

Part 3: Disputes about eligibility (motor accident)

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

This Part applies to disputes about a motor accident injury under Part 3, Division 2 of the Act.

This version of Part 3 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 any part or parts of this Guideline in 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

20 Determination of disputes

- (1) An interested person who disputes a decision of the Authority as to whether an injury is a motor accident injury may request the Authority to refer the dispute for determination under this section.
- (2) Each of the following is an **interested person**-
 - a) the person whose injury is the subject of the Authority's decision,
 - b) the insurer of a claim made by the injured person in respect of the injury,
 - c) the Nominal Defendant.
- (3) The Authority is to refer the dispute to the President for the determination of the Commission under Part 4.4 of the *Motor Accidents Compensation Act 1999*.

Note –

Part 4 of Schedule 4 to the Personal Injury Commission Act 2020 requires the Commission to be constituted by 3 general members of the Commission assigned to the Motor Accidents Division of the Commission.

- (4) The Commission is to determine the dispute and certify in writing as to its determination giving reasons for its determination.
- (5) The Commission's determination as to whether an injury is a motor accident injury is final and binding for the purposes of this Act and any proceedings under this Act.

1 Definitions

1.1 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).

Applicant means an interested person who initiates the request for referral of a dispute.

Certificate means a determination issued under section 20(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 as to whether an injury is a motor accident injury under Part 3, Division 2 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 these Guidelines is a reference to the **injured person's legal guardian** where applicable.

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

Interested person has the meaning as defined in section 20(2) of the Act. A **reference** to an interested person or party in these Guidelines includes multiples of parties or multiple parties to any application or request to refer a dispute.

Lifetime Care means the Lifetime Care and Support Authority of NSW.

Nominal Defendant has the meaning given to it in section 32 of the Motor Accidents Compensation Act 1999 or as referred to in Division 2.4 of the *Motor Accident Injuries Act 2017*.

The Commission means the Personal Injury Commission.

Request means a request for Lifetime Care to refer a dispute for determination under section 20(1) of the Act.

2 Disputes about motor accident injury: jurisdiction

- 2.1 An applicant may request Lifetime Care refer a dispute as to whether an injury is a motor accident injury.
- 2.2 A request can only be made after Lifetime Care has notified the injured person in writing of its decision about eligibility to the Scheme under section 9 of the Act and Part 1 of the Lifetime Care and Support guidelines.
- 2.3 A request must be received within 6 months of the date of Lifetime Care's determination.
- 2.4 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.
- 2.5 Lifetime Care may choose not to refer the dispute if Lifetime Care is satisfied that the request:
 - a) does not establish that it relates to a dispute as to whether an injury is a motor accident injury;
 - b) has not been made by an interested person as specified in section 20(2) of the Act; or
 - c) has not been made within 6 months of receipt of Lifetime Care's decision about eligibility.

3 Request to refer a dispute

- 3.1 A request for referral of a dispute must include:
 - a) a statement that the applicant is an interested person and explanation as to how they satisfy the definition of an interested person in section 20(2) of the Act;
 - b) the injured person's name, address and contact details;
 - c) the name, address and contact details of:
 - i. the injured person's guardian if there is one, and
 - ii. the injured person's legal representative if there is one
 - d) the date of Lifetime Care's decision;
 - e) a statement that the applicant disputes the decision;
 - f) the reasons why the applicant disputes Lifetime Care's decision whether an injury is a motor accident injury; and
 - g) any information or documentation relevant to the dispute application.
- 3.2 If the applicant does not provide the above information Lifetime Care may request that the applicant provide the information to Lifetime Care before the application is referred to the Commission.
- 3.3 Lifetime Care will send a written acknowledgement of the request to refer the dispute to the applicant within 5 working days of receipt.

- 3.4 If Lifetime Care is aware of another interested person within the meaning of section 20(2), a copy of the application and all information and documentation sent with the application will be provided to that interested person within 10 working days of receipt.
- 3.5 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).

4 Referral to the Commission

- 4.1 Lifetime Care will refer the dispute to the Commission with a copy of all relevant material including the applicant's request for referral and the information and material provided in accordance with 3.1 of these Guidelines.
- 4.2 The dispute will be determined by 3 non- presidential members of the Commission assigned to the Motor Accidents Division of the Commission in accordance with section 20(3) of the Motor Accidents (Lifetime Care and Support) Act 2006.
- 4.3 Lifetime Care will inform the applicant and all other interested persons that Lifetime Care is aware of when the dispute has been referred to the Commission.

5 Legal costs

Relevant section of the legislation

Motor Accidents (Lifetime Care and Support) Act 2006

21 Legal costs

- (1) The Commission determining a dispute under this Division is to include in its determination a determination of the amount of the reasonable legal costs payable by the injured person for or in respect of legal services provided to the person in connection with the referral for determination of and the determination of the dispute.
- (2) The Authority is to pay those reasonable legal costs of the injured person as assessed by the panel. No other legal costs are payable by the Authority for or in respect of legal services provided to an interested person in connection with the referral for determination of and the determination of a dispute under this Division.
- (3) The regulations may make provision for or with respect to fixing maximum legal costs for legal services provided to a person in connection with the referral for determination of and the determination of a dispute under this Division.
- (4) A legal practitioner is not entitled to be paid or recover for a legal service an amount that exceeds any maximum legal costs fixed for the service by the regulations under this section.
- (5) This section does not entitle a legal practitioner to recover legal costs for a legal service or matter that a court or costs assessor determines were unreasonably incurred.
- (6) This section and any regulations under this section prevail to the extent of any inconsistency with the legal costs legislation (as defined in section 3A of the Legal Profession Uniform Law Application Act 2014). An assessment under that legislation of any costs in respect of which provision is made by a regulation under this section is to be made so as to give effect to that regulation.
- (7) In this section, legal services and legal costs have the same meanings as in the Legal Profession Uniform Law (NSW).

- 5.1 The Commission will include in its determination, in accordance with section 21(1), the amount of the reasonable legal costs payable by the injured person for or in respect of legal services provided in connection with the dispute.
- 5.2 The Commission will not assess the amount of reasonable legal costs if the injured person did not receive legal services in connection with the dispute.

- 5.3 In making an assessment of the amount of reasonable legal costs, the Commission:
- a) must have regard to any submissions made by either party;
 - b) must have regard to the requirements of any regulations issued under section 21(3) of the Act; and
 - c) must have regard to the principles and matters referred to in Section 200 of the Legal Profession Uniform Law (NSW).
- 5.4 In connection with a dispute about whether an injury is a motor accident injury, Lifetime Care is only able to pay for the reasonable legal costs incurred by the injured person, under section 21(1). No legal costs are payable by Lifetime Care for or in respect to other legal services, *for example those provided to other interested persons such as the insurer in any claim for statutory benefits or damages made by the injured person in respect of the injury, or the Nominal Defendant.*
- 5.5 Lifetime Care is to pay the legal costs that the panel have assessed as reasonable within 20 working days of receipt of a properly drawn tax invoice or invoices.