

Lifetime Care and Support (Catastrophic Injuries) LTCS Eligibility Disputes Guideline 2016*

Disallowable instrument DI2016-166

made under the

Lifetime Care and Support Act 2014, section 93 (LTCS Guidelines)

1 Name of instrument

This instrument is the *Lifetime Care and Support (Catastrophic Injuries) LTCS Eligibility Disputes Guideline 2016*.

2 Commencement

This instrument commences on 1 July 2016.

3 LTCS Eligibility Dispute Guidelines

Schedule 1 to this instrument provides the Lifetime Care and Support Commissioner's guidelines for disputes about eligibility to participate in the LTCS scheme. These are part 2 of the LTCS Guidelines.

4 Revocation

This instrument revokes Disallowable Instrument DI2014-203.

Lisa Holmes
Acting Lifetime Care and Support Commissioner of the ACT
27 June 2016

*Name amended under Legislation Act, s 60

Schedule 1

PART 2 – Guidelines for disputes about eligibility

Introduction

This Part of the LTCS Guidelines is issued under section 93 of the LTCS Act and applies to disputes about eligibility under Division 7.1 of the LTCS Act.

To avoid requirements that might be unreasonable in the circumstances on any injured person, the LTCS Commissioner may waive observance of any part or parts of these LTCS Guidelines.

Any reference to the injured person means the injured person's legal guardian where applicable.

Any reference to the participant means the participant's legal guardian where applicable.

Time periods and extension of time

Any period of time referred to in these LTCS Guidelines:

- 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
- excludes days that are not working days (such as weekends and public holidays).

The LTCS Commissioner reserves the right to extend or abridge any time limit in the LTCS Guidelines that affects the LTCS Commissioner, an injured person or an assessor. The LTCS Commissioner may extend any of the time periods in the LTCS Guidelines, whether or not a request is made to extend any time limit.

1. Disputes about eligibility: jurisdiction

As per section 34(1), a dispute about eligibility is a disagreement about whether the injury suffered by a person satisfies the criteria specified in section 15(1) and under Part 1 of these LTCS Guidelines for eligibility for participation in the LTCS Scheme.

A dispute application can only be made where the injured person or the insurer disputes the LTCS Commissioner's determination on whether the injured person is or is not eligible to be a participant in the LTCS Scheme in relation to the injury criteria specified in section 15(1) and under Part 1 of these LTCS Guidelines.

Any application in relation to a dispute must be received within 6 months of receipt of the LTCS Commissioner's decision about eligibility.

The LTCS Commissioner may reject any such request if the LTCS Commissioner is satisfied that the request:

- does not establish that it relates to a dispute about eligibility;
- has not been made by persons specified in section 34 of the LTCS Act; or
- has not been made within 6 months of receipt of the LTCS Commissioner's decision about eligibility.

2. Application

An application for a dispute must be made to the LTCS Commissioner or by notice to the LTCS Commissioner. The application must be in writing (letter or email).

The application must include:

- the injured person's name, address and contact details;
- a clear statement that there is disagreement with the LTCS Commissioner's decision about eligibility and the date of the decision;
- detailed reasons why there is disagreement with the LTCS Commissioner's decision as to whether or not the injured person's injury satisfies (or does not satisfy) the criteria specified in Part 1 of the LTCS Guidelines;
- the reasons (with reference to any relevant information, such as medical reports) as to why the injured person does or does not meet the criteria for eligibility in Part 1 of the LTCS Guidelines; and
- any information or reports relevant to the criteria for eligibility.

In exceptional circumstances the LTCS Commissioner may allow the notice to be given orally, with assistance provided to transfer the notice into written form (section 34(3)).

If the applicant does not provide the above information, then the LTCS Commissioner may request that the applicant provide the information to the LTCS Commissioner before the application can proceed to be assessed.

The LTCS Commissioner will send a written acknowledgement of the application to the sender within 10 days of receipt of the application.

If there is another party to the dispute, a copy of the application will be provided to any other party within 10 days of receipt of the application, after which time that party has 20 days in which to make a submission to the LTCS Commissioner on the application.

The applicant should be aware that any information provided to the LTCS Commissioner 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.

3. Further information or documentation required

If the LTCS Commissioner is satisfied that further information or documentation is required in the application or is likely to assist in the resolution of the dispute, the LTCS Commissioner may:

- request that the information be provided within a period of up to 20 days; and
- proceed with processing the application without the information, but only after the stated time has passed for the submission of the information.

The LTCS Commissioner may contact 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.

At any stage during the dispute, the LTCS Commissioner 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.

4. LTCS Commissioner convenes assessment panel

The LTCS Commissioner will convene an assessment panel drawn from those persons who have been appointed as eligibility assessors as soon as possible, and within 20 days of acknowledgement of the application or receipt of any submission from another party. When convening the assessment panel, the LTCS Commissioner will consider:

- the needs of the injured person, for example, the nature of their injury (e.g. traumatic brain injury, spinal cord injury);
- which elements of the eligibility criteria are in dispute;
- the location of the injured person and the assessors;
- the specialty and expertise of the assessors;
- the availability of the assessors; and
- whether an interpreter is required.

The LTCS Commissioner will advise the parties of the arrangements for the assessment, in writing, within 5 days of the panel being convened. This will include the names and specialties of the assessors on the panel.

When the panel is convened the LTCS Commissioner will appoint a chairperson, and will send the panel copies of:

- the dispute application and all accompanying documents, including the LTCS Commissioner's original determination of eligibility; and
- any additional documentation or information received since the application was made.

The LTCS Commissioner may contact the injured person prior to any assessment by a review 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.

5. Grounds for objection to the assessment panel

A party may request the LTCS Commissioner reallocate the dispute to a different assessor on the basis that the assessor is unsuitable. This request may apply to any or all of the assessors on the panel.

To do this, the party must:

- apply within 10 days of receiving the notification of the names of the assessors on the assessment panel; and
- provide detailed reasons as to why the assessor is unsuitable.

The LTCS Commissioner will forward this request to any other party, who must provide any submissions within 10 days of receipt. The LTCS Commissioner will make a decision on the request for reallocation within 10 days of receipt of the request, or within 10 days of receipt of the submission from the other party. The LTCS Commissioner will reallocate the dispute if satisfied that there are reasonable grounds for believing that the assessor is unsuitable.

It is not unsuitable for an assessor who has previously completed a dispute assessment for an injured person to assess another dispute relating to that injured person.

6. Assessment panel hold initial meeting

The assessment panel will hold an initial meeting or teleconference within 30 days of the date the panel was convened, where the panel will decide:

- whether clinical examination of the injured person is required or if the assessment can be completed on the information provided;
- whether additional information is required for the panel to make a decision;
- which member of the panel will sign the certificate on behalf of the panel; and
- whether a further meeting of the panel is required.

7. Procedures for the panel's assessment

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 panel sees fit.

The assessment panel must follow the LTCS Guidelines at the time of their assessment and must also follow any practice notes that are in force at the time of their assessment. The panel may do any or all of the following in their assessment of the dispute:

- contact each other by teleconference, email or by meeting;
- contact any of the injured person's past or present treating medical or health professionals;
- request medical records or other documentation that the panel consider relevant to the dispute; or

- request the injured person attend a clinical examination.

Administrative support will be provided to the assessment panel during the assessment process where required.

8. Clinical examination arranged if required

At the request of the assessment panel, the LTCS Commissioner will arrange a clinical examination with a member or members of the panel. The assessment panel will decide if any or all panel members are required to examine the injured person. If an examination is to occur, the parties will be notified in writing of:

- the time, date and location of the clinical examination; and
- the name and specialty of the assessor or assessors conducting the clinical examination.

Before the examination the LTCS Commissioner will notify the injured person:

- how to prepare for the examination (e.g. what to wear and bring) and what to expect; and
- what may occur at the examination, for example the kind of questions that may be asked of the injured person and support person.

9. Clinical examination procedures

The assessment panel will determine who may be present at a clinical examination and how the examination proceeds. A parent, legal guardian, carer or other 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 the LTCS Commissioner gives prior approval and is satisfied that the circumstances warrant it.

A legal guardian, carer or other 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.

The LTCS Commissioner will pay the reasonable costs associated with attendance of the injured person, and if required, the reasonable expenses of one accompanying person such as the legal guardian, carer or other support person to attend any clinical examination arranged by the LTCS Commissioner.

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:

- understands the reason for the examination and the issues the panel will consider in assessing the dispute;
- is aware of what the examination will involve; and
- is aware of the role of the assessors as independent decision-makers, making a legally binding decision that will be documented in the panel's certificate.

After the examination, a teleconference may be held to discuss examination findings. At the panel's discretion, this may also involve the injured person.

10. Use of interpreters in assessments and clinical examinations

Interpreters accredited by NAATI (National Accreditation Commissioner for Translators and Interpreters) should be used during the course of an assessment if an interpreter is required or is requested by the injured person.

If a NAATI interpreter is not available, a non-NAATI interpreter may be used at the discretion of the panel or the LTCS Commissioner. Any person accompanying the injured person to an examination or assessment, such as a carer or support person, cannot act as an interpreter.

11. Certificate issued by assessment panel

The assessment panel may hold as many meetings or teleconferences as required after a clinical examination in order to finalise their determination. However, in all cases, the assessment panel must attempt to resolve the dispute as quickly as possible.

The assessment panel will issue a certificate as to its determination on the dispute under section 37(2) of the LTCS Act. The certificate will include written reasons for the decision and will be in the form approved by the LTCS Commissioner.

The assessment panel will issue their certificate to the LTCS Commissioner within 15 days of their final contact, clinical examination or final teleconference. The LTCS Commissioner will forward a copy of the certificate to the injured person and any other party within 5 days of receipt.

12. Reviews of assessment panel determinations

A party to a dispute may apply under section 38 for review of the determination of the assessment panel.

Applications for review can only seek review of a determination made by an assessment panel and cannot seek review of a determination made by a review panel.

The application for review will be rejected if it:

- is not received within 6 months of receipt of the assessment panel's certificate;
- relates to a review panel certificate; or
- is not completed by those persons outlined in section 38 of the LTCS Act.

An application for review must:

- be in writing (letter or email);
- include the participant's name, address and contact details;
- include a clear statement as to why a review is requested in relation to the grounds for review listed in section 38(3) of the LTCS Act, together with detailed reasons;

- clearly outline the reasons why the issue is capable of reversing the outcome of the previous assessment as to whether or not the injured person's injury satisfies (or does not satisfy) the criteria specified in Part 1 of the LTCS Guidelines; and
- attach any relevant information or medical reports that are relevant to the review application.

A copy will be provided to any other party within 10 days of receipt of the application for review, after which time any other party has 20 days in which to make a submission to the LTCS Commissioner on the application.

The LTCS Commissioner will consider the application to determine whether there is reasonable cause to suspect that the application meets the criteria in section 15 of the LTCS Act, within 10 days of receipt of the application or any submission by another party.

In considering the application, the LTCS Commissioner:

- may contact the applicant or any other party to clarify any issues in the application;
- may contact the applicant to request additional information be provided before a decision is made;
- in the case of section 15(1)(a) and 15(1)(b) of the LTCS Act, may contact a third party in order to clarify issues relevant to the grounds for review; and
- must consider the application and make a determination on the information provided.

The LTCS Commissioner 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 rejected, supported by a brief statement of reasons, within 5 days of considering the application.

13. Referral to a review panel

The LTCS Commissioner will convene a review panel from the LTCS Commissioner's list of assessors as soon as possible, and within 20 days of the decision to refer the application to a review panel.

When convening the panel, the LTCS Commissioner will consider:

- the needs of the injured person, for example, the nature of their injury (e.g. traumatic brain injury, spinal cord injury);
- which elements of the injury eligibility criteria are in dispute;
- the location of the injured person and the assessors;
- the specialty and expertise of the assessors;
- the availability of the assessors; and
- whether an interpreter is required.

The review panel will not include any of the assessors on the previous assessment panel whose decision is the subject of the application for review, unless the exceptional requirements of section 39(2) are met.

The LTCS Commissioner will advise the parties of the arrangements of the assessment, in writing, within 5 days of the panel being convened. This will include the names and specialties of the assessors on the review panel.

The LTCS Commissioner may contact the injured person prior to any assessment by a review panel. This contact is in order to ensure that the injured person's specific needs can be considered in any assessment or clinical examination if required.

14. Grounds for objection to the review panel

A party may request the LTCS Commissioner reallocate the dispute to a different assessor on the basis that the assessor is unsuitable. This request may apply to any or all of the assessors on the review panel.

To do this, the party must:

- apply within 10 days of receiving the notification of the names of the assessors on the panel; and
- provide detailed reasons as to why the assessor is unsuitable.

The LTCS Commissioner will forward this request to any other party, who must provide any submissions within 10 days of receipt. The LTCS Commissioner will make a decision on the request for reallocation within 10 days of receipt of the request, or within 10 days of receipt of the submission from the other party. The LTCS Commissioner will reallocate the dispute if satisfied that there are reasonable grounds for believing that the assessor is unsuitable.

It is not unsuitable for an assessor who has previously completed a dispute assessment for an injured person to assess another dispute relating to that injured person. However, the review panel will not include any of the assessors on the previous assessment panel whose decision is the subject of the application for review, unless the exceptional requirements of section 39(2) are met.

15. Review panel hold initial meeting

When the review panel is convened, the LTCS Commissioner will appoint a chairperson and will send the panel copies of:

- all material that was before the previous panel, including the LTCS Commissioner's original determination of eligibility and reasons;
- the decision of the previous review panel;
- the written reasons for accepting the review application;
- the review application and all accompanying documents; and
- any additional documentation or information received since the review application was made.

The review panel's initial meeting or teleconference will occur as soon as possible and within 30 days of the date the panel was convened.

16. Procedures for review panel assessment

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

The review panel must follow these LTCS Guidelines at the time of their assessment and must also follow any practice notes that are in force at the time of their assessment.

The review panel's assessment process will consider all aspects of the dispute afresh which will involve:

- deciding whether another clinical examination of the injured person is required, or if the assessment will be completed on the papers provided;
- deciding whether the panel will confirm the decision of the previous assessor or revoke that decision;
- deciding whether any additional information is required to make a decision; and
- considering any new information that was not before the previous assessment panel.

If the review panel decides that another clinical examination or additional information is required, the previous sections of the LTCS Guidelines apply in relation to requesting further information or documentation, arrangement of the clinical examination, clinical examination procedures and use of interpreters.

If a clinical examination occurs, the review panel may hold as many meetings or teleconferences 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.

17. Review panel certificate

The review panel will issue a certificate that certifies its decision on the dispute. The review panel will confirm the assessment panel's determination or revoke it and issue its own determination. The certificate will include written reasons for the decision and will be in the form approved by the LTCS Commissioner.

The review panel will issue their certificate to the LTCS Commissioner within 20 days of the clinical examination or final teleconference. The LTCS Commissioner will forward a copy of the certificate to the injured person and any other party within 5 days of receipt.

18. Corrections of obvious errors in certificates

If a party considers that an assessment panel or review panel has made an obvious error in a certificate, that party may apply to the LTCS Commissioner to have the error corrected within 30 days of the date on the certificate.

The application to have the error corrected must be made in writing, including the details of the obvious error and the suggested correction. 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 under section 37(4) and 39(4).

The LTCS Commissioner will forward this request to any other party within 10 days of receipt, after which time that party has 20 days in which to make a submission to the LTCS Commissioner on the application to have the error corrected.

The LTCS Commissioner will send the application to the panel within 10 days of receipt of the application or any submission from the other party. The panel must decide whether to issue a replacement certificate within 30 days of receipt of the application to correct the obvious error, or receipt of the submission from the other party.

The review panel may issue a replacement certificate that corrects any obvious error and that will replace the previous certificate. If a replacement certificate is issued, the replacement certificate is to be titled as a replacement certificate and will supercede the previous certificate.

APPENDIX A

Definitions and information about parties to a dispute about eligibility

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

Act means *Lifetime Care and Support (Catastrophic Injuries) Act 2014*. A reference in these LTCS Guidelines to a section “X” is a reference to a section of the Lifetime Care and Support (Catastrophic Injuries) Act 2014 (ACT).

Assessor has the meaning given to it in section 36 of the Act. A reference to an assessor also includes multiples of assessors or a group of assessors conducting an assessment as a panel.

Certificate means a certificate of the assessment panel or review panel’s determination issued under sections 37 or 39 of the Act, including the reasons for any finding.

Days is a reference to the number of working days and not calendar days.

Dispute means a dispute about eligibility which has the meaning given to it under section 37 of the Act.

Insurer means an insurer of a claim as defined in section 16(8) of the *LTCS Act*.

Injured person means the person who is the subject of the LTCS Commissioner’s decision about eligibility. Any reference to an injured person in these LTCS Guidelines is a reference to the injured person’s legal guardian where applicable.

LTCS Commissioner means the Lifetime Care and Support Commissioner of the ACT.

Panel means a panel of three assessors convened by the LTCS Commissioner under section 34 and 39(1) of the LTCS Act. Unless specified, this could mean an assessment panel or review panel.

Participant means an injured person who is an interim or lifetime participant in the Lifetime Care and Support Scheme. Any reference to a participant in these LTCS Guidelines is a reference to the participant’s legal guardian 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 38 of the Act.

Parties to a dispute and legal representation

A party to a dispute about eligibility is always:

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

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.

All parties to a dispute will:

- receive a copy of the request to refer the dispute, and any other documents related to the dispute submitted to the LTCS Commissioner in relation to that dispute;
- receive a copy of the LTCS Commissioner's decision about eligibility and any documents related to that decision that were submitted to the LTCS Commissioner, including the Application Form to the LTCS Scheme;
- have 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 panel; and
- receive the assessment panel or review panel's certificate.

If the injured person or a party has legal representation, the LTCS Commissioner will send any document required to be sent to the injured person or party to their legal practitioner or agent.

However, despite the existence of legal representation, the LTCS Commissioner may contact the injured person directly in relation to any aspect of a dispute or assessment if required.

APPENDIX B

Sending documents to the LTCS Commissioner

To deliver or send documents to the LTCS Commissioner, the postal address is:

LTCS Commissioner
ACT Lifetime Care and Support Scheme
1 Constitution Ave
Canberra ACT 2601

GPO Box 158
Canberra City ACT 2601

Email: ltcss@act.gov.au

Documents sent to or from the LTCS Commissioner will be assumed to be received on the same day as they were sent:

- if delivered by hand;
- if sent via email or internet transfer;

Any email or internet transfer sent on or after 4.30pm will be taken to be received on the next business day.

Documents sent to or from the LTCS Commissioner shall be assumed to be received 5 days after sending if posted by mail.

Documentation and other supporting material

Parties should only submit copies of documents to the LTCS Commissioner, not original documents.

If documents or other material are submitted to the LTCS Commissioner, the LTCS Commissioner will give a copy of that document or material to any other party to the dispute.

Parties must not contact an assessor directly in relation to the dispute unless the LTCS Commissioner gives permission to do so. This applies whether the assessment is current or has finished.

Medical documentation

All medical documentation must be listed in the application or otherwise listed in writing (sent with a cover letter) when sent to the LTCS Commissioner.

In the case of X-rays, Computerised Tomography (CT or CAT scans), Magnetic Resonance Imaging or other radiological or similar investigations, only the resulting report should be sent to the LTCS Commissioner.

No original films or scans should be submitted to the LTCS Commissioner. These can be brought to any examination by the injured person. If an examination does not occur, the LTCS Commissioner will arrange for the original films or scans to be viewed by all panel members when needed.