

Part 1: Eligibility for participation in the Lifetime Care and Support Scheme

This Part is made under sections 7, 8 and 58 of the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act).

This version of Part 1 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and, on and from that date, applies to applications for participation in the Lifetime Care and Support Scheme (the Scheme), whether for interim or lifetime participation.

1 Application for participation

Relevant section of the legislation:

Motor Accidents (Lifetime Care and Support) Act 2006

7 Eligibility for participation in the Scheme

- (1) A person who has suffered a motor accident injury is eligible to be a participant in the Scheme in respect of the injury if the person's injury satisfies the criteria specified in the LTCS Guidelines for eligibility for participation in the Scheme.
- (2) Participation in the Scheme may be as a lifetime participant or an interim participant and for that purpose the LTCS Guidelines are to establish criteria for eligibility for lifetime participation and criteria for eligibility for interim participation in the Scheme.
- (3) A person is not eligible to be a participant in the Scheme in relation to an injury if the person has been awarded damages, pursuant to a final judgment entered by a court or a binding settlement, for future economic loss in respect of the treatment and care needs of the participant that relate to the injury.
- (4) The LTCS Guidelines may make provision for or with respect to eligibility for participation in the Scheme, including provision for or with respect to the criteria that a motor accident injury must satisfy for the injured person to be eligible for participation in the Scheme in respect of the injury and the determination of whether a motor accident injury satisfies those criteria.

- 1.1 Only people who sustain a motor accident injury as a result of a motor accident in New South Wales (NSW) that satisfies the criteria in this Part of the Guidelines are eligible for participation in the Scheme.
- 1.2 An application to the Lifetime Care and Support Authority (Lifetime Care) to become a participant in the Scheme can be made by or on behalf of the injured person or by the insurer of a claim made by the person in respect of the injury. An application by an insurer does not require the consent of the person. The application must demonstrate that:
 - a) the injured person had a motor accident within the meaning of the *Motor Accidents Compensation Act 1999* or the *Motor Accident Injuries Act 2017*;
 - b) the accident occurred in New South Wales;
 - c) the injury was caused by the motor accident; and
 - d) the motor accident injury meets the criteria set out in the Guidelines.

2 Making an application

Relevant section of the legislation:

Motor Accidents (Lifetime Care and Support) Act 2006

8 Application for participation in the Scheme

- (1) An application for a person to become a participant in the Scheme in respect of a motor accident injury is to be made to the Authority and can only be made by or on behalf of the person or by the insurer of a claim made by the person in respect of the injury.
- (2) An application by an insurer does not require the consent of the person.
- (3) The State Insurance Regulatory Authority may direct the insurer of a claim made by a person in respect of an injury to make an application for the person to become a participant in the Scheme, and the insurer must comply with such a direction.
- (4) An application is to be made in the form approved by the Authority and is to set out or be accompanied by such particulars and information as may be required by the approved form.
- (5) The Authority may require the injured person to provide authorisation for the Authority to obtain information and documents relevant to the motor accident injury from specified persons in connection with the application.
- (6) The LTCS Guidelines may make provision for or with respect to applications to become a participant in the Scheme, including provision for or with respect to:
 - a) the making and determination of applications (including the information required to be provided in connection with an application), and
 - b) requiring an insurer to pay the costs of any assessment required by the LTCS Guidelines in connection with an application, and
 - c) imposing restrictions on the time within which an application can be made or requiring the deferring of the making of an application until an injury has stabilised.

- 2.1 An application to Lifetime Care for participation in the Scheme must be made on the Application Form approved by Lifetime Care.
- 2.2 The approved Interim Application Form is available on Lifetime Care's website at: www.icare.nsw.gov.au. The approved Lifetime Application Form is available from Lifetime Care.
- 2.3 Subject to clause 7 below:
 - a) an application in respect of an injured person for a particular motor accident injury is an application for interim participation in the Scheme if the person has not already been an interim participant in the Scheme in relation to that motor accident injury; and
 - b) an application in respect of an injured person for a particular motor accident injury is an application for lifetime participation in the Scheme if the person has already been accepted as an interim participant in the Scheme in relation to that motor accident injury. This is the case even if the person is no longer an interim participant in the Scheme on the date of the application.
- 2.4 If the application is made by or on behalf of the injured person, the injured person, or a person signing on their behalf, will be required to provide authorisation for Lifetime Care to obtain information and documents relevant to the injury, motor accident or motor vehicle from specified persons in connection with the application. The authorisation is part of the Application Form.
- 2.5 The Application Form must be signed by the injured person, the person making the application on the person's behalf or the insurer. All questions on the Application Form must be completed and all relevant documentation specified in the Application Form must be attached.
- 2.6 There are no fees for making an application.

- 2.7 Lifetime Care may determine that an application is not complete unless it consists of:
- a) a signed Application Form;
 - b) a medical certificate completed by an appropriately qualified medical specialist registered under the relevant regulation agency; and
 - c) a FIM™ or WeeFIM® score sheet where applicable (for brain injury or burns).
- 2.8 Lifetime Care may exercise discretion to treat an incomplete application as complete.
- 2.9 If the Application Form does not contain the information necessary for Lifetime Care to make its decision about eligibility, the applicant (and/or the injured person or a person acting on their behalf if the application was made by the insurer) will be requested to provide additional information. Lifetime Care may specify a time within which additional information must be provided, which will usually be 20 working days but which may be a shorter or longer period at the discretion of Lifetime Care. The person from whom the additional information is requested may request an extension of time, which may be granted at the discretion of Lifetime Care. A request that a FIM™ or WeeFIM® score sheet be completed in accordance with clause 3.2 or clause 6.4 (or both) is a request for additional information under this clause.
- 2.10 Lifetime Care may require the injured person, or a person acting on their behalf, to provide authorisation for Lifetime Care to obtain information and documents relevant to the injury, motor accident or motor vehicle from specified persons in connection with the application, where no such authorisation was provided as part of the Application Form. Lifetime Care will specify a time within which such an authority must be provided, which will usually be 20 working days, but which may be a shorter or longer period at Lifetime Care's discretion. The injured person, or a person acting on their behalf, may request an extension of time, which may be granted at the discretion of Lifetime Care.
- 2.11 Lifetime Care may request that the injured person attend an assessment to obtain information in relation to any or all injury criteria. Lifetime Care will specify a time within which the injured person must attend such an assessment, which will usually be 20 working days, but which may be a shorter or longer period at the discretion of Lifetime Care. The injured person, or a person acting on their behalf, may request an extension of time, which may be granted at the discretion of Lifetime Care.
- 2.12 If Lifetime Care requests that the injured person attend an assessment under clause 2.11, Lifetime Care will pay for the costs of the assessment.
- 2.13 Lifetime Care will not be able to make its determination about the applicant's eligibility until one or more of the following have occurred:
- a) such time as it has received all relevant information, or has exercised its discretion under clause 2.8 to regard an application as complete; or
 - b) if it has not received any additional information in accordance with a request made under clause 2.9 within the time specified in the request for such information, or within any extended time period as requested after the date by which the additional information was to be provided; or
 - c) if it has not received any authorisation required in accordance with clause 2.10 within the time specified in the request for such authorisation, or within any extended time period as requested, after the date by which the authorisation was to be provided; or
 - d) if the injured person has not attended any assessment requested in accordance with clause 2.11 within the time specified in Lifetime Care's request for such attendance, or within any extended time period as requested, after the date by which the injured person was to have attended such assessment.

Applications made by an insurer

- 2.14 If an insurer makes an application on behalf of an injured person:
- a) the insurer must advise the injured person that the application has been made, and must send a copy of that application to the injured person at the same time as it sends the application to Lifetime Care; and

- b) the insurer must complete that part of the Application Form that confirms it has provided a copy of its application to the injured person.

3 Information relevant to determination of eligibility

- 3.1 Lifetime Care may consider any or all of the following information before making an eligibility determination:
 - a) the application form and any information and/or documentation provided with it, and any information and/or documentation provided in response to a request for additional information;
 - b) any FIM™ and WeeFIM® score sheet or form;
 - c) the Accident Notification Form, CTP Personal Injury Claim Form (if it has been completed) or other personal injury benefits claim forms;
 - d) ambulance or air ambulance/retrieval records;
 - e) hospital records;
 - f) treating doctor's reports and other medical reports;
 - g) past medical records or school records;
 - h) accident investigations;
 - i) police reports;
 - j) other pre-accident information or general medical information;
 - k) other information Lifetime Care considers relevant.

Medical certification

- 3.2 An appropriately qualified medical specialist must certify that the injured person meets the injury criteria as specified in this Part of the Guidelines. This includes certification that the specialist has examined the injured person and has sighted and agrees or disagrees with the FIM™ or WeeFIM® score sheet where applicable.
- 3.3 The certification required under clause 3.2 must be completed on the medical certificate which forms part of the Application Form.

4 FIM™ and WeeFIM® for use for brain injuries and burns

- 4.1 Lifetime Care has developed score sheets for the FIM™ and WeeFIM® for use for injured persons who have sustained brain injuries and burns. These forms include a section where the clinician completing the form can indicate which scores relate to the injury and reasons why the score has been given. Lifetime Care's score sheets must be used for all interim and lifetime participation applications for brain injuries and burns. Further information about the FIM™ and WeeFIM® tools and score sheets are available on Lifetime Care's website at: www.icare.nsw.gov.au
- 4.2 The WeeFIM® tool and the appropriate age norms must be used if the injured person:
 - a) has acquired a brain injury or burns; and
 - b) is a child aged between 3 and 8 years.
- 4.3 Lifetime Care may request that a FIM™ or WeeFIM® be completed on Lifetime Care's score sheets where no such score sheet forms part of the application. Any request under this clause constitutes a request for additional information pursuant to clause 2.9.

Functional Independence Measure (FIM™) assessment

- 4.4 The FIM™ or WeeFIM® assessment is to be conducted by a person who has been trained in FIM™ or WeeFIM®, passed the relevant examination and is credentialed through the Australian Rehabilitation Outcomes Centre, or equivalent if the assessment is conducted outside Australia.

- 4.5 If the injured person is not yet a participant in the Scheme and clause 2.9 does not apply, the FIM™ or WeeFIM® assessment must be conducted within 20 working days of the date of a completed application for participation or such other period as Lifetime Care permits.
- 4.6 The FIM™ or WeeFIM® assessment must be conducted within 40 working days of the date of a completed application for participation or such other period as Lifetime Care permits if:
- a) the injured person is an interim participant in the Scheme; or
 - b) an interim participation period has lapsed and the application for participation is made after the interim participation period has expired.
- 4.7 If more than one FIM™ or WeeFIM® assessment has been conducted, the most recent assessment will be relied upon for the eligibility determination.
- 4.8 Reference to the age norm of any item on the WeeFIM® is a reference to the normative data published in the WeeFIM® Version 5.0 (or subsequent versions) issued by Uniform Data System for Medical Rehabilitation.

Pre- and co-existing conditions

- 4.9 If Lifetime Care receives an application from an injured person who has a pre- or co- existing condition, such as previous stroke, brain injury or dementia, Lifetime Care may request information on these conditions before it is able to make an eligibility determination. *For example, an injured person may have had a stroke resulting in right-sided hemiplegia and is then involved in a motor vehicle accident resulting in traumatic brain injury.*

In these circumstances, Lifetime Care may require information on the person's conditions prior to the accident to determine the impact of the injury on the injured person's function. Any request under this clause constitutes a request for additional information pursuant to clause 2.9.

5 Deferring the making of an application¹

- 5.1 Lifetime Care may require that the making of an application for participation in the Scheme be deferred until the injury has stabilised or is unlikely to change. *For example, an injured person may not meet the eligibility criteria immediately after the motor vehicle accident but may do so after subsequent surgery.*

6 Eligibility criteria for participation in the Scheme

- 6.1 The eligibility criteria set out in this clause apply to both interim participation and lifetime participation in the Scheme.
- 6.2 A person is eligible for participation only where:
- a) the person has been injured in a motor accident; and
 - b) the person meets the injury criteria for one or more kinds of injury set out in this clause at the time the eligibility decision is made.
- 6.3 If Lifetime Care is satisfied that a person is eligible to be a participant and that application for the person's acceptance as a participant has been duly made, Lifetime Care must accept the person as an interim or lifetime participant as appropriate.
- 6.4 Functional assessment using either FIM™ or the WeeFIM® is part of the eligibility criteria for both interim participation and lifetime participation in the Scheme if the injured person has sustained a brain injury or burns.

¹Section 8(6)(c) of the Act

Spinal cord injury

- 6.5 A spinal cord injury is an acute traumatic lesion of the neural elements in the spinal canal (spinal cord and cauda equina) resulting in permanent sensory deficit, motor deficit and/or bladder/bowel dysfunction.
- 6.6 A person who has a spinal cord injury that satisfies the following criteria is eligible for participation in the Scheme:
- a) the spinal cord injury was caused by a motor accident; and
 - b) the spinal cord injury has resulted in permanent neurological deficit.

Brain injury

- 6.7 A traumatic brain injury is an insult to the brain, usually with an associated diminished or altered state of consciousness that results in permanent impairments of cognitive, physical and/or psychosocial functions.
- 6.8 A person who has a brain injury that satisfies the criteria a) – c) is eligible for participation in the Scheme:
- a) the brain injury was caused by a motor accident; and
 - b) the duration of Post Traumatic Amnesia (PTA) is greater than 1 week. If the PTA assessment is not available or applicable, *for example, if the injured person is a child who is under 8 years of age, or the injured person has a penetrating brain injury*, there must be:
 - i. evidence of a very significant impact to the head causing coma for longer than one hour, or
 - ii. a significant brain imaging abnormality due to the motor accident; and
 - c) subject to clause 8 below, one of the following criteria is met:
 - i. if the injured person is over 8 years of age at the time of assessment, there is a score of 5 or less on any of the items on the FIM™ or WeeFIM® due to the brain injury; or
 - ii. if the injured person is aged between 3 and 8 years at the time of assessment, there is a score at least two less than the age norm on any item on the WeeFIM® due to the brain injury; or
 - iii. if the injured person is aged less than 3 years at the time of assessment, there is a medical certificate from a paediatric rehabilitation physician that states the child will probably have permanent impairment due to the brain injury resulting in a significant adverse impact on their normal development.

Amputations

- 6.9 A person who has had one or more amputations as described below, or the equivalent impairment, is eligible for participation in the Scheme if either 6.10 or 6.11 are satisfied. For the purpose of the Guidelines, “equivalent impairment” means that the person’s limb function is equivalent to an amputation described in clauses 6.10 and 6.11 (i) – (iv).
- 6.10 This clause is satisfied if:
- a) the injury resulting in the impairments (whether amputations, equivalent impairments or some combination) was caused by a motor accident; and
 - b) one of (i), (ii) or (iii) below is satisfied:
 - i. there are multiple amputations of the upper and/or lower extremities, meaning that there is more than one of the following types of amputation at or above, proximal to, the level of:
 - a “short” transtibial or standard transtibial amputation, as defined by the loss of 50% or more of the length of the tibia. This includes all other amputations of the lower extremity (such as knee disarticulation or transfemoral amputation) above this level;

- a thumb and index finger of the same hand, at or above the first metacarpophalangeal joint. This includes all other amputations of the upper extremity (such as below-elbow or above-elbow amputation) above this level;
- ii. there are multiple amputations, each of which is an equivalent impairment to an amputation described at (i);
- iii. there is at least one amputation described at (i) and at least one equivalent impairment to an amputation described at (i).

6.11 This clause is satisfied if:

- a) the injury resulting in the impairment (whether amputation or an equivalent impairment) was caused by a motor accident; and
- b) the injured person has had at least one of the following types of injury:
 - i. forequarter amputation (complete amputation of the humerus, scapula and clavicle) or shoulder disarticulation;
 - ii. hindquarter amputation (hemipelvectomy by trans-section at sacroiliac joint, or partial pelvectomy);
 - iii. hip disarticulation (complete amputation of the femur);
 - iv. "short" transfemoral amputation as defined by the loss of 65% or more of the length of the femur;
 - v. brachial plexus avulsion or rupture resulting in an equivalent impairment to an upper limb amputation described in part 6.11.b (i);
 - vi. an equivalent impairment to any of the injuries described at (i)-(iv) above; or
 - vii. any other severe orthopaedic and/or neuromuscular injury of either an upper or lower limb producing an equivalent impairment to the amputations described in 6.10 and 6.11.b(i)–(iv)

6.12 For the purpose of the Guidelines, "equivalent impairment" means the functional equivalent to an amputation, resulting from an injury such as (but not limited to) brachial plexus avulsion or rupture, where paralysis exists and movement in the paralysed limb, or relevant part thereof, is minimal or non-existent due to the injury.

6.13 In relation to:

- i. clause 6.10 - measurement of percentage loss of length of the amputated tibia is to be calculated using x-ray imaging pre- and post-amputation. There may be rare circumstances, such as traumatic bilateral transtibial amputation, where contralateral tibial length and tibial length prior to amputation is unknown and therefore percentage measurement is not applicable. In this case, percentage loss is defined as 50% of tibial length calculated from estimated knee height. Estimated knee height is to be calculated from the injured person's documented total height prior to the motor accident injury.
- ii. clause 6.11 - measurement of percentage loss of length of the amputated femur is to be calculated using x-ray imaging pre- and post-amputation. Where x-ray imaging is not available, measurement of the contralateral length of the femur should be compared with the length of the amputated femur to measure percentage loss.

Burns

6.14 A person who has sustained burns is eligible for participation in the Scheme if the following criteria are met:

- a) the burns were caused by a motor accident; and
- b) one of the following criteria is met:
 - i. there are full thickness burns greater than 40% of total body surface area, or, if the injured person is a child under 16 years of age, there are full thickness burns greater than 30% of total body surface area; or
 - ii. there are inhalation burns causing long term respiratory impairment; or

- iii. there are full thickness burns to the hand, face or genital area; and
- c) subject to clause 8 below, one of the following criteria is met:
 - i. if the injured person is over 8 years of age at the time of assessment, there is a score of 5 or less on any of the items on the FIM™ or WeeFIM® due to the burns; or
 - ii. if the injured person is aged between 3 and 8 years at the time of assessment, there is a score at least two less than the age norm on any item on the WeeFIM® due to the burns; or
 - iii. if the injured person is aged less than 3 years at the time of assessment, there is a medical certificate from a paediatrician or an appropriately qualified medical specialist otherwise approved in writing by Lifetime Care that states the child will probably have permanent impairment due to the burns resulting in a significant adverse impact on their normal development.

Permanent blindness

6.15 A person who has lost sight in both eyes is eligible for participation in the Scheme if the following criteria are met:

- a) the loss of sight was caused by a motor accident; and
- b) the person is legally blind, that is:
 - i. visual acuity on the Snellen Scale after correction by suitable lenses is less than 6/60 in both eyes;
 - ii. field of vision is constricted to 10 degrees or less of arc around central fixation in the better eye irrespective of corrected visual acuity (equivalent to 1/100 white test object); or
 - iii. a combination of visual defects resulting in the same degree of visual loss as that occurring in (i) or (ii) above.

7 Lifetime Care's determination

- 7.1 Lifetime Care will consider the following when making its determination about eligibility for participation in the Scheme:
 - a) the information set out in clause 3.1 above; and
 - b) the eligibility criteria in clause 6 above.
- 7.2 Lifetime Care will make its determination as soon as possible after receiving an application for participation, subject to clause 2.13 above. It will advise the following parties of its determination, including reasons, in writing:
 - a) the injured person and their legal representative, if legally represented;
 - b) the insurer, if the insurer is not the applicant; and
 - c) if the applicant is a person other than the injured person or the insurer: the applicant and their legal representative, if legally represented.
- 7.3 If Lifetime Care denies an application for participation in the Scheme, Lifetime Care will provide the applicant (and the injured person, if the injured person is not the applicant) with information about Lifetime Care's process for dispute resolution.
- 7.4 If Lifetime Care is satisfied that by reason of any mistake of law or fact a determination about interim eligibility for participation was wrongly made, Lifetime Care may withdraw the previous determination and make a new determination within 12 months of the original determination. Lifetime Care will provide the applicant (and the injured person, if the injured person is not the applicant) with information about Lifetime Care's process for dispute resolution.

8 Interim and lifetime participation

- 8.1 Subject to clauses 8.3 and 8.4, once eligibility for participation in the Scheme in accordance with clause 6 above has been established, an injured person will be accepted as an interim participant for a period of two years. The period of interim participation in the Scheme commences on the date of Lifetime Care's determination. The period of interim participation is imposed because of the possibility of recovery and ongoing improvement in the injured person's condition. Recovery may mean that the injured person may not meet the eligibility criteria after the interim participation period.
- 8.2 A person may only be accepted as an interim participant once in relation to any particular motor accident injury. A person will be accepted as a lifetime participant if an application is made in respect of the same motor accident and eligibility for the Scheme is established (or was previously established and participation has lapsed) in accordance with clause 6 above.
- 8.3 A child who becomes an interim participant under the age specified at s9(5) of the *Motor Accidents (Lifetime Care and Support) Act 2006* will spend longer than two years as an interim participant.

Bringing forward a decision about lifetime participation

- 8.4 Notwithstanding clauses 8.1 and 8.3, Lifetime Care may make a decision that an interim participant is to be accepted as a lifetime participant prior to the expiry of the interim participation period referred to in clause 8.1 and 8.3 if the medical information available to Lifetime Care provides evidence that the injured person's motor accident injury is such that he or she will meet the injury criteria for lifetime participation (which are the same as for interim participation) at the end of the interim participation period.

9 Time limit on applications

- 9.1 An interim application to the Scheme must be made within 3 years of the date of the motor accident injury.
- 9.2 Lifetime Care may extend this time limit if there is a full and satisfactory explanation for why the application was not made within 3 years of the date of the motor accident injury. An applicant who submits an application more than 3 years after the date of the motor accident injury must advise Lifetime Care, in writing, of the circumstances the applicant says provide a full and satisfactory explanation as to why the application was not made within 3 years.
- 9.3 Examples of circumstances that would not be accepted as a full and satisfactory explanation include:
- when a reasonable person in the position of the applicant would not have delayed making the application;
 - there is an unjustified delay in seeking medical advice/ legal advice; and
 - there is an unjustified delay in terms of the intent of the Motor Accident (Lifetime Care and Support) Act 2006.