



'Approved provider' and Regulatory Authority [2018] ACECQARRPstr0030 (8 October 2018)

Date of Decision: 8 October 2018

Application reference: STR0030

Decision: The Ratings Review Panel decided by consensus to confirm elements 2.2.1 and 2.2.2 are assessed as not met. The panel decided by consensus to amend the ratings for Standard 2.2, Quality Area 2 and the overall rating to Working Towards.

Issues:

1. The approved provider sought a review of the ratings 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, the service was rated Significant Improvement Required (SIR) for Quality Area 2 including standards 2.1 and 2.2. At first tier review, the regulatory authority amended the SIR rating for standard 2.1 to Working Towards but confirmed the SIR rating for 2.2. The approved provider seeks a second tier review of Standard 2.2.
3. The panel considered the following documents:

Item	Document
1	Assessment and rating draft report
2	Assessment and rating evidence summaries
3	First tier review decision notice and letter to AP
4	Photographs and other additional evidence considered at first tier review



5	Application for second tier review including approved provider's statement
6	Evidence provided by approved provider at second tier review
7	RA feedback form - blank template

The Law

4. 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.

5. An SIR rating may be given if the education and care service does not meet the quality area or a relevant regulation for that quality area in a way that the regulatory authority is satisfied constitutes a significant risk to the safety, health or wellbeing of any child or children being educated and cared for by the service (regulation 59). A rating of SIR can be applied at the standard and quality area level. If a rating of SIR is given for any standard or quality area, the overall service rating is SIR.

Significant improvement required ratings

6. The panel noted the following information about assessing risk from the Guide to the NQS which is published on ACECQA's website.

Analysing risk

7. The National Law and Regulations do not define 'risk'. A common tool used to analyse the level of risk is a risk matrix (see below).

8. This tool helps identify the level of risk by looking at how likely it is a negative event may occur, and the severity of the consequence should it occur.

9. Risk can arise through any part of the environment where education and care is provided to children. This includes the physical environment, staff members and other people at the service. Risk can arise from an action or through a failure to act. Risks can also emerge from systemic failure, such as a provider not having adequate systems in place to control for risk.



Risk Matrix						
		Likelihood				
		Rare	Unlikely	Possible	Likely	Almost Certain
Consequences	Major	Moderate	High	High	Critical	Critical
	Significant	Moderate	Moderate	High	High	Critical
	Moderate	Low	Moderate	Moderate	High	High
	Minor	Very low	Low	Moderate	Moderate	Moderate
	Insignificant	Very low	Very low	Low	Moderate	Moderate

10. The risk matrix includes five levels of likelihood, which are described below. When thinking about likelihood, regulatory authorities should take into account factors such as history of compliance, as well as readiness, willingness and ability to comply. It is also important to consider how soon an event might occur, as this will help decide the most suitable action for responding to the risk.

Likelihood	Description
Rare	Very unlikely – the event may occur only in exceptional circumstances
Unlikely	Improbable – the event is not likely to occur in normal circumstances
Possible	Potential – the event could occur at some time
Likely	Probable – the event will probably occur in most circumstances
Almost certain	Very likely – the event is expected to occur in most circumstances

11. The risk matrix includes five levels of consequence: insignificant, minor, moderate, significant and major. This takes into account the impact, or potential impact, of an event including its scale and duration. A consequence might affect the safety and wellbeing of children at the service, their family or the wider community.
12. When analysing the consequences of a potential event, regulatory authorities should consider the vulnerability of people who might be affected. For instance very young children or children with a disability may be particularly vulnerable, because they are less able to act to protect their wellbeing.



13. Harm to children might arise as the result of a single incident or from several incidents that occur over time. This is known as cumulative harm.

Standard under review

Standard 2.2 – Each child is protected

- 2.2.1 – Supervision: At all times, reasonable precautions and adequate supervision ensure children are protected from harm and hazard
- 2.2.2 – Incident and emergency management: Plans to effectively manage incidents and emergencies are developed in consultation with relevant authorities, practised and implemented
- 2.2.3 – Child protection: Management, educators and staff are aware of their roles and responsibilities to identify and respond to every child at risk of abuse and neglect.

Noting the regulatory authority had found element 2.2.3 met, the panel considered if elements 2.2.1 and 2.2.2 should be assessed as met or not met and whether to amend or confirm the SIR rating for Standard 2.2.

Panel discussion

Element 2.2.1

14. The panel noted the regulatory authority had observed supervision was maintained most of the time and focussed on the highlighted incident where an educator had left two children outside while putting a child to sleep inside. The panel accepted the approved provider's submission that on this occasion the nominated supervisor was present and supervising the children outside and that these children were safe and protected. However, the panel had concerns that adequate supervision was not being provided to the sleeping child. The panel noted that looking through the window to check on the sleeping child would not be adequate to protect the sleeping child and that the educator should have undertaken regular breathing checks while being physically present in the room.
15. The panel noted the NSW specific regulation that requires swimming pools at NSW family day care services to be fenced in accordance with the Swimming Pools Act 1992 and that relevant provisions under this Act include the requirement for a child-resistant barrier in good repair and that access to the pool be kept securely closed when not in use. The panel agreed that pools pose a significant risk to children if not properly managed. The panel examined photographs of the pool gate, noting the gate could be locked with a



key. The panel considered the evidence did not show how the gate was inadequate and it appeared the gate would prevent children from entering even with the key in the lock. The panel discussed that protecting children near pools involves also considering the environment. For example, it is imperative that children cannot access a pool by pushing furniture or equipment against the fence to climb over. The panel agreed it should not put much weight on the certificates provided by the approved provider, as they appeared to be evidence of registration rather than compliance. Nevertheless, the panel agreed that, in the absence of other evidence, the pool fencing appeared to be sufficient to meet the element.

16. The panel noted high play equipment stored at the service and agreed that a child could potentially access the equipment and could be injured falling from that height, because the equipment was not placed on softfall. While the panel noted the risk would be mitigated through supervision, it agreed reasonable precautions to protect children would include placing the play equipment on softfall at all times.
17. The panel noted an uncovered powerpoint in the bathroom was high off the ground and not easy for a child to reach. The panel was of the view the provider met the requirements but that best practice would be to cover the powerpoint and the provider could implement a simple improvement.
18. The panel assessed element 2.2.1 as not met. Supervision of the sleeping child and not having softfall under high play equipment were, in the panel's view, key examples that showed children were not always being protected from harm and hazards.

Element 2.2.2

19. The panel discussed whether emergency drills were consistently conducted across the service. It noted evidence provided by the approved provider appeared to show that emergency drills are happening in the majority of cases. The panel had difficulty determining the extent of the concerns the regulatory authority had. However, the panel noted that in at least one home the drills had happened quarterly but not every three months, which is the requirement under the Regulations. The panel agreed that lockdown drills are a type of emergency drill and can be one of the types of drills to be practiced during the regular emergency drill practices. The panel noted there was no specific requirement for regular lockdown drills.



20. The panel noted that it is important that emergency diagrams are clear and that no time wasted in an emergency. The panel noted an educator had a different floor plan displayed which did not meet the requirements.
21. The panel agreed risk assessments need to be living documents at the educators' homes and that it is not enough for the unit to develop standard assessments, particularly as there will be different risks at different homes.
22. The panel noted that accidents can occur if glass is not made safe. While the panel noted that steps had been taken to resolve issues with the glass since the assessment and rating visit, it agreed that at the time of the visit glass that children could access was potentially unsafe.
23. The panel noted the regulatory authority's concerns that authorisations for ambulance travel were not obtained. The panel noted these authorisations are required under regulation 161 and should be considered under Quality Area 7, so did not take this information into account in deciding the rating for this standard.
24. As there was evidence the provider was not meeting some of the requirements under this element, the panel assessed this element as not met.

Standard 2.2

25. The panel discussed whether the SIR rating should be given for Standard 2.2. It noted the definition of SIR and that it should be applied if a service does not meet a quality area or regulation in a way that constitutes a significant risk to the safety, health or wellbeing of any child or children.
26. The panel noted that the regulatory authority had given the SIR rating because of "systemic failure in the service's processes and educators' understanding of their legislative requirements". The panel noted that it was difficult for it to determine whether the issues were systemic without clear information about how many educators were visited and how many issues were found at each and that this information was missing from the regulatory authority's submissions. The panel found the issues identified in the report read as isolated incidences and could not see evidence of systemic failure. Although, the panel noted that isolated incidences could potentially meet the SIR definition.



27. The panel agreed that past ratings should not have an unfair influence on the assessment and rating and it is important that each rating is a point in time assessment and based on the evidence of the day.
28. The panel considered the following points were evidence to support elements 2.2.1 and 2.2.2 as being assessed as not met: failure to meet guidelines when checking on a sleeping child, high play equipment not on softfall, an educator practising emergency drills quarterly not every 3 months, an incorrect evacuation diagram displayed, failure to meet safety glass requirements and inadequate risk assessments.
29. The panel considered whether these issues met the definition for SIR and assessed the risk to children using the risk matrix. The panel agreed with a previous second tier review panel that SIR should be given if risk at a service falls within the high-critical sections of the risk matrix. The panel agreed there was some evidence of some risk to children at this service but it could not place it at the high-critical level on the risk matrix.
30. The panel emphasised the importance of doing physical breathing checks to ensure the safety of sleeping children. This issue was of most concern to the panel. However, as some monitoring of the sleeping child was being undertaken, the panel did not find the evidence supported a rating of SIR. The panel decided that the standard should be rated Working Towards.
31. Subsequently, the panel amended the rating for Quality Area 2 and the overall rating to Working Towards.