independence to make choices and decisions about things that affect them. Furthermore, children in two of the rooms were not always provided with opportunities to attempt or complete age appropriate tasks independently, such as feeding themselves.
30. The Panel noted the provider's claims, in response to the regulatory authority's draft Report, that 'security footage shows all toddlers feeding themselves'.
31. The Panel noted that it had little evidence available before it to determine whether each child's agency is promoted, enabling them to make choices and decisions and influence events and their world. The Panel agreed that the evidence provided by the regulatory authority was narrow, and did not clearly establish that the element was not met. In particular, the Panel noted that while the regulatory authority states that children in two of the rooms were not always provided with opportunities to attempt or complete age appropriate tasks independently, it did not provide detailed evidence to support this statement. However, the Panel also agreed that the provider did not submit any evidence to substantiate its claim that it is meeting the element.
32. The Panel agreed that based on the evidence provided, it was unable to find that each child's agency is promoted, enabling them to make choices and decisions and influence events and their world. Therefore, element 1.1.6 remains at 'not met'.

Standard 1.2

33. Standard 1.2 is that:
Educators and co-ordinators are focused, active and reflective in designing and delivering the program for each child.
34. It is made up of three separate elements, two of which are under review.

Element 1.2.1

35. Element 1.2.1 requires that:
'Each child's learning and development is assessed as part of an ongoing cycle of planning, documenting and evaluation'.
36. In the final Report, the regulatory authority states that there were no documented assessments of each child's learning and development as part of an ongoing cycle of planning, documenting and evaluation. Furthermore, evaluations that informed the cycle of planned experiences for future programs, or that reflected on individual children's learning and development, were not completed and documented.
37. The Panel noted the provider's claims, in response to the regulatory authority's draft Report, that evidence of the cycle of planning, including evaluation and reflection is comprehensively documented and well displayed around the service and available to families. The provider further claims that learning stories are used to capture all children's participation in the program and include thorough reflections and assessments of children's learning against the learning outcomes of the Early Years Learning Framework.
38. The Panel reviewed the 'learning stories' submitted by the provider and agreed that while there was some evidence of assessment of learning and development, the information provided did not demonstrate an ongoing cycle of planning, documenting and evaluation. The Panel noted that the information was generally descriptive rather than analytical in nature.
39. The Panel agreed that based on the evidence provided, it was unable to find that each child's learning and development is assessed as part of an ongoing cycle of planning, documenting and evaluation. Therefore, element 1.2.1 remains at 'not met'.

Element 1.2.2

40. Element 1.2.2 requires that:
'Educators respond to children's ideas and play and use intentional teaching to scaffold and extend each child's learning'.
41. In the final Report, the regulatory authority states that educators in a number of the rooms did not consistently scaffold and extend each child's learning or respond to their ideas and play. Educators' responses to children's play were often brief comments on what children were doing, rather than providing encouragement or initiating interactions and conversations that extended each child's learning. For example, interactions with children were often related to routine tasks and educators did not consistently respond to children's ideas and play or use intentional teaching to scaffold and extend each child's learning. For example, an educator helped two children put on

dress up clothes, assisting with the buttons and dressing, then immediately left the area to complete another task.

42. The Panel noted the provider's statement, in response to the regulatory authority's draft Report, that an educator had explained to the assessor that she had extended upon the children's recent interest and learning about Australian native animals by arranging an incursion delivered by a local wildlife carer. The provider claims that the assessor was not interested in this as it did not happen on the day of the assessment and rating visit. The provider also claims that security camera footage shows that 'educators were observed sitting down with children at activities and actively engaging with the children'. The provider gives the example of an educator who engaged in a drawing experience with a child, and claims that this was observed by the assessor but was not documented.
43. The Panel noted that while the provider claims that its camera footage shows an educator engaging with a child in a drawing experience, the provider has not detailed whether the educator used intentional teaching to scaffold and extend the child's learning. The Panel agreed that from the information submitted, it was difficult to assess the level of engagement of educators and whether each child's learning was extended.
44. The Panel noted the provider's claim that the assessor was not interested in learning experiences that did not occur on the day of the assessment and rating visit. The Panel agreed that while it may be appropriate to consider events that occurred prior to the assessment and rating visit, it would still expect the service's daily program to provide evidence of educators responding to children's ideas and play and using intentional teaching to scaffold and extend each child's learning. However, the Panel also noted that it may not be possible for the authorised officer to observe all activities across all rooms on the day of an assessment and rating visit.
45. The Panel noted the inconsistency of service delivery observed by the assessor, and noted that element 1.2.2 requires that educators respond to children's ideas and play and use intentional teaching to scaffold and extend 'each child's' learning. The Panel agreed that based on the evidence provided, it was unable to find that the element is met. Therefore, element 1.2.1 remains at 'not met'.

Standard 2.1

46. Standard 2.1 is that:
Each child's health is promoted.
47. It is made up of four separate elements, two of which are under review.

Element 2.1.1

48. Element 2.1.1 requires that:
'Each child's health needs are supported'.
49. In the final Report, the regulatory authority states that a medical management plan, a risk management plan and communications plan had not been developed for all children with a specific health care need. For example, an infant with a specific health care requirement had an information sheet that explained the child's health care needs broadly and stated that the child was never to be given avocado or banana, yet this was not identified on the food allergy list in the children's rooms. The Report also notes that a child at risk of anaphylaxis was playing in the outdoor area, and the child's epipen was not located within easy access. Furthermore, in the toddler room the information recorded on a child's medical management plan identified that the child required 3 puffs of ventolin daily, yet this was not consistent with the educators practice in the room. An educator advised that ventolin was administered as required.
50. The Panel noted the provider's claims, in response to the regulatory authority's draft Report, that the food allergy list was displayed in the room and was available on all the service's iPads. In response to the assessor's statement that a child's epipen was not located within easy access, the provider claims that children's medications are stored in a manner that was clearly visible and accessible to all staff. The provider states that it advised the assessor that the epipen was located in the upstairs room near the changing area. The provider also claims that the assessor has incorrectly recorded that a child has an asthma plan requiring 3 puffs of ventolin to be administered each day.
51. The Panel noted that the provider did not submit any documentation (such as the food allergy list or asthma management plan) in support of its claims.
52. The Panel noted that whether the allergy list was captured electronically or in printed format, allergy lists should be clearly displayed in the room, and whether this was the case is disputed by the regulatory authority and the provider. The Panel also noted that to ensure that each child's health needs are supported, allergy lists should not just be clearly displayed, but educators should be aware of what is on the list.
53. As to whether the epipen was in easy access to the child with anaphylaxis, the Panel agreed that without information regarding the layout of the service's premises and the precise location of the epipen, it was unable to determine whether it was in easy access.
54. The Panel agreed that based on the evidence provided, it was unable to find that each child's health needs are supported. Therefore, element 1.2.1 remains at 'not met'

Element 2.1.2

55. Element 2.1.1 requires that:
'Each child's comfort is provided for and there are appropriate opportunities to meet each child's need for sleep, rest and relaxation'.
56. In the final Report, the regulatory authority states that practice at the service was not consistent as children's cues in two of the rooms were missed, with several children noticeably tired and crying during lunch time. Additionally, spaces that provided an opportunity for solitary, quiet play or supported children to relax during the day were not provided for all children. For example, infants did not have access to soft furnishings, large cushions or a comfortable sofa where educators could sit to interact with infants and feed them their bottles. Instead infants were propped on a small head cushion on the floor to have their bottles.
57. The Panel noted the provider's claims, in response to the regulatory authority's draft Report, that all rooms have areas where the children can go and rest and enjoy moments of solitude.
58. The Panel referred to the evidence cited by the regulatory authority, and agreed that based on the examples provided it was unable to find that each child's comfort is provided for and there are appropriate opportunities to meet each child's need for sleep, rest and relaxation. Therefore, element 2.1.2 remains at 'not met'.

Standard 2.3

59. Standard 2.3 is that:
Each child is protected.
60. It is made up of four separate elements, three of which are under review

Element 2.3.1

61. Element 2.3.1 requires that:
'Children are adequately supervised at all times'.
62. In the final Report, the regulatory authority states that educators did not always demonstrate an awareness of each child or position themselves at different locations throughout the indoor and outdoor area to ensure adequate supervision of all children in all areas, and did not regularly communicate their movements to each other. For example, when outside, a toddler was observed wandering into a secluded area at the back of the playground and remained there for some time before he was noticed by an educator. Additionally, a child walking around in the toddler room had a

wooden salt shaker in her mouth. Educators did not appear to notice this and did not intervene to ensure that the salt shaker was removed from her mouth.

63. The Panel noted the provider's claims, in response to the regulatory authority's draft Report, that educators positioned themselves to respond to children when required, and supported children to independently access activities. The provider states that educators were communicating with each other when they needed to leave the room or go indoors/outdoors. The provider claims that the child that went into a 'secluded area' was noticed, and furthermore, educators regularly conduct head counts.
64. The Panel agreed that based on the evidence provided, it was of the view that the element has been met. Therefore, element 2.3.1 is amended to 'met'.

Element 2.3.2

65. Element 2.3.2 requires that:
'Every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury'.
66. In the final Report, the regulatory authority states that reasonable precautions were not taken to protect children from harm and any hazard likely to cause injury. The Report states that bottle fed babies were not held by educators when they were feeding, instead educators were observed putting babies to bed with bottles and propping babies on small head cushions on the floor to feed themselves.
67. The Panel noted that the provider did not submit any further information in relation to this element.
68. The Panel noted that where there is a lack of evidence demonstrating that a service is 'meeting' an element, and where there is no immediate hazard or risk to the health or safety of children, the appropriate rating for the standard may be 'working towards the NQS'. Where evidence is so deficient that the Panel considers there is a significant risk to the health or safety of children, it may warrant the Panel rating the standard at 'Significant Improvement Required'.
69. The Panel agreed that based on the information available, it was unable to find that every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury. Therefore, element 2.3.2 remains as 'not met'.

Element 2.3.3

70. Element 2.3.3 requires that:
'Plans to effectively manage incidents and emergencies are developed in consultation with relevant authorities, practised and implemented'.
71. In the final Report, the regulatory authority states that emergency and evacuation procedures were not rehearsed every 3 months by staff members, volunteers and children present at the service on the day of the rehearsal, and that the rehearsal of the emergency and evacuation procedures were not documented. The Report states that small groups of children had practiced evacuating down the stairs to the rear car park, however, a whole service evacuation had not taken place.
72. The Panel noted the provider's claims, in response to the regulatory authority's draft Report, that educators evaluate and document the outcome of each emergency and evacuation practice, which is used to inform future practice. The provider further claims that its fire logs demonstrate that the emergency and evacuation producers have been rehearsed, and that these were shown to the assessor.
73. The Panel noted that the provider did not submit any documentation, such as its fire logs, in support of its claim that emergency and evacuation practices are documented. The Panel agreed that for a rehearsal of an emergency or evacuation procedure to be effective, it would likely require the whole service present on the day of the rehearsal to participate in the practice. The Panel noted that this requirement is consistent with Regulation 97.
74. The Panel agreed that based on the information available, it was unable to find that plans to effectively manage incidents and emergencies are practised and implemented. Therefore, element 2.3.3 remains at 'not met'.

Standard 3.2

75. Standard 3.2 is that:
'The environment is inclusive, promotes competence, independent exploration and learning through play'.
76. It is made up of two separate elements, one of which is under review.

Element 3.2.2

77. Element 3.2.2 requires that:
'Resources, materials and equipment are sufficient in number, organised in ways that ensure appropriate and effective implementation of the program and allow for multiple uses'.

78. In the final Report, the regulatory authority states that there were limited resources available to enable all children to take responsibility for their own learning that provided variety and challenge, and that reflected the breadth of ages, interests and capabilities of the children accessing the program. For example, in one of the rooms resources that were available for children were insufficient in number and not suitable for the ages of the children and the equipment available was not organised to ensure effective use by children. Resources were not rearranged during the morning or after children had accessed them, but remained where children left them across the floor. In one of the rooms, resources, equipment and materials were arranged around a large mat in a quarter of the room. In nursery room 1, eleven children had access to limited equipment such as fluffy animals, two soft balls, some books and a bead frame. The Report states that objects that promote infants' interests to investigate and explore, to stack and knock down, fit things together and pull apart, were not provided. The Report also states that across the service there were limited opportunities for children to access experiences that were open-ended and for children to access equipment that encouraged multiple use or could be used in numerous ways.
79. The Panel noted the provider's claims, in response to the regulatory authority's draft Report, that the assessor's description of the resources available in nursery room 1 does not include 'the many other things in the room'. In response to the assessor's statement that there were limited opportunities for children to access experiences that were open-ended and encouraged multiple use, the provider claims that the assessor refused to view the service's vegetable garden.
80. The Panel noted that the provider did not submit strong evidence for this element, and did not provided details of the resources available at the service, with the exception of the service's vegetable garden.
81. The Panel agreed that based on the information available, it was unable to find that resources, materials and equipment are sufficient in number, organised in ways that ensure appropriate and effective implementation of the program and allow for multiple uses. Therefore, element 3.2.2 remains at 'not met'.

Standard 4.1

82. Standard 4.1 is that:
Staffing arrangements enhance children's learning and development and ensure their safety and wellbeing.
83. It is made up of one element, which is under review.

Element 4.1.1

84. Element 4.1.1 requires that:
'Educator-to-child ratios and qualification requirements are maintained at all times'.
85. In the final Report, the regulatory authority states that the staff member that worked in the kitchen did not have evidence of the identifying number and the expiry date of their current working with children check recorded.
86. The Panel noted the provider's claims, in response to the regulatory authority's draft Report, that the working with children check was completed, however 'the staff member did not have his card on him'.
87. The Panel noted that the provider did not submit any evidence of the working with children check for the staff member in question.
88. The Panel agreed that based on the information available, it was unable to find that qualification requirements are maintained at all times. Therefore, element 4.1.1 remains at 'not met'.

Standard 5.1

89. Standard 5.1 is that:
Respectful and equitable relationships are developed and maintained with each child.
90. It is made up of three separate elements, two of which are under review.

Element 5.1.1

91. Element 5.1.1 requires that:
'Interactions with each child are warm, responsive and build trusting relationships'.
92. In the final Report, the regulatory authority states that not all educators consistently interacted with each child in a warm, responsive manner. For example, educators in one of the rooms did not acknowledge all children during play and did not consistently respond to each child's needs or consistently promote children's sense of security. The Report notes that a child fell from a vinyl cube and hit his head on the floor and began to cry, one educator looked up and continued to tie a child's shoe, another continued to read a book to a group of children. Another educator walked over after several minutes and picked the child up and moved the child to the group of children listening to a story, the child was still crying. Another educator picked up the child, and started to comfort the crying child. The Report also states that educators in two of the rooms regularly sat alongside children for

brief periods of time, often moving from group to group but did not take the time to promote warm, responsive relationships.

93. The Panel noted the provider's claims, in response to the regulatory authority's draft Report, that in relation to a child that fell from a vinyl cube, its security camera footage 'shows that the educator went over to the child as soon as the incident happened to make sure the child was ok'. The provider states that 'the assessor leaves out the fact that the child fell onto another soft cube hitting his head, not hard ground'.
94. The Panel noted that it is often hard to document interactions with children and agreed with the finding of the Ratings Review Panel in STR0007, that observations of practice are critical when collecting evidence against many elements and that in many instances it is observed practice and not paperwork which will greatly inform an authorised officer's assessment.
95. The Panel agreed that based on the information available, it was unable to find that interactions with each child are warm, responsive and build trusting relationships. Therefore, element 5.1.1 remains at 'not met'.

Element 5.1.2

96. Element 5.1.2 requires that:
'Every child is able to engage with educators in meaningful, open interactions that support the acquisition of skills for life and learning'.
97. In the final Report, the regulatory authority states that children's attempts to engage with educators were not consistently responded to. For example, educators did not always comfort children who were upset. A child in the toddler room began crying just before lunch time and an educator walked the child to a table, helped her sit down and left the child still crying and waiting for lunch.
98. The Panel noted the provider's claims, in response to the regulatory authority's draft Report, that children are always comforted in times of distress, confusion and frustration. The provider claims that while noting that an educator helped a child sit down, the assessor failed to note that 'in the toddler room the educators supported children to develop skills to deal with day to day experiences, such as cleaning and food preparation'. The provider states that the educator walked away to get the child a specifically made meal as the child had just arrived from overseas. The provider further states that 'educators responded to unsettled children by engaging with them warmly and assisting them to regulate their emotions'.
99. The Panel noted that it had little evidence available before it to determine whether every child is able to engage with educators in meaningful, open interactions that support the acquisition of skills for life and learning. In

particular, the Panel agreed that the evidence provided by the regulatory authority was narrow, and it was difficult to establish whether the example provided was an isolated incident. However, the Panel also agreed that the provider did not submit any evidence to substantiate its claims.

100. The Panel agreed that based on the information available, it was unable to find that every child is able to engage with educators in meaningful, open interactions that support the acquisition of skills for life and learning. Therefore, element 5.1.1 remains at 'not met'.

Standard 5.2

101. Standard 5.2 is that:
Each child is supported to build and maintain sensitive and responsive relationships with other children and adults.
102. It is made up of three separate elements, two of which are under review.

Element 5.2.2

103. Element 5.2.2 requires that:
'Each child is supported to manage their own behaviour, respond appropriately to the behaviour of others and communicate effectively to resolve conflicts'.
104. In the final Report, the regulatory authority states that educators did not consistently provide children with positive guidance and encouragement towards acceptable behaviour. For example, in one of the rooms educators did not generally role model positive guidance and often used directive language. Another example provided was of a child squealing loudly, and the educator responding in a harsh tone and removing the child from the cushion she was sitting on to another area of the mat. The Report also states that educators did not always explain the rules or expectations to children. For example, a child during outdoor play was directed to leave the baby doll in the cubby as she was not allowed to take it outside. When the child asked 'why', the educator responded 'because you are not allowed'. Educators often did not intervene in situations where children's behaviour needed to be positively guided, for example, in the toddler room a child stood over another child sitting at a table and continually hit the child in the face until the child cried. Another child pulled a child's hair until she cried and another toddler hit a child on the head with a spade several times in the sandpit.
105. The Panel noted that, in response to the regulatory authority's draft Report, the provider did not dispute all of the assessor's observations, but rather provided justifications for the language used and practices observed.

106. The Panel agreed that based on the information available, it was unable to find that each child is supported to manage their own behaviour, respond appropriately to the behaviour of others and communicate effectively to resolve conflicts. Therefore, element 5.2.2 remains as 'not met'.

Element 5.2.3

107. Element 5.2.3 requires that:
'The dignity and rights of every child are maintained at all times'.
108. In the final Report, the regulatory authority states that the dignity and rights of each child were not maintained at all times. For example, a child who was required to sit for long periods of time was not supported by a familiar educator who was able to respond sensitively and confidently to her cues, and to engage her in meaningful learning experiences while she sat. The Report also states that behaviour management techniques did not always support children's dignity and rights, when educators spoke to children in a harsh tone or when educators did not intervene to prevent children hurting each other. For example, an educator in one of the rooms 'growled' at a child and said, "didn't we have this discussion yesterday, no jumping up and down on the ride on, we push it not for riding, get off". The educator then took the toy away from the child, and a few minutes later she placed another child on the toy.
109. The Panel noted the provider's claims, in response to the regulatory authority's draft Report, that the assessor has made incorrect observations regarding the child that was required to sit for long periods of time. The provider states that the child had arrived from overseas on the day of the assessment and rating visit, and that 'she was given the option to move from where she was sitting'. The provider further states that a single educator was assigned to the child for the entire day, and the educator asked the child a number of questions. The provider further claims that 'after time, the child had built a secure attachment and relationship to the educator', as she asked the educator to take her jumper off, and then put it back on. The provider states that the assessor failed to document this observation.
110. The Panel noted that in its view the regulatory authority had not given enough information to support its finding that the dignity and rights of every child are not maintained at all times. In particular, the regulatory authority had not explained why a child was required to sit for long periods of time.
111. The Panel agreed that the provider's response to the assessor's observations, particularly in relation to a child who was required to sit for long periods of time, supported the provider's claim that the dignity and rights of every child are maintained at all times.

112. The Panel agreed that based on the evidence provided, it was of the view that the element has been met. Therefore, element 5.2.3 is amended to 'met'.

Standard 7.3

113. Standard 7.3 is that:
Administrative systems enable the effective management of a quality service.

114. It is made up of five separate elements, one of which is under review.

Element 7.3.2

115. Element 7.3.2 requires that:
'Administrative systems are established and maintained to ensure the effective operation of the service'.

116. In the final Report, the regulatory authority states that the service's administrative process had not effectively ensured that all staff members had a current working with children check or had a staff record.

117. The Panel noted that the provider did not submit any further information in relation to this element.

118. In relation to the absence of a working with children check for a staff member at the service, the Panel noted that the National Authorised Officer Assessment and Rating Training states that if the evidence has only one focus, it should be used in only one element. However, if the evidence has more than one focus, it can be used to describe its different focuses in relevant elements.

119. The Panel agreed that even if the absence of a working with children check was previously considered under element 4.1.1, evidence that not all staff members had a staff record would support a finding that the service has not met element 7.3.2.

120. In relation to the service's non-compliance over the past 12 months, as referenced in the regulatory authority's first tier review findings, the Panel noted that section 135(2) of the National Law provides that in determining a rating level, the regulatory authority may have regard to the service's history of compliance with the National Law.

121. The Panel agreed that based on the information available, it was unable to find that administrative systems are established and maintained to ensure the effective operation of the service. Therefore, element 7.3.2 remains at 'not met'.

Additional considerations

122. The panel noted that in its application for second tier review, the provider made claims about the conduct of the assessor. In relation to these claims, the Panel noted that in STR0003 the Ratings Review Panel, in considering allegations of perceived bias of the assessor, concluded that the Ombudsman's office is the most appropriate authority to review the approved provider's concerns around bias.