

## Part 2: Disputes about eligibility (injury criteria)

This Part of the Lifetime Care and Support Guidelines (the Guidelines) is made under sections 19 and 58 of the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act).

This Part applies to disputes about eligibility under Part 3, Division 1 of the Act.

This version of Part 2 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to applications made for participation in the Lifetime Care and Support Scheme (the Scheme), whether for interim or lifetime participation, or disputes referred, on and from that date.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any part or parts of this Guideline. Waiving observance of all or part of this Guideline in any particular circumstances is not an indication that Lifetime Care will waive observance of this part or any other parts of the Guidelines in other circumstances.

### Relevant section of the legislation

*Motor Accidents (Lifetime Care and Support) Act 2006*

#### 12 Definitions

In this Division:

**Assessment Panel** means a panel of assessors convened under this Division to determine a dispute under this Division.

**Assessor** means a person appointed under this Division as an assessor for the purposes of this Division.

**Review Panel** means a panel of assessors convened under this Division to review a determination by an Assessment Panel.

#### 13 Appointment of assessors

The Authority is to appoint medical practitioners and other suitably qualified persons to be assessors for the purposes of this Division.

#### 14 Referral of disputes to Assessment Panel

- (1) If there is a dispute as to whether a motor accident injury suffered by a person satisfies criteria specified in the LTCS Guidelines for eligibility for participation in the Scheme, the dispute can be referred to an Assessment Panel for determination.
- (2) The dispute can be referred by the Authority or by notice to the Authority given by or on behalf of the injured person or by the insurer of the injured person's claim.
- (3) The Authority is to convene a panel of 3 assessors to constitute the Assessment Panel to determine a dispute referred under this section.
- (4) The Assessment Panel to which a dispute is referred for determination is to determine the dispute and is to give a certificate as to its determination setting out the reasons for its determination.

## 1 Time periods and extension of time

### 1.1 Any period of time referred to in the Guidelines:

- a) excludes the day that the act is done, e.g. a reference to 5 working days means 5 working days from the following day; and
- b) excludes days that are not working days when Lifetime Care is closed (such as weekends and public holidays).

- 1.2 Lifetime Care reserves the right to extend or abridge any time limit in the Guidelines that affects Lifetime Care, an injured person, a party to the dispute or a dispute assessor. Lifetime Care may extend any of the time periods in the Guidelines, whether or not a request is made to extend any time limit.

## 2 Definitions

- 2.1 In this Part of the Guidelines, these words and phrases have the following meanings:

**Act** means *Motor Accidents (Lifetime Care and Support) Act 2006*. A reference in the Guidelines to a section "X" is a reference to a section of the *Motor Accidents (Lifetime Care and Support) Act 2006 (NSW)*.

**Assessor** has the meaning given to it in section 22 of the Act. A reference to an assessor can also include a group of assessors as a Review Panel.

**Certificate** means a certificate of the assessment panel or review panel's determination issued under sections 14(4) or 15(4) of the Act, including the reasons for any finding.

**Days** is a reference to the number of working days unless otherwise specified.

**Dispute** means a dispute about an assessment or any aspect of an assessment by Lifetime Care about eligibility of an injured person, which has the meaning given to it under section 14(1) of the Act.

**Determination** means a decision made by a dispute assessor, assessment panel or review panel in relation to the issue in dispute.

**Insurer** means an insurer of a claim as defined in section 3 of the Act.

**Injured person** means the person who is the subject of Lifetime Care's decision about eligibility. Any reference to an injured person in the Guidelines is a reference to the **injured person's legal guardian (with relevant authority)** where applicable.

**Lifetime Care** means the Lifetime Care and Support Authority of New South Wales.

**Participant** means an injured person who is a participant in the Lifetime Care and Support Scheme (the Scheme). Any reference to a participant in the Guidelines is a reference to the **participant's legal guardian (with relevant authority)** in cases where this applies.

**Party** means someone involved in the dispute such as the injured person or an insurer. A reference to a party can include multiples of parties, or multiple parties.

**Review** means a review of a dispute about eligibility referred to in section 15 of the Act.

## 3 Parties to a dispute

- 3.1 The parties to a dispute about eligibility always include:

- a) the applicant, that is, the person making the dispute application (if the applicant is not the injured person); and
- b) the injured person who is the subject of Lifetime Care's decision about eligibility. The injured person is always a party to the dispute, whether or not they are a participant in the scheme at the time that the dispute application is made.

- 3.2 An insurer of a claim made by the injured person in respect of the injury may also be a party to a dispute about eligibility, but only after a claim has been made. The date that the insurer may become involved in the dispute is the date that the claim form was received by the insurer.

- 3.3 All parties to a dispute will:

- a) receive a copy of the request to refer the dispute, and any other documents related to the dispute submitted to Lifetime Care;
- b) receive a copy of Lifetime Care's decision about eligibility and any documents related to that decision that were submitted to Lifetime Care, including the Lifetime Care Application Form;

- c) have an opportunity to make a written submission or submissions in relation to the dispute or issues in dispute, which may be in response to any information in the application or any documents attached to the application, which will be forwarded to the Assessment Panel; and
- d) receive the Assessment Panel or Review Panel's certificate.

#### **4 Legal representation**

- 4.1 If the injured person or a party has legal representation in respect of the dispute, Lifetime Care will send any document required to be sent to the injured person, their legal practitioner or other authorised person.
- 4.2 Despite the existence of legal representation, Lifetime Care may contact the injured person directly in relation to any aspect of a dispute or assessment if required. Lifetime Care will inform the injured person's legal representative if this is required.

#### **5 Sending documents to Lifetime Care**

- 5.1 Lifetime Care's postal address is:  
Lifetime Care and Support Authority  
GPO Box 4052  
Sydney NSW 2000
- 5.2 Documents sent electronically to or from Lifetime Care on a working day before 5.00pm will be assumed to be received on the same day as they were sent. Any documents sent at or after 5.00pm on a working day, or on a day that is not a working day, will be taken to be received on the next working day. Any documents sent by mail to or from Lifetime Care shall be assumed to be received 5 working days after posting.

#### **6 Documentation and other supporting material**

- 6.1 Parties should only submit copies of documents to Lifetime Care, not original documents.

#### **7 Medical documentation**

- 7.1 All medical documentation must be listed in the application or otherwise listed in writing (e.g. sent with a cover letter) when sent to Lifetime Care.
- 7.2 In the case of X-rays, Computerised Tomography (CT or CAT scans), Magnetic Resonance Imaging (MRI) or other radiological or similar investigations, unless specifically requested by the panel, parties should send only the resulting report.
- 7.3 If an injured person holds their original films or scans, these can be taken to a clinical examination.
- 7.4 Lifetime Care will advise of any other arrangements for the viewing of such scans by an Assessment Panel or Review Panel, that does not involve clinical examination of the injured person.
- 7.5 Irrespective of whether they have been provided to the other party, an Assessment Panel or Review Panel may take into consideration any such radiological scans or similar investigations and their accompanying reports that are present at a clinical examination.
- 7.6 All matters pertaining to a dispute about eligibility, including clinical assessment, are conducted in private and are not open to the public. Any part of an Assessment Panel or Review Panel's assessment process and certificate is not open to, or available to, the public.

#### **8 Disputes about eligibility: jurisdiction**

- 8.1 As per section 14 (1) of the Act, a dispute about eligibility is a disagreement about whether a motor accident injury suffered by a person satisfies criteria specified in the Guidelines for eligibility for participation in the Scheme.

- 8.2 A dispute application can only be made after Lifetime Care has notified the injured person in writing of its determination whether the injured person is or is not eligible to be a participant in the Scheme in relation to the injury criteria outlined in the Guidelines.
- 8.3 A dispute application must be received within 6 months of the date of Lifetime Care's determination.
- 8.4 Lifetime Care may extend the 6-month time limit if there are exceptional circumstances for why the application was not made within 6 months of the determination.
- 8.5 Lifetime Care may reject a dispute application if Lifetime Care is satisfied that one or more of the following apply:
- a) the dispute application does not, on its face, relate to a dispute about eligibility;
  - b) the dispute application has not been made by a person specified in section 14 (2) of the Act;
  - c) the dispute application has not been made within 6 months of receipt of the determination about eligibility.

## **9 Alternative to dispute when the injured person is not an interim or lifetime participant**

- 9.1 If Lifetime Care forms the view that one or both of the following applies:
- a) the dispute application contains information that may allow Lifetime Care to make an eligibility decision or;
  - b) circumstances revealed by the dispute application are such that Lifetime Care considers it preferable that the dispute applicant lodge another application to the Scheme instead of a dispute application.
- Lifetime Care may invite the dispute applicant to withdraw the dispute application and, in that case, the dispute applicant may:
- i. request that the dispute application be treated as a new application to the Scheme; or
  - ii. lodge a new application to the Scheme.
- 9.2 If a dispute applicant requests that the dispute application be treated as a new application to the Scheme, this Part of the Guidelines will cease to apply, and Part 1 of the Guidelines will apply, with such amendments or abridgments of time as are required to give effect to this clause and clause 9.1.

## **10 Dispute application: procedure**

- 10.1 A dispute application can be referred by Lifetime Care or by notice to Lifetime Care given by or on behalf of the injured person or by the insurer of the injured person's claim. A dispute application can be received in writing or verbally. Information about how to lodge a dispute is provided on the eligibility decision letter.
- 10.2 The dispute application must include:
- a) the injured person's name, address and contact details;
  - b) the date of Lifetime Care's determination about eligibility;
  - c) a statement that the applicant disputes the determination;
  - d) the reasons why the applicant disputes Lifetime Care's determination as to whether or not the injured person's motor accident injury does or does not satisfy the criteria for eligibility specified in Part 1 of the Guidelines;
  - e) the reasons, with reference to any relevant information, including medical reports, why the applicant is of the view that the injured person does or does not meet the criteria for eligibility in Part 1 of the Guidelines; and
  - f) any information or reports relevant to the criteria for eligibility. This may include information about co-existing conditions or conditions that existed prior to the motor accident.

- 10.3 If the applicant does not provide the above information, then Lifetime Care may request that the applicant provide the information to Lifetime Care before the application can proceed to be assessed.
- 10.4 Lifetime Care will send a written acknowledgement of the dispute application to the applicant within 5 working days of receipt.
- 10.5 If there is another party to the dispute, a copy of the application will be provided to any other party within 10 working days of receipt, after which time that party has 20 working days in which to make a submission in response to the application.
- 10.6 The applicant should be aware that any information provided to Lifetime Care will be shared with any other party to the dispute, regardless of whether they are a party to the dispute at the time the information is provided.
- 10.7 All documents must be in English, unless accompanied by an English translation of the document. Any translated documents must be accompanied by a declaration that the translation is an accurate translation of the document and that the translator is accredited by the National Accreditation Authority for Translators and Interpreters Ltd (NAATI).

## **11 Further information or documentation required**

- 11.1 If Lifetime Care is satisfied that further information or documentation is required in relation to the application or is likely to assist in the resolution of the dispute, Lifetime Care may:
  - a) request that the injured person, a service provider, or CTP insurer provide this information within a period of up to 20 working days;
  - b) proceed with processing the application without the information, but only after the time has passed for the submission of the information.
- 11.2 Lifetime Care may contact any party, or any of the injured person's treating health practitioners or service providers, in order to clarify the issues in dispute or to assist with obtaining information relevant to the dispute. Information provided by the parties must be all the relevant information requested by Lifetime Care and listed in writing. Any additional information is to be sent to Lifetime Care within 20 working days of receipt of a request, unless otherwise specified.
- 11.3 At any stage during the dispute, Lifetime Care may contact any of the injured person's treating health practitioners about health or physical safety issues noted by an assessor as being urgent or serious.

## **12 Lifetime Care convenes Assessment Panel**

- 12.1 Lifetime Care will convene an Assessment Panel from Lifetime Care's list of assessors as soon as possible, and within 20 working days of acknowledgement of the application or receipt of any submission from another party. When convening the Assessment Panel, Lifetime Care will consider:
  - a) the needs of the injured person, including the nature of their injury;
  - b) which elements of the eligibility criteria set out in Part 1 are in dispute;
  - c) the location of the injured person and the assessors;
  - d) the specialty and expertise of the assessors; and
  - e) the availability of the assessors.
- 12.2 Lifetime Care will advise the parties of the arrangements for the Assessment Panel, in writing, within 5 working days of the Assessment Panel being convened. This will include the names and specialties of the assessors on the Assessment Panel.
- 12.3 When the Assessment Panel is convened, Lifetime Care will appoint a chairperson, and will send the Assessment Panel copies of:

- a) the dispute application and all accompanying documents, including Lifetime Care's original determination of eligibility; and
  - b) any additional documentation or information received since the application was made.
- 12.4 Lifetime Care may contact the injured person prior to any assessment by an Assessment Panel. This contact is in order to ensure that the injured person's individual needs can be considered in any assessment or clinical examination if required.
- 12.5 Parties must not contact an assessor, Assessment Panel or Review Panel directly in relation to the dispute unless Lifetime Care gives permission to do so. This applies whether the assessment is current or has finished.

### **13 Grounds for objection to the Assessment Panel**

- 13.1 A party may request Lifetime Care reallocate the dispute to a different assessor or assessors on the basis that they consider the assessor is not appropriate. This request may apply to any or all of the assessors on the Assessment Panel. To do this, the party must:
- a) apply within 10 working days of receiving the notification of the names of the assessors on the Assessment Panel;
  - b) provide detailed submissions as to why the assessor is not appropriate to assess the dispute; and
  - c) send a copy of their submissions to any other party to the dispute and Lifetime Care.
- 13.2 Lifetime Care will forward this request to any other party and invite submissions within 10 working days of receipt. Lifetime Care will make a decision on the request for reallocation within 10 working days of receipt of the request, or within 10 working days of receipt of the submission from the other party. Lifetime Care will reconvene the Assessment Panel in whole or in part if satisfied that there are reasonable grounds for believing that any of the assessors originally appointed to form the Assessment Panel are not appropriate.
- 13.3 Lifetime Care will reallocate the dispute if satisfied that there are reasonable grounds for believing that the assessor or the Assessment Panel as a whole might no longer be appropriate to assess the dispute.
- 13.4 In the event of illness, on request of the dispute assessor, or if the assessor or the Assessment Panel as a whole is otherwise unable to assess the dispute in a reasonable timeframe; if required Lifetime Care may reallocate a dispute to a different assessor or Assessment Panel as a whole. Lifetime Care will notify the parties of its decision in writing within 5 working days.

### **14 Assessment Panel to hold initial meeting**

- 14.1 The Assessment Panel will hold an initial meeting within 20 working days of the date the Assessment Panel was convened, where the Assessment Panel will decide:
- a) whether clinical examination of the injured person is required or if the assessment can be completed on the information provided;
  - b) whether additional information is required for the Assessment Panel to make a decision;
  - c) which member of the Assessment Panel will write and sign the certificate on behalf of the Assessment Panel; and
  - d) whether a further meeting of the Assessment Panel is required.
- 14.2 The Assessment Panel's initial meeting is to occur in the absence of the parties.

### **15 Procedures for the Assessment Panel's assessment**

- 15.1 The Assessment Panel is not bound by the rules of evidence in conducting an assessment. The Assessment Panel may determine its own procedure and may inquire into any such issue as the Assessment Panel sees fit.

- 15.2 The Assessment Panel must follow the Guidelines at the time of their assessment and must also follow any practice notes that are in force at the time of their assessment. Without limitation, the Assessment Panel may do any or all of the following in their assessment of the dispute:
- a) contact each other by email or by meeting;
  - b) contact any of the injured person's past or present treating medical or health professionals;
  - c) request medical records or other documentation that the Assessment Panel consider relevant to the dispute;
  - d) request the injured person attend a clinical examination with any or all members of the Assessment Panel; and/or
  - e) request the injured person attend a clinical examination with another health professional who is not a member of the Assessment Panel. If this occurs, the health professional will provide a report to the Assessment Panel and parties to the dispute.
- 15.3 If the Assessment Panel requests the injured person attend a neuropsychological assessment, this assessment will occur in accordance with the State Insurance Regulatory Authority publication: *Neuropsychological Assessment of Children and Adults with Traumatic Brain Injury: Guidelines for the NSW Compulsory Third Party Scheme and the Lifetime Care and Support Scheme*.
- 15.4 Administrative support will be provided to the Assessment Panel during the assessment process where required by a person or team that has not been involved in the decision that is the subject of the dispute.
- 15.5 The Assessment Panel need not conduct a hearing or any other meeting or conference with all or any of the parties.

## 16 Clinical examination procedures

### Relevant section of the legislation

*Motor Accidents (Lifetime Care and Support) Act 2006*

#### 17 Costs of assessment

- (1) The costs of determinations and reviews of determinations under this Division are payable by the Authority.
- (2) The costs of determinations and reviews under this Division include the necessary costs and expenses of travel and accommodation incurred by the injured person, and by a parent or other carer of the injured person in order to accompany the injured person, in attending a panel for the purposes of the determination or review.

- 16.1 At the request of the Assessment Panel, Lifetime Care will arrange a clinical examination with a member or members of the Assessment Panel. The Assessment Panel will decide if any or all Assessment Panel members are required to examine the injured person.
- 16.2 If an examination is to occur, the parties will be notified in writing of:
- a) the time, date and location of the clinical examination; and
  - b) the name and specialty of the assessor or assessors or other persons conducting the clinical examination.
- 16.3 Before the examination, Lifetime Care will notify the injured person:
- a) how to prepare for the examination and what to expect;
  - b) what may occur at the examination. *For example, the kind of questions that may be asked of the injured person and their support person;* and
  - c) who can attend the examination.

- 16.4 Lifetime Care will arrange any clinical examination and pay the necessary costs and expenses of travel and accommodation associated with attendance of the injured person, and if required, the reasonable expenses of one accompanying person such as a parent, carer or legal guardian or other support person to attend in accordance with section 17(2) of the Act.
- 16.5 The Assessment Panel will determine who may be present at a clinical examination and how the examination proceeds. A parent, legal guardian, carer or support person may be present during an examination involving the injured person in order to assist in any way required. Legal or medical representatives of the injured person or any party cannot be present during a clinical examination unless Lifetime Care gives prior approval and is satisfied that the circumstances warrant it.
- 16.6 A legal guardian, carer or support person may provide information to the assessor/s during a clinical examination, but only when asked by the assessor. At their discretion, the assessor/s may ask any legal guardian, carer or support person to leave the clinical examination if this request is reasonable and the circumstances warrant it.
- 16.7 When the clinical examination occurs, the assessor/s will take such measures as are reasonably practicable to ensure that the injured person and anyone accompanying them:
- a) understands the reason for the examination and the issues the Assessment Panel will consider in assessing the dispute;
  - b) is aware of what the examination will involve; and
  - c) is aware of the role of the Assessment Panel as an independent decision-maker, making a legally binding determination that will be documented in the Assessment Panel's certificate.

## **17 Use of interpreters in assessments and clinical examinations**

- 17.1 Arrangements will be made for an interpreter accredited by NAATI (National Accreditation Authority for Translators and Interpreters) if an interpreter is required or is requested. If a NAATI interpreter is not available, a non-NAATI interpreter may be used at the discretion of the Assessment or Review Panel.
- 17.2 Any person accompanying the injured person to an examination or assessment, such as a carer or support person, cannot act as an interpreter.

## **18 Certificate issued by Assessment Panel**

- 18.1 The Assessment Panel may hold as many meetings as required in order to finalise their determination. However, in all cases, the Assessment Panel must attempt to resolve the dispute as quickly as possible.
- 18.2 The Assessment Panel will issue a certificate as to its determination of the dispute under section 14(4) of the Act. The certificate will include written reasons for the determination and will be in the form approved by Lifetime Care.
- 18.3 The Assessment Panel will issue their certificate to all parties to the dispute within 15 working days of their final contact, clinical examination or final meeting.
- 18.4 If required, Lifetime Care will implement the determination within 5 working days of receipt.

## **19 Reviews of Assessment Panel determinations**

### **Relevant section of the legislation**

*Motor Accidents (Lifetime Care and Support) Act 2006*

### **15 Review of Assessment Panel's determination**

- (1) The determination of an Assessment Panel can be referred for review by a Review Panel, but only on one or more of the following grounds:
- a) a change in the condition of the injured person, being a change that occurred or that first became apparent after the dispute was referred for determination by the Assessment Panel



and that is capable of having a material effect on the determination,

- b) the availability of additional relevant information about the injury, being information that was not available, or could not reasonably have been obtained, before the dispute was referred for determination by the Assessment Panel and that is capable of having a material effect on the determination,

(2) A determination can be referred for review:

- a) by or on behalf of the injured person, or
- b) by the insurer of the injured person's claim, or
- c) by the Authority.

(3) The Authority is to convene a panel of 3 assessors to constitute the Review Panel to review the determination of the Assessment Panel.

(4) The Review Panel can confirm the determination of the Assessment Panel or it can revoke that determination, substituting its own determination and giving a certificate as to its determination.

## **16 Determinations to be binding**

The determination of an Assessment Panel (or of a Review Panel on the review of an Assessment Panel's determination) as to whether a motor accident injury satisfies criteria specified in the LTCS Guidelines for eligibility for participation in the Scheme is final and binding for the purposes of this Act and any proceedings under this Act.

19.1 A party to a dispute may apply for review of the determination of the Assessment Panel under section 15(2) of the Act. Applications for review are to be sent to Lifetime Care.

19.2 Applications for review are to be sent to Lifetime Care. Lifetime Care's postal address is:

Lifetime Care and Support Authority  
GPO Box 4052  
Sydney NSW 2000

19.3 Applications for review can only seek review of a determination made by an Assessment Panel under section 14 of the Act and cannot seek review of a determination made by a Review Panel.

19.4 An application for review must be made within 6 months of the date that the Assessment Panel's certificate is given to the participant and Lifetime Care.

19.5 An application for review must:

- a) be in writing (letter or email);
- b) include the injured person's name, address and contact details;
- c) include a clear statement as to why a review is requested, including an identification of the applicable ground or grounds for review listed in section 15 of the Act, together with reasons; and
- d) attach any relevant information or medical reports that are relevant to the review application.

19.6 If Lifetime Care is the applicant for review, it is required to advise the other parties in writing prior to the submission of any application for review, including the information set out in 12.3 above, and seek submissions in response.

19.7 The application for review may be dismissed:

- a) if it is not received within 6 months of receipt of the Assessment Panel certificate;
- b) it relates to a Review Panel certificate; or
- c) it does not identify, on its face, one or more of the grounds set out in section 15(1) of the Act.

19.8 Lifetime Care may extend the 6-month time limit if exceptional circumstances exist. Lifetime Care may seek submissions from the other party or parties to the dispute before deciding to extend any time limit.

- 19.9 Lifetime Care may decline to make submissions in response to an application made by the injured person. However, Lifetime Care is obliged to apply for review if it identifies a potential ground for review, or to provide submissions if it concurs with any of the applicant's stated grounds for review.
- 19.10 If Lifetime Care is not the applicant for review, Lifetime Care will acknowledge the application, and provide a copy of the review application to any other party, within 10 working days of receipt of the review application.
- 19.11 Any other party who is not the applicant for review has 20 working days from the date of the review application, or from the date on which advice from Lifetime Care pursuant to clause 19.6, is received by that party, to make a submission to whether the dispute application should be referred to the Review Panel or dismissed pursuant to clause 19.7 above.
- 19.12 Lifetime Care will advise the applicant for review and any other party as to whether the application is to be referred to a Review Panel or is dismissed, supported by a brief statement of reasons, within 5 working days of receiving submissions from all parties or, if there is any party which does not make submissions, within 5 working days of the last date for the provision of submissions.
- 19.13 A participant or Lifetime Care cannot apply for a review of a determination made by a Review Panel about a participant's eligibility.

## **20 Alternative to review when the injured person is not an interim or lifetime participant**

- 20.1 If Lifetime Care forms the view that one or both of the following applies:
- a) the review application contains information that may allow Lifetime Care to make an eligibility decision; or
  - b) circumstances revealed by the review application are such that Lifetime Care considers it preferable that the review applicant lodge another application to the Scheme instead of a review application.
- Lifetime Care may invite the review applicant to withdraw the review application and, in that case, the review applicant may:
- i. request that the review application be treated as a new application to the Scheme; or
  - ii. lodge a new application to the Scheme.
- 20.2 If a review applicant requests that the review application be treated as a new application to the Scheme, this Part of the Guidelines will cease to apply, and Part 1 of the Guidelines will apply, with such amendments or abridgements of time as required to give effect to this clause and clause 20.1.

## **21 Referral to a Review Panel**

- 21.1 Once the review application has been accepted, Lifetime Care will convene a Review Panel within 10 working days of the decision to refer the application to a Review Panel.
- 21.2 If Lifetime Care is not the applicant for review, Lifetime Care will select 3 assessors from its list of dispute assessors, having regard to:
- a) the needs of the injured person. *For example, the nature of their injury (e.g. traumatic brain injury, spinal cord injury);*
  - b) which elements of the eligibility criteria are in dispute;
  - c) which grounds for review are the subject of the review application;
  - d) the location of the injured person and the assessors;
  - e) the specialty and expertise of the assessors; and
  - f) the availability of the assessors.

- 21.3 The Review Panel must not include any of the assessors on the Assessment Panel whose decision is the subject of the application for review.
- 21.4 Lifetime Care will advise the parties of the arrangements for the Review Panel, in writing, within 5 working days of the Review Panel being convened. This will include the names and specialties of the assessors on the Review Panel.

## **22 Grounds for objection to the Review Panel**

- 22.1 A party may request Lifetime Care reallocate the Review Panel to a different assessor or assessors on the basis that they consider any one of the assessors is not appropriate to assess the review. This request may apply to any or all of the assessors on the Review Panel. To do this, the party must:
- a) apply within 10 working days of receiving the notification of the names of the assessors on the Review Panel; and
  - b) provide detailed reasons as to why the assessor/s are not appropriate.
- 22.2 Lifetime Care will forward this request to any other party and invite submissions within 10 days of receipt. Lifetime Care will make a decision on the request for reallocation within 10 days of receipt of the request, or within 10 working days of receipt of the submission from the other party. Lifetime Care will reconvene the Review Panel in whole or in part if satisfied that there are reasonable grounds for believing that any of the assessors appointed to form the Review Panel are not appropriate.
- 22.3 Lifetime Care will communicate a decision in writing, supported by a brief statement of reasons for its decision on reallocation within 5 working days of receipt of the request.
- 22.4 It is appropriate for an assessor who has previously completed a dispute assessment for an injured person to assess another dispute relating to that injured person. *For example, a dispute assessment for another type of dispute under another part of the Guidelines.*

## **23 Review Panel is to hold initial meeting**

- 23.1 When the Review Panel is convened, Lifetime Care will appoint a chairperson, and Lifetime Care will send the Review Panel copies of:
- a) all material that was before the previous Assessment Panel, including Lifetime Care's original determination of eligibility and reasons;
  - b) the review application and all accompanying documents;
  - c) the Assessment Panel certificate issued under section 14(4) of the Act; and
  - d) any additional documentation or information received since the review application was made.
- 23.2 The Review Panel's initial meeting will occur as soon as possible and within 20 working days of the date the Review Panel was convened.
- 23.3 The Review Panel's meetings will occur in the absence of the parties.

## **24 Procedures for Review Panel assessment**

- 24.1 Prior to commencing the assessment process, the Review Panel will confirm the ground upon which the review application has been made.
- 24.2 The Review Panel will consider all materials, including the application, and will decide whether one or more of the following review grounds are met;
- a) a change in the condition of the injured person, being a change that occurred or that first became apparent after the dispute was referred for determination by the Assessment Panel and that is capable of having a material effect on the determination.

- b) the availability of additional relevant information about the injury, being information that was not available, or could not reasonably have been obtained before the dispute was referred for determination by the Assessment Panel and that is capable of having a material effect on the determination.
- 24.3 If the Review Panel finds that one or more of the grounds have not been met, it will provide written reasons and the review will not proceed.
- 24.4 If the Review Panel finds that one or more of the grounds have been met, the Review Panel will consider all aspects of the dispute afresh which will involve:
- a) Deciding whether another clinical examination of the injured person is required;
  - b) Deciding whether any additional information is required in order to make a decision, whether from the participant, any party to the review or any third party;
  - c) Deciding whether and how to contact the applicant, any other party to the review or any third party as it sees fit;
  - d) Considering any new information that was not before the Assessment Panel; and
  - e) Deciding whether the Review Panel will confirm the decision of the Assessment Panel or revoke that decision.
- 24.5 The Review Panel may determine its own procedure and may enquire into any issue it considers relevant. The Review Panel is not bound by the rules of evidence in conducting an assessment.
- 24.6 The Review Panel must follow the Guidelines at the time of its assessment and must also follow any practice notes that are in force at the time of its assessment.
- 24.7 If the Review Panel decides that another clinical examination or additional information is required, the previous clauses of these Guidelines apply in relation to requesting further information or documentation, arrangement of the clinical examination, clinical examination procedures and use of interpreters.
- 24.8 If a clinical examination occurs, the Review Panel may hold as many meetings as required after the examination in order to finalise their determination. However, in all cases, the Review Panel must attempt to resolve the dispute as quickly as possible.
- 24.9 Administrative support will be provided to the Review Panel during the assessment process where required by a person or team that has not been involved in the decision that is the subject of the dispute.

## **25 Review Panel determination and certificate**

- 25.1 The Review Panel can confirm the determination of the Assessment Panel or revoke the determination and substitute its own determination.
- 25.2 The Review Panel will issue a certificate that certifies its determination of the dispute. The certificate will include written reasons for the determination and will be in the form approved by Lifetime Care.
- 25.3 The Review Panel will issue their certificate to all parties to the dispute within 15 working days of their final contact, clinical examination or final meeting, whichever is the latest.
- 25.4 Where required, Lifetime Care will implement the determination within 5 working days of receipt.

## **26 Corrections of obvious errors in certificates**

- 26.1 If a party considers that an Assessment Panel or a Review Panel has made an obvious error in a certificate, that party may apply to Lifetime Care to have the error corrected within 20 working days of the date on the certificate. An obvious error may also be identified and corrected by the relevant Assessment Panel or Review Panel or by Lifetime Care.
- 26.2 An obvious error in the certificate may only include an obvious clerical or typographical error in the certificate, or an error arising from an obvious omission or inconsistency.

- 26.3 An application to have an obvious error corrected must be made in writing, including the details of the obvious error and the suggested correction.
- 26.4 Within 10 working days of receipt of an obvious error being identified by any of the parties, Lifetime Care will notify the party of the identification of the obvious error. The party has 10 working days from receipt of that notification in which to advise if they agree with the suggested correction.
- 26.5 The Assessment Panel or Review Panel may issue a replacement certificate that corrects any obvious error within 20 working days of receipt of the application to correct the obvious error and that will replace the previous certificate. Any replacement certificate must be issued to Lifetime Care and the parties.

## 27 Legal costs

<b>Relevant section of the legislation</b>
<i>Motor Accidents (Lifetime Care and Support) Act 2006</i>
<b>17 No legal costs payable by Authority</b>
(1) No legal costs are payable by the Authority for or in respect of legal services provided to an injured person or an insurer in connection with the referral of a matter for or the making of a determination or review of a determination under this Division.
(2) In this section, legal services and legal costs have the same meanings as in the Legal Profession Uniform Law (NSW).