



'Approved provider' and Qld Department of Education [2017]
File number: STR0027

Applicant: 'Approved provider'
Regulatory Authority: Queensland Department of Education
Date of decision: 18 September 2017
Application reference: STR0027

Decision

The Ratings Review Panel (the panel) by consensus confirmed Element 2.1.2 as Not Met and therefore the rating level for Standard 2.1, as Working Towards NQS.

Issues under review

1. The approved provider sought a review of Element 2.1.2 on the grounds that the regulatory authority did not appropriately apply the prescribed process for determining a rating and failed to take into account or give sufficient weight to facts existing at the time of the rating assessment.
2. At Assessment and Rating, the service was rated as Working Towards NQS for Quality Area 2, Meeting NQS for Quality Areas 1, 4, 5, 6 and 7 and Exceeding NQS for Quality Area 3.
3. At first tier review, the regulatory authority confirmed the ratings awarded during the assessment and rating, with Element 2.1.2 remaining at Not Met.
4. The approved provider submitted that element 2.1.2 should be rated as Met and that subsequently standard 2.1 and Quality Area 2 should be rated Meeting.
5. The approved provider claimed the regulatory authority rated the service unfairly and inconsistently compared with other services on its safe sleeping practice, which the service says is an acknowledged 'grey area'. The service also argued that the regulatory authority did not give proper regard to the importance of respecting families' practices and routines, and of working to meet individual children's and families' needs.
6. The service was also concerned that the final assessment and rating report was not provided within the legislated timeframe of 60 days and that issues were raised in the final report that were not mentioned during the assessment and rating visit or in the draft report, which meant the service did not have an opportunity to respond, however it is noted these matters are not within the rating review panel's remit.

Evidence before the panel

7. The ratings review panel established by ACECQA considered all the evidence submitted by the provider and the regulatory authority. This included:
 - QIP
 - Draft assessment and rating report
 - Assessment and Rating Draft Report – approved provider’s feedback
 - Final Assessment and rating report
 - First tier review application
 - First tier review evidence assessment – summary from Regulatory Authority
 - First tier review decision letter, considers and findings
 - Second tier review application
 - Compliance history
 - NQSARDT data export document
 - Second tier review – approved provider’s response to Regulatory Authority’s submission

8. The Panel was also provided with advice from ACECQA on the element under review.

The law

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

Review of rating levels

Standard 2.1

10. Standard 2.1 is that *Each child’s health is promoted.*
11. Element 2.1.2 is that *Each child’s comfort is provided for and there are appropriate opportunities to meet each child’s need for sleep, rest and relaxation.*

Draft assessment and rating report

12. The **Regulatory Authority noted the following** in relation to element 2.1.2:
13. Safe and appropriate space, furniture and resources were provided for rest, sleep and relaxation in accordance with recognised guidelines about children’s health, safety and well-being. Spaces and furniture that supported each child’s comfort and needs for sleep, rest and relaxation were provided in all the rooms For example, in the nursery room, sleep times were staggered and aligned with each child's routine. A section of the room was made available for children and children could access any time. The school-age room was organised with large cushions and floor spaces and a range of board and card games which supported relaxed play.

14. Opportunities for sleep, rest and relaxation are provided for the children. For example, sleep and rest routines and practices were flexible and considered the child and family's personal preferences and needs. Each child's comfort is provided for and there are appropriate opportunities to meet each child's need for sleep, rest and relaxation. For example, individual sleep and rest routines were displayed and adhered to all times. In the Kindergarten room, children who did not want to sleep were observed engaged in a range of self-selected restful activities such as playing with board games, reading books, looking at photographs on the iPad and playing with building blocks. A section of the room was organised for the children who required sleep with ample natural light. Children were allowed to sleep for as long as they wanted.
15. However, in the nursery one room, there were a number of displays on the nursery wall advising of how children in this room prefer to sleep. One child was noted as having two sleeps a day preferring to lie on their stomach. This did not align with safe standards for babies to sleep, which is on their backs. Further to this, in the same room, a child was observed sleeping in a bed on the floor surrounded by a tepee of hessian which hung from the ceiling. The educator explained that this sleeping arrangement was put in place in collaboration with the parent who informed the service that the child had a similar sleep and rest arrangement at home, and they never slept in a cot. Further discussion with the Nominated Supervisor confirmed that the child's parent authorised the service in writing for this arrangement to be put in place and written authorisation was provided by the parent upon request. The bed on the floor surrounded by a tepee of hessian did not meet Australian Standards, further demonstrating that the sleeping arrangements which were implemented in this room did not align with safe sleeping practices for infants as recommended by Red Nose, current research and evidence based practices for safe sleeping guidelines for infants.
16. When assessing suitability of the sleeping arrangements of the bed on the floor which is surrounded by a tepee of hessian against the National Quality Standard, the following evidence has been considered:
 - the service's sleep, rest and relaxation policy and procedure;
 - a copy of the written authorisation from the parent;
 - photographic evidence of the child sleeping on a bed on the floor surrounded by a tepee of hessian which hung from the ceiling;
 - observations during the assessment and rating visit confirming that the child was monitored and checked on regularly as they slept;
 - verbal confirmation with the educator during the assessment and rating visit confirming that the child has a similar sleep arrangement at home; and
 - recommended guidelines for best practice on safe sleeping practices for infants by Red Nose.

17. In its Quality Improvement notes, the regulatory authority recommended the service consider:
 - How educators can be further skilled on safe sleep practices and giving confidence for staff to decline to implement sleep practice that go against the guidelines, when requested by parents.
18. In its Compliance notes, the regulatory authority answered 'no' to the question of whether there was an unacceptable risk to the health, safety and wellbeing of children?

Approved Provider's feedback on draft assessment report

19. The **approved provider noted the following** in response to the draft assessment and rating report:
20. During the assessment, the assessor noted a nursery child who prefers to sleep on their stomach as part of their sleeping routine as provided from their parents. Upon enrolment, the family discussed the child's preference to sleep on their stomach and how the child finds it difficult to sleep on their back, resulting in limited sleep. During the enrolment process, the family were provided with information from SIDS and made aware of the recommended sleeping practices from SIDS and encouraged to provide a doctor's certificate. The doctor's certificate was provided prior to commencement of enrolment and this gave medical permission for the practice of tummy sleeping to continue and took into consideration that the child was over six months and the likelihood of SIDS has reduced after six months of age. This practice for this child was done under the recommendation of a medical practitioner.
21. In addition, the assessor witnessed a child sleeping in a pod. The service disputes the risk given by the report for the pod. The mattress for the pod goes to the sides, with no gaps, with the sides attached to the pod, not hung from the ceiling, reducing choking hazards. There is a hessian mosquito net attached above the pod, which sits over the metal archway of the pod. This hessian creates a focal point in the line of sight for the educators to ensure the child who was sleeping in the pod or any children feeding in the pod are highlighted within the space to ensure that they are supervised at all times. The pod is located on a flat surface, ventilated, was continually supervised, following the same sleep check procedures for a child in a cot and meets the requirements of sleeping within a bassinet based on SIDS information.
22. The child in question, upon enrolment, had difficulty sleeping in a cot at home, often transferring between the bassinette and a similar piece of equipment to the pod. Initial attempts of putting the child to sleep in the cot resulted in the child becoming extremely distressed, resulting in limited sleep which has rebound effects on their day, learning and relationships. Lengthy discussions occurred with the family immediately as to how educators could support the child and work to provide a warm, caring environment and safe sleeping practices which respected the needs of the child. It was decided that the pod provided the child with the opportunity to settle in comfortably to the centre, it was the closest representation of their home environment. The pod was the

first step in the transition to the cot, and building of a strong sense of security. Whilst in the pod the child slept for longer periods of time and staff gradually attempted to move the child into the cot.

23. The centre prides itself on listening to both the individual child and the family's needs, working in partnership to achieve the best outcome for their child. The significance of working with families and listening to their voices is clearly represented in the Early Years Learning Framework where it states *"Children thrive when families and educators work together in partnership to support young children's learning"*.
24. The service argues that the educators showed their understanding of this concept of working in collaboration with families to support the needs of the child. Educators demonstrated respect for the rights of the parents and understanding of the importance of creating consistency between the home environment and the care environment by respecting the practices, traditions and values of the parents. This practice was clearly witnessed by the assessor during their time at the centre and made the point to positively mention so in the report where they commented that:
"Opportunities for sleep, rest and relaxation are provided for the children. For example, sleep and rest routines and practices were flexible and considered the child and family's personal preferences and needs".
25. Further professional support of working with families in finding a positive sleep routine and one that is an extension of the home environment can be seen in the NCAC factsheet "Safe sleep and rest in child care", which states that:
'If your service cannot implement your child's sleep routine because it is not compatible with SIDS and Kidsafe sleeping recommendations, the educators at the service should be able to tell you why and discuss the relevant alternatives. They should work sensitively and helpfully with you at all times to ensure the best outcomes for your child'.
26. The Education and Care Services National Regulations (81) state that:
"The approved provider of an education and care service must take reasonable steps to ensure that the needs for sleep and rest of children being educated and cared for by the service are met, having regard to the ages, development stages and individual needs of the children".
27. In discussing the individual child's needs with the families of both of the children involved the service says they have provided a safe environment that ensures a consistent sleeping pattern and encourages further learning and development.
28. The service says the regulatory authority's comment of *"How educators can be further skilled on safe sleep practices and giving confidence for staff to decline to implement sleep practice that go against the guidelines, when requested by parents"* is inappropriate as parent request and the needs of the child are to be considered on a case to case basis. In order to thrive and learn, a sense of belonging and comfort needs to be achieved, a circle of security can be done once the basic needs of sleep and hunger are successfully met.

The child in question has transitioned positively and successfully to a cot where they now sleep for a significant amount of time both morning and afternoon. The transition was possible as the child was initially supported to sleep in the pod to reflect home practices whilst building a loving and trusting relationship with the room staff to then be able to transition to a cot. This transition process occurred under strict supervision, and with the child's safety always the first priority, with the risk assessment of the pod showing low risk. The success of this transition and the resulting sleep times supports the child's routine to night sleeps at home, allowing for both the parents and the child to be settled and rested to ensure that work requirements can be met and maintained.

29. The service said any concerns regarding the pod during the assessment and rating visit were not discussed between the assessor and room leader nor was it raised throughout the discussion with the director/approved provider. The pod was not addressed as an unacceptable risk at the time of the assessment and rating visit. The issues regarding the pod had not been brought to the centre's attention until eight weeks later when the draft report was received. The service questions why, if it was considered to be an unacceptable risk, was the opportunity to offer supporting information or make minor adjustments not given? The service contends that rectification of this issue could have taken place during the assessment and rating visit to provide evidence to the assessor, giving the service the opportunity to receive a higher rating against the standard.
30. The service contends that if the pod was deemed an unacceptable risk, a compliance notice would have been issued for this practice. The service also believes if the practice was not deemed enough of a risk to require a compliance notice, Not Meeting one element should not result in an overall rating of Working Towards.
31. The service argues that based on advice from Kidsafe NSW they correctly negotiated the variables of both the sleeping environment and the family – the pod was on a flat surface, nothing was covering the baby's face and the mattress was correctly fitted.
32. In researching the findings of their draft report, the service says that other centres are using the pod in question, and were rated as Meeting element 2.1.2, with an overall Exceeding rating given for this Quality Area.
33. According to the approved provider, when networking with another centre, they advised pods are used in a nursery room and used for children from young babies to 15 month olds, and this practice was in place during a recent compliance visit, with no issue raised. They also say some centres still incorporate the use of bassinets for their sleeping environments, however, this is not recommended from the SIDS association. They argue it is allowed with parent permission as it reflects the child's sleep routine at home, which is the same practice incorporated with the pod.
<https://rednose.com.au/article/bassinets>.

Final assessment and rating report – Regulatory Authority’s consideration of feedback provided on the draft assessment report

34. In providing the final assessment and rating report, **the regulatory authority determined the following:**
35. The letter from the medical practitioner has been considered and assessed as not strong enough to influence a change in the rating of this part of the element to ‘Met’. The letter from the medical practitioner identifies that the child has been assessed for head control and mouth clearance while on his belly. The letter is not a directive to place the child on their belly rather, the letter states that the child rolls on to their stomach by themselves during sleep and in the event that they do, they have been assessed to have the neck control and mouth clearance to tolerate sleeping on their belly. Further to this, the information provided and practice made reference to does not reflect the service’s sleep and rest policy and procedure. The service sleep and rest policy and procedures states that:
- “If a medical condition exists that prevents a child from being placed on their back, the alternative resting practice must be directed in writing by the child’s medical practitioner. If older babies turn over during their sleep, allow them to find their own sleeping position, but always lay them on their back when first placing them to rest.”*
36. No evidence was submitted to support how educators ensure that for this child, risk minimisation measures are in place or have been implemented to confirm that the service adequately manages this sleeping practice. Therefore, the evidence provided does not sufficiently influence a change in the rating of this part of the element to ‘Met’.
37. With regards to sleeping arrangements of a child in a pod, the information provided is not strong enough to influence a change of rating in this part of the element because the information does not support best practice for sleeping infants. The information does not identify the following:
- if the mattress had been assessed as firm enough to ensure the child’s safety;
 - if there was a risk assessment in place for identifying all foreseen risks associated with this arrangement to ensure that the sleeping pod arrangement is arranged in a manner that ensures the child’s safety and wellbeing. A risk assessment was requested and was not provided.
 - a photograph of the pod taken at the time of the visit shows a soft toy next to the child. Guidelines and recommendations by Red Nose were that this arrangement would be considered safer if there were no objects placed within proximity that could be a choking hazard to the child while they slept. In this instance, the fluffy toy identified in the photo of the sleeping infant with a dummy in their mouth in the pod meets the criteria of a choking hazard and therefore does not influence a change in this part of the element from Not Met to Met.

38. Upon considering the approved provider's response and the additional evidence provided, and evidence gathered during the visit, Element 2.1.2 will remain as 'Not Met' as the evidence provided does not demonstrate how there are appropriate opportunities to meet each child's need for sleep.
39. The overall rating for standard 2.1 remains as Working Towards NQS.

Approved provider's submission at first tier review

40. At first tier review, in addition to the feedback provided on the draft assessment and rating report, the **approved provider submitted:**
41. The service stated that while the medical letter discussed commencing on back at 10 months of age it was agreed the service would transition to sleeping on stomach with back patting to reflect home practices. This was advised to be acceptable by a SIDS representative.
42. The service provided photographs showing the pod location, ensuring ongoing supervision, and mattress thickness. The service noted that mattress standards are voluntary and that the mattress meets SIDS requirements of being firm, clean, cannot sag in the middle, well-fitting with no gaps and has no signs of damage. A room plan also shows the location of the pod which the service submits clearly shows high levels of supervision throughout the room.
43. The assessor for another centre which used a sleeping pod commented "*Safe and appropriate space, furniture and resources were provided for rest, sleep and relaxation in accordance with recognised guidelines about children's health, safety and wellbeing. The rooms were arranged to allow the children the space to remove themselves and engage in quiet, less active play*".
44. The service says that a risk management plan was provided to the authorised officer and again provided with the first tier application, demonstrating how they manage the sleep practice.
45. The service attached a photo showing the thickness of the mattress and indicated that as it was placed on the floor, it was firm with no ability to sag.
46. In the final assessment and rating (but not discussed in the draft) it was raised that the child in the pod had a soft toy and dummy. The service says the toy cited is a sleeping aid for this child which makes womb noises and the child has slept with this toy since birth. The child commences sleep with this toy and it is then attached with Velcro to the side of the sleeping area to continue soothing the child. There is no SIDS requirement for a child to sleep without a dummy. Rather, the requirement is that a child has the dummy for every sleep opportunity to reduce risk.
47. As part of their first tier review application the service queried the consistency, communication and entire assessment and rating process and formally requested a response regarding the following matters:
 - Why were the issues not addressed during the visit, allowing the opportunity for a minor adjustment? The service argues that had they been made aware of the concerns on the day immediate action could

have been taken to ensure they had appropriate procedures in place, without impacting the individual needs of any child

- Why, when this issue was noted, did the service not receive a phone call advising of concerns. The regulatory authority allowed this practice to continue for eight weeks prior to advising of an issue and therefore should be held responsible in meeting their requirements to ensure any concerns are addressed at the service
- If these sleep issues were deemed inappropriate enough to receive Working Towards overall, why was the service not issued with a compliance notice? The services says they discussed this for feedback with an officer from another region who assumed they would have received a compliance notice to be rated Working Towards overall with only one Not Met
- If this is not deemed to require a compliance notice, why did the service receive Working Towards overall? Many services have received Not Meeting in one area but a rating of 'Meeting' overall
- Where is the line drawn? Other requirements of SIDS are a smoke-free home and environment, as well as breastfeeding. If services are to follow SIDS 100%, with no allowance for risk assessed alternatives to meet home practice and ensure consistency of care, as well as sense of belonging, security and trust, then should services also request information regarding smoke-free environments and breastfeeding history to further assess sleep requirements of a child?
- How will ACECQA ensure the consistency of sleeping practises? If there is no capacity for alternative sleeping arrangements to be approved then *all* centres must be required to ensure they meet this requirement.

First tier review – Regulatory authority's consideration of evidence and decision

48. The **Regulatory authority noted the following:**
49. On 23 June 2017, the approved provider submitted information on the sleeping pod. The information provided markets the pod as "a unique hideaway log chair which provides the perfect spot for children to read a book. The hideaway log chair features a removable green leaf cushion for extra cosiness".
50. In reviewing the evidence in the final report and as provided by the approved provider in feedback to the draft report and the first tier review, it is clear that the service has a genuine commitment to engaging with and negotiating care with families, particularly in relation to sleep and rest procedures.
51. There are three issues that have been identified for consideration in the first tier review:
 - tummy sleeping

- presence of sleeping toy
 - suitability of mattress in the sleeping pod.
52. Tummy sleeping – The authorised officer noted in the final report a 'sleep display' poster which identified that one child had two sleeps per day preferring to lie on their stomach. The approved provider provided a letter from a doctor to explain the practice of 'tummy sleeping' for this child in which the doctor noted:
- the child has neck control and strength to tolerate sleeping on his tummy if he moves into this position. The doctor's letter identified the child was seven months old at time of writing the letter and therefore at the time of the assessment and rating was 11 months of age.
53. The practice of tummy sleeping in this instance is supported by a medical practitioner, is age appropriate, and complies with the recommendations of Red Nose in '*why back to sleep is the safest position for your baby*':
- Once a baby has been observed to repeatedly roll from back to front again on their own for several weeks, they can be left to find their own sleeping position (this is usually 5-6 months).
54. The relevant information can be located at: <https://rednose.com.au/article/why-back-to-sleep-is-the-safest-position-for-your-baby>.
55. Presence of sleeping toy – In the final report, the authorised officer identified a fluffy toy visible in a photo of a sleeping infant with a dummy in their mouth as a choking hazard. In response to this, the approved provider identified in the first tier review that the toy sighted is a sleeping aid which makes 'womb noises' and the child has slept with this toy since birth.
56. While the use of the dummy is mentioned in the final report, the authorised officer did not identify this as a concern as the use of a dummy meets with Red Nose guidelines. However, the information provided by Red Nose is very clear that soft toys should never be placed in the sleeping environment:
- The risk posed by suffocation by the presence of soft objects in the baby's sleeping environment outweighs any benefit to the baby from a soft toy. The relevant information can be located at: <https://rednose.com.au/article/can-my-baby-have-a-soft-toy>
57. Suitability of the mattress in the sleeping pod – No information was provided by the approved provider to indicate that the mattress used in the sleeping pod meets Australian Safety Standards for mattresses.
58. In their submission to the first tier review, the approved provider stated that "*mattress standards are voluntary and that this mattress meets SIDS requirements of being firm, clean, cannot sag in the middle, well-fitting with no gaps and has no signs of damage.*"
59. While AS/NZS 8811.1:2013 *Methods of testing infant products - Sleep Surfaces - Test for firmness* is a voluntary standard, guidance provided by Red Nose advises to "use a firm sleep surface that is compliant with the new

AS/NZS Voluntary Standard." ([https://rednose.com.au/article/what-is-a-safe-mattress.](https://rednose.com.au/article/what-is-a-safe-mattress))

60. Further, the Guide to the National Quality Standard for Element 2.1.2 states that for practice to be Meeting NQS, assessors may observe:
 - Safe sleep practices being implemented, including cots, other bedding equipment and accessories that meet Australian Standards.
61. While the approved provider's submission stated that the pod's mattress "*meets SIDS requirements*", the letter from a parent makes a clear statement to the contrary:

At the time of this discussion [staff member] made it clear that the pod did not meet the safety guidelines outlined by SIDS Australia and was not in line with the centre's policies or practices, however I gave permission for [child] to sleep in the pod if that is where she would sleep.
62. The safety of the child must be the paramount consideration in all circumstances. While a parent may provide signed permission for their child or children to sleep in a pod, this does not override the approved provider's responsibility to make decisions about sleep practices which are based on current sleep safety guidelines.
63. The recent '*Sleep health and sleep development in ECEC - Infants and toddlers aged birth to 3 years*' fact sheet produced by Queensland University of Technology (QUT) states:

In genuine partnerships educators will work with parents to provide continuity in sleep practices. However, it must also be acknowledged that some practices may not be feasible in the group-based context or cannot be implemented because they do not comply with current safe sleeping guidelines.
64. ECEC services have a responsibility to observe current Safe Sleeping Guidelines and to ensure a safe sleeping environment. The QUT Sleep resources can be found at: <https://det.qld.gov.au/earlychildhood/news-publications/sector-reports/sleep>
65. Taking into consideration all of the above, the evidence for Element 2.1.2, identified by the authorised officer in the final report and submitted by the approved provider demonstrates practice that reflects Working Towards NQS.
66. The Regulatory Authority confirmed the rating level as Not Met for element 2.1.2, and Working Towards NQS for Standard 2.1. As a result, the Regulatory Authority confirmed the overall rating for Quality Area 2 as Working Towards.

Second tier review evidence submitted by the approved provider

At second tier review the **approved provider submitted that:**

67. The final assessment and rating was received on day 65 (with day 1 being first day of visit) which is outside of the allowed timeframes prescribed in the

National Law 136. The assessment and rating process was not suspended at any stage to allow for this extra time.

68. No consideration was given regarding the needs of the family and child. The arrangement was an extreme circumstance provided for six weeks to allow a child who had never slept in a cot before the opportunity to transition to a cot whilst maintaining a calm and loving relationship with staff. Had the service not allowed this transition the options would have been to have a distressed child, room and staff or have the mother remove her from care and be unable to work. No consideration was given that the child now sleeps in a cot twice a day or may have only been sleeping for less than 10 minutes in the photos taken as she was allowed to fall asleep in the pod and then moved to a cot. No consideration has been given to the other seven children in the room who benefited from a calm, loving environment as this one child was allowed the opportunity to settle in a manner that suited her sleeping requirements.
69. The sleep aid was only raised in the final assessment and rating report, not allowing the service to respond to the draft. Use of the sleep aid was given permission by the parent to allow the child to settle. The child showed no signs of rolling and was in full view of staff members 100% of the time when using the sleep aid which provides a beating heart sound for comfort.
70. The services says it was provided positive feedback regarding practice during the visit due to meeting the child's needs and no mention of the sleep issue was provided until days before the draft was due, by which stage the child had transitioned to only cot sleeping. After repeatedly raising concerns regarding the process and questioning the outcome of this area, and the whole assessment and rating, particularly querying why the service had not received a compliance notice if the matter was serious enough to achieve Working Towards overall, the service received a compliance notice posted almost four months after the assessment and three months after the issue was raised. The service maintains this is an inappropriate course of action to take to confirm Not Meeting.
71. The service says there has been no consistency in the process and this has not been addressed. The service says it provided evidence of another service receiving an Exceeding rating utilising these same pods with the in-addition notes stating that the pods, rockers, bouncers and swings in use allowed the children to rest (sleep) in their own areas.
72. In the first tier review the regulatory authority noted the service had told the family that the pod was not SIDS approved but then separately noted that mattress requirements were only voluntary, so the service was meeting SIDS practices, and that these two statements were a contradiction. These were two separate time periods. The service was originally of the understanding that the pods did not meet SIDS requirements but due to feedback from other services and SIDS, as well as previous experience, the services believed they could be used in the room under supervision along with rockers and swings, in exceptional circumstances. When investigating after the matter was raised the

service became aware that mattress ratings were only voluntary and it was inappropriate to say the mattress did not meet SIDS requirements.

73. While the service was happy to accept feedback regarding the sleep matter, staff spent excessive time ensuring this one child received the highest quality of care and that their needs were met, as well as those of the other children in the room. The service says the process of being rated as 'Not Met' has been inappropriate, outside timeframes and inconsistent with the same, approved sleeping practices at other centres that have achieved Meeting or Exceeding. SIDS provided feedback that this is a grey area and it would be inappropriate to expect a child to never fall asleep in an unapproved position or piece of furniture due to the daily running requirements of a room.

Further comment submitted by the approved provider in response to the Regulatory Authority's submission of documents to the second tier review

74. The **approved provider submitted that** the outcome is inequitable and incorrect and not reflective of ACECQA maintaining consistency across Australia during the assessment and rating process and noted the following:
75. More than three months after assessment and rating, the Regional Office emailed and phoned the service requesting information by COB that day. The Regional office also phoned the approved provider but would have received a message that she was away. Separate email and phone contacts were given for anything urgent. The Regional office did not use the contact details provided or phone the centre to speak with the Nominated Supervisor, (which appeared urgent by her request of COB).
76. When the approved provider returned to work she emailed the Regional office. For this two-week period there was no follow up from the Regional Office regarding this email or matter, further showing the non-urgency of their concern that a child may be sleeping in the pod and not consistent with them afterwards sending a compliance notice to the service.
77. The approved provider then received an email from the Regional office, requesting a meeting to discuss the assessment and rating visit and the learnings of the ECEC. The approved provider was hoping to discuss the questions raised in her email.
78. After lodging their second tier review the approved provider was advised that the meeting would be held after the second tier review outcome was decided.
79. The approved provider is concerned that the first time they will be able to meet with someone to discuss their concerns, practices and questions will be more than six months after their assessment has been completed. They believe this does not reflect appropriate practice and confirms that no serious incidents occurred at the service. The service reports that for three months after assessment they received no follow up, support, communication or visit from their local office and believe this is because the local office did not deem the matter serious or inappropriate practice, which they believe is inconsistent with their rating of Working Towards.

80. The service says that after repeatedly stating that they were working within consistent approved practices and should not have received a Working Towards overall for one Not Met, they received a compliance notice for the pod sleeping, almost four months after the assessment and rating visit occurred. They believe the compliance notice was an afterthought from the first tier review, as they indicated they believed the regulatory authority outcome and process was inappropriate without a compliance notice.
81. The approved provider reports she had a phone meeting with the first tier review team. The approved provider said she was advised that most of her questions would need to be answered by the Regional office, after the second tier review is completed.
82. The approved provider lists the following matters from her conversation with the first tier review team as confusing and inconsistent:
- The regulatory authority said it could not take into consideration the Exceeding rating of another service as they are not aware of the exact practice occurring at the time. The approved provider advised she was the service manager of the other service during the A&R visit and that they were performing the same practice with the pods and have continued to do so, with ECEC spot checks being performed with no concerns raised regarding the pods. The inconsistency of another service achieving Exceeding for the same practice which rated this service as Working Towards has still not been addressed
 - The regulatory authority said that given the service's feedback on another service achieving Exceeding, SIDS advice that this was a 'grey area' and the Facebook posts indicating services using non-approved sleeping devices, they will include information in their next newsletter to services to advise them of the correct sleep requirements and initiate training of local officers regarding the matter.
 - The service contends this is unfair as it makes them the example for other services. They argue that to ensure consistency and fairness, their service should be rated Meeting or Exceeding in this area, as other centres have been, and that changes can be made after the rating has been finalised, or, that reviews need to be made of all services that have been allowed to use non-approved sleeping devices and their rating be reduced to Working Towards.
 - The approved provider cited the following example she gave to the regulatory authority:
One educator is in the cot room putting three children to sleep, the second educator has three children interacting on the floor, one child in the rocker and one child commencing a bottle feed. Within minutes of the bottle feed commencing the baby in the rocker falls to sleep. Does the educator stop feeding the baby as they are in a non-approved sleeping device, causing distress, to move the sleeping child to the cot room where two educators

will now be, leaving the other children unsupervised? Or allow the child to sleep in the rocker for a period of time until they can be moved?

- According to the service, the regulatory authority advised that leaving the baby would be the appropriate practice, which the approved provider agreed with. The approved provider contends this is evidence that approved sleeping is a grey area and there is no protection for staff if an ECEC officer was to attend at that time. The regulatory authority advised that if the educator explains the sleeping situation the officer in attendance would make a decision on appropriateness given the circumstances. The approved provider claims this is the scenario that occurred during their assessment and rating visit – the authorised officer queried the sleep practice, listened to the explanation and observed the sleep practice, took photos of support and provided positive feedback.

The approved provider says that weeks later, after the photos were seen by central office and possibly others, one officer had an issue with the sleeping practice and without considering the circumstances or conversations, rated the service as Working Towards. The approved provider emailed the regulatory authority regarding concerns on this matter but did not receive a response prior to the second tier review.

- Based on the authorised officer's rating notes no concerns were raised of the pod or area 2.1.2, with only positive feedback seen.
83. The approved provider says that prior to being approved as a service, during building construction, the leading local officer advised she would expect the service to achieve no more than Working Towards in their first assessment and rating. The service strongly feels that the local office has now pursued to ensure this occurs, despite this being inappropriate and not consistent with practices throughout Australia which are approved and seen as Exceeding.
84. The approved provider summarises their position as follows:
- The service worked within consistent approved practice to meet the needs of a child at the centre. With risk assessments, parent permission and close monitoring, having the child in 100% viewing when using the pod, the child in question transitioned to a cot within six weeks of the pod being used as a transitional sleeping device.
 - Other services use this device and other non-approved sleeping devices and received a Meeting or Exceeding rating. It is agreed that this is a 'grey area' but in the case of this service it is being seen as black and white.
 - The service was provided positive feedback regarding the practice meeting the needs of a child and the photos were seen by central office and others before one officer showed concern and reduced the centre's overall rating without being in attendance or understanding the circumstances explained to the authorised officer on the day.
 - The approved provider says they was provided overall positive feedback about the entire visit as a whole, with the authorised officer stating that all

seven areas of the NQS wheel need to be working for the wheel to stay spinning and theirs was spinning beautifully.

- The assessment and rating process was conducted outside the prescribed timeframe of 60 days as outlined in the National Law, 136. Had one officer not raised a last minute sleep issue, the prescribed timeframe would have been adhered to.
 - If a service doesn't meet a prescribed deadline such as submitting their QIP on time there would be serious repercussions but nobody can advise the repercussions for our local office not meeting their prescribed timeframe.
 - No explanation has been given for the practice being rated as Exceeding at other services. The approved provider contends that the argument that other services' situation cannot be considered is invalid as the approved provider oversaw the practice at both services.
 - Issues were raised in the final report which were not mentioned in the draft, not allowing the service to respond.
85. The follow up from the local office is not consistent with this being a serious matter. A compliance notice was issued four months after the visit and at no time during the assessment and rating process was the service advised that their assessment was being suspended due to a compliance notice. The local office emailed queries regarding the matter three months after the visit and did not respond to any questions from the service.
86. The regulatory authority has not been able to answer questions or advise how centres can protect themselves from this 'grey area' of approved sleeping.
87. The service is inappropriately being used as an example to other services who have previously been allowed to participate in this practice.

Ratings review panel's considerations

88. In its discussions, the panel considered whether the evidence submitted demonstrated the service had met or not met recommended guidelines for safe sleeping practice, particularly in relation to babies sleeping on their stomach; Australian Standards for bedding equipment, including the use of bedding equipment for which a standard does not exist; and the use of soft toys in the sleeping environment. Correspondence with the approved provider confirmed the child photographed in the pod is four and a half months old.
89. The panel also considered advice to services and regulatory authorities from the *Guide to the National Quality Standard* and from recommended source Red Nose.
90. In relation to sleep practices and standard 2.1, the *Guide to the National Quality Standard* states:
- Fundamental to providing for children's wellbeing is to ensure that routines, activities and experiences support children's individual requirements for health, nutrition, sleep, rest and relaxation. (pg 47)

- Children’s and families’ requirements for children’s comfort and welfare in relation to daily routines, such as rest, sleep, dressing and toileting/nappy changing, vary due to a range of factors. Issues that may influence a child’s individual requirements for these routines include the child’s and family’s sociocultural background, their personal preferences and the routines and activities that are in place at home. (pg 53)
 - Assessors may observe safe sleep practices being implemented, including cots, other bedding equipment and accessories that meet Australian Standards; educators ensuring that sleeping infants are closely monitored and that all sleeping children are within hearing range and observed (pg 54)
 - Assessors may discuss how educators and co-ordinators negotiate sleep and rest routines and practices with families to reach agreement on how these will occur for each child at the service (pg 54).
91. Red Nose provides the following advice on soft toys:
- Soft toys should never be placed in the sleeping environment. Soft objects in the cot can be a suffocation risk.
 - Keep soft toys out of the sleeping environment for babies under seven months of age because they may cover the nose and mouth and interfere with breathing.
 - The risk posed by suffocation by the presence of soft objects in the baby’s sleeping environment outweighs any benefit to the baby from a soft toy. It is therefore advised not place soft toys and other soft objects in the cot for babies under seven months of age.
 - Seven month old babies are more likely to explore objects in their sleeping environments than younger babies. Some babies over seven months of age may appreciate a small object such as a soft toy to provide comfort and connection (transitional object) during times of separation from their parent.
<https://rednose.com.au/article/can-my-baby-have-a-soft-toy>
92. Red Nose provides the following advice on baby safe sleeping products:
- *Keeping Baby Safe – A guide to infant and nursery products* <https://www.accc.gov.au/publications/keeping-baby-safe-a-guide-to-infant-and-nursery-products> states that ‘most nursery products should be made to meet voluntary or mandatory Australian standards and carry labels that warn about possible hazards’.
 - The Government has developed mandatory standards for cots and portable cots (from March 2009) and all cots, new and second hand, sold in Australia must meet the Australian Standard for cots (AS/NZS 2172-2003). Safety requirements for cots regarding height and gaps around the mattress are currently mandatory, but the test method set out in the Australian Standard for ‘sleep surfaces – test for firmness’ is a voluntary

standard (Australian/New Zealand standard AS/NZS 8811.1:2013 Sleep surfaces – test for firmness).

- In addition, the voluntary mattress firmness test is only in place for mattresses supplied with the cot, not mattresses sold separately. There is no mandatory Australian Standard to check for when buying many other nursery products.
- Unlike cots, there is no Australian Standard for bassinets, so Red Nose is careful to keep up to date with reports of accidents associated with bassinet use. This research shows that the most frequent accidents associated with bassinet use are falls and suffocation hazards. Australian and US governments draw on these reports and produce guidelines on ways to reduce these types of accidents.
- When we look at products to buy for a new baby, we need to ascertain not only whether it is effective for the required purpose but also is it safe to use under all circumstances of use especially where the baby may be unsupervised. This is particularly important when selecting products which babies will use when asleep.
- When assessing whether or not a product is safe for baby to sleep in parents need to ensure a number of things:
 - Ensure that it has a wide stable base and that it is placed on a stable surface.
 - Use a size and style to suit your baby's weight and age (see manufacturer's instructions).
 - Remove all ribbons and ties to prevent strangulation.
 - The sides should be at least 300 mm high, measured from the top of the mattress base, and preferably made of air-permeable material such as mesh (or breathable zones).
 - Use a firm, clean, well-fitting mattress that is flat (not tilted or elevated) and is not thicker than 75mm.
 - If the legs fold, ensure they can be locked and won't collapse when used.
- A safe baby sleeping bag which reduces the need for extra bedding is a good alternative when using a bassinet. If baby's chest feels cool to touch and additional warmth is necessary, a lightweight blanket can be used if it is possible to tuck the blanket under the mattress so that it cannot be pulled over baby's head.
- It is recommended that a bassinet type product should be used for a short period only. Once baby becomes active and starts to roll, the baby should be moved into a safe cot.
- Products that are made from cardboard may not be suitable for all Australian climates. Such factors as humidity and dampness may make

the box soft and likely to become less rigid and maybe even break when carried.

- Products that sit on the floor may increase the risk of pets sleeping in them or the danger of being tripped over.
- Anything that makes it hard to see the baby in a safe sleeping product (e.g. curtains, mobiles, high box sides) should be avoided.
<https://rednose.com.au/article/baby-safe-sleeping-products>

93. Red Nose provides the following advice on safe sleep practices

- Sleep baby on the back from birth, not on the tummy or side
- The chance of babies dying suddenly and unexpectedly is greater if they sleep on their tummies or sides.
- Healthy babies placed to sleep on the back are less likely to choke on vomit than tummy sleeping babies. In fact, sleeping baby on the back actually provides airway protection.
- Some babies, with rare medical conditions, might have to sleep on the tummy or side but only do this if the baby's medical practitioner advises to do so in writing.
<https://rednose.com.au/article/what-steps-can-i-take-to-sleep-my-baby-safely>

94. Red Nose provides the following advice on what is a safe mattress:

- A safe mattress is one that is the right size for the cot, is firm, clean and in good condition and is placed flat (not tilted or elevated).
- Right size: Ensure the mattress complies with the size and depth recommended by the manufacturer of the cot. A baby or toddler can get stuck in gaps between a poor fitting mattress and the cot sides. This is especially dangerous if their face is trapped and covered, or their neck is restricted in any way. Make sure there is no more than a 20mm gap between the mattress and the cot sides and ends
- Firm: Use a firm sleep surface that is compliant with the new AS/NZS Voluntary Standard (AS/NZS 8811.1:2013 Methods of testing infant products – Sleep Surfaces - Test for firmness).
- A soft mattress or sleeping surface can increase the risk of sudden unexpected infant death if baby rolls over onto the tummy. Remove plastic packaging from the mattress and always make sure that the waterproof mattress protector is strong and a tight fit. Never put soft bedding under the bottom sheet, such as a sheepskin, as this makes the sleeping surface too soft. A pillow, cushion or sofa is not a safe mattress as they are too soft and increase the risk of sudden unexpected infant death.
- In portable or 'porta' cots use the firm, clean and well-fitting mattress that is supplied with the portable cot. Don't add additional padding under or

over the mattress or an additional mattress.

<https://rednose.com.au/article/what-is-a-safe-mattress>

The ratings review panel found that the service is clearly committed to meeting the individual needs of children and families, and commended their efforts in this regard.

However, in reviewing the evidence the panel said it had to be guided first and foremost by the right of the child to be safe. Current available guidance from recognised organisations, such as Red Nose, around safe sleeping practices advise that soft toys should never be placed in the sleeping environment of a baby under seven months, and that the risk posed by suffocation by the presence of soft objects in the baby's sleeping environment outweighs any benefit to the baby from a soft toy. Red Nose also advises that babies should be placed to sleep on their back, noting that older babies may roll over of their own accord and can be left to find their preferred sleep position, and that any mattress used for sleeping must be firm.

The available evidence shows a child aged 4.5 months sleeping with a soft toy on a mattress that, while placed on a firm surface (the floor), looks to be soft and cushiony, with the potential for folds of fabric to accumulate. The photograph of sleep information (nursery poster) displayed in the service indicates that one child has 'two sleeps on tummy'. While there is an accompanying doctor's letter, the letter does not provide medical advice that the child should be placed to sleep on his tummy, only that he has the 'neck control and strength to tolerate sleeping on his tummy if he moves into this position'.

The panel agreed that while the service was clearly working to respect and support practices undertaken by the family at home, not all practices may be feasible in a group context, where there are more children to be supervised. Further, the panel found that while working with families to avoid undue distress for children is important, duplicating potentially unsafe practices at the service is not in families' best interests and is not supportable.

In making its decision, the panel was mindful of finding the right balance between the child's rights, parents' rights and the service's duty of care. The panel agreed that some sleeping practices observed and documented during the assessment and rating visit do not match recommended practice according to recognised safe sleeping information currently available. Accordingly, the panel considered that the service had not met element 2.1.2, which 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.

Additional comments from the ratings review panel

The panel also discussed the concerns raised by the approved provider about the assessment and rating process. While the panel noted their role is to confirm or amend the ratings levels determined during the first tier review process, not to make a finding on the way the assessment and rating was conducted, they did agree that aspects of the process may not have helped the service to understand and accept their rating, and that the provision of the assessment and rating report outside the

legislated 60 days further contributed to the service's dissatisfaction with the process.

The panel acknowledged the service's concern that the sleeping practices and issues of safety were not raised on the day of the assessment and rating visit to give the service an opportunity to respond to the matter at an earlier point in the process.

The panel also recognised the service's frustration with what they perceive to be a lack of consistency around the assessment and rating of services' sleep management practices, but also noted its role under the National Law is to make an assessment based on the evidence provided about the service for which the review is being conducted, and that it is not within the panel's remit to make comparisons between the practice *observed* at one service and the *reported* practice of another service, at another time.

The panel noted that the feedback in the assessment and rating report, which states that 'each child's comfort is provided for and there [are] appropriate opportunities to meet each child's need for sleep, rest and relaxation' could be considered contradictory and incongruous with the 'not met' rating, although they note the report does go on to state the regulatory authority's reasons for concern.

The panel noted that any concerns about the assessment and rating process should be raised initially with the Queensland Department of Education through their complaints process.

Decision

The Ratings Review Panel by consensus confirmed that element 2.1.2 is not met. As a result, Standard 2.1, Quality Area 2 and the overall rating remain at Working Towards NQS.