



Date of decision: 26 March 2018

File number: STR0029

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**Applicant:** 'Approved Provider'

**Regulatory Authority:** NSW Department of Education

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**Decision:** The Ratings Review Panel by consensus:

- confirmed the judgment for Element 1.1.3 as Not met, and therefore the rating for Standard 1.1 and Quality Area 1 remained at Working towards NQS
  - amended the judgment for Element 3.1.1 to Met, and as a result amended the rating for Standard 3.1 and Quality Area 3 to Meeting NQS
  - amended the judgment for Element 4.1.1 to Met, and as a result amended the rating for Standard 4.1 and Quality Area 4 to Meeting NQS.
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**Issues under review:**

1. The approved provider seeks a review of the above standards and elements on the grounds that the regulatory authority failed to take into account or give sufficient weight to special circumstances or facts existing at the time of the rating assessment.
2. After the service's assessment and rating visit, the service was rated at Working towards NQS based on the following:
  - Quality Area 1 - Working towards
    - Working towards for Standard 1.1, with Elements 1.1.2, 1.1.3 and 1.1.6 Not met
    - Meeting for Standard 1.2



- Quality Area 2 - Meeting
    - Meeting for Standards 2.1, 2.2 and 2.3
  - Quality Area 3 - Working towards
    - Working towards for Standard 3.1, with Element 3.1.1 Not met
    - Exceeding for Standard 3.2 and
    - Meeting for Standard 3.3
  - Quality Area 4 - Working towards
    - Working towards for Standard 4.1 with Element 4.1.1 Not met
    - Exceeding for Standard 4.2
  - Quality Area 5 - Meeting
    - Meeting for Standards 5.1 and 5.2
  - Quality Area 6 - Exceeding
    - Exceeding for Standards 6.1 and 6.2
    - Meeting for Standard 6.3
  - Quality Area 7 - Exceeding
    - Meeting for Standard 7.1
    - Exceeding for Standards 7.2 and 7.3.
3. At first tier review, the regulatory authority:
- amended Elements 1.1.2 and 1.1.6 to Met, however Element 1.1.3 remained Not met. Therefore the rating for Standard 1.1 and Quality Area 1 remained at Working towards
  - confirmed Element 3.1.1 as Not met. Therefore the rating for Standard 3.1 and Quality Area 3 remained at Working towards
  - confirmed Element 4.1.1 as Not met. Therefore the rating for Standard 4.1 and Quality Area 4 remained at Working towards.
4. The provider submits that:
- Element 1.1.3 should be Met and Standard 1.1 should be rated as Exceeding
  - Element 3.1.1 should be Met and Standard 3.1 should be rated as Exceeding
  - Element 4.1.1 should be Met and Standard 4.1 should be rated as Exceeding.



### Evidence before the panel

Item	Document	Source
1	Non compliance table of breaches (Aug 2017)	Service
2	Non compliance – table of breaches (Sep 2017)	Regulatory Authority
3	Response to table of breaches (September)	Service
4A	Evidence summary	Regulatory Authority
4B	Rating outcome summary – draft	Regulatory Authority
5	Response to approved provider feedback on assessment and rating report	Regulatory Authority and Service
6A	Rating outcome summary – final	Regulatory Authority
6B	Rating certificate	Regulatory Authority
7	Application for first tier review	Service
8	Notification of first tier review outcome	Regulatory Authority
9	First tier review panel decision notice	Regulatory Authority
10	Feedback to region	Regulatory Authority
11	Revised notice of rating	Regulatory Authority
12	Second tier review application form	Service
13	Second tier review evidence	Service

5. The panel was also provided with advice from ACECQA on the elements under review.

### The Law

6. Section 151 states 'Following a review, the Ratings Review Panel may:
- (a) confirm the rating levels determined by the Regulatory Authority; or
  - (b) amend the rating levels'.



## **Background**

### *Context*

7. The service is a long day care service with 40 approved places. The service is based in NSW.
8. The assessment and rating visit was undertaken on 20-21 September 2017. The approved provider received the draft assessment and rating report on 3 October and gave feedback to the draft report. The final assessment and rating report was sent to the approved provider on 13 November.
9. The approved provider applied for first tier review on 28 November, received the regulatory authority's first tier review decision on 29 January 2018 and applied for second tier review on 12 February 2018.

## **Review of rating levels**

### **Standard 1.1**

10. Standard 1.1 is that:  

An approved learning framework informs the development of a curriculum that enhances each child's learning and development.
11. This standard is comprised of six elements, one of which – 1.1.3 – is currently assessed as Not met. The approved provider contends that Standard 1.1 should be rated as Exceeding.

### *Element 1.1.3*

12. Element 1.1.3 is that:  

The program, including routines, is organised in ways that maximise opportunities for each child's learning.

## **Regulatory authority's view**

### *Assessment and rating report*

13. In the Assessment and rating report, the regulatory authority states:
  - Evidence of children's individual interests forming the basis of the program is limited.
  - Children are required to line up and wait during transitions, and many activities are provided for the whole group at the same time.
  - Whilst children are given choice when accessing equipment and resources, opportunities for children to make choices and decisions about their play and the routine is limited.

### *At first tier review*

14. The regulatory authority noted the following from the evidence summary:
  - "Let's put our hats away and go inside," said an educator.
  - Children were asked to pack away the outdoor area and were transitioned up a small flight of stairs to the balcony area. "We need to wait for nappies



and then we can have our lunch. Who is going to read a story with me?" asked the educator.

- "We will go inside in 5 minutes," said an educator.
- Outdoor transition: 7 children lined up at the door and waited for 10 minutes for all children to put on sunscreen and hats and for an educator to clean the tables. "We have to wait for our friends and then we can go outside," she said.
- Children are split into 2 groups for staggered mealtimes.
- All children are encouraged to eat, sleep, toilet/nappy change and attend group times at the same time.
- Beds are arranged in the playrooms by an educator whilst children are outside.
- Half-way through the progressive lunch children who were playing were asked to sit down for lunch so an educator could go inside and put out the beds.
- An educator left children eating at the lunch table to go inside and put out the beds – replaced by another educator.
- 'Appropriate clothing for the weather' Interest plan for August/September states 'The interest emerged from the children's previous interest in weather'. No resources were added to the environment – children completed craft for a notice board.
- Activities that link to children's interests provided for children's free play is not recorded on the program.
- All children participate each week in extra-curricular activities selected by head office at the start of the year - same schedule for all services. The schedule was planned using parent feedback in 2016.
- 'Making play dough' was planned for children as a follow-up from parent input – was not implemented during indoor play due to special guest visitor. No other activities in the indoor area reflected children's current interests.
- Interest plans are based on groups of children and teacher-led activities – children's individual interests are not documented.
- The interest folder contains past daily journals which discuss individual children's interests and note one follow-up experience – added to weekly plan.
- Pirate Day was celebrated because it was linked to 'Talk to a pirate day' and the children like pirates.
- The mid-year report provided to families notes children's interests.
- Children are told it is time for their nappy to be changed and then they are settled at morning tea.
- "Do you want some lunch?" asked an educator. "No," said the child. "No?" replied the educator. "Let's go have lunch," she said and picked up the child.



- Routines are led by educators and are not always responsive to children's individual needs – a child was playing with a puzzle on a small table when the educator said it was time to go to the other side of the room. The child became visibly distressed.
  - Routines are sometimes used to meet the needs of educators rather than the children – all children rest at the same time in the 2-3 group to allow educators to have lunch breaks; all children go outside at the same time to allow the educator to arrange the beds, and children are requested to have lunch so an educator can go inside and arrange the beds.
  - A child was taken away from the group time to have her nappy changed and have morning tea. "Would you like to have morning tea?" asked the educator but did not acknowledge the response.
  - All children are required to participate in an external music group time for 30 minutes – can leave group if they get upset or distracted.
15. The first tier review panel considered submissions by the approved provider that Element 1.1.3 should be Met, noting that evidence was provided showing examples of routines, displayed information and input gathered from families.
16. The first tier review panel found that the evidence collected at assessment and rating showed that:
- the daily routines are not 'progressive' indoor/outdoor, with children being moved indoors and outdoors at the same time, and for various transitions, such as lunch
  - routines and interactions between educators and children are interrupted by changes in staffing, routines, and transitions, and that there is a 'roll-on effect' within the service when changes to the routine i.e. lunches take place in one room, with other rooms, impacting on the activities in the other room.
17. The first tier review panel determined the judgment for Element 1.1.3 remained at Not met.

### **Approved Provider's view**

#### *Second tier review*

18. The approved provider contends that they are Exceeding this standard and provided the following evidence for Element 1.1.3:
- As outlined under the assessment guide under Element 1.1.3 page 30, Guide to the National Quality Standard:  
*Assessors may observe:*  
*Children:*  
*Noticing and predicting patterns of regular routines and the passing of time*  
Children are aware of their routines and this allows them to make decisions independently. This is evident as each day this is a regular occurrence. For example, when children transition from indoor to outdoors after washing their hands, they direct themselves to where the serving



shelf is, collect their utensils and continue to take themselves to the table and self-serve. This can also be demonstrated after their lunch meal when they have a choice of going to their beds or participating in yoga.

*Using effective routines to help make predicted transitions smoothly*

Children are leading the routines as they are aware of what is happening next. They are invited to join meals / toileting progressively (our definition and understanding of 'progressive' is that an occurrence can happen gradually or in stages and children can choose to do so at their own pace. This may have been a misinterpretation from the authorised officer point of view as the understandings of the definition differed). Progressive meals and transitions are in place to ensure smooth transitions throughout all age groups. This is evident when children can transition from one part of the routine to another.

*Participating collaboratively in everyday routines, events and experiences and having opportunities to contribute to decisions*

Children reflect on their daily events and contribute to decision making, children's QIP and follow-up experiences. Individual and large and/or small group spontaneous experiences are initiated and occur throughout the day where children have opportunities to extend and further their learning. For example, this is evident in the children's QIP where children have the opportunity to come together to reflect and document what they would like to do next based on their input and idea suggestions.

*Having opportunities to enhance their learning during routines*

The children are presented with learning opportunities throughout planned/spontaneous and free play experiences and can contribute to these independently. The routines in place allow for the children to self-direct their play and make decisions as to when they would like to be part of an experience. This is evident through the variety of experiences set up and planned for at one given time during planned/ free play experiences. This is also demonstrated when children initiate their own play choices and decisions.

Educators and coordinators:

*Using routines and play experiences with babies and children to build attachment*

Familiarity and consistency of staff during routines and their shifts allow for educators to build relationships. Educators allow children to show them what they are interested in and use prompts and cues from the children to build attachments.



*Using routine to seek intentional teaching*

Educators record individual and group observations throughout their day and at various intervals/transitions. These assist in setting goals, used for future planning and implement further challenges. Educators within all rooms collaboratively review their daily and weekly reflections and changes are continuously implemented. This is evident with each room's weekly reflections, goals and planning on weekly organisers, daily journals, individual child observations and follow ups.

*Seeking opportunities within routines for spontaneous learning*

Educators engage with children, allowing them to lead play and use self-directed play throughout experiences and routines. Routines demonstrate flexibility for small/large and individual interactions to occur. These opportunities are implemented spontaneously and are evident on weekly organisers demonstrating why this learning has taken place. Environments are also set up to allow free choice.

*Minimising the times during which children are expected to do the same thing at the same time*

Each room has established a routine which demonstrates how the children have opportunities to participate in various experiences and transitions that occur at the same time. Timeframes are an indication of when various experiences occur throughout the day and show flexibility as to when children can participate in them. This is demonstrated through progressive meals and learning opportunities which allow for children to make their own decision in what they would like to be doing. Children can join and/or leave any group experience at any given time.

*Special circumstances*

The service would like to be considered for special circumstances. On the day of assessment and rating, the service had a scheduled special guest visit (book author) as well as their Learn and Grow team who attend on a weekly basis. On this day their music teacher had a scheduled class. They feel that this may have impacted the Officer's observations as she may not have an opportunity to see the general running of the routine in each room.

*At first tier review*

19. The approved provider contended that they are Exceeding for this standard and provided the following supporting statements for Element 1.1.3:
  - Routines are flexible and progressive allowing for minimal disruption to children's play and the time that educators spend with children both as individuals and in groups maximise engagement and learning.
  - The design and organisation of the learning environments support children's choices to play alone, alongside of or with peers.



- Routines are established to ensure that each child has the opportunity to participate in a variety of indoor and outdoor experiences throughout the day.
  - The officer's description of the routine is incorrect. At no time throughout the day are children's routines changed to accommodate educators' roles and responsibilities.
  - A staff member was covered by the floater so that she could go on her break.
  - Toddlers transition before nappy changes from the mat to progressive morning tea.
20. The approved provider supplied the following evidence for Element 1.1.3:
- A collection of photos of the 2-5 years outdoor play space
  - All room Pirate day links which included photos and journal entries
  - All rooms meal time progressive which is the daily routine chart for the nursery, toddler and preschool rooms
  - Photo display showing children assisting with the routine by making beds
  - Children's current interest and making playdough – photos and journal entries
  - Weekly organiser showing planning for the week commencing 18/9/17
  - Cycle of learning which includes an 'all about me' sheet, observations, planning and follow up for a child from each group
  - Individual child's rest time requirements – enrolment record showing sleep routine
  - Floater shift which is a routine chart for the floater position
  - Collection of photos of the outdoor area
  - Indoor learning spaces – collection of photos of the indoor areas
  - Intentional teaching – photos and journal entries from an experience using bean bags
  - Nappy change transitions before meals which includes the daily routine charts for the nursery and toddler groups
  - Routine requirements for three children in the nursery group
  - Self-help during mealtimes which is a collection of photos of children serving themselves fruit and placing their plate in a container
  - Toddler mealtime progressive which is a routine chart for the toddler group.

*Assessment and Rating draft report feedback*

21. The approved provider contended this standard should be Exceeding and submitted:
- The educators provide the children with a program and routine that is organised to maximise each child's involvement and engagement in learning.
  - Routines are flexible and progressive allowing for minimal disruption to children's play and the time that educators spend with children both as individuals and in groups maximise engagement and learning.



- The design and organisation of the learning environments support children's choices to play alone, alongside or with peers.
- Routines provide children with opportunities to develop self-help skills and independence.
- When children have finished eating they scrape their plate into a bucket and place their plate and cup away in separate buckets before washing their hands.
- Routines are established to ensure that each child has the opportunity to participate in a variety of indoor and outdoor experiences throughout the day.
- Free choice and spontaneous experiences are encouraged and offered to promote and support children's autonomy and decision making.
- Intentional teaching strategies are also adapted by educators to ensure and enhance learning opportunities.

### **Ratings review panel's considerations**

- The panel's discussion focussed on whether the available evidence demonstrated the service was using routines to maximise children's learning.
  - The panel found there was limited evidence within the assessment and rating report that routines were being used as learning experiences, and the evidence that was recorded by the authorised officer indicated narrow opportunities for children to make choices.
  - The panel found the evidence indicated activities were not focused on individual children's needs but that the program, particularly routines, were adult directed, with educators observed interrupting activities and leaving children to undertake other tasks, ignoring opportunities for spontaneous learning and flexibility.
  - While the service contested these observations, the panel did not believe there was enough evidence to support the service's claims that routines were appropriately child-led and allowed the exercise of choice. The panel also found the claim for special circumstances (given the attendance of a special guest and attendance by the weekly "Learn and Grow" team and music teacher) was not warranted, observing that weekly classes should not unduly disturb the service's procedures.
  - The panel found the authorised officer's observations for the element to be thorough, including the citing of multiple examples from the evidence where activities were interrupted and learning opportunities were missed, and where children were asked to do something but then directed elsewhere against their wishes.
  - The panel concluded there was not evidence that the program is organised to *maximise* children's learning and that the element should remain at not met.
22. Given the panel decided that Element 1.1.3 is Not met, a rating of Exceeding for Standard 1.1 could not be considered. The rating for Standard 1.1 and Quality Area 1 remains at Working towards NQS.



### **Standard 3.1**

23. Standard 3.1 is that:

The design and location of the premises is appropriate for the operation of a service.

24. This standard is comprised of three elements, one of which – 3.1.1 – is under review.

#### *Element 3.1.1*

25. Element 3.1.1 is that:

Outdoor and indoor spaces, buildings, furniture, equipment, facilities and resources are suitable for their purpose.

#### *Regulation 109*

26. Regulation 109 relates to toilet and hygiene facilities:

The approved provider of an education and care service must ensure that –

- a) Adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and
- b) The location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.

### **Regulatory authority's view**

#### *Assessment and rating report*

27. In the assessment and rating report the regulatory authority found that while resources, furniture and equipment are developmentally and age appropriate, the approved provider has failed to ensure that the service is compliant with Regulation 109.

#### *First tier review*

28. The officer noted in the final Assessment and Rating decision documents that the service failed to ensure that the service is compliant with Regulation 109, citing the following evidence:

- three toilets are available in the service – one in the nursery and two in the 2-3 room.
- Children in the 3-5 room access one toilet in the 0-2 room – children walk out of their playroom gate, past the kitchen, through the 0-2 playroom door, and into the 0-2 bathroom.

29. The approved provider supplied photos of the gardens which did not relate to the compliance issue. Following the issue of a compliance action after the assessment and rating visit, a gate was installed between the 3-5 room and 0-2 room to provide access to the toilet in the 0-2 room.

30. To assist in its decision making the panel consulted the evidence recorded by the officer at the time of the assessment and rating visit which clearly set out the requirements for the children in the 3-5 room to access the toilet and hygiene facilities. The regulatory authority does not believe this practice is



consistent with a judgment of Met for this element. The subsequent action taken by the approved provider has addressed this and improved the convenience of the access for the children.

31. The first tier review panel decided that the submissions made by the approved provider, when considered with the evidence recorded by the authorised officer, do not justify a change for this element.

### **Approved provider's view**

#### *Second tier review*

32. The approved provider submitted the following evidence for Element 3.1.1:

- Access to the bathroom on day of assessment and rating  
The preschool children have convenient access to a toilet. On the date of the assessment and rating visit the children had access to the bathroom by opening a half door and walking into another room.

The service floor plan shows the preschool children's travel path demonstrating convenient access to the bathroom on the day of assessment and ratings and changes made as suggested by the officer.

#### Post suggestions made by authorised officer

The officer suggested giving the preschool children access via another door within the room. This suggestion was taken on-board and put in place immediately however the recommendation has not made a difference.

The service also argued that at another service operated by the same approved provider the preschool children are required to walk a longer distance to reach the bathroom yet the authorised officer rated Quality Area 3 as Exceeding.

#### *First tier review*

33. The approved provider submitted that Element 3.1.1 should be Met, and offered the following statements in support of this:
  - The preschool children have access to an age-appropriate toilet, washing and drying facilities that are safe and offer convenient access by the children.
  - Other services within their organisation with a similar physical environment have been rated Exceeding this year.

#### *Feedback to the assessment and rating draft report*

34. The approved provider submitted the following evidence:
  - They consider they are exceeding national standards as all indoor and outdoor spaces, equipment, furniture, building and resources provide a stimulating learning and care environment for children.
  - The preschool children can access the bathroom via a dividing gate into the nursery. The children can independently open/close this gate to utilise the bathroom.



### Ratings review panel's considerations

35. The panel discussed whether the children aged 3-5 years old have adequate, age-appropriate, safe and convenient access to toilet facilities, noting the first tier review decision found the service had failed to ensure compliance with Regulation 109.
36. The evidence considered by the panel stated the 3-5 year old children use the bathroom located in the 0-2 year olds' room.
37. The panel noted that the evidence indicated the preschool aged children are able to access their designated bathroom independently, and that there was no indication the facilities are inappropriate or unsafe, only that the access could be more convenient. The panel agreed that the regulatory authority's requested solution supported this assessment, given they requested a change to the children's access route to the bathroom, not that they use another bathroom.
38. The panel also agreed that the regulatory authority provided very little information about why the service is not meeting this element and that more information in the first tier decision on why this element was not met would have been helpful to both the approved provider and the review panel.
39. The panel decided that on balance, the available evidence indicated the children had adequate, safe use and convenient access to the bathroom facilities and therefore the judgment for the element should be amended to met.
40. This amendment meant that all elements for Standard 3.1 were now Met and subsequently the panel also considered whether a rating of Exceeding was appropriate for this standard.
41. To achieve a rating of Exceeding for Standard 3.1, the panel may expect to see evidence of the following<sup>1</sup>:
  - 3.1.1 All outdoor and indoor spaces, buildings, furniture, equipment, facilities and resources provide a stimulating learning and care environment for children.
  - 3.1.2 All premises, furniture and equipment are safe, clean and well maintained and enhance the learning environment for children.
  - 3.1.3 Facilities are designed or adapted to ensure active participation by every child in the service and promote flexible use and interaction between indoor and outdoor space at all times.
42. The panel considered the available evidence and confirmed that the rating for Standard 3.1 should be Meeting National Quality Standard, rather than Exceeding National Quality Standard.
43. Following the amendment to Element 3.1.1, Standard 3.1 and Quality Area 3 were amended to Meeting NQS.

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<sup>1</sup> Text is underlined where the Exceeding descriptor is different to the Meeting descriptor



## **Standard 4.1**

44. Standard 4.1 is that:

Staffing arrangements enhance children's learning and development and ensure their safety and wellbeing.

45. This standard is comprised of one element, Element 4.1.1, which is under review.

### *Element 4.1.1*

46. Element 4.1.1 is that:

Educator to child ratios and qualification requirements are maintained at all times.

### *Regulation 122*

47. Regulation 122 states that educators must be working directly with children to be included in ratios. An educator cannot be included in calculating the educator to child ratio of a centre-based service unless the educator is working directly with children at the service.

## **Regulatory authority's view**

### *Assessment and rating report*

48. In the draft assessment and rating report, the regulatory authority states:

- The approved provider has failed to ensure that the service is compliant with National Law Section 169 and Regulations 122 and 123 at all times.

49. In the final assessment and rating report, this has been modified by the regulatory authority to:

- The approved provider has failed to ensure that the service is compliant with Regulation 122 at all times.

### *First tier review*

50. The officer noted in the final Assessment and Rating decision documents that the approved provider has failed to ensure that the service is compliant with Regulation 122 at all times citing the following evidence:

- The record of educators working directly with children was not maintained accurately. From 13:10 to 13:20 in the 2-3 room the record indicates that no educators were in the playroom. The children's services manager said she was in the room at 13:10 but filled out the record inaccurately.
- Morning tea was disrupted when one educator left the room half-way through and was replaced by another educator.
- Role-play was disrupted when an educator who was interacting with children in home corner was asked to continue nappies as the float educator had to go to another room.
- The service employs nine full-time educators and 10 part-time educators, including the nominated supervisor and the cook. One casual educator was in attendance during the visit.



- The service employs one Early Childhood Teacher (ECT), 12 Diploma trained educators, and six Certificate III trained educators. Three educators are working towards an Early Childhood qualification and one educator is working towards a Diploma qualification.
  - On the day of the visit one ECT, nine Diploma trained educators, and two Certificate III trained educators were in attendance with 34 children.
  - An educator typed on an iPad for 30 minutes with three children aged less than two years and seven children aged two years. Seven children were asleep and three were awake on their beds. No other educators were present in the room. The educator was not working directly with children at this time.
  - Educator to child ratios were not maintained between 12:15pm and 2:00pm whilst four educators went on a 50-minute lunch break, two educators were on a 45-minute lunch break and three educators were on a 35 minute lunch break. The supervision policy states 'Correct ratios will be maintained at all times'.
51. The first tier panel considered claims by the approved provider that Element 4.1.1 should be Met, and noted that action was taken to address the non-compliance issue after the assessment and rating visit.
52. The first tier review panel decided that the submissions made by the approved provider describe practices that are not consistent with the requirements of Element 4.1.1 and maintain the evidence provided reinforces this.
53. It was the first tier panel's view that evidence recorded by the officer against this standard in the Assessment Evidence Summary and then used to determine the rating for this standard is consistent with a rating of Working Towards NQS.
54. The first tier panel concluded that there was sufficient evidence to determine that Element 4.1.1 should remain at Not met.

### **Approved provider's view**

#### *At second tier review*

55. The approved provider submitted the following:
- They are Exceeding for this standard.
  - The notes recorded by the officer indicating the service was not meeting educator to staff ratios don't actually have any reference to meeting ratio. At all times the service is operated at above educator to staff ratios. As indicated on the roster, the service had a floater position and a co-ordinator, in addition to meeting the required ratios.
  - The authorised officer noted the following points:
    - Morning tea was disrupted when one educator left the room half-way through and was replaced by another educator (ratio maintained)



- Role play was disrupted when an educator who was interacting with children in home corner was asked to continue nappies as the float educator had to go in another room (ratio maintained)

The above statements made by the authorised officer do not impact the ratios due to them being covered at all times.

- Further to the regulatory authority's observation in the first tier review decision:
  - The panel considered claims by the approved provider that Element 4.1.1 should be Met noting that action was taken to address the non-compliance issues after the assessment and rating visit

The service took this action as it was suggested by the compliance officer to do so. The authorised officer requested that educators not use the iPad during rest time, although the educators still believe they were complying. This was raised with the nominated supervisor and the service felt that it was not an issue. In more than 25 years of experience and many assessment and rating visits across a range of services, this has never been identified as a non-compliance issue. Across all their services, educators complete day book requirements while children are sleeping while being present in the room.

Meaning of working directly with children:

- (a) is physically present with the children; and
- (b) is directly engaged in providing education and care to the children

- The service understands the above regulation, however when the officer challenged them during assessment and rating identifying they were non-compliant during rest time as the educator was typing on an iPad, this was a surprise. This is a common practice that during rest time while the children are sleeping, educators complete their daily journal for families outlining what learning the children engaged in throughout the day. They shared with the Officer that they did not agree, however she insisted and suggested what action they should take and inform their educators that they could not use the iPad during rest time which is now identified by the first tier review panel as the service addressing the non-compliance issue.

#### *At first tier review*

56. The approved provider contended that Element 4.1.1 should be Met, and provided the following statements to support this claim:
- The compliance officer observed an educator completing the daily journal on an iPad during sleep time. The children were all on their beds and sleeping at the time and the educator was sitting next to the children. This practice is common across all children's services and has been observed by other compliance officers at other services and this has never been identified as a non-compliance issue. The same authorised officer assessed another service operated by the approved provider and rated



Quality Area 4 as Exceeding, and gave an overall rating of Exceeding, but would have observed the same practice.

*Assessment and rating draft report feedback*

57. The approved provider submitted:

- They are exceeding for this standard as educator to child ratios are maintained at all times and the organisation and educators contribute to the high quality care and learning environment for children.
- Educator-to-child ratios and qualification requirements are maintained at all times. There is a designated educational leader and a responsible person on the premises during operational times. A regular roster is arranged for the year that contributes to a quality learning and care environment for the children. Children and families access familiar educators across the week. The nominated supervisor is non-teaching and available to support families, children and educators across the service.
- They also employ a floater to cover educators so they are available for parent meetings, inclusion support meetings, completing documentation and assisting during busy transitions.
- All permanent educators have a current first aid certificate and are trained in the management of asthma and anaphylaxis.
- The educators are committed to the service and demonstrate their commitment through attending professional development sessions to update their knowledge, through taking ownership of organising team bonding sessions to unify and make the team stronger.
- The team demonstrate commitment to high quality care and learning for children by attending conferences, participating in social activities together and for the past few years raising money for children with additional needs.
- The team also demonstrate commitment through being punctual, arriving before their shift starts and with most staff having breakfast at the centre. The team also works overtime when necessary and support each other by covering each other's shifts if needed. Commitment is also shown through professional relationships established with children, families, the community, management and each other.
- The service coordinator also demonstrated commitment to the service and the team, postponing an overseas trip to support and mentor her team during the assessment and rating process.

**Ratings review panel's considerations**

58. The panel noted that while the draft assessment and rating report and the September 2017 compliance note indicated breaches of Section 169 of the National Law and Regulation 123, the first tier review decision states that the service was not compliant with Regulation 122 and does not make reference to non-compliance with Section 169 of the National Law or Regulation 123.



59. The panel subsequently discussed whether the practice of using technology, such as an iPad, while children are sleeping/resting constitutes working directly with children and agreed that it did, noting that it is very common and acceptable practice across the sector for educators to use sleep/rest times to undertake documentation and support communication with families.
60. The panel found that the supervision remained appropriate because the educator was still available to the children and could easily cease using the iPad to assist or engage with a child if needed.
61. The panel noted that while supervising children must always remain the key priority, they found that using an iPad during sleep/rest time met the requirement for educators to be working directly with children, and that as such the service was not in breach of Regulation 122.
62. As a consequence, the panel agreed that the judgment for Element 4.1.1 should be amended to Met.
63. This amendment meant that all elements for Standard 4.1 were now met and subsequently the panel also considered whether a rating of Exceeding was appropriate for this standard.
64. To achieve a rating of Exceeding for Standard 4.1, the panel may expect to see evidence of the following:

Educator-to-child ratios and qualification requirements are maintained at all times, and the organisation of educators contributes to a high quality learning and care environment for children.
65. The panel considered the available evidence and confirmed that the rating for Standard 4.1 should be Meeting National Quality Standard, rather than Exceeding National Quality Standard.
66. Following the amendment to Element 4.1.1, Standard 4.1 and Quality Area 4 were amended to Meeting NQS.