



Lifetime Care

# **The Lifetime Care and Support Guidelines 2018**





## The Lifetime Care and Support Guidelines 2018

The Lifetime Care and Support Guidelines are issued under the Motor Accidents (Lifetime Care and Support) Act 2006, including sections 28 and 58.

Words and expressions used (but not defined) in these Guidelines have the same meanings as in the *Motor Accidents (Lifetime Care and Support) Act 2006*.

Questions about the Lifetime Care and Support Guidelines can be directed to Lifetime Care within Insurance and Care NSW (icare).

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A handwritten signature in black ink, appearing to read 'John Nagle'.

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# The Lifetime Care and Support Guidelines 2018

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

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

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 applies to applications for participation in the Lifetime Care and Support Scheme (the Scheme), whether for interim or lifetime participation, made on and from that date.

## 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](http://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](http://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-existing and co-existing conditions***

- 4.9 If Lifetime Care receives an application from an injured person who has a pre-existing 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 application.<sup>1</sup>**

- 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.

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<sup>1</sup> Section 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 following criteria 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 evidence of a very significant impact to the head causing coma for longer than one hour, or 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 at least one of clauses 6.10 and 6.11 are satisfied.
- 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 the level of:
  - a. 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;
  - b. 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 impairments, 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 partial or total paralysis; or
  - vi. an equivalent impairment to any of the injuries described at (i)-(iv) above.

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 clause 6.11, measurement of percentage loss of length of the amputated tibia or 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. 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.

## **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**

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

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

#### **9 Acceptance as a participant**

- (1) A person becomes a participant in the Scheme if the Authority is satisfied that the person is eligible to be a participant and accepts the person in writing as a participant in the Scheme, either as a lifetime participant or an interim participant (according to the person's eligibility).
- (2) If the Authority 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, the Authority must accept the person as a lifetime participant or an interim participant (according to the person's eligibility).
- (3) A person accepted as an interim participant must be accepted as a lifetime participant if the Authority becomes satisfied during the person's interim participation in the Scheme that the person is eligible for lifetime participation in the Scheme.
- (4) A person accepted as a lifetime participant in the Scheme remains a participant for life.
- (5) A person 3 years of age or over who is accepted as an interim participant remains an interim participant for a period of 2 years only.
  - a) A person under 3 years of age who is accepted as an interim participant remains an interim participant until the person is 5 years of age.
  - b) If a person who is an interim participant is accepted as a lifetime participant, the person ceases to be an interim participant on that acceptance and then remains a participant for life.
- (6) A person cannot be accepted as an interim participant more than once in relation to the same motor accident injury.
- (7) The expiration of a period of interim participation in the Scheme does not prevent subsequent acceptance of the person as a lifetime participant in the Scheme.

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.

## **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 will not be assessed for lifetime participation before the age of 5 years. A child who becomes an interim participant under the age of 3 years 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 three 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 three years of the date of the motor accident injury. An applicant who submits an application more than three 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 three years.

## Part 2: Guidelines for disputes about eligibility

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), including sections 19 and 58.

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 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 or any other Guideline in any other circumstances.

### 1 Time periods and extension of time

#### 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.

1.1 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 12 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 14(4) or 15(4) 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 14(1) of the Act.

**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** where applicable.

**Lifetime Care** means the Lifetime Care and Support Authority.

**Panel** means a panel of three assessors convened by Lifetime Care under section 14(3) of the Act. This could mean an Assessment Panel or Review Panel.

**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** 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 in relation to that dispute;
- 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 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 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, agent 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  
icare  
GPO Box 4052  
Sydney NSW 2000

5.2 Documents sent 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:

- a) if delivered by hand;
- b) if sent via email or internet transfer;
- c) if sent by facsimile.

- 5.3 Any email, facsimile or internet transfer 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.
- 5.4 Documents sent to or from Lifetime Care shall be assumed to be received 5 working days after sending if posted by mail.

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

- 6.1 Parties should only submit copies of documents to Lifetime Care, not original documents.
- 6.2 If documents or other material are submitted to Lifetime Care, Lifetime Care will give a copy of that document or material to any other party to the dispute.
- 6.3 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.

## **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 or other radiological or similar investigations, parties should not submit original films, scans or investigations, and 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. 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, must be by prior advice to the parties to the dispute.
- 7.4 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.
- 7.5 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 Surveillance images**

- 8.1 Surveillance images that are provided by a party to the dispute must:
- a) be provided electronically in a format readily viewable on a standard desktop computer;
  - and
  - b) be accompanied by any investigator's or loss adjuster's report concerning those surveillance images.

- 8.2 The other party will be provided with the surveillance images and be given an opportunity to put forward submissions in response to the surveillance images.
- 8.3 Lifetime Care does not conduct surveillance on participants.

## **9 Disputes about eligibility: jurisdiction**

- 9.1 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.
- 9.2 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.
- 9.3 A dispute application must be received within 6 months of the date of Lifetime Care's determination.
- 9.4 Lifetime Care may extend the 6-month time limit if there is a full and satisfactory explanation for why the application was not made within 6 months of the determination.
- 9.5 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.

## **10 Alternative to dispute application**

- 10.1 In a case where the injured person is not an interim or lifetime participant at the time of the dispute application, 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 if the injured person is not an interim or lifetime participant at the time of the dispute application;
  - 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 then 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.
- 10.2 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 10.1.

## **11 Dispute application: procedure**

- 11.1 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 (in person or by telephone).
- 11.2 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.
- 11.3 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.
- 11.4 Lifetime Care will send a written acknowledgement of the dispute application to the applicant within 5 working days of receipt.
- 11.5 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.
- 11.6 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.
- 11.7 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).

## **12 Further information or documentation required**

- 12.1 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; and

b) proceed with processing the application without the information, but only after the time has passed for the submission of the information.

12.2 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.

12.3 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.

### **13 Lifetime Care convenes Assessment Panel**

13.1 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;
- e) the availability of the assessors; and
- f) whether an interpreter is required.

13.2 Lifetime Care will advise the parties of the arrangements for the assessment, 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.

13.3 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.

13.4 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.

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

14.1 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.
- 14.2 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.
- 14.3 Except where procedural fairness considerations mean it is not appropriate, an assessor who has previously formed part of an Assessment Panel and determined a dispute assessment for an injured person may be appointed as a member of an Assessment Panel to determine another unrelated dispute relating to that injured person. *For example, a dispute assessment for a different type of dispute under another part of the Guidelines.*
- 14.4 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.
- 14.5 Lifetime Care may reallocate a dispute to a different assessor or Assessment Panel as a whole following allocation if required. This could be 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.

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

- 15.1 The Assessment Panel will hold an initial meeting or teleconference 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.
- 15.2 For the avoidance of doubt, the Assessment Panel's initial meeting or teleconference is to occur in the absence of the parties.

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

- 16.1 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.

16.2 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 teleconference, 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.

16.3 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*.

16.4 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.

16.5 For the avoidance of doubt, the Assessment Panel need not conduct a hearing or any other meeting or conference with all or any of the parties.

## **17 Clinical examination arranged if required**

### **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.

17.1 At the request of the Assessment Panel, Lifetime Care will arrange a clinical examination with a member or members of the Assessment Panel. This may be organised through

administrative support. The Assessment Panel will decide if any or all Assessment Panel members are required to examine the injured person.

- 17.2 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.
- 17.3 Before the examination, Lifetime Care will notify the injured person:
- a) how to prepare for the examination (e.g. what to wear and bring) and what to expect; and
  - b) what may occur at the examination. *For example, the kind of questions that may be asked of the injured person and support person.*
- 17.4 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.

## **18 Clinical examination procedures**

- 18.1 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 Lifetime Care gives prior approval and is satisfied that the circumstances warrant it.
- 18.2 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 if this request is reasonable and the circumstances warrant it. *For example, a support person continually raises their voice and attempts to speak for the injured person. The support person does not respond to requests for the injured person to answer questions instead, which is affecting the assessment and causing the injured person to be visibly distressed.*
- 18.3 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.

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

- 19.1 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.
- 19.2 Any person accompanying the injured person to an examination or assessment, such as a carer or support person, cannot act as an interpreter.

## **20 Certificate issued by Assessment Panel**

- 20.1 The Assessment Panel may hold as many meetings or teleconferences 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.
- 20.2 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.
- 20.3 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 teleconference.
- 20.4 If required, Lifetime Care will implement the determination within 5 working days of receipt.

## **21 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,acc
  - (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.

- 21.1 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.
- 21.2 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.
- 21.3 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.
- 21.4 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 13.3 above, and seek submissions in response.
- 21.5 The application for review may be dismissed:
- a) if it is not received within 6 months of receipt of the Assessment Panel certificate; or
  - b) it does not identify, on its face, one or more of the grounds set out in section 15(1) of the Act.
- 21.6 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.
- 21.7 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.
- 21.8 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.

21.9 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 21.4, 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 21.5 above.

21.10 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.

## **22 Alternative to review**

22.1 In a case where the review application relates to section 15(1)(a) and/or 15(1)(b) of the Act and the injured person is not an interim or lifetime participant at the time of the review application, 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;
- b) the 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 dispute application, then 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.

22.2 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 22.1.

## **23 Referral to a Review Panel**

23.1 Lifetime Care will convene a Review Panel pursuant to one of clauses 23.2, 23.3, and 23.4 within 10 working days of the decision to refer the application to a Review Panel.

23.2 If Lifetime Care is not the applicant for review, it will select three assessors from its list of dispute assessors (subject to clause 23.5), 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;
- f) the availability of the assessors; and

g) whether an interpreter is required.

- 23.3 If Lifetime Care is the applicant for review, it will allow the other party or parties to the review to select the members of the Review Panel from its list of dispute assessors (subject to clause 23.5) and will convene the Review Panel in accordance with those selections.
- 23.4 If Lifetime Care is the applicant for review and the other parties to the review cannot agree on the selection of members of the Review Panel in accordance with clause 23.3 then, if there are two other parties, each such party will select one member of the Review Panel from Lifetime Care's list of dispute assessors (subject to clause 23.5) and Lifetime Care will select the third member in accordance with the criteria set out at clause 23.2 (subject to clause 23.5). If there are three parties to the review other than Lifetime Care, each such party will select one member of the Review Panel. In either case, Lifetime Care will convene the Review Panel in accordance with the selections made pursuant to this clause.
- 23.5 Whether convened pursuant to clause 23.2, 23.3 or 23.4, the Review Panel must not include any of the assessors on the Assessment Panel whose decision is the subject of the application for review.
- 23.6 Lifetime Care will advise the parties of the arrangements for the conduct of the review by the Review Panel, in writing, within 5 working days of the panel being convened. This will include the names and specialties of the assessors on the Review Panel.
- 23.7 Lifetime Care may contact the injured person prior to the conduct of the review 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.

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

- 24.1 A party may request the Review Panel reallocate the conduct of the review to a differently convened Review Panel on the basis that they consider any one of the assessors is not appropriate to assess the dispute. 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;
  - b) provide detailed reasons as to why the assessor/s are not appropriate; and
  - c) send a copy of their reasons to the other party to the dispute and Lifetime Care.
- 24.2 If a party selected an assessor or more than one assessor pursuant to clause 21.3 or 21.4, that party may not request reallocation of the review to a differently convened Review Panel on the basis that the assessor/s selected by that party is/are not appropriate to assess the dispute.
- 24.3 The Review Panel will forward this request to any other party and invite submissions within 10 days of receipt. The Review Panel 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. The Review Panel will reconvene the Review Panel in

whole or in part if satisfied that there are reasonable grounds for believing that any or all of the assessors are not appropriate.

- 24.4 It is generally 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.*

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

- 25.1 When the Review Panel is convened, the Review Panel 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.
- 25.2 The Review Panel's initial meeting or teleconference will occur as soon as possible and within 20 working days of the date the Review Panel was convened.
- 25.3 The Review Panel's initial meeting or teleconference may occur in the absence of the parties.

## **26 Procedures for Review Panel assessment**

- 26.1 The Review Panel is not bound by the rules of evidence in conducting an assessment.
- 26.2 The Review 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.
- 26.3 The Review Panel's assessment process will consider all aspects of the Assessment Panel determination and decide whether one or more of the review grounds set out in section 15 of the Act are made out.
- 26.4 In assessing the matters in dispute, the Review Panel may determine its own procedure and may inquire into any such issue as the Review Panel sees fit, including:
- a) deciding whether another clinical examination of the injured person is required, or if the assessment will be completed on the documentation provided;
  - b) deciding whether the participant should be required to attend an assessment (clinical examination) with another health professional (who is not a member of the Assessment Panel or Review Panel) and a report be provided to the Review Panel to make their decision, or if the assessment will be completed on the documentation provided;
  - c) deciding whether any additional information is required to make a determination, whether from the applicant, or any other party to the review or any third party;

d) deciding whether and how to contact the applicant, any other party to the review or any third party as it sees fit; and

e) considering any new information that was not before the Assessment Panel.

26.5 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.

26.6 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.

26.7 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 or the previous dispute assessed by the Assessment Panel.

26.8 The Review Panel need not conduct a hearing or any other meeting or conference with all or any of the parties.

## **27 Review Panel determination and certificate**

27.1 The Review Panel can confirm the determination of the Assessment Panel or revoke the determination and substitute its own determination.

27.2 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.

27.3 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 teleconference, whichever is the latest.

27.4 Where required, Lifetime Care will implement the determination within 5 working days of receipt.

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

28.1 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 30 working days of the date on the certificate. An obvious error may also be corrected as a result of identification of an obvious error in the certificate by the relevant Assessment Panel or Review Panel or by Lifetime Care.

28.2 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.

28.3 An application to have an obvious error corrected must be made in writing, including the details of the obvious error and the suggested correction.

- 28.4 An Assessment Panel or Review Panel which identifies an obvious error in the certificate must advise Lifetime Care within 30 working days of the date on the certificate.
- 28.5 Within 10 working days of receipt of an application pursuant to clause 20.3, advice from the Assessment Panel or Review Panel pursuant to clause 20.4, or identification of the error by Lifetime Care (as applicable), Lifetime Care will notify any party (or any other party) of the application, advice or identification of the obvious error (as applicable), including by forwarding any application. Any party has 20 working days from receipt of that notification to make a submission as to whether there is an obvious error which should be corrected.
- 28.6 Lifetime Care will send the application to the Assessment Panel or Review Panel, as relevant, within the later of 10 working days after:
- a) receipt of the application;
  - b) or any submission from any other party.
- 28.7 The Assessment Panel or Review Panel must decide whether to issue a replacement certificate within 20 working days of receipt of the application to correct the obvious error, or receipt of the submission from the other party.
- 28.8 The Assessment Panel or 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 identified as a replacement certificate and will supersede the previous certificate.

**Part 3: This Part has been left blank**

## Part 4: Guidelines for disputes about participants' treatment and care needs

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 28 and 58.

This Part applies to disputes about an assessment or any aspect of an assessment by the Lifetime Care and Support Authority (Lifetime Care) of the treatment and care needs of a participant under Part 4 of the Act.

This version of Part 4 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any dispute about treatment and care needs referred on and from that date in respect of any participant in the Lifetime Care and Support Scheme (the Scheme), whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

Lifetime Care may waive observance of any 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 or any other Guideline in any other circumstances.

### 1 Time periods and extension of time

#### Relevant section of the legislation

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

#### **24 Dispute about Authority's assessment—determination by assessor**

- (1) If a participant in the Scheme disputes an assessment or any aspect of an assessment by the Authority of the treatment and care needs of the participant, the Authority must, at the request of the participant, refer the dispute to an assessor for determination.
- (2) A participant cannot make such a request more than 28 days after the Authority gives the participant a copy of the Authority's certificate of assessment of the treatment and care needs of the participant.
- (3) The Authority is to appoint health professionals and other suitably qualified persons to be assessors for the purposes of this Part.
- (4) The assessor who determines a dispute about the treatment and care needs of a participant is to give a certificate to the Authority and the participant certifying as to the assessor's determination and setting out the assessor's reasons for any finding on which the determination is based.

1.1 Any period of time referred to in these Guidelines:

- a) excludes the day that the act is done. *For example, 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 these Guidelines that affects Lifetime Care, a participant, a party to the dispute or a dispute assessor. Lifetime Care may extend any of the time periods in these 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.

**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 issued under sections 23(4) or 25(4) of the Act including the reasons for any finding.

**Dispute** means a dispute about an assessment or any aspect of an assessment by Lifetime Care of the treatment and care needs of the participant, which has the meaning given to it under section 24 of the Act.

**Lifetime Care** means the Lifetime Care and Support Authority.

**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** in cases where this applies.

**Panel** means a Review Panel of three assessors convened to review an assessor's determination of a dispute under section 25(3) of the Act.

**Review** means a review of an assessor's determination referred to in section 25 of the Act

2.2 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.

## 3 Legal representation

3.1 If the participant has legal representation in respect of the dispute, Lifetime Care will send copies of any document required to be sent to the participant to their legal representative. However, despite the presence of a legal representative, the assessor or Lifetime Care may contact the participant 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.

3.2 If a participant has made a request for a dispute to be referred to an assessor or Review Panel, they are entitled to:

a) view and receive a copy of all documents held by Lifetime Care in relation to the dispute; and

b) make a written submission about any aspect of the dispute or issues in dispute which will be forwarded to the dispute assessor or Review Panel; and

c) receive the certificate issued by the dispute assessor or Review Panel.

#### **4 Sending documents to Lifetime Care**

4.1 Lifetime Care's postal address is:

Lifetime Care and Support Authority  
icare  
GPO Box 4052  
Sydney NSW 2000

4.2 Documents sent 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:

- a) if delivered by hand;
- b) if sent via email or internet transfer;
- c) if sent by facsimile.

4.3 Any email, facsimile or internet transfer 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.

4.4 Documents sent to or from Lifetime Care shall be assumed to be received 5 working days after the date of sending if posted by mail.

#### **5 Documentation and other supporting material**

5.1 The participant should only submit copies of documents to Lifetime Care, not original documents.

5.2 The participant must not contact a dispute assessor directly in relation to the dispute unless Lifetime Care gives permission to do so. This applies whether the assessment is current or has finished.

#### **6 Medical documentation**

6.1 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.

6.2 In the case of X-rays, Computerised Tomography (CT or CAT scans), Magnetic Resonance Imaging or other radiological or similar investigations, the participant should not submit original films, scans or investigations, and only the resulting report should be sent to Lifetime Care.

6.3 If a participant holds their original films or scans, these can be taken to a clinical examination as required. Any other arrangements for the viewing of such scans by a dispute assessor or panel, that does not involve clinical examination of the participant, must be by prior advice to the parties to the dispute.

6.4 Irrespective of whether they have been provided to the other party, a dispute assessor 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 Privacy**

- 7.1 All matters pertaining to a dispute about treatment and care needs, including clinical assessment, are conducted in private and are not open to the public. Any part of a dispute assessor or Review Panel's assessment process and certificate is not open to, or available to, the public.

## **8 Disputes about an assessment or any aspect of an assessment of treatment and care needs: jurisdiction**

- 8.1 As per section 24(1) of the Act, a participant may make a dispute application when they dispute an assessment or any aspect of an assessment by Lifetime Care of their treatment and care needs. A dispute application is regarded as a request for Lifetime Care to refer a dispute for determination.
- 8.2 A dispute application can only be made after Lifetime Care has notified the participant in writing, in a certificate, as to Lifetime Care's assessment of their treatment and care needs under section 23(4) of the Act.
- 8.3 A dispute application must be made by or on behalf of the participant within 28 calendar days of the date that Lifetime Care gives the participant its certificate of assessment of the participant's treatment and care needs under section 23(4) of the Act.
- 8.4 Lifetime Care may extend the 28-day time limit if there is a full and satisfactory explanation for why the application was not made within 28 days of the determination.
- 8.5 Lifetime Care may reject an application if Lifetime Care is satisfied that the application:
- a) does not establish that it relates to a dispute about an assessment, or any aspect of an assessment, of the participant's treatment and care needs;
  - b) has not been made by the participant or someone on their behalf; or
  - c) has not been made within the time frame outlined in 8.3 above.

## **9 Application for referral of a dispute**

- 9.1 An application for a referral of a dispute must:
- a) be in writing (letter or email) or verbally communicated to Lifetime Care in person or by telephone;
  - b) include a clear statement that there is disagreement with the assessment or aspects of the assessment; and
  - c) include reasons why there is disagreement with Lifetime Care's decision. If a treatment or service has not been approved by Lifetime Care and is the subject of the dispute, the participant must clearly outline the reasons as to why they consider the request is reasonable and necessary with reference to any other relevant information.
- 9.2 If the participant does not provide the above information, then Lifetime Care may request that the participant provide the information to Lifetime Care before the request is referred for assessment.

- 9.3 Lifetime Care is to send a written acknowledgement of the application to the participant within 5 working days of receipt.

***Application for referral of a dispute and the existing assessment of treatment and care needs***

- 9.4 A dispute application does not change or affect the existing assessment of the participant's treatment and care needs, as documented in the certificate, until or unless a further certificate is issued, whether following determination of the dispute or otherwise. A dispute application does not operate to delay or prevent Lifetime Care, or a service provider, implementing the certificate as to Lifetime Care's assessment of the participant's treatment and care needs that is the subject of the dispute application.

**10 Requesting further information or documentation**

- 10.1 On receipt of documentation, Lifetime Care may determine that further information or documentation is required in the application or is likely to assist in the resolution the dispute. Lifetime Care may:
- a) request that the participant or a service provider provide this information within a period of up to 20 working days; and
  - b) proceed with processing the application without the information, but only after the stated time has passed for the submission of the information.
- 10.2 Lifetime Care may contact any of the participant's treating health practitioners or service providers in order to assist with obtaining information relevant to the dispute.
- 10.3 At any stage during the dispute, Lifetime Care may contact any of the participant's treating health practitioners about health or physical safety issues noted by an assessor as being urgent or serious.

***Contact with the participant***

- 10.4 Lifetime Care may contact the participant prior to any assessment by a dispute assessor. This contact may be in order to:
- a) discuss or clarify the issues in dispute. *For example, to discuss the reasons the participant disputes Lifetime Care's decision, if this is unclear from the dispute application;*
  - b) explore other avenues for early resolution of the dispute, prior to referral to a dispute assessor, if the participant wishes to do so;
  - c) explain the operation of clause 11 of these Guidelines and ask if the participant would prefer Lifetime Care to consider the dispute application to be a request for Lifetime Care to make a new assessment of the participant's treatment and care needs; or
  - d) make arrangements for the assessment by the dispute assessor, including to ascertain the participant's needs pursuant to clause 16.

## **11 Optional new assessment of needs by Lifetime Care**

- 11.1 On receipt of a dispute application, if one or more factors set out in clause 11.2 below exists, Lifetime Care may ask the participant if the participant would prefer Lifetime Care to consider the dispute application as a request to make a new assessment of the participant's treatment and care needs.
- 11.2 The factors that Lifetime Care will consider in deciding whether to ask the participant if they would prefer Lifetime Care to consider the dispute application as a request to make a new assessment of the participant's treatment and care needs, include:
- a) Lifetime Care considers it more likely than not that a new assessment would lead to a different outcome, compared with the previous assessment;
  - b) the information provided in the dispute application was not previously requested or received by Lifetime Care in its earlier assessment of needs; and/or
  - c) new information is provided that is likely to change Lifetime Care's assessment of the participant's treatment and care needs.
- 11.3 A new assessment by Lifetime Care may consider additional information not available to the previous decision maker.
- 11.4 Any new assessment is to be conducted in accordance with Part 5 of the Guidelines, as applicable.
- 11.5 If the participant does not achieve the outcome sought from the new assessment, the participant can request that the original dispute application be treated as a dispute application in relation to the new assessment.

### ***Alternative dispute resolution: contact with participant***

- 11.6 If contact with, or a meeting is required with, the participant or service provider/s to conduct a new assessment, or to clarify any issues in dispute, Lifetime Care will arrange a suitable time and venue. Lifetime Care will attempt to contact the participant as soon as possible and ideally within 5 working days of receipt of the dispute application.
- 11.7 If a meeting is arranged Lifetime Care will notify the participant of:
- a) the proposed time, date and location of any meeting;
  - b) the names of any other people attending the meeting. *For example, service providers or treating health professionals; and*
  - c) the purpose of the meeting. *For example, to explore issues in dispute and discuss options for resolution.*
- 11.8 Lifetime Care may contact any of the participant's treating health practitioners or service providers to discuss or clarify any issues in dispute, whether a meeting occurs or not.
- 11.9 The assessment by a dispute assessor will not proceed if the participant withdraws their dispute application, whether a meeting occurs or not.

## **12 Referral for external review by a dispute assessor**

- 12.1 The dispute is to be referred to a dispute assessor within 5 working days of the later of:
- a) receipt of the dispute application;
  - b) receipt of additional information requested pursuant to clause 9.2 or 10.1; or
  - c) a request from the participant that an original dispute application be treated as a dispute application in relation to a new assessment pursuant to clause 11.5.
- 12.2 Lifetime Care will choose a dispute assessor from Lifetime Care's list of dispute assessors.
- 12.3 Lifetime Care will advise the participant of the arrangements for the assessment in writing, which will include the name and specialty of the assessor.
- 12.4 When choosing a dispute assessor, Lifetime Care will consider:
- a) the needs of the participant. *For example, the nature of their injury (e.g. traumatic brain injury, spinal cord injury);*
  - b) the issue in dispute or the aspect of Lifetime Care's assessment of treatment and care needs that is in dispute;
  - c) the location of the participant and the assessor;
  - d) the specialty and expertise of the assessor;
  - e) the availability of the assessor; and
  - f) whether an interpreter is required.

## **13 Grounds for objection to the dispute assessor**

- 13.1 The participant may request Lifetime Care reallocate the dispute to a different assessor or assessors on the basis that the participant considers that the assessor is not appropriate. To do this, the participant must:
- a) apply within 10 working days of receiving the notification of the name of the assessor; and
  - b) provide detailed reasons as to why they think the assessor is not appropriate.
- 13.2 Lifetime Care will make a decision on the request for reallocation within 10 working days of receipt. Lifetime Care will reallocate the dispute to a different assessor if satisfied that there are reasonable grounds for believing that the assessor is not appropriate.
- 13.3 Except where procedural fairness considerations mean it is not appropriate, an assessor who has previously determined a dispute assessment for a participant may be appointed to assess another unrelated dispute relating to that participant. *For example, a dispute assessment for a different type of dispute under another part of the Guidelines.*
- 13.4 Lifetime Care may reallocate a dispute to a different assessor following allocation if required. This could be in the event of illness, on request of the dispute assessor, or if the assessor is otherwise unable to assess the dispute in a reasonable timeframe.

## 14 Assessment by the dispute assessor

- 14.1 When referring a dispute to the assessor, Lifetime Care will provide the assessor and participant with a copy of:
- a) a letter referring the assessment of the dispute;
  - b) the participant's application in relation to the dispute, and any supporting documents;
  - c) Lifetime Care's certificate of assessment of the treatment and care needs of the participant and a copy of all other documentation by Lifetime Care in relation to this certificate, including all documents considered by Lifetime Care when making its assessment;
  - d) all documents Lifetime Care considers relevant to Lifetime Care's assessment of the participant's treatment and care needs. *For example, certificates of previous assessments of treatment and care needs for the requested item or service, the most recent treating specialist report or neuropsychological report; and*
  - e) a copy of any additional documentation or information received relating to the certificate since the request was made; and
  - f) a copy of any information that the participant requests be provided to the assessor.
- 14.2 The dispute assessor is not bound by the rules of evidence in conducting an assessment. The dispute assessor may determine their own procedure and may inquire into any such issue as they see fit. The dispute assessor 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.
- 14.3 Once the dispute is referred to a dispute assessor, the dispute assessor is to determine how the assessment will proceed and may do any or all of the following:
- a) contact the participant to clarify issues in dispute;
  - b) contact any treating health professional or service provider, where appropriate, to clarify any issues in dispute or request further information;
  - c) request the participant attend an assessment (clinical examination) with the dispute assessor;
  - d) request that the participant attend an assessment (clinical examination) with another health professional (who is not the dispute assessor) in accordance with section 27 of the Act and a report be provided to the dispute assessor to make their decision; and/or
  - e) assess the dispute on the documentary material provided.
- 14.4 The dispute assessor may decide that a matter be assessed without a clinical examination of the participant if the dispute assessor is satisfied that:
- a) a decision can be made based on the information provided;
  - b) a clinical examination is unnecessary in that it would not provide new information besides that already provided in the documentation; and/or

c) the individual needs of the participant preclude an examination, or an examination would cause the participant distress.

14.5 In all cases, the dispute assessor must attempt to resolve the dispute fairly and as quickly as possible and must take all steps as are reasonably practicable to ensure the participant is aware of the role of the dispute assessor as an independent decision-maker, making a legally binding decision that will be documented in their certificate.

14.6 Administrative support will be provided to the dispute assessor during the assessment process where required.

## 15 Clinical examination arranged if required

### Relevant section of the legislation

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

### 27 Co-operation of participant

A participant in the Scheme must comply with any reasonable request made by the Authority or an assessor in connection with an assessment of or dispute about the treatment and care needs of the participant, including a request to undergo a medical examination or other examination by a health professional.

15.1 When a clinical examination is required, Lifetime Care will notify the participant in writing of the time, date and location of the clinical examination, and the name and specialty of the health professional. This may be organised through administrative support.

15.2 Before the examination Lifetime Care will notify the participant:

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

## 16 Clinical examination procedures

16.1 The dispute assessor, or the health professional conducting the examination, is to 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 participant in order to assist in any way required. Legal or medical representatives of the participant cannot be present during a clinical examination unless Lifetime Care gives prior approval and is satisfied that the circumstances warrant it.

16.2 A legal guardian, carer or other support person may provide information to the dispute assessor, or health professional conducting the examination, during a clinical examination, but only when asked by the dispute assessor or health professional conducting the examination. At their discretion, the dispute assessor, or health professional conducting the examination, may ask any legal guardian, carer or support person to leave the clinical examination if this request is reasonable and the circumstances warrant it. *For example, a*

*support person continually raises their voice and attempts to speak for the participant. The support person does not respond to requests for the participant to provide information instead, which is affecting the assessment and causing the participant to be visibly distressed.*

- 16.3 Lifetime Care will pay the reasonable costs associated with attendance of the participant, and if required, the reasonable expenses of one accompanying person such as the participant's guardian, carer or other support person to attend any clinical examination. Payment of any such costs requires prior approval from Lifetime Care.
- 16.4 When the clinical examination occurs, the dispute assessor, or health professional conducting the examination, will take such measures as are reasonably practicable to ensure that the participant and anyone accompanying them:
- a) understands the reason for the examination and the issues the dispute assessor will consider in assessing the dispute, or which the health professional conducting the examination has been asked to address;
  - b) is aware of what the examination will involve;
  - c) is aware of the role of the health professional in providing an independent opinion; and
  - d) is aware of the role of the dispute assessor.

## **17 Use of interpreters in 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 participant to an examination or assessment, such as a carer or support person, cannot act as an interpreter.

## **18 Certificate issued by assessor**

- 18.1 The dispute assessor will issue a certificate as to its determination under section 24(4) of the Act. The certificate will include written reasons for the decision and will be in the form approved by Lifetime Care.
- 18.2 The dispute assessor will send the certificate to the participant and Lifetime Care within 15 working days of the assessment conducted by the dispute assessor, whether a clinical examination was conducted or whether the assessment occurred only on the documentation provided to the dispute assessor.

## **19 Determination is legally binding**

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

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

### **26 Effect of assessment**

- (1) The Authority's assessment of the treatment and care needs of a participant is final and binding for the purposes of this Act and any proceedings under this Act.
- (2) The Authority is to revise its assessment to make any changes that may be necessary to give effect to any determination by an assessor or Review Panel of a dispute about those treatment and care needs.
- (3) The Authority's assessment of the treatment and care needs of a participant supersedes any earlier assessment by the Authority of those needs.

19.1 If required, Lifetime Care will revise its assessment to give effect to the dispute assessor's determination within 5 working days of receipt.

## **20 Review of the assessor's determination**

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

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

### **25 Review of assessor's determination**

- (1) The Authority or a participant can refer an assessor's determination of a dispute about the treatment and care needs of the participant for review by a Review Panel, but only on one or more of the following grounds:
  - (a) the availability of additional relevant information about the treatment and care needs of the participant, being information that was not available, or could not reasonably have been obtained, at the time of the assessor's determination and that is capable of having a material effect on the determination,
  - (b) the assessor's determination was not made in accordance with the LTCS Guidelines,
  - (c) the assessor's determination is demonstrably incorrect in a material respect.
- (2) An assessor's determination can be referred for review not later than 28 days after the assessor's certificate of determination is given to the Authority and the participant.
- (3) The Authority is to convene a panel of 3 assessors to constitute the Review Panel for the review of an assessor's determination.
- (4) On its review, the Review Panel can confirm the assessor's determination or can revoke the assessor's determination and substitute its own determination, giving the Authority and the participant a certificate of the determination and setting out the Review Panel's reasons for any finding on which its determination is based.
- (5) In conducting its review, a Review Panel must take into account any written submissions prepared by or on behalf of the participant that are submitted to the Panel.
- (6) In conducting its review, a Review Panel must take into account any written submissions prepared by or on behalf of the participant that are submitted to the Panel.

20.1 The participant or Lifetime Care may apply for review of the determination of the dispute assessor under section 25(1) of the Act.

20.2 Applications for review made by a participant are to be sent to Lifetime Care. Lifetime Care's postal address is:

Lifetime Care and Support Authority  
icare  
GPO Box 4052  
Sydney NSW 2000

20.3 Any email, facsimile or internet transfer sent on 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.

20.4 An application for review must be made within 28 calendar days of the date that the dispute assessor's certificate is given to the participant and Lifetime Care.

20.5 A participant or Lifetime Care cannot apply for a review of a determination made by a Review Panel about a participant's treatment and care needs.

20.6 An application for review must:

- a) be in writing (letter or email);
- b) include the participant's name, address and contact details;
- c) include a clear statement as to why a review is requested in relation to the grounds for review listed in section 25 of the Act, together with reasons; and
- d) attach any relevant information or medical reports that are relevant to the application.

20.7 If Lifetime Care identifies a potential ground or grounds for review and the participant does not apply for a review, Lifetime Care is obliged to apply for review if it forms the view that the review, on the ground or grounds identified, is likely to have an outcome which will make a material practical difference to the participant or to Lifetime Care.

20.8 If Lifetime Care is the applicant for review, it is required to advise the participant in writing prior to the submission of any application for review, including the information set out in 20.6 above, and seek submissions as to whether the dispute application should be referred to the Review Panel or dismissed pursuant to clause 20.10 below. The participant must provide any such submissions within 20 working days of receiving the advice from Lifetime Care described in this clause.

20.9 Lifetime Care will acknowledge a review application within 10 working days of receipt.

20.10 The application for review may be dismissed:

- a) if it is not received within 28 calendar days of receipt of the dispute assessor's certificate;
- b) if it relates to a review panel certificate;
- c) if it does not identify, on its face, one or more of the grounds set out in section 25(1) of the Act.

20.11 Lifetime Care will advise the participant as to whether the application is to be accepted and referred to a Review Panel or is dismissed, supported by a brief statement of reasons:

- a) if the participant is the applicant for review: within 20 working days of receiving the application for review;

- b) if Lifetime Care is the applicant for review: within 5 working days of receiving submissions from the participant or, if the participant does not provide submissions, within 5 working days of the last date for the provision of submissions.

## **21 Alternative to review**

- 21.1 In a case where the review application could be regarded as a request for Lifetime Care to make a new assessment of needs or contains information that may allow Lifetime Care to make a new assessment, clause 11 above applies, with references to a “dispute application” in that clause to be taken to be references to a “review application” for the purposes of this clause.

## **22 Referral to a Review Panel**

- 22.1 Lifetime Care will convene a Review Panel pursuant to one of clauses 22.2 and 22.3 within 10 working days of the decision to refer the application to a Review Panel.
- 22.2 If Lifetime Care is not the applicant for review, it will select three assessors from its list of dispute assessors (subject to clause 22.4), 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) the issues in dispute and the applicant’s grounds for review;
  - c) the location of the injured person and the assessors;
  - d) the specialty and expertise of the assessors;
  - e) the availability of the assessors; and
  - f) whether an interpreter is required.
- 22.3 If Lifetime Care is the applicant for review, it will allow the participant to select the members of the review panel from its list of dispute assessors (subject to clause 15.5) and will convene the Review Panel in accordance with those selections.
- 22.4 Whether convened pursuant to clause 20.2 or 20.3, the Review Panel must not include the dispute assessors whose decision is the subject of the application for review.
- 22.5 Lifetime Care will advise the participant of the arrangements for the conduct of the review by 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.
- 22.6 Lifetime Care may contact the injured person prior to the conduct of the review 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.

## **23 Grounds for objection to the review panel**

- 23.1 The participant may request that the dispute be reallocated to a differently convened Review Panel on the basis that they consider any one of the assessors is not appropriate to assess

the dispute. This request may apply to any or all of the assessors on the Review Panel. To do this, the participant 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 is not appropriate.

23.2 If the participant selected an assessor or more than one assessor pursuant to clause 22.3, that party may not request reallocation of the review to a differently convened Review Panel on the basis that the assessor/s selected by the participant is/are not appropriate to assess the dispute.

23.3 Lifetime Care will make a decision on the request for reallocation within 10 days of receipt of the request. Lifetime Care will reallocate the dispute if satisfied that there are reasonable grounds for believing that the assessor/s is unsuitable.

23.4 It is generally 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.*

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

24.1 When the Review Panel is convened, the Review Panel will appoint a chairperson and Lifetime Care will send the Review Panel copies of:

- a) all material that was before the dispute assessor, including the decision by Lifetime Care about the participant's treatment and care needs;
- b) the original certificate issued by the dispute assessor;
- c) the review application and all accompanying documents; and
- d) any additional documentation or information received since the review application was made.

24.2 The Review Panel's initial meeting or teleconference will occur as soon as possible and within 20 working days of the date the Review Panel was convened.

24.3 For the avoidance of doubt, the Review Panel's initial meeting or teleconference may occur in the absence of the parties.

## **25 Procedures for Review Panel assessment**

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

25.2 The Review Panel assessment process will consider all aspects of the dispute afresh which will involve:

- a) deciding whether one or more of the review grounds are made out;

- b) deciding whether another clinical examination of the participant is required, or if the assessment will be completed on the papers provided;
- c) deciding whether the Review Panel will confirm the decision of the dispute assessor or revoke that decision;
- d) deciding whether any additional information is required in order to make a decision, whether from the applicant, any other party to the review or any third party as it sees fit;
- e) deciding whether and how to contact the applicant, any other party to the review or any third party as it sees fit; and
- f) considering any new information that was not before the dispute assessor.

25.3 If the Review Panel decides that another clinical examination or additional information is required, the following clauses from this part apply:

- a) clause 10; Requesting further information or documentation;
- b) clause 15; Clinical examination arranged if required;
- c) clause 16; Clinical examination procedures; and
- d) clause 17; Use of interpreters in clinical examinations.

25.4 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.

25.5 Administrative support will be provided to the Review Panel during the review where required.

25.6 For the avoidance of doubt, the Review Panel need not conduct a hearing or any other meeting or conference with all or any of the parties.

## **26 Review Panel determination and certificate**

26.1 The Review Panel can confirm the determination of the Assessment Panel or revoke the determination and substitute its own determination.

26.2 The Review Panel will issue a certificate that certifies their determination of the dispute. The certificate will include written reasons for the determination and will be in the form approved by Lifetime Care.

26.3 The Review Panel will issue their certificate to the participant and Lifetime Care within 15 working days of their final contact, clinical examination or final teleconference, whichever is latest.

26.4 Where required, Lifetime Care will implement the determination within 5 working days of receipt.

## **27 Corrections of obvious errors in a certificate**

27.1 If a participant considers that a dispute assessor or Review Panel has made an obvious error in a certificate, the participant may make an application to Lifetime Care to have the error

corrected within 30 working days of the date of the certificate. An obvious error may also be corrected as a result of the identification of an obvious error in the certificate by the relevant dispute assessor or Review Panel or by Lifetime Care.

- 27.2 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.
- 27.3 An application to have an obvious error corrected must be made in writing, including the details of the obvious error and the suggested correction.
- 27.4 A dispute assessor or Review Panel which identifies an obvious error in the certificate must advise Lifetime Care within 30 working days of the date on the certificate.
- 27.5 Within 10 working days of receipt of advice from the dispute assessor or Review Panel pursuant to clause 20.4, or identification of the error by Lifetime Care (as applicable), Lifetime Care will notify the participant of the advice or identification of the obvious error (as applicable). The participant has 20 working days from receipt of that notification in which to make a submission as to whether there is an obvious error which should be corrected.
- 27.6 Lifetime Care will send the application to the dispute assessor or Review Panel, as relevant, within the later of 10 working days after:
- a) receipt of the application; or
  - b) any submission from the participant.
- 27.7 The dispute assessor or Review Panel, as relevant, must decide whether to issue a replacement certificate within 20 working days of receipt of the application to correct the obvious error, or receipt of the submission from the participant.
- 27.8 The dispute assessor or Review Panel, as relevant, may issue a replacement certificate that corrects any obvious error and that will replace the previous certificate. Any replacement certificate must be issued to Lifetime Care and the participant. If a replacement certificate is issued, the replacement certificate is to be identified as a replacement certificate and will supersede the previous certificate.

## **28 Legal costs**

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

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

#### **29 No legal costs payable for assessment or review**

- (1) No legal costs are payable by the Authority for or in respect of legal services provided to a participant in the Scheme in connection with an assessment under this Part of the treatment and care needs of the participant or the determination or review of a determination under this Part of a dispute about such an assessment.
- (2) In this section, legal services and legal costs have the same meanings as in the Legal Profession Uniform Law (NSW).

## **Part 5: Assessment of treatment and care needs**

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 5 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

Any reference to the participant means their tutor, legal guardian or legal representative where this applies.

### **1 Assessment and planning principles**

1.1 The principles below direct the overall approach to assessment and planning for participants and are to be used by Lifetime Care and service providers.

1.2 Principles for the general approach to assessment of treatment and care needs are:

- a) the participant is central to all planning and decision making;
- b) the participant's right to exercise choice and control should be evident in plans and requests for services;
- c) the participant is as actively involved as they wish to be in all decision making and planning about their treatment, rehabilitation and care services, with support provided as needed;
- d) the Scheme provides participants with opportunities to maintain and develop skills to maximise their independence, life roles and community participation, so as to facilitate social and economic inclusion/ participation; and
- e) treatment, rehabilitation and care services meet treatment and care needs, and develop the individual's participation, independence and life roles while respecting flexibility and lifestyle choices.

1.3 Principles for communication are:

- a) effective communication with the participant and people close to them is essential for assessment, planning and delivery of services; and
- b) communication is in ways which best suit the participant's individual circumstances.

1.4 Principles for assessment are:

- a) the participant's needs are identified through a comprehensive assessment of their strengths, abilities, limitations and desired participation goals. The assessment considers any potential facilitators and barriers to achieving the goals;
- b) the participant's views are essential to their assessment and plan;
- c) assessments are conducted using objective tools wherever possible; and
- d) management plans are completed for any risks identified within the assessment, with the input and agreement of the participant, people close to them, service providers and Lifetime Care.

1.5 Principles for plans and requests for services are:

- a) plans and requests are directed by the participant, outlining their identified goals and expected outcomes;
- b) in establishing goals with the participant, any potential environmental or personal barriers or facilitators are recorded and addressed; and
- c) plans and requests explicitly state which services are to be funded by Lifetime Care to meet the participant's motor accident injury related treatment and care needs and may include information about services Lifetime Care does not fund.

1.6 Principles for service delivery are:

- a) effective service delivery is participant-centred and involves communication and cooperation with the participant, their family, service providers and Lifetime care;
- b) effective service delivery maximises the participant's independence and their participation in life roles in the community;
- c) the participant has the right to direct their service delivery to the extent that this is possible or that they wish to; and
- d) participants with decision making capacity have the right to refuse services, even when others may consider this choice to be unwise.

## **2 Procedures to be followed in connection with assessments**

### ***Assessment of a participant's treatment and care needs***

- 2.1 Lifetime Care must make an assessment of the treatment and care needs of a participant in the Scheme in accordance with the Act and the Guidelines.
- 2.2 Lifetime Care may conduct an assessment of the treatment and care needs of a participant in the Scheme if the need is identified by Lifetime Care, and/or if requested by the participant or someone on their behalf.
- 2.3 A request may be made:
  - a) on a form;
  - b) in writing (e.g. by letter, email or fax); or
  - c) verbally to Lifetime Care or a service provider.
- 2.4 If a request is made to a service provider by a participant or someone on their behalf, the service provider request Lifetime Care to conduct an assessment.

- 2.5 Lifetime Care's procedures for requesting services must be used by a service provider when requesting Lifetime Care to conduct an assessment. This includes using Lifetime Care's approved forms for requesting an assessment. All of Lifetime Care's approved forms are available at [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au).
- 2.6 Lifetime Care may request that a participant, service provider or other person on the participant's behalf provides additional information if there is insufficient information contained within the request to undertake an assessment of needs, or if the request has not been submitted on the current version of Lifetime Care's form.
- 2.7 A request for an assessment by Lifetime Care may relate to more than one of the treatment and care needs listed in section 5A(1) of the Act. Lifetime Care may decide to assess more than one request for assessment of treatment and care needs at the same time, regardless of whether this was requested.
- 2.8 Lifetime Care may assist a participant to access services or to request Lifetime Care to undertake an assessment of their needs on their behalf. This may include funding a service provider such as a case manager.

#### ***Lifetime Care reviewing requests***

- 2.9 Where possible, Lifetime Care will make its assessment within 10 working days of receipt of a request, where it has all relevant information to assess the treatment and care needs, except for requests for:
- a) prostheses; or
  - b) home and transport modification, unless the cost of the modification is under \$10,000.
- 2.10 In relation to requests for prostheses and home and transport modifications over \$10,000, Lifetime Care will provide written advice to the participant about the status of a request within 20 working days of receipt of the request.
- 2.11 Lifetime Care will give to the participant a copy of its reasons for approval or refusal of a request in a certificate in accordance with section 23(4) of the Act in the relevant timeframe as outlined above. Lifetime Care will also provide information about the process for resolving disputes about treatment and care needs.

#### ***Ongoing assessments***

- 2.12 Lifetime Care will conduct ongoing assessments when the participant's treatment and care needs are likely to change over time. In deciding the intervals at which assessments are to be carried out, Lifetime Care may have regard to any of the following factors and any other factors it considers relevant, including:
- a) the nature and severity of the motor accident injury;
  - b) whether the participant is an interim participant, when assessments of treatment and care needs may be expected to occur more frequently;
  - c) the frequency of any requests received from the participant;

- d) when the motor accident injury occurred, given that participant's treatment and care needs may change during the recovery process;
- e) the extent of the participant's treatment and care needs;
- f) whether and how the participant's motor accident injury affects their ability to request that Lifetime Care assesses their needs; and
- g) where possible, the extent to which the need for multiple assessments can be decreased.

### ***External assessments***

2.13 Lifetime Care may request a participant undergo an assessment or a medical examination with an external service provider or a health professional.

2.14 If the participant agrees to undergo an assessment or medical examination, Lifetime Care may request an external service provider or health professional to:

- a) complete a report;
- b) complete a plan or a request for services on one of Lifetime Care's approved forms; and/or
- c) provide additional information to accompany a plan or request already submitted to Lifetime Care.

2.15 If a participant refuses a reasonable request which results in Lifetime Care being unable to make an assessment, Lifetime Care may have insufficient information to determine that the requested treatment or care need is reasonable and necessary.

2.16 If Lifetime Care refuses a requested treatment or care need because it has insufficient information to determine that the requested treatment or care need is reasonable and necessary because the participant refuses a reasonable request to undergo an assessment or medical examination, Lifetime Care will document the refusal by informing the participant or a person acting on their behalf, in writing, that:

- a) Lifetime Care is unable to make a decision to approve the treatment or care need;
- b) the reasons for, and circumstances of, the refusal of the treatment or care need; and
- c) Lifetime Care will not arrange and pay for services to meet the treatment and care need.

## **3 Methods used to determine treatment and care needs**

3.1 In undertaking an assessment, Lifetime Care will:

- a) take the participant's views into consideration;
- b) identify the participant's goals, aspirations, strengths, capacity, circumstances and context;
- c) assess, with the participant, their activity limitations, participation restrictions or barriers and needs arising from the participant's motor accident injury;
- d) assess risks and safeguards in relation to the participant;
- e) wherever possible, relate treatment and care needs to the participant's stated goals and aspirations;

- f) consider the assessment and planning principles in the Guidelines;
- g) wherever possible, use appropriate standardised objective assessment tools in force from time to time and as published on Lifetime Care's website at: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au).

3.2 Information that Lifetime Care may require to conduct an assessment of a participant's treatment and care needs may include:

- a) any information provided in any request for a treatment and care need;
- b) answers to questions posed by Lifetime Care or external service providers;
- c) hospital records;
- d) treating doctor's reports and other medical reports;
- e) past medical records or school records;
- f) other pre-accident information or general medical information; and
- g) any other information Lifetime Care considers relevant.

#### **4 Reasonable and necessary criteria used to determine needs**

4.1 Part 6 of the Guidelines outlines the criteria Lifetime Care may consider in determining reasonable and necessary treatment and care needs.

#### **5 Information needed to determine whether a treatment and care need is related to the motor accident injury**

5.1 In deciding whether a treatment or care need is related to the motor accident injury, Lifetime Care may consider:

- a) information in 3.2 above;
- b) whether it is possible to assess the nature and extent of any pre-existing or co-existing injury to determine the treatment and care need solely related to the motor accident;
- c) whether a pre-existing injury or co-existing injury has been exacerbated by the motor accident injury;
- d) whether there are other needs related to the motor accident injury that may be affected by a decision that a need is not related; and
- e) any other information Lifetime Care considers relevant.

#### **6 Incurred expenses and reimbursement**

6.1 Where possible, assessment of treatment and care needs is to be undertaken before expenses are incurred on treatment, items or services.

6.2 If a participant, or someone on their behalf, incurs an expense and requests Lifetime Care reimburse the expense, Lifetime Care may:

- a) assess the treatment and care needs that relate to the motor accident injury in accordance with this Part; and
- b) use the criteria in Part 6 of the Guidelines to determine whether the expense incurred is reasonable and necessary.

## **Part 6: Determination of reasonable and necessary treatment and care needs**

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 6 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment or determination of treatment and care needs made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### **1 Paying for reasonable expenses**

- 1.1 Under section 11A of the Act Lifetime Care is to pay for reasonable expenses incurred by or on behalf of a person in relation to the assessed treatment and care needs of the person while the person is a participant in the Scheme where those treatment and care needs are reasonable and necessary in the circumstances and relate to the motor accident injury in relation to which the person is a participant in the Scheme.
- 1.2 Lifetime Care is to make an assessment of treatment and care needs that are reasonable and necessary in the circumstances, relate to the participant's motor accident injury, and satisfy the eligibility requirements in the Guidelines.
- 1.3 This Part of the Guidelines outlines the criteria that Lifetime Care will consider in determining reasonable and necessary treatment and care needs.
- 1.4 Treatment and care needs are defined in section 5A (1) of the Act as a participant's needs in connection with any of the following:
  - a) medical treatment (including pharmaceuticals);
  - b) rehabilitation;
  - c) ambulance transportation;
  - d) respite care;
  - e) attendant care services;
  - f) aids and appliances;
  - g) prostheses;
  - h) education and vocational training;
  - i) home and transport modification;

- j) workplace and educational facility modifications; and
- k) such other kinds of treatment, care, support or services as may be prescribed by the regulations.

- 1.5 There may be treatment and care needs that are related to the motor accident injury that are reasonable and necessary in the circumstances, but which are not needs in connection with treatment and care needs as defined in section 5A of the Act or regulations, if any. Lifetime Care is not able to pay for these.
- 1.6 Lifetime Care is not able to pay for:
- a) treatment and care needs that are not reasonable and necessary in the circumstances; or
  - b) an incurred expense that is not reasonable.

## **2 Criteria used to determine a participant's treatment and care needs**

- 2.1 Lifetime Care is to determine a participant's treatment and care needs in accordance with the Act and the Guidelines.
- 2.2 Lifetime Care will assess a participant's treatment and care needs on a case by case basis applying the criteria specified in this Part of the Guidelines, relevant criteria in other Parts of the Guidelines, and any other criteria or information Lifetime Care considers relevant in the circumstances.
- 2.3 The criteria or considerations that Lifetime Care may use in making decisions about whether treatment, equipment or a service is reasonable and necessary include whether:
- a) the treatment, equipment or service will benefit the participant;
  - b) the treatment, equipment or service is appropriate to the participant's treatment and care needs;
  - c) the provider is appropriate;
  - d) the treatment, equipment or service is cost effective; and
  - e) the treatment or care need relates to the motor accident injury in respect of which the person is a participant.

### ***Benefit the participant***

- 2.4 In determining whether the participant will benefit from the proposed treatment, equipment or service, Lifetime Care may consider whether:
- a) the participant has been involved in the planning of goals and outcomes;
  - b) where possible, the participant has identified, understood and agreed to the goals and outcomes;
  - c) the proposed treatment, equipment or service relates to the participant's goals and makes it easier for them to participate in the community;
  - d) the participant prefers the proposed treatment, equipment or service to others or they have agreed to the service request;
  - e) there is relevant information showing the requested treatment, equipment or service will benefit the participant;

- f) any risk from providing the treatment, equipment or service is sufficiently offset by the expected benefits;
- g) any risk from providing the treatment, equipment or service is assessed and a plan to manage any risk is developed and documented with the input and agreement of the participant, people close to them, service providers and Lifetime Care;
- h) the participant's recovery/management will be progressed or maintained by the outcomes;
- i) an adverse outcome or risk of such an outcome may occur if the treatment, equipment or service is not provided; and
- j) the treatment, equipment or service or similar or related services have been provided in the past with positive results or outcomes.

***The treatment, equipment or service is appropriate***

2.5 In deciding whether the treatment, equipment or service is appropriate to meet treatment and care needs, Lifetime Care may consider whether:

- a) the proposed treatment, equipment or service relates to the participant's goals;
- b) the treatment, equipment or service is in accordance with current clinical practice, is evidence- based or evidence informed and/or in accordance with clinical guidelines;
- c) the requested treatment, equipment or service is consistent with the participant's current medical or rehabilitation management;
- d) there is evidence that the requested treatment, equipment or service is effective;
- e) a similar treatment, equipment or service is currently provided;
- f) the proposed treatment, equipment or service is congruent with other services (or proposed services) to be provided to the participant;
- g) there are any contraindications of the proposed treatment, equipment or service;
- h) other treatments, provision of equipment or services will not provide an improved outcome;
- i) after considering other available treatments, equipment or services, the proposed treatment, equipment or service is the most appropriate available;
- j) the participant prefers the proposed treatment, equipment or service to others or has agreed to the proposed treatment, equipment or service;
- k) if the treatment, equipment or service is new or innovative, there is sufficient rationale for offering it and measures exist to quantify its outcomes. Lifetime Care will consider there is sufficient rationale for new or innovative treatment only when satisfied that:
  - i. its efficacy is demonstrated by peer reviewed journal articles or other evidence based or evidence-informed literature;
  - ii. it is widely supported by practitioners in the field;
  - iii. it has progressed past the early stages of clinical trial;
  - iv. there is a Medical Benefits Schedule (MBS) item number (for medical treatment, procedures and surgery); and

- v. when there is a risk associated with the treatment, the participant has made an informed choice to accept the risk and has documented their consent.

***The provider is appropriate***

- 2.6 In deciding whether the provider of the treatment, equipment or service is appropriate, Lifetime Care will consult with the participant or a person acting on behalf of the participant and consider whether:
- a) the participant has chosen or expressed a preference for a provider, or has agreed to the proposed provider;
  - b) the provider is qualified and appropriately experienced to provide the service unless the participant has chosen another provider;
  - c) the provider of the treatment, equipment or service is available to meet treatment and care needs;
  - d) the participant can readily access the provider;
  - e) if the provider is a health practitioner as defined in section 5 of the Health Practitioner Regulation National Law (NSW) No 86a, the provider is registered by the Australian Health Practitioner Regulation Agency, if applicable; and
  - f) the provider is an approved provider under Part 18 of the Guidelines (if applicable).

***The treatment, equipment or service is cost effective***

- 2.7 In deciding whether the treatment, equipment or service is cost effective, Lifetime Care will consider:
- a) the long term benefits compared to the short term benefits;
  - b) whether the expected outcomes outweigh the cost;
  - c) fees charged by providers of comparable services in the same geographical or clinical area;
  - d) if other treatment, services or equipment are not available, appropriate or able to be provided when needed;
  - e) whether equipment or modifications are required;
  - f) cost and other factors relating to lease or rental of equipment when compared to purchase or modification;
  - g) whether there are other services that will achieve comparable outcomes;
  - h) relevant advances in technology;
  - i) changes to the participant's needs over time.

***The treatment or care need relates to the motor accident injury***

- 2.8 In deciding whether the treatment or care need is related to the motor accident injury, Lifetime Care will consider:
- a) the evidence that demonstrates that the service relates to the injury or injuries sustained in the motor accident;
  - b) whether pre-existing injuries are exacerbated; and

- c) time since injury, subsequent injuries and comorbidities.

### **Other relevant criteria**

- 2.9 Lifetime Care may consider other relevant criteria or considerations including the participant's age, ethnic, cultural and linguistic background.

### **3 Other guidelines to be used**

- 3.1 Under section 58(3) of the Act, the Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- 3.2 These Guidelines adopt the following current versions of the following publications for the purpose of undertaking assessments:
  - a) *Neuropsychological assessment of children and adults with traumatic brain injury: Guidelines for the NSW Compulsory Third Party Scheme and Lifetime Care and Support Scheme;*
  - b) *Guidelines for the prescription of a seated wheelchair or mobility scooter for people with a traumatic brain injury or spinal cord injury;*
  - c) *Guidelines for the prescription of a seated wheelchair or mobility scooter for people with a traumatic brain injury or spinal cord injury: Supplement 1: Wheelchair features – Standing wheelchair;*
  - d) *Guidance on the support needs for adults with spinal cord injury;*
  - e) Any additional guidelines developed or adopted by Lifetime Care and published on Lifetime Care's website at: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au).
- 3.3 All publications and guidelines that are to be used are available on Lifetime Care's website at: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au).

### **4 Considering risk in assessing whether a treatment, equipment or service is reasonable and necessary**

- 4.1 An expense will not be reasonable, and a treatment and care need will not be reasonable and necessary if any of the following circumstances apply:
  - a) it is likely to cause harm to the participant;
  - b) it relates to an illegal activity; or
  - c) it poses an unacceptable risk to the participant or others.

### **5 What reasonable treatment and care expenses do not include**

- 5.1 An expense will not be reasonable, and a treatment and care need will not be reasonable and necessary if any of the following circumstances apply:
  - a) the service is not within any of the categories of treatment and care needs specified in section 5A of the Act or in the regulations, if any;
  - b) the treatment or service is for the participant's family members;

- c) the expense, treatment or service compensates for economic loss relating to the motor accident such as lost wages, weekly benefits or other forms of income maintenance or income support;
- d) the expense, treatment or service constitutes assistance to keep a business open, such as paying for temporary staff to do a participant's job;
- e) the expense, treatment or service relates to items lost or damaged in the motor accident;  
or
- f) the expense, treatment or service relates to payments for large capital items such as houses and cars.

5.2 Lifetime Care may have regard to other considerations in deciding that, in the circumstances, proposed or incurred expenses are not reasonable, or do not relate to reasonable and necessary treatment and care needs.

## **Part 7: Rehabilitation**

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 7 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs relating to rehabilitation made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### **1 Definition of rehabilitation**

- 1.1 Rehabilitation of an injured person means the process of enabling or attempting to enable the person to attain and maintain:
- a) the maximum level of independent living, and
  - b) full physical, mental, social and vocational ability, and
  - c) full inclusion and participation in all aspects of life.

### **2 Reasonable and necessary rehabilitation**

- 2.1 Lifetime Care considers treatment and care needs for rehabilitation to be reasonable and necessary when:
- a) the service is required as a result of the motor accident injury;
  - b) the service is likely to be effective and achieve a measurable improvement; and
  - c) the service promotes progress towards functional independence, participation and self-management or is associated with maintaining function and preventing deterioration or secondary health conditions.
- 2.2 Reasonable and necessary treatment and care needs for rehabilitation include:
- a) therapies such as physiotherapy, occupational therapy, speech pathology and psychology;
  - b) case management services, to facilitate access to services when a participant requires support to participate in rehabilitation or to identify, plan and resume participation; and
  - c) costs associated with the service provider's provision of rehabilitation, including documentation of plans, requests, reports, case conferences or other contact with other professionals treating the participant.
- 2.3 Reasonable and necessary rehabilitation does not include:

- a) treatment or services for a condition that existed prior to the motor accident;
- b) assistance to keep a business open. *For example, paying for temporary staff to do a participant's job; or*
- c) services required beyond the purpose of rehabilitation for the motor accident injury, such as participation in sports at an elite level.

2.4 Reasonable expenses in respect of a participant's assessed treatment and care needs in relation to rehabilitation will not generally include:

- a) services where the cost is included in the hospital or inpatient rehabilitation bed day fee;
- b) costs of telephone calls or internet connection for participants to arrange appointments by phone or email; or
- c) fees associated with cancellation or non-attendance after the first episode of non-attendance, unless the reason for non-attendance is beyond the participant's control.

### **3 Method of assessment and criteria used to determine reasonable and necessary rehabilitation services**

3.1 The assessment of treatment and care needs in connection with rehabilitation must:

- a) be made in collaboration with the participant and provider; and
- b) take into account the participant's individual needs for rehabilitation in the context of other treatment and services provided.

3.2 To determine whether a participant's need for rehabilitation services is reasonable and necessary in the circumstances, the following information is relevant:

- a) information relating to the biological, psychological and social factors that influence the participant's health as part of their assessment and treatment interventions;
- b) information about pre- or co-existing medical conditions that affect whether a treatment or care need for rehabilitation is related to the motor accident injury;
- c) information from a health professional or medical practitioner as to the likely cause of the presenting rehabilitation need, if the participant has pre- or co-existing medical conditions that may impact on their needs for or in connection with rehabilitation;
- d) clinical assessments and reports relating to the treatment or care need or the requested rehabilitation service;
- e) justification for the proposed intervention, including the relationship to the motor accident; and
- f) justification for the treatment process, including any associated rehabilitation as part of an overall treatment plan.

3.3 In assessing treatment and care needs for rehabilitation, Lifetime Care will also consider:

- a) rehabilitation must be recommended by a registered health practitioner (where registration applies) unless the participant resides outside Australia;
- b) rehabilitation must be directed and provided by a registered health practitioner (where registration applies) unless the participant resides outside Australia;

- c) delivered by an appropriately trained person under the supervision of a registered health practitioner (where registration applies) where appropriate (in the case of a home therapy program);
- d) a rehabilitation service must be requested prior to its commencement, unless urgent or delivered under an existing fee schedule;
- e) relevant aspects of the participant's health status that are expected to change with rehabilitation should be measured, such as pain, depression, activities of daily living, health-related quality of life and work performance, and those measures considered in any assessment of needs and any request for rehabilitation services; and
- f) goals that are relevant to the participant's injury must be developed and must be able to be measured in a manner that is reliable, valid and sensitive to change.

3.4 Lifetime Care adopts the *Clinical Framework for the Delivery of Health Services* in connection with rehabilitation.

#### **4 Concurrent treatment**

4.1 Lifetime Care considers more than one type of physical treatment (*for example, physiotherapy, osteopathy, chiropractic or exercise physiology*) and/or more than one type of psychological treatment (*for example, counselling and psychological treatment*) to be concurrent treatment.

4.2 Concurrent treatment occurs when treatment is provided contemporaneously by more than one type of provider (*for example, a participant receives chiropractic and physiotherapy treatment at the same time*) or where similar services are provided by one type of provider. *For example, when a participant receives physiotherapy and acupuncture from one provider who is qualified to provide both services.*

4.3 Lifetime Care recognises that a participant may require different types of rehabilitation services from a variety of professionals at the same time and may only fund concurrent treatments when:

- a) there is reasonable clinical justification;
- b) both or all concurrent treatments are part of an overall coordinated plan approved by Lifetime Care;
- c) treatment providers are in close communication to ensure that the provision of treatment and goals are closely aligned;
- d) there is written information which outlines the circumstances supporting the request for services in respect of both or all concurrent treatments; and
- e) treatments by the same type of provider are directed towards different conditions to achieve different treatment goals. *For example, different treatment goals for musculoskeletal physiotherapy and neurological physiotherapy.*

4.4 In assessing treatment and care needs for rehabilitation in relation to concurrent treatment, to avoid duplication of services, Lifetime Care will also consider:

- a) whether the physical treatment required by the participant can be provided by the same provider or service to treat one condition;
  - b) assessment of the aims of the services; and
  - c) confirmation that the services are complementary.
- 4.5 Lifetime Care does not regard receiving a range of different rehabilitation services at the same time to be concurrent treatment. *For example, physiotherapy treatment and a gym program.*
- 4.6 Lifetime Care does not regard receiving case management services and other rehabilitation services at the same time to be concurrent treatment.
- 4.7 Lifetime Care will generally regard the involvement of more than one case manager at the same time to be concurrent treatment, unless the involvement of more than one case manager is required to address a short-term need, such as to hand over to another provider of case management services.
- 4.8 Lifetime Care does not generally regard individual and group sessions provided by the same provider to be concurrent treatment. *For example, a participant receiving individual physiotherapy and group hydrotherapy services delivered by a physiotherapist.*

## **5 Gym and exercise programs**

- 5.1 Reasonable and necessary treatment or care needs in connection with rehabilitation include the reasonable and necessary cost of a gym or other exercise program developed in conjunction with a qualified exercise professional, such as a physiotherapist or exercise physiologist.
- 5.2 Information required by Lifetime Care to assess a participant's treatment or care need in connection with rehabilitation may include:
- a) biological, psychological and social factors that influence the participant's need for gym membership or exercise program as part of their rehabilitation;
  - b) information from a qualified exercise professional, such as a physiotherapist or exercise physiologist about the proposed exercise program including frequency of attendance;
  - c) pre or co-existing medical conditions that affect whether a treatment or care need for gym membership or exercise program is related to the motor accident injury;
  - d) medical clearance from a relevant treating specialist that the participant is able to participate;
  - e) information about the need for an attendant care worker or support person to facilitate access and ensure safe participation;
  - f) justification for the proposed intervention, including the relationship to the motor accident; and
  - g) evidence of consistent participation in a previous exercise therapy or rehabilitation program, or attendance record for the gym or exercise program for subsequent requests.

- 5.3 To determine if expenses relating to gym memberships are reasonable, Lifetime Care will consider:
- a) the cost of two gyms in the participant's local area as a guide to the reasonable expense of a gym membership in the participant's circumstances;
  - b) if a participant expresses a particular preference to attend a gym that is more expensive than a local community gym, any justification for the proposed gym, including how attendance at the proposed gym is related to the motor accident.
- 5.4 If Lifetime Care determines that the cost of a gym that is more expensive than a local community gym is not reasonable, Lifetime Care may contribute the cost of a local gym membership towards the membership of the preferred gym and the participant is able to fund the difference.
- 5.5 Lifetime Care considers the assistance of an exercise physiologist or personal trainer to be reasonable and necessary in the circumstances only when:
- a) specialist assistance to exercise safely is required, and is assistance that an attendant care worker is unable to provide or cannot reasonably be trained to provide;
  - b) an attendant care worker or other support person is unable to provide the support; and
  - c) the provision of an exercise physiologist or personal trainer would not be concurrent treatment in accordance with clause 4.1 above.
- 5.6 Gym or other exercise programs that are not prescribed by a qualified exercise professional are not considered reasonable and necessary treatment and care needs.
- 5.7 Expenses associated with gym membership and attendance, such as clothing, towels, fitness/yoga mats and drink bottles, are generally not considered to be reasonable expenses in relation to the treatment and care need as they are costs which would be incurred by the participant regardless of the injury.

## **6 Application of this part**

- 6.1 Lifetime Care will apply this Part of the Guidelines to requests to assess a participant's treatment and care needs where another Part of the Guidelines does not apply. *For example, requests for driving lessons that are unrelated to the use of a modified vehicle would be assessed in accordance with this Part.*

## Part 8: Attendant care services

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 8 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs relating to attendant care services made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

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 or any other Guideline in any other circumstances.

### 1 Reasonable and necessary attendant care services

1.1 Lifetime Care considers treatment and care needs in connection with attendant care services (also referred to support worker services or community worker services) to be reasonable and necessary when the services:

- a) are required because of the motor accident injury;
- b) help the participant with everyday tasks, such as personal assistance, nursing, home maintenance and domestic services;
- c) assist the participant to maximise their independence;
- d) facilitate the participant's return to their former role or assist them to develop new functional skills and roles;
- e) are appropriate for the participant's age and circumstances, when compared with alternative options and models to meet their care need;
- f) reduce or eliminate the risk of harm to the participant or others; and
- g) are the least restrictive response to meet the participant's injury related needs.

1.2 Reasonable and necessary treatment and care needs in connection with attendant care services do not include circumstances where the services:

- a) are for an injury, condition or circumstance that existed before the motor accident or that are not a result of the motor accident;
- b) are of no clear benefit to a participant;
- c) are for other members of the participant's family or household;
- d) replace parental responsibilities. *For example, the supervision of a child of an age or level of dependence that would generally be expected to require parental supervision;*

- e) are provided in an unsafe environment or if the attendant care worker is placed at risk of harm. *For example, lifting a participant where this has been assessed as a manual handling risk; or*
  - f) substitute or replace a participant's employment. *For example, an attendant care worker performing work tasks for a participant.*
- 1.3 Lifetime Care may consider paying the reasonable expenses of domestic services in place of attendant care services to meet a care need that is related to the motor accident injury.

## **2 Personal assistance**

- 2.1 Attendant care services include personal assistance with daily living tasks including:
- a) showering, bathing, oral hygiene, dressing and grooming;
  - b) personal hygiene including bowel and bladder care;
  - c) eating and drinking;
  - d) taking medication
  - e) fitting and use of aids and appliances (equipment), hearing and communication devices;
  - f) mobility and transfers; or
  - g) health maintenance, such as positioning, application of splints, wound care and applying dressings, regular and routine exercises or stretches.
- 2.2 Attendant care services include personal assistance with the following tasks to assist the participant function in the community, including:
- a) selecting and planning activities;
  - b) facilitating engagement in activities;
  - c) meal preparation and other domestic tasks;
  - d) caring for dependants;
  - e) support with banking and shopping;
  - f) personal care; and
  - g) attending rehabilitation or medical appointments.
- 2.3 Attendant care services include personal assistance with the following tasks to assist the participant engage in rehabilitation, including:
- a) attendant care for community--based treatment, rehabilitation or associated activities;
  - b) therapy support, to implement a therapy program under the guidance and supervision of a health professional; or
  - c) weekend leave while the participant is an inpatient in a hospital or rehabilitation facility.
- 2.4 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to personal assistance will not generally include:
- a) travel expenses for the participant, their family or attendant care workers except where the participant requires attendant care services to get to and from treatment and rehabilitation services or to access the community where expenses are paid by Lifetime Care;

- b) personal care and nursing services whilst the participant is an inpatient in a hospital or during inpatient rehabilitation; or
- c) general training for skills an attendant care worker would reasonably be expected to possess to gain or maintain employment. *For example, manual handling and infection control.*

### **3 Nursing**

- 3.1 Nursing will be funded as part of an attendant care service when the participant needs direct care tasks that require the specialised skills, training or experience of a Registered Nurse.
- 3.2 Lifetime Care adopts the guidelines developed by the *Australian Community Industry Alliance*, formerly known as the *Attendant Care Industry Association (ACIA)* that aim to guide best practice in the attendant care industry, including provision of paid attendant care and nursing in the community, when assessing reasonable and necessary needs for nursing. These guidelines are available on the website of the *Attendant Care Industry Association*.

### **4 Home maintenance**

- 4.1 Home maintenance services include assistance with the following tasks:
  - a) routine home maintenance for upkeep and to ensure safe and easy access. *For example, cleaning of external gutters; removal of overhanging branches in the immediate vicinity of the home; and*
  - b) episodic or seasonal home maintenance tasks. *For example, window cleaning, changing light bulbs and smoke alarm batteries, and cleaning filters, exhausts and flyscreens.*
- 4.2 Home maintenance services are to be provided only for the property currently lived in by the participant.

### **5 Domestic services**

- 5.1 Domestic services include assistance with the following regular and routine tasks:
  - a) cleaning and similar tasks involved in the everyday operation and maintenance of a household;
  - b) gardening and lawn mowing to ensure safe and easy access;
  - c) car washing; and
  - d) swimming pool cleaning.
- 5.2 Domestic services are to be provided only for the property currently lived in by the participant.
- 5.3 Reasonable and necessary treatment and care needs in connection with domestic services do not include circumstances where the service:
  - a) is for upkeep of extensive grounds and gardens or a farm beyond what is required for safe and easy access to the house and immediate garden/land area. Lifetime Care considers it is reasonable to maintain the general amenity of the immediate land around a house,

approximating the size of a suburban block. *For example, a participant who lives on a property requests that Lifetime Care funds lawn mowing to the immediate land around his house, for an area that would be equal to a suburban block in his nearest town and pays for maintenance of fencing around this area to ensure safety from cattle in other paddocks. However, Lifetime Care does not consider it reasonable to maintain safe and easy access to the entire property including boundary fences.*

- b) is for a farming activity. *For example, planting crops or managing livestock;*
- c) falls outside of routine upkeep. *For example, decorative gardening and planting fruit and vegetable gardens;*
- d) falls outside of routine home maintenance or domestic services and requires a tradesperson to perform; or has been assessed by the attendant care provider as a work, health and safety issue or a task that would pose excessive risk to an attendant care worker undertaking the task. *For example, an attendant care provider may not allow their attendant care worker to change a lightbulb as this requires climbing a ladder;*
- e) is at a frequency which exceeds what Lifetime Care considers reasonable. *For example, Lifetime Care would consider a reasonable frequency for lawn mowing to be once per fortnight, and may not consider weekly lawn mowing to be reasonable;*
- f) is for internal or external home decoration or renovation, or other services intended for home improvement or to add value to a home; or
- g) is for other members of the household.

5.4 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to domestic services will not generally include:

- a) domestic service that is included as part of a daily bed fee or residential care accommodation fee; or
- b) cleaning products, materials or equipment, waste removal or tip fees.

## **6 Home maintenance and domestic services when the participant is away from home**

6.1 Information required by Lifetime Care to assess a participant's treatment or care needs for domestic services, gardening and home maintenance services if the participant is away from home for an extended period, including periods when the participant is hospitalised, include:

- a) the reason for the absence and the period that the participant will be away from home;
- b) the impact on upkeep and safe and easy access for the participant and other members of the household if the service was not continued;
- c) the reasonable capacity of other household members to perform these services when the participant is away from home; and
- d) the nature and extent of services that may subsequently be required if services are not continued.

## **7 Participants who are children**

- 7.1 Where the participant is a child, the reasonable and necessary attendant care provided for children by Lifetime Care will not include replacement of the usual care and supervision provided by a parent or paid for by a parent. *For example, babysitting, child care costs and the cost of out-of-school hours care.*
- 7.2 The role of the attendant care worker is to provide attendant care services to the participant and not to provide direct care or supervision to other family members such as the participant's siblings.
- 7.3 In the case of young children, Lifetime Care may consider paying the reasonable expenses of domestic services in place of attendant care services to allow the parent to meet a participant's motor accident injury care need.
- 7.4 The role of an attendant care worker to meet care needs related to the motor accident injury does not replace parental responsibility to supervise and provide non-injury related care to the child participant.
- 7.5 Documentation of the attendant care needs of a child participant, for tasks ordinarily provided by a parent or family member as part of their parental responsibilities, must include clear justification for why these are an assessed care need.

## **8 Attendant care and domestic services for participants who have caring responsibilities**

- 8.1 Lifetime Care may pay reasonable and necessary expenses for attendant care for participants who have caring responsibilities, to assist them to perform their role as a parent or caregiver, when the need for this assistance is related to the motor accident injury.
- 8.2 Payment of attendant care expenses in these circumstances aims to maximise the participant's independence and support them in their role as a parent and/or caregiver. The role of the attendant care worker is to provide attendant care services to the participant. The presence of an attendant care worker for care needs related to the motor accident injury does not replace parental or caregiver responsibility. *For example, an attendant care worker may assist a participant to travel with their children to and from school but will not be solely responsible for taking the children to and from school.*

## **9 Alternatives to attendant care service provision**

- 9.1 Lifetime Care may consider paying reasonable expenses of alternatives to attendant care services such as school holiday programs, child care, community-based groups, or community access programs. This will be considered when such alternatives are age appropriate, provide appropriate support and are assessed as a suitable alternative to meet the participant's injury-related needs and are cost effective compared to attendant care.
- 9.2 Lifetime Care will not pay for everyday activity costs that are not related to the need arising from the motor accident injury.

## **10 Attendant care services when the participant is away from home**

- 10.1 Lifetime Care may pay the reasonable expenses of attendant care services for a participant when away from home. *For example, when on holiday or away from their usual place of residence.*
- 10.2 Lifetime Care requires additional documentation of the care needs of the participant and the level of care being requested to assess their need for attendant care when away from home in the following circumstances, when:
- a) additional attendant care hours are being requested for the duration of the participant's absence;
  - b) the participant will use a different attendant care provider than the one engaged to provide their regular attendant care program;
  - c) the participant is travelling overseas; or
  - d) attendant care worker travel or accommodation expenses are requested.
- 10.3 Lifetime Care may consider additional expenses to be reasonable and necessary when the participant is away from home, in circumstances including:
- a) when it can be demonstrated that a change in attendant care service provision would cause secondary care complications or behavioural complications;
  - b) when the participant requires attendant care support during travel to and from their destination that is beyond that provided by transport providers; or
  - c) where the participant's level of function, accommodation environment, unfamiliar surroundings, unfamiliar routine or need to access additional equipment creates an additional need for attendant care.
- 10.4 When additional attendant care is required during a participant's holiday, Lifetime Care will generally consider that 28 calendar days per calendar year is a reasonable period where additional attendant care holiday support will be considered to be reasonable and necessary and:
- a) the 28 calendar days per year can be taken in one block or made up of several trips in one calendar year;
  - b) the participant may choose to combine the 28 calendar days per year over 2 or more years to provide attendant care for when a participant is away from home for a longer period. *For example, the participant may choose to combine 56 days over 2 years, for a 2-month holiday overseas, or 84 days over 3 years.*
- 10.5 The time limitations in 10.4 apply only if additional assessed attendant care is required, and do not apply if the participant does not have an additional need for attendant care above their usual need.
- 10.6 If there is an injury-related need for plane travel at a class above economy class, Lifetime Care will generally consider funding the cost difference between economy class travel and business class travel on the basis of the following principles:

- a) Lifetime Care will generally consider that the cost difference of one domestic return flight and one international return flight per calendar year is a frequency considered to be reasonable and necessary; and
- b) Lifetime Care will generally consider it reasonable to pay for the attendant care worker's airline ticket and for an attendant care worker to travel in the same class as the participant, to provide support beyond that can be provided by airline cabin crew; and
- c) Lifetime Care expects that the attendant care worker's airline ticket will be purchased applying any of the airline's carer discounts and concession fares available, where applicable.

10.7 If the participant requires additional attendant care holiday support, the participant is required to provide reasonable notice to Lifetime Care and the attendant care provider so that arrangements can be made to ensure the participant's care needs are met. Lifetime Care considers a reasonable notice period to be one month prior to the intended travel date for domestic travel, and 3 months prior to intended travel for overseas travel.

10.8 The reasonable expenses in relation to the participant's assessed treatment and care needs when they are away from home will not generally include:

- a) expenses for recreational activities or recreational equipment while the participant is away from home;
- b) expenses for the participant's entry to tourist attractions or other participation in activities relating to a holiday;
- c) a participant's personal holiday expenses, such as travel costs, meals and accommodation;
- d) travel expenses in excess of economy class level unless there is a clear injury-related need;
- e) attendant care worker travel expenses to accompany a participant to and from their destination, where a participant is assessed as being able to travel without an attendant care worker present and with the support provided by transport providers;
- f) general costs associated with international travel, such as immunisation, passports or visas for the participant;
- g) attendant care assistance for any tasks other than to meet an assessed care need; or
- h) travel insurance or any other expenses associated with changes to travel plans for the participant.

## **11 Attendant care services when a participant is in hospital**

11.1 Lifetime Care will generally not pay for additional attendant care services while a participant is in hospital or inpatient rehabilitation. Any requests for attendant care, in addition to the support provided by the hospital or inpatient rehabilitation facility, must demonstrate that there are exceptional circumstances.

## **12 Expenses for attendant care providers when a participant is away from home**

12.1 Lifetime Care will consider funding the following expenses incurred by an attendant care provider relating to delivering care while a participant is on holiday or away from home:

- a) the Australian Tax Office (ATO) rate for reasonable travel claims for domestic and overseas allowance expenses, including living away from home allowance to cover meals and incidentals if the relevant criteria are met;
- b) an attendant care worker's airline ticket in accordance with clause 10.6 above;
- c) incidental allowances, only when the holiday costs are inclusive of meals and accommodation, such as a cruise;
- d) transfers, visas, travel insurance and immunisations for overseas travel;
- e) entry fees for attendant care workers where these are not otherwise covered under programs such as the Companion Card; and/or
- f) accommodation for an attendant care worker or workers at a standard room rate.

## **13 Method of assessment and criteria used to determine reasonable and necessary treatment and care needs in connection with attendant care services**

13.1 The assessment of treatment and care needs in connection with attendant care services must:

- a) consider the participant's individual needs for attendant care in the context of other treatment and services provided, including equipment, home modifications and other items. *For example, continence aids and supplies;*
- b) be made in collaboration with the participant;
- c) consider the environment or environments in which attendant care services will be delivered; and
- d) consider the participant's injury-related needs and their ability to perform or be assisted with tasks.

13.2 Information required by Lifetime Care to assess a participant's treatment or care needs in connection with attendant care services may include:

- a) information relating to the motor accident injury, including nature and severity of injury;
- b) pre- or co-existing conditions that may also give rise to a care need,
- c) other treatment and care needs under section 5A of the Act, such as equipment and home modifications;
- d) environmental risk factors. *For example, participants living in or travelling to rural or remote areas;*
- e) home ownership, in the case of domestic services and home maintenance, where a landlord or other home owner may be responsible for some aspects of home maintenance;
- f) household arrangements and shared household responsibilities, in the case of domestic services and home maintenance;

g) standard schedule, in relation to frequency of services for gardening and home maintenance; or

h) the type and level of care or service, and the requested provider, where applicable.

13.3 The following procedures are to be followed when assessing treatment and care needs in connection with attendant care services:

a) a review of care needs is to be conducted by a health professional or team of professionals with recognised qualifications and relevant experience in reviewing the need for attendant care services; and

b) a review of care needs is undertaken, where possible, in the environment in which care will be delivered.

13.4 Lifetime Care adopts relevant guidelines and other publications including the *Guidance on the support needs for adults with spinal cord injury*, when assessing the reasonable and necessary attendant care service needs of participants with spinal cord injury.

## **Part 9: Education support services**

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 9 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs relating to education support services made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### **1 Reasonable and necessary education support services**

- 1.1 Education support services required as a consequence of the motor accident are additional supports provided to participants who are students to promote independence in their learning. Education support services are additional to services a student is entitled to under the applicable state or federal legislation.
- 1.2 Lifetime Care considers the education provider to be responsible for the provision of educational support services appropriate to the participant's development and capabilities. Lifetime Care will not consider education support services to be reasonable and necessary, or a reasonable expense, if the participant is already entitled to those services under applicable state or federal legislation, administered by the NSW Department of Education, Association of Independent Schools NSW, the Catholic Education Commission of NSW, TAFE NSW student services, individual vocational and higher education institutions, and equivalent for participants outside of NSW.
- 1.3 Education support services include assistance with commencement at or return to appropriate educational settings within:
  - a) preschool;
  - b) childcare, including before and after school care;
  - c) primary and secondary schools; or
  - d) other educational settings such as higher education.
- 1.4 Lifetime Care considers treatment and care needs for education support to be reasonable and necessary when the services:
  - a) assist to maximise independence and involvement in an education program;
  - b) are required as a result of the motor accident injury;

- c) are appropriate for the participant's age, development and circumstances, when compared with alternative options and models to meet the participant's need; and
  - d) are based on measurable learning and development outcomes.
- 1.5 Education support services, in connection with education and vocational training, may include one or more of the following based only on their documented injury-related needs:
- a) assistance with short-term needs, such as education support to assist a participant to catch up on missed curriculum as a result of a prolonged hospital admission, or the need to consolidate a participant's learning where an injury-related learning need has been identified;
  - b) teacher release time to adapt and modify programs to accommodate the participant's individual learning needs;
  - c) professional support for the teacher and/or school learning support officer such as training to implement a rehabilitation program with the participant;
  - d) special education required as part of the participant's individual learning plan;
  - e) support to facilitate transitions between educational facilities, such as between schools or from primary school to high school;
  - f) individual support to engage with the curriculum or specific subjects, such as school learning and support officer support;
  - g) school learning support officer or attendant care worker time for overnight excursions/camps; or
  - h) specialist support such as therapists, special education teachers or other professionals, when delivered in conjunction with other rehabilitation services.
- 1.6 The following education support services are not considered reasonable and necessary:
- a) services for a condition that existed before a motor accident or that is not a result of a motor accident;
  - b) services that the participant accessed, was assessed as needing or was on the waiting list for prior to the motor accident; or
  - c) assistance with tasks that are the responsibility of a parent or guardian such as supervising homework and helping to access the local library, other resources or project materials.
- 1.7 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to education support services will not generally include:
- a) education expenses levied by the educational institution including school fees, fees for excursions or school camps, stationery and uniforms that are the responsibility of the parent or guardian;
  - b) travel that is not related to a treatment or care need. *For example, travel to and from school.* Other state and federal resources would be expected to provide travel assistance to attend school and school excursions. There may be individual circumstances where

travel support is provided for the first term only. *For example, if the child is transitioning to school for the first time, or to a new school;*

- c) support or services available to all students, such as whole class programs that are part of the school curriculum;
- d) costs that would reasonably be expected to be funded by the employer/ education provider, such as continuing professional development for teachers and other staff. *For example, workshops and seminars that are not specifically aimed at an individual participant are generally not considered reasonable and necessary;*
- e) education materials or resources that are not specifically required by the participant; and
- f) tutoring or enhancement programs for participants who do not have identified learning support needs, the request for tutoring is not supported by the school or is for tasks that are the responsibility of a parent or guardian to oversee, such as supervising homework or preparing school projects.

## **2 Method of assessment and criteria used to determine reasonable and necessary treatment and care needs for education support services**

2.1 The assessment of treatment and care needs in connection with education support services must:

- a) take into account the participant's individual needs in the context of other treatment and services provided, including rehabilitation, attendant care services and aids and appliances;
- b) be made in collaboration with the participant;
- c) consider the environment or environments in which education support services will be delivered; and
- d) take into account the participant's injury-related needs and their ability to perform or be assisted with tasks.

2.2 Information required by Lifetime Care to assess a participant's treatment or care need for education support services may include one or more of the following types of information:

- a) relationship to the motor accident injury, including nature and severity of injury;
- b) the participant's pre-accident development and learning history;
- c) services which the participant accessed, was on the waiting list for, or was assessed as requiring prior to the motor accident;
- d) pre- or co-existing conditions that may also give rise to a need for education support services, to ensure a holistic approach to care provision;
- e) measurable changes in the participant's ability to engage in education and training as a result of their motor accident injury;
- f) relation to other treatment and care needs under section 5A of the Act, such as rehabilitation and attendant care services;

- g) the status or outcome of any application for assistance through the applicable state or federal legislation administered through the NSW Department of Education, Association of Independent Schools of NSW or Catholic Education Commission of NSW; and
- h) the justification for the type and level of education support requested and for the provider of the service, where applicable.

2.3 The following procedures are to be followed when assessing treatment and care needs for or in connection with education support services:

- a) a review of education support needs is to be, where possible, undertaken in the environment or environments in which the education support service will be delivered; and
- b) the duration of any request for education support will be considered in the context of the participant's injury related needs and stage of rehabilitation. *For example, requests may be more frequent as a participant returns to school.*

2.4 The type and amount of education support services requested may change when:

- a) the participant achieves measurable outcomes;
- b) the participant's education program changes;
- c) injury-related needs or circumstances change; or
- d) the service is no longer the most appropriate response to the participant's needs.

### **3 Tutoring**

3.1 Tutoring is a service provided in addition to a school education program, and in conjunction with that program, that provides individual support with a specific subject or specific study skills. Tutoring aims to enable a participant to resume his/her pre-accident level of academic achievement or level consistent with their motor accident injury.

3.2 Tutoring, as an education support service, will be considered reasonable and necessary when:

- a) it relates to a specific need for education support as a direct result of the motor accident injury;
- b) it is expected to promote a participant's independence in the education setting;
- c) is identified as the most effective approach after adjustments and strategies implemented by the education facility have been considered;
- d) the service will enable the achievement of measurable learning outcomes and educational goals; and
- e) the service complements other education support services provided and other specialist services such as neuropsychology, psychology, speech pathology and occupational therapy.

3.3 Tutoring does not include tasks that are the responsibility of a parent or guardian such as supervising homework, helping access the local library, other resources or project materials.

3.4 To determine whether a participant's need for tutoring is reasonable and necessary in the circumstances, the following factors are relevant:

- a) evidence that additional fatigue and/or anxiety for the participant has been considered;
- b) whether the service is subject specific and linked to the curriculum;
- c) whether the service supports the goals and outcomes of the participant's individual learning plan;
- d) whether the content is personalised for the participant and delivered one to one or in small groups;
- e) whether sessions are scheduled outside regular class hours;
- f) whether the provider of the service has knowledge of the curriculum, subject content and current teaching practice;
- g) whether the provider is able to provide outcome measurements and/or progress reports as required; and
- h) whether the service is time limited.

## Part 10: Respite care services

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 10 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs relating to respite care services made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### 1 Reasonable and necessary respite care services

- 1.1 Lifetime Care considers treatment or care needs in connection with respite care services to be reasonable and necessary when the services:
  - a) are planned and short-term services to support and enhance the sustainability of the family unit or usual living arrangements in the household where the participant lives;
  - b) enhance sustainability of the regular care or support routine by providing the participant with a break from usual care arrangements; or
  - c) facilitate and support the primary informal support relationship between the family or carer and the participant.
- 1.2 Reasonable and necessary treatment and care needs in connection with respite care do not include:
  - a) respite care services relating to circumstances, a need and/or an impairment that existed before a motor accident or that are not a result of a motor accident injury; and
  - b) services that are not for short intervals (although respite services may be scheduled at periodic intervals during the course of a twelve-month period).
- 1.3 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to respite care services will not generally include:
  - a) expenses that are attendant care services or domestic services under Part 8;
  - b) expenses related to holidays as respite services, such as the travel, accommodation costs and activity costs for a holiday; and
  - c) respite care services that exceed any injury-related need, such as additional costs incurred as a result of choosing a respite service option which offers a higher level of support than is required to meet the participant's needs. *For example, Lifetime Care will*

*not regard the extra cost to be reasonable and necessary where a participant does not require high level nursing care and chooses this option.*

- 1.4 Lifetime Care will consider paying reasonable expenses of alternatives to respite care services, such as centre-based respite, and flexible respite. Specifically, in some circumstances other programs will be considered when such alternatives are:
  - a) age-appropriate;
  - b) provide appropriate support;
  - c) assessed as a suitable alternative to meet the participant's injury-related needs; and
  - d) designed to support and sustain the participant and their usual care arrangements as outlined in clause 1.1 above.
- 1.5 Respite care services may be provided to a participant who receives other support services such as attendant care. If regular respite care services are requested to undertake a particular task, Lifetime Care may review the participant's needs for attendant care services, with reference to Part 8 of the Guidelines, as an alternative to funding respite care services.
- 1.6 When a participant is away from home, a request to fund attendant care in an alternative setting on a short-term basis should be made with reference to clause 10 of Part 8 of the Guidelines.

## **2 Method of assessment and criteria used to determine reasonable and necessary treatment and care needs in connection with respite care services**

- 2.1 To determine whether a participant's need for respite care services is reasonable and necessary in the circumstances, the services must:
  - a) be planned in collaboration with the participant;
  - b) be age-appropriate;
  - c) consider the participant's individual needs for respite care in the context of other treatment and services provided, including attendant care and aids and appliances (equipment);
  - d) consider the needs of the family unit or usual living arrangements, including who the participant chooses to deliver their attendant care; and
  - e) consider the environment or environments in which respite care services will be delivered.
- 2.2 Information required by Lifetime Care to assess a participant's treatment or care needs in connection with respite care services may include:
  - a) information relating to the motor accident injury, including nature and severity of injury;
  - b) about pre- or co-existing conditions that may also give rise to a respite care need;
  - c) relating to other treatment and care needs under section 5A of the Act, such as attendant care, aids and appliances (equipment) and home modifications; or
  - d) providing justification for the type and level of respite care services requested and for the provider of the service, where applicable.

## **Part 11: Participants living overseas**

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 23, 28 and 58.

This version of Part 11 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs made on and from that date in respect of any participant in the Scheme living overseas, whether interim or lifetime and whether accepted into the Scheme before or after the date of gazettal.

This Part should be read in conjunction with Parts 5, 6, 7 and 18 of the Guidelines.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### **1 Lifetime Care's assessment of treatment and care needs when the participant is living overseas**

- 1.1 Wherever possible, Part 5 of the Guidelines applies in relation to assessment of treatment and care needs when a participant is living overseas.
- 1.2 In some circumstances, Lifetime Care may waive part or all of its procedures, such as the need for information to be provided on Lifetime Care's forms, if it can otherwise be satisfied that a treatment or care need is reasonable and necessary and relates to the motor accident injury.
- 1.3 If there is insufficient information, Lifetime Care may be unable to determine that the treatment and care need is reasonable and necessary and related to the motor accident injury, or that the expense incurred is reasonable.

### **2 Reasonable and necessary treatment and care needs**

- 2.1 Reasonable and necessary treatment and care needs when a participant is living overseas may include a brokerage service, case management service or other contracted service to assist with the administration of treatment and care services.
- 2.2 As outlined in Part 18 of the Guidelines, Lifetime Care may consider there are special circumstances in relation to the payment of non-approved providers in respect of services provided to a participant living overseas.
- 2.3 Lifetime Care may enter into an agreement with a participant living outside Australia to pay expenses to the participant for a fixed period in accordance with section 11A(4) of the Act.

- 2.4 Lifetime Care will seek to meet the participant's treatment and care needs in a way that is compatible with local service provision in the participant's country of residence. Lifetime Care can only fund services to meet treatment and care needs outlined in section 5A of the Act that are available in the country in which the participant resides.
- 2.5 Payments made by Lifetime Care for treatment, care and support services will be in Australian dollars and will not exceed the costs that would be incurred if the participant were living in Australia.
- 2.6 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to participants living overseas will not generally include:
- a) an expense that is unreasonable when compared to similar services provided in NSW or Australia;
  - b) services where there is insufficient information about the participant's injury-related need for the item or service;
  - c) costs related to relocating to another country, such as visas, travel agent fees or immunisation;
  - d) repatriation, flight or accommodation costs for the participant to return to Australia; or
  - e) costs related to medical or allied health professionals travelling to the participant's country of residence to assess or treat the participant.

## Part 12: Transport modification (Modifications to a motor vehicle)

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 12 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs relating to transport modification made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### 1 Reasonable and necessary transport modification

- 1.1 Minor modifications to a motor vehicle are changes that do not alter the structure of the vehicle or the safety of the vehicle and do not require certification by the licensing authority. They may be temporary or permanent changes. *For example, a seat belt buckle cover to enable the participant to travel safely in a vehicle, panoramic mirrors, fish eye mirrors, a spinner knob, or an indicator extension lever.*
- 1.2 Major modifications to a motor vehicle are permanent modifications that alter the structure of the motor vehicle. Major modifications to a motor vehicle require certification by the licensing authority. *For example, left foot accelerator, mechanical hand controls, wheelchair hoist systems, wheelchair restraining devices or wheelchair access ramps.* Major modifications must be prescribed by an occupational therapist qualified in driver assessment.
- 1.3 Lifetime Care considers treatment or care needs in connection with transport modification to be reasonable and necessary when the participant:
  - a) has a physical, sensory and /or cognitive disability as a result of the motor accident injury which prevents them from safely driving or travelling as a passenger;
  - b) has reached a level of maximum recovery and stability in their functional ability to drive or be transported as a passenger in a vehicle;
  - c) requires modifications to their vehicle in order to get in and out, drive the vehicle, be transported safely in a wheelchair, or to transport a wheelchair;
  - d) owns or has access to a motor vehicle, or is planning to purchase a suitable vehicle to be modified; and
  - e) if the participant intends to be a driver of the vehicle to be modified and will obtain or retain their licence.

- 1.4 Lifetime Care will not generally consider major modifications to more than one vehicle owned and/or used by the participant at the same time to be a reasonable and necessary treatment and care need except in circumstances where a replacement vehicle is undergoing modification immediately prior to the disposal of a current vehicle.
- 1.5 Reasonable and necessary treatment and care needs in connection with transport modification do not include:
- a) modifications to a motor vehicle which relate to or are required because of a need or condition that existed prior to the motor accident;
  - b) modifications that provide no functional benefit to the participant for a sustained period of time. *For example, if the participant will only use a modified vehicle infrequently and/or for short periods of time and other means of transport (such as taxi transportation) are more cost effective or appropriate in the circumstances;*
  - c) driver modifications for a participant who intends to drive but is not medically cleared and licensed to drive;
  - d) driver modifications for a participant who has been assessed as unsafe to drive;
  - e) transport infrastructure such as modification to a road or footpath where this is part of a universal service obligation or reasonable adjustment; and
  - f) services to compensate for the lack of a public transport system in the participant's local area.
- 1.6 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to transport modification will not generally include:
- a) modifications that do not comply with the requirements of a registration body, current national medical standards or the applicable Australian Standards and design rules, where these apply;
  - b) the purchase of a vehicle;
  - c) any standard costs associated with motor vehicle ownership including licensing, registration, compulsory third-party insurance and comprehensive insurance;
  - d) costs to convert the vehicle back to its standard configuration once major modifications have been installed;
  - e) repairs that form part of the supplier's or vehicle modifier's warranty, including vehicle modifier warranty or the vehicle's insurance policy;
  - f) loss, theft or damage to the motor vehicle or its modifications.

## **2 Method of assessment and criteria used to determine reasonable and necessary treatment and care needs in connection with transport modification**

- 2.1 The participant's needs in connection with transport modification are affected by the extent to which the motor accident injury has resulted in physical, cognitive or behavioural impairments that impair their ability to drive or be transported in a vehicle.
- 2.2 Assessment of a participant's needs in connection with transport modification must:

- a) be made in collaboration with the participant;
- b) take into account the participant's individual needs, and social and physical environment;
- c) consider whether the participant's needs for transport modification are stable or are likely to change; and
- d) identify and recommend the most appropriate and cost-effective transport modification option.

2.3 Information required by Lifetime Care to assess a participant's treatment or care need in connection with transport modification includes:

- a) information about the participant's transport needs and the frequency of access to the modified vehicle, especially in cases where funding is requested to modify a vehicle shared between family members;
- b) information about the modification suitability and cost of a vehicle owned or used by the participant prior to the motor accident injury, including age, condition and ownership of the vehicle;
- c) confirmation that the vehicle proposed to be modified is in good condition and will remain roadworthy and registrable;
- d) consideration of the modification suitability and cost of a new vehicle (that has been purchased, or is yet to be purchased) following the motor accident injury, including age, condition and intended ownership of the vehicle;
- e) documented agreement from the owner of the vehicle, if the vehicle is not owned by the participant, that they consent to installation of the modifications and agree to ongoing use by the participant;
- f) evidence that the recommended modifications have been successfully trialled, wherever possible; and
- g) the costs of modifications (over the expected life of the vehicle) compared with alternative transport options.

2.4 The following procedures are to be followed when assessing treatment and care needs in connection with transport modification, before a decision is made about whether a modification is reasonable and necessary:

- a) the vehicle modifications must be those recommended by an occupational therapist experienced in vehicle modifications; and
- b) two quotes for the recommended modifications, or an explanation regarding why only one quote is available.

2.5 The following procedures are to be followed when assessing whether a transport modification is reasonable and necessary, if the participant is intending to be the driver of the modified vehicle:

- a) the participant must provide a medical certificate by a treating medical practitioner which provides evidence of medical clearance to return to driving; and

- b) the participant must be assessed by a driver trained occupational therapist, certified by the appropriate licensing authority.

### **3 Electronic hand controls**

- 3.1 The following procedures are to be followed when assessing treatment and care needs for electronic or electro-mechanical hand controls:
  - a) the supplier of the modification must provide a written quote for electronic or electro-mechanical hand controls;
  - b) a range of industry specialists, vehicle modifiers and converters should be consulted to provide a range of quotes and options for vehicle modifications. At least two quotes from two different suppliers are required; and
  - c) requests to fund electro-mechanical hand controls, such as space-drive technology, should be preceded by a trial of mechanical hand controls in a suitably modified vehicle or be accompanied by medical evidence establishing an inability to use hand controls. Lifetime Care will consider the electro-mechanical hand controls to be reasonable and necessary only if the participant demonstrates an inability to use mechanical controls.

### **4 Insurance, repairs and maintenance of modifications**

- 4.1 Lifetime Care will fund insurance of the modifications, being the difference in comprehensive insurance costs between an unmodified vehicle and a modified vehicle.
- 4.2 Maintenance and repair of an installed modification is considered reasonable and necessary when it is:
  - a) required to maintain the functionality of the modification;
  - b) limited to normal wear and tear;
  - c) the maintenance or repair is not covered under warranty or covered by insurance; and
  - d) where the cost of the modification has been shared between Lifetime Care and the participant or owner of the vehicle, the cost of the maintenance or repair is consistent with Lifetime Care's contribution towards the modification.
- 4.3 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to transport modifications will not generally include:
  - a) maintenance and repairs that all vehicle owners are expected to undertake on a vehicle in order to keep them in safe working order;
  - b) day-to-day running costs such as oil, petrol, parking fees or tolls; and
  - c) maintenance or repairs that are for aesthetic reasons or to add value to a vehicle.
- 4.4 Lifetime Care may replace rather than repair the modification installed in the vehicle when:
  - a) it is not cost effective to repair the modification;
  - b) the projected life expectancy of the modification has expired;
  - c) the occupational therapist or engineer recommends new equipment; or
  - d) the modification no longer meets the participant's needs.

## **5 Modifications to workplace vehicles**

5.1 Lifetime Care will only consider paying for minor or adaptive modifications to more than one vehicle which the participant will own and/or use at the same time, where:

- a) the participant reasonably requires modifications to enable them to return to work; and
- b) modifications do not form part of the employer's obligations for reasonable adjustment.

*For example, Lifetime Care would consider funding two steering wheel spinner knobs where a participant requires the use of a spinner knob in a private vehicle as well as their employer's vehicle.*

## **6 Modifications to a subsequent vehicle**

6.1 Lifetime Care considers it reasonable to fund major modifications to a motor vehicle no more frequently than every eight years, unless there is a change in the participant's injury-related needs or circumstances which prevent access to the modified vehicle or unless there are some other circumstances making the funding of modifications reasonable and necessary.

6.2 Lifetime Care may consider it reasonable to fund major modifications to a motor vehicle more frequently than every eight years in circumstances when the participant's circumstances have changed substantially. *For example:*

- a) *if the participant who uses a wheelchair required modifications for passenger access and has now returned to driving;*
- b) *the previous vehicle no longer meets the participant's injury-related needs due to a change in functional status; or*
- c) *the previous vehicle cannot be repaired and requires replacement.*

6.3 If the owner of the modified vehicle wants to purchase a replacement vehicle, Lifetime Care considers it reasonable to fund the transfer of the modifications (where not commercially available) to the replacement vehicle wherever possible.

## **7 Driver rehabilitation services in connection with transport modifications**

7.1 Lifetime Care will fund the reasonable costs of driving rehabilitation designed by an occupational therapist qualified in driver assessment, where the need is related to the motor accident injury and the specific goal is for the participant to learn to use the transport modifications. This driver rehabilitation will include lessons from a qualified driving instructor, in a suitably modified vehicle with dual controls.

7.2 A request for funding of driving lessons for modified vehicles will be considered only if the participant has medical clearance that they are medically fit to drive or at least to attend an off- and on-road assessment of their driving performance.

7.3 Lifetime Care will not consider it reasonable and necessary to pay for driver rehabilitation for any period of time when the participant's licence is suspended or cancelled.

- 7.4 Lifetime Care may fund the following costs in connection with driver rehabilitation, to the extent that rehabilitation is a reasonable or necessary treatment and care need in connection with transport modification:
- a) fees to a medical examiner for a medical certificate to certify fitness to drive;
  - b) an off- and on-road assessment conducted by a driver-trained occupational therapist;
  - c) lessons recommended by a driver-trained occupational therapist which Lifetime Care has deemed as reasonable and necessary to allow safe driving with the transport modifications which are to be made; and
  - d) minor modifications to a vehicle that the participant has access to or owns, to enable the participant to have driver practice hours.
- 7.5 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to driver rehabilitation services will not generally include:
- a) cancellation fees for non-attendance at driving lessons as part of driving rehabilitation;
  - b) driving lessons if the participant is charged with a driving offence (*for example speeding or driving under the influence of alcohol or drugs*) during their period of driving rehabilitation; and
  - c) initial lessons for a new learner driver where the need is not related to the motor accident injury and there are no modifications to the vehicle.

## **8 Agreements**

- 8.1 Lifetime Care may enter into an agreement with the participant that specifies conditions of use, maintenance, insurance and ownership of the vehicle. The agreement may concern one or more of the following:
- a) subsequent ownership;
  - b) changes of ownership;
  - c) frequency of future modifications;
  - d) maintenance and repairs to the vehicle's adaptations or modifications;
  - e) ongoing costs related to the modification such as insurance; or
  - f) the requirement to repay the reasonable contribution amount to Lifetime Care if the vehicle is sold.

## **Part 13: Aids and appliances (equipment)**

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 13 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs relating to aids and appliances made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### **1 Reasonable and necessary aids and appliances**

1.1 Lifetime Care considers treatment and care needs for an aid or appliance (also referred to as equipment or assistive technology) to be reasonable and necessary when:

- a) the aid or appliance is required as a result of the motor accident injury;
- b) the aid or appliance will meet the participant's needs and is consistent with their goals;
- c) other treatment or care options have been considered and the aid or appliance is determined to be the most appropriate option in the circumstances;
- d) the aid or appliance will achieve one or more of the following:
  - i. increase or maintain independence;
  - ii. increase or maintain participation;
  - iii. improve or maintain mobility;
  - iv. aid communication;
  - v. relieve pain or discomfort;
  - vi. maintain health or prevent ill-health;
  - vii. assist a return or entry to vocational, educational or leisure activities; or
  - viii. increase or maintain the safety of the participant, their family, carers or attendant care workers.

1.2 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to aids and appliances will not generally include expenses for:

- a) items that are not the most cost-effective solution to meet the participant's injury-related needs;

- b) repair or replacement due to the participant intentionally neglecting, abusing, losing or misusing an aid or appliance, except where the neglect, abuse or loss has occurred as a result of the participant's injury;
- c) continence aids, supplies or other consumables where the participant is an inpatient, or where a bed fee includes the provision of these aids or supplies; or
- d) replacement or repair of items when the repair or replacement is covered under warranty or insurance;
- e) an aid or appliance that does not comply with Australian Standards, where applicable, or that is not registered with the Therapeutic Goods Administration, where applicable; and
- f) replacement or upgrade of an item when an existing item meets the participant's injury-related needs.

## **2 Method of assessment and criteria used to determine reasonable and necessary treatment and care needs for or in connection with aids and appliances**

- 2.1 The assessment of treatment and care needs for the provision of aids and appliances must:
  - a) be made in collaboration with the participant; and
  - b) take into account the participant's individual needs, social and physical environment.
- 2.2 When making an assessment of needs in connection with an aid or appliance, Lifetime Care adopts the *Professional Criteria for Prescribers* developed by Lifetime Care and NSW Health that aim to guide best practice in the prescription of aids and appliances by defining the required qualifications and levels of experience that prescribers must possess. These can be accessed on Lifetime Care's website at: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au) and the website of NSW Health.
- 2.3 Information required by Lifetime Care to make an assessment includes:
  - a) clearly stated participant-centred goals addressing the need for the item(s);
  - b) justification for the item(s), including the relationship to the motor accident injury and criteria listed in Part 6 of the Guidelines as to the question of whether the aid or appliance is reasonable and necessary;
  - c) clinical assessments;
  - d) the aid or appliance has been successfully trialled (where possible) and the participant is able to safely use the aid or appliance within the intended environment of use;
  - e) implementation procedures for the aid or appliance are outlined, including any associated training requirements; and
  - f) written support from the participant's education facility if the aid or appliance is to aid a return or entry into an educational activity.
- 2.4 The following procedures are to be followed in the prescription of an aid or appliance:
  - a) the prescription must be conducted by a health professional or team of professionals with recognised qualifications and relevant experience in prescribing that category of equipment;

- b) Lifetime Care requires the prescriber to have a higher level of experience where the complexity of the participant's needs, the equipment, any associated risks, or a combination of these factors, is high;
- c) reference to the list of equipment for the corresponding injury level found in *Guidelines for levels of attendant care for people with spinal cord injury* should be made for participants with a spinal cord injury. These can be accessed on Lifetime Care's website at: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au);
- d) reference to *Summary of the Guidelines for the prescription of a seated wheelchair or mobility scooter for people with a traumatic brain injury or spinal cord injury* should be made if the prescription is for a seated wheelchair or mobility scooter. These can be accessed on Lifetime Care's website at: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au);
- e) an Equipment Request Form must be completed except where the equipment can be directly ordered through Lifetime Care's contracted supplier, or Lifetime Care has advised that an Equipment Request Form is not required. These can be accessed on Lifetime Care's website at: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au);
- f) the prescriber must follow the *Professional Criteria for Prescribers* and the *Professional Criteria for Prescribers of Exercise and Fitness Equipment*. These can be accessed on Lifetime Care's website at: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au); and
- g) one or more quotes are to be provided if requested by Lifetime Care.

### **3 Hire of aids and appliances**

- 3.1 Lifetime Care will consider the hire of an aid or appliance to be more appropriate than the purchase of an aid or appliance when:
  - a) the participant's medical condition, functional status or circumstances are likely to change in the foreseeable future;
  - b) the prescriber is unsure of the functional benefits of the aid or appliance and needs to confirm its benefits through a longer-term trial of the aid or appliance before purchase;
  - c) the participant's living arrangements are not known, and it is not possible to confirm that the aid or appliance will be functional in the home environment; or
  - d) the need for the aid or appliance is for the short term only.
- 3.2 Lifetime Care may fund the hire of an aid or appliance when it is more cost effective to hire the aid or appliance than purchase it.

### **4 Maintenance and repair of aids and appliances**

- 4.1 Lifetime Care considers maintenance and repair of an aid or appliance to be reasonable and necessary when:
  - a) the need for maintenance or repairs results from normal wear and tear;

- b) the need for maintenance or repairs is routine as recommended by the manufacturer or to meet industry standards; or
- c) an adjustment is needed due to growth or other change in the participant's needs.

4.2 Lifetime Care may fund maintenance and repair of an aid or appliance when:

- a) the maintenance or repair is not covered under warranty or covered by insurance; and
- b) the cost of the maintenance or repair is consistent with Lifetime Care's contribution towards the purchase or modification of the aid or appliance, where Lifetime Care has accepted partial liability for it.

## **5 Replacement of aids and appliances**

5.1 Lifetime Care considers replacement of an aid or appliance to be reasonable and necessary when:

- a) the item is still required by the participant;
- b) the participant's needs have changed due to growth or change in function and modification to the item is not feasible; or
- c) the need to replace the aid or appliance is the result of normal use over a reasonable period of time and repair to the item is not feasible.

5.2 Lifetime Care may determine that an Equipment Request Form is not required in the instance that a participant's needs have not changed and the item requested is to replace the same as one previously prescribed due to the result of normal use over a reasonable period of time.

## **6 General household and personal items**

6.1 General household and personal items may be funded when the need for a different general household or personal item is directly related to the motor accident injury.

6.2 General household and personal items include, *for example*:

- a) *beds and mattresses*
- b) *domestic goods such as a washing machine*
- c) *personal computers*
- d) *tablets and smartphones*
- e) *bicycle helmet*
- f) *standard footwear.*

6.3 Lifetime Care considers treatment and care needs for general household and personal items to be reasonable and necessary when:

- a) a specific item or type of item will increase the participant's independence;
- b) a specific item or type of item is required as a result of the motor accident injury; and
- c) the item will ensure the safety of the participant, family members and attendant care workers.

- 6.4 Lifetime Care will not fund replacement of an aid or appliance where the aid or appliance is a general household or personal item, including examples in clause 6.2, which under normal circumstances would be owned and replaced by the participant or their household. This clause applies even if the aid or appliance in question was initially purchased or funded by Lifetime Care because the participant needed a specific kind of item in this category, and that need necessitated replacement of an equivalent item already owned by the participant or their household. After the initial purchase, Lifetime Care expects the general household or personal item will be replaced by the participant. *For example, if the participant or their household had owned a top-loading washing machine and Lifetime Care funded the purchase of a front-loading washing machine on the basis this would increase the participant's independence and capacity to participate in household activities, Lifetime Care would not fund any replacement for the washing machine at a later date.*
- 6.5 Personal computer aids and appliances will be considered reasonable and necessary when they will achieve one or more of the following:
- a) assist the participant to return to work. This includes working remotely until they can access their workplace;
  - b) are required for a vocational retraining program where the goal of the program has been confirmed by a Work Options Plan and Lifetime Care supports this goal;
  - c) will increase a participant's functional independence in their instrumental activities of daily living such as shopping and money management where the participant:
    - i. lives in a remote location;
    - ii. has a severe physical impairment; or
    - iii. has some other motor accident injury-related condition that inhibits the participant's access to the community.
- 6.6 Personal computer aids and appliances for education will be considered reasonable and necessary when the participant:
- a) is enrolled in distance education, or school or tertiary education that is able to provide remote learning;
  - b) is unable to access their educational institution, including the computer facilities of the educational institution; and
  - c) does not own or have access to suitable computer aids and appliances only where the school or educational facility does not have a 'bring your own device' or similar in place.
- 6.7 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to personal computer aids and appliances will not generally include:
- a) the additional cost of software, hardware or peripherals where this is the participant's personal preference and is not required to maximise a participant's independence; or

- b) the additional cost of software upgrades where this is the participant's personal preference and is not required to ensure that the participant's computer remains serviceable or maximises a participant's independence in computer use.
- 6.8 Short-term internet access will be considered reasonable and necessary when the need is related to the participant's motor accident injury and the participant is:
- a) a hospital inpatient temporarily unable to access their workplace;
  - b) participating in a short-term therapy program delivered via the internet or skype; or
  - c) participating in a short-term return to work program.
- 6.9 Tablets and smart phones are generally considered normal personal items and not an aid or appliance to meet an injury-related treatment and care need. However, a tablet or smart phone and necessary applications will be considered reasonable and necessary when:
- a) the participant requires the device (and applications) as part of a goal-oriented rehabilitation program in which the recommendation is that the item will:
    - i. measurably increase independence. *For example, via a reduction in need for attendant care workers or support workers, and/or*
    - ii. measurably improve an injury related deficit in communication; and
  - b) the participant can demonstrate the ability to effectively use the device and any relevant software for the reasons it has been recommended.
- 6.10 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to tablets and smartphones will not generally include:
- a) cellular data or the cost of connecting the device to the internet;
  - b) an upgrade or replacement of the device; and
  - c) applications other than those prescribed to meet an injury related need.

## **7 Aids and appliances for exercise and fitness**

- 7.1 An exercise aid or appliance will be considered reasonable and necessary when the factors listed at clause 1.1 of this Part are met and:
- a) the need for the aid or appliance is related to a participant's goal documented in their plan; and
  - b) the participant's commitment has been demonstrated through regular use of the aid or appliance over a period of time where hire or loan is available.
- 7.2 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to aids and appliances will not generally include:
- a) equipment that is available for use in another setting (such as a gymnasium) that is appropriate for the participant to access;
  - b) equipment that is used by the participant solely in other environments. *For example, a physiotherapist's treatment rooms; or*
  - c) purchase of an aid or appliance when Lifetime Care considers hire is more appropriate. *For example, when there are no definitive living arrangements.*

## **8 Aids and appliances for recreation or leisure purposes**

- 8.1 Aids and appliances for leisure or recreation will be considered reasonable and necessary when the factors at clause 1.1 of this Part are met and it will assist a participant to return to or commence a developmentally appropriate leisure activity.
- 8.2 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to aids and appliances will not include large capital items or recreational vehicles, including equipment for elite sports.

## **9 Agreements with participants for aids and appliances**

- 9.1 Lifetime Care may require the participant to enter into an agreement that includes the conditions of use, maintenance, insurance and ownership of an aid or appliance.
- 9.2 If a participant requests a specific aid or appliance which is more expensive than an equivalent item that is required to meet the participant's identified needs, Lifetime Care may pay a reasonable contribution to the cost of that item, measured by reference to the reasonable cost of the equivalent item which would meet the needs in question.

## Part 14: Home modifications

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 14 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs relating to home modifications made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### 1 Home modifications

- 1.1 Lifetime Care considers treatment and care needs in connection with home modifications to be reasonable and necessary when:
  - a) the long-term impact of the motor accident injury restricts or prevents the participant from accessing the home and/or being able to utilise the home's standard fittings or facilities;
  - b) the proposed home modification will increase the participant's independence and reduce the participant's need for other kinds of supports such as attendant care;
  - c) the participant's need for the home modification is unlikely to change over a considerable period; and
  - d) the home modification will ensure the safety of the participant, family members and attendant care workers.
- 1.2 Reasonable and necessary treatment or care needs in connection with home modifications include:
  - a) minor home modifications that do not alter the external structure of a home, are not complex, and have a cost limit of \$30,000. *For example, temporary internal or external ramping, simple rails, shower screen removal or non-structural widening of an entrance;*  
or
  - b) major home modifications which alter the internal or external structure of a residence, are complex, involve multiple tradespeople, require a detailed plan or Council approval, or cost over \$30,000. *For example, adding or removing walls, adding a wet area or shower or erecting a new structure.*
- 1.3 The following home modifications are not considered reasonable and necessary treatment and care needs:

- a) any part of the home modification that provides no clear injury-related benefit to a participant;
  - b) repairs or modifications required because of a condition that existed before the motor accident; and
  - c) where the home modification constitutes, is likely to constitute, or will result in, an illegal structure. An illegal structure is one that is contrary to relevant building and construction codes or local Council planning guidelines, statutes and/or laws.
- 1.4 The expenses in relation to home modifications may be considered to be reasonable expenses only when:
- a) the home modification has been agreed to by the participant and home owner in writing;
  - b) the body corporate or other relevant authority (as applicable) has approved the home modification in writing;
  - c) the home modification has been approved in advance by Lifetime Care;
  - d) alternative options, including relocation, have been considered and excluded;
  - e) the scale and cost of the proposed home modification is the most feasible option when considering the likely benefit to the participant; and
  - f) there are no prohibitive structural constraints. *For example, surrounding terrain and condition of the home.*
- 1.5 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to home modifications will not generally include:
- a) cost of repairs for conditions in the home that existed before the motor accident. *For example, termite damage or concrete cancer,*
  - b) building or construction of in-ground or above-ground pools, spas or other aqua-therapy facilities;
  - c) upgrades of any materials required for the home modification;
  - d) items or labour not included in the final contract for modifications agreed to by Lifetime Care, unless prior approval has been obtained from Lifetime Care;
  - e) items that are normal household items and are not related to the participant's need arising from their motor accident injury. *For example, furniture or whitegoods, surge protectors, towel rails, fans, lights, hot water services, security doors and windows;*
  - f) other home modifications or renovations intended to add value to an existing property that are not related to the participant's motor accident injury;
  - g) any loss of value to the home resulting from any home modification;
  - h) any loss of value to the home resulting from the removal of a minor home modification; and
  - i) costs associated with the removal of major home modifications.

## **2 Method of assessment and criteria used to determine reasonable and necessary treatment and care needs in connection with home modification**

- 2.1 To determine if expenses relating to home modifications are reasonable, Lifetime Care will consider:
- a) the ownership of the home;
  - b) the expected length of stay at the home; and
  - c) whether home modification has been confirmed as the most cost-effective option in the circumstances.
- 2.2 The assessment of treatment and care needs in connection with home modifications may include:
- a) a home assessment completed by an occupational therapist with appropriate experience in home modifications (building modification occupational therapist);
  - b) identification of environmental barriers relating to the motor accident injury and all options for overcoming these barriers such as provision of equipment, non-structural home modifications and relocation; and
  - c) clear clinical justification as to why home modification is needed, and the feasibility of the proposed home modification compared with the other options.
- 2.3 Information required by Lifetime Care to assess a participant's treatment or care need in connection with home modifications may include:
- a) information about the participant's entry and exit from the home;
  - b) information about access to areas in the home to enable the participant to undertake activities of daily living, instrumental activities of daily living and participate in life roles and associated responsibilities;
  - c) home modification project plans including the cost and extent of the proposed home modification;
  - d) confirmation the proposed home modification meets the relevant Australian Standards;
  - e) required consents for the proposed home modification by any other parties. *For example, a landlord, body corporate or local Council consent;*
  - f) the effects of aids or appliances, including wheelchairs, on the participant's ability to function within their environment; and
  - g) whether any future improvement or change is likely.

## **3 Modification to a home owned by the participant and their family**

- 3.1 Lifetime Care considers treatment and care needs for modification to a home owned by the participant or their family to be reasonable and necessary when:
- a) the home to be modified is the primary home of the participant;
  - b) the participant intends to remain living at that home for at least 5 years; and
  - c) relocation to another home, or a more suitable home, is not an appropriate option for the participant and their family.

- 3.2 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to home modification to a home owned by the participant and their family will not generally include:
- a) a home modification where Lifetime Care has already funded a major home modification in the past 5 years, unless exceptional circumstances exist. *For example, the participant's injury-related needs or personal circumstances have changed unexpectedly;* or
  - b) costs for the removal of a major home modification from a home owned by the participant or their family.

#### **4 Home modification to a second home**

- 4.1 Lifetime Care considers treatment and care needs for home modifications to a second home to be reasonable and necessary when:
- a) the modification is to be made to a house or unit that is not the participant's usual place of residence but in which the participant spends significant time as a resident. *For example, a second residence that a participant needs to access because of shared parenting arrangements or a holiday home;* and
  - b) the modification will provide basic access for the participant. *For example, ramps, rails, doorway widening and minor bathroom modifications.*
- 4.2 Information required by Lifetime Care to assess a participant's treatment or care need in connection with modification to a second home may include:
- a) the nature and extent of any previous home modification paid for by Lifetime Care;
  - b) the anticipated amount of time that the participant is expected to spend in the second home; and
  - c) the potential benefit to the participant of modifying the second home.

#### **5 Interim accommodation expenses**

- 5.1 Lifetime Care considers treatment and care needs in connection with interim accommodation to be reasonable and necessary when:
- a) it is short term accommodation for a participant while major modifications are taking place to their home, making it inaccessible or uninhabitable;
  - b) the interim accommodation is for the participant and the family members living with them at the time of the accident, and who will be displaced as a result of the home modification building process; and
  - c) the need for interim accommodation is for a participant's first major home modification.
- 5.2 The following interim accommodation is not considered reasonable and necessary treatment and care needs:
- a) circumstances where a participant had an accommodation issue prior to the motor accident injury;

- b) the need for home modification is not due to the motor accident injury; or
  - c) the participant has declined other feasible options for accommodation.
- 5.3 The expenses in relation to interim accommodation may be considered to be reasonable expenses only when:
- a) the duration of interim accommodation does not exceed nine months; and
  - b) interim accommodation is the most cost-effective option to meet the participant's injury-related needs.
- 5.4 To determine whether a participant's need for interim accommodation is reasonable and necessary in the circumstances, the following factors are relevant:
- a) whether discharge from hospital or inpatient rehabilitation is possible without home modification;
  - b) the length of time for completion of the home modification and whether the home modification is able to be staged to allow earlier access to the home; and
  - c) whether the home to be modified is able to be occupied during the home modification process.
- 5.5 Information required by Lifetime Care to assess a participant's treatment or care need for interim accommodation may include:
- a) whether all other alternative accommodation options have been considered and discounted;
  - b) the size of the proposed interim accommodation in relation to the number of family members being accommodated;
  - c) the length of time that interim accommodation is required;
  - d) the need for treatment, rehabilitation and care services that would be delivered in the interim accommodation setting; and
  - e) the location of the interim accommodation.

## **6 Home modifications to a rental property**

- 6.1 Lifetime Care considers treatment and care needs for modifications to a rental property to be reasonable and necessary when:
- a) the participant's name (if they are an adult) or the participant's parent or legal guardian (if they are a child) is on the lease;
  - b) the property owner has agreed to the home modifications in writing; and
  - c) the participant intends to remain in the rental property for the foreseeable future.
- 6.2 The expenses in relation to home modifications to a rental property may be considered to be reasonable expenses only when costs do not exceed \$15,000 multiplied by the number of years in the term of the lease. *For example, Lifetime Care would consider it reasonable and necessary to install home modifications costing \$22,500 if the owner of the rental property agrees to the modifications. The participant wants to stay in the rental property for the foreseeable future and is willing to sign a lease for an 18-month period.*

- 6.3 The expenses in relation to the costs of returning a rental property to its former state may be considered to be reasonable expenses only when:
- a) specifically requested by the property owner; and
  - b) related to the services or modifications that were previously approved or installed by Lifetime Care.

## **7 Relocation if the home is not suitable for modification**

- 7.1 Lifetime Care considers treatment and care needs for or in connection with relocation to be reasonable and necessary when:
- a) the participant is being discharged from hospital for the first time since the accident or the participant's injury related needs have significantly changed resulting in the need for relocation;
  - b) Lifetime Care has decided that the home is unable to be modified and the participant is required to purchase another home or to enter into a rental lease in respect of another home; and
  - c) Lifetime Care is satisfied that the home the participant is relocating to is the most appropriate option in relation to their injury.
- 7.2 The expenses in relation to the relocation costs below will generally be considered reasonable expenses when a participant, or a member of the participant's family with whom they live, decides to purchase a new home and factors listed in clause 7.1 are met:
- a) real estate agent fees;
  - b) legal fees associated with property purchase;
  - c) stamp duty associated with property purchase;
  - d) cleaning costs associated with preparing the home for sale;
  - e) furniture removal; and
  - f) the cost of a building report or strata report and pest inspection.
- 7.3 The cost of assistance to locate a suitable home for rental or purchase may be considered a reasonable expense when the participant and/or any member of their family with whom they live are unable to undertake this task themselves and factors listed in clause 7.1 are met.
- 7.4 The expenses in relation to the relocation costs below will generally be considered reasonable expenses when a participant, or a member of the participant's family with whom they live, needs to relocate to another rental property and factors listed in clause 7.1 are met:
- a) fees for breaking a tenancy agreement
  - b) furniture removal;
  - c) cleaning costs required due to a participant's injury related needs; and

- d) the cost of an assessment and report to locate an appropriate home by an appropriately qualified third party approved by Lifetime Care e.g. building modifications occupational therapist and/or building modifications project manager.
- 7.5 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to relocation to another rental property will not generally include costs associated with the end of a tenancy that are a condition of the lease. *For example, advertising costs associated with breaking a lease or cleaning a property at the end of a tenancy.*
- 7.6 Information required by Lifetime Care to assess a participant's treatment or care need in connection with relocation may include:
- a) recommendations and information contained in a current building report or strata report (for units/townhouses) and pest report; and
  - b) advice and recommendations from a building modification occupational therapist and project manager's assessment of the property in relation to the participant's injury-related needs.

## **8 Purchase of another home**

- 8.1 When a participant and/or their family are considering the purchase of another home, Lifetime Care expects that the participant will select a property that does not require substantial modification to meet their injury-related needs.
- 8.2 The costs of a building modification occupational therapist and in some cases a building modification project manager, to review the home that is being considered for purchase and provide advice to the participant on whether the home will meet their injury-related needs, including the nature and extent of home modifications required and their approximate costs, may be considered a reasonable expense.
- 8.3 The expenses in relation to major home modifications will generally be considered to be reasonable expenses only if the total cost is up to \$85,000 (excluding GST) for all of the applicable following modifications:
- a) accessible entry to and exit from the home;
  - b) a bathroom and toilet;
  - c) a bedroom;
  - d) a laundry (for participants who can fully or partially complete laundry tasks); and
  - e) a kitchen (for participants who can fully or partially prepare their own food or beverages).
- 8.4 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to modifications to a purchased home will not generally include expenses for:
- a) repairs to the home;
  - b) any home modifications undertaken that are not approved by Lifetime Care. *For example, Lifetime Care is not liable for the costs of home modifications if a participant is*

*advised that the home is unsuitable to modify and the participant proceeds to purchase or rent the home;*

- c) more than one strata report, building report or pest inspection report;
- d) any repairs or maintenance issues identified in strata, building or pest inspection reports;
- e) internet access to research suitable properties;
- f) body corporate/strata fees; and
- g) council or water rates.

## **9 Contributions to a new home build (off the plan)**

- 9.1 If a participant and/or their family are considering building a new home, Lifetime Care expects that the participant will choose a home design that does not require substantial modification to meet their injury related needs.
- 9.2 The costs of a building modification occupational therapist and in some cases a building modification project manager, to review the home design and provide advice to the participant on whether the home will meet their injury-related needs, may be considered a reasonable expense.
- 9.3 Lifetime Care may fund the reasonable cost difference between the standard cost of building the home and any additional costs incurred for the following elements, on the basis that the reasonable cost difference represents relevant reasonable expenses:
- a) accessible entry to and exit from the home;
  - b) a bathroom and toilet;
  - c) a bedroom;
  - d) a laundry (for participants who can fully or partially complete laundry tasks); and
  - e) a kitchen (for participants who can fully or partially prepare their own food or beverages).
- 9.4 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to contributions to a new home build will not generally include:
- a) costs of modifications required as a result of the design of the home where the design does not reasonably meet the participant's injury-related needs. *For example, internal or external lifts to a split-level home if the participant is unable to mobilise safely on stairs;*
  - b) any amount in respect of modifications to the plans that are made at no cost to the participant;
  - c) any standard cost related to the finishings of a new home. *For example, bathroom tiles, taps, flooring and other standard features;*
  - d) costs for modifications that are above the standard cost due to development covenant requirements or due to personal preference; and
  - e) any standard costs related to building a new home. *For example, council fees, external consultant or engineer fees.*

## **10 Room temperature control equipment**

- 10.1 Lifetime Care considers treatment and care needs for room temperature control equipment to be reasonable and necessary when:
- a) the participant is unable to self-regulate their body temperature as a result of a motor accident injury and this is unlikely to resolve; or
  - b) the lack of room temperature control causes secondary care complications. *For example, a participant with amputations.*
- 10.2 To determine whether a participant's need for room temperature control equipment is reasonable and necessary in the circumstances, the following factors are relevant:
- a) the main areas of the house that the participant will access for substantial periods of time; and
  - b) the structure and layout of the participant's home.
- 10.3 Information required by Lifetime Care to assess a participant's treatment or care need in connection with room temperature control equipment may include:
- a) clinical evidence that the participant is unable to self-regulate their body temperature as a result of the motor accident injury; and
  - b) the participant's documented level of spinal cord lesion if the participant has impaired thermoregulation due to a spinal cord injury. *For example, participants with a spinal lesion at T6 or above are considered to have impaired thermoregulation.*
- 10.4 Lifetime Care considers treatment and care needs for or in connection with a contribution to energy costs to be reasonable and necessary when:
- a) Lifetime Care has funded the installation of room temperature control equipment, or agrees that any existing room temperature control equipment is an injury related need;
  - b) there is evidence of the energy costs that can be directly related to the use of the temperature control equipment to meet the participant's assessed needs; and
  - c) the participant has applied for and is receiving any existing rebates, such as the NSW Medical Energy Rebate for NSW residents.
- 10.5 Lifetime Care will generally consider a contribution of up to 35% of the total cost of incurred energy bills, commencing from the date of installation or commencement of use of the room temperature control equipment, to be a reasonable expense.
- 10.6 Lifetime Care may contribute to costs associated with the servicing, preventative maintenance and repair costs of room temperature control equipment when Lifetime Care has funded the installation of room temperature control equipment or otherwise agreed to the injury-related need.

## **11 Environmental control systems and units**

- 11.1 Lifetime Care considers treatment and care needs for environmental control systems and units to be reasonable and necessary when they will increase the participant's independence and reduce the participant's need for other kinds of support such as

attendant care, when carrying out activities of daily living and instrumental activities of daily living.

- 11.2 Reasonable and necessary treatment or care needs in connection with environmental control systems and units include:
- a) additional equipment, modifications and home automation in an environmental control system that can work together as a system with an environmental control unit to improve access and independent control in the home. *For example, automatic door openers, intercoms, emergency call alerts, light control and telephone control.*
  - b) a specialised environmental control unit remote control allowing an alternative method of controlling appliances and equipment in the home environment. These are also sometimes known as “Electronic Aids to Daily Living”.
- 11.3 Information required by Lifetime Care to assess a participant's treatment or care need in connection with an environmental control system and unit may include:
- a) the expected increase in the participant's independence;
  - b) an assessment by a health professional with recognised qualifications, and relevant experience in prescribing this category of equipment. This may necessitate a prescription by an occupational therapist with relevant experience working in collaboration with the building modifications occupational therapist;
  - c) the results of any trials of the system where possible;
  - d) availability of a backup system in case of emergency or device failure;
  - e) the consideration of cost-effective alternatives; and
  - f) the cost, set up, ongoing support and maintenance of the environmental control system and unit.

## **12 Repairs and maintenance to home modifications**

- 12.1 Lifetime Care considers treatment and care needs for or in connection with repairs and maintenance to home modifications to be reasonable and necessary when:
- a) they are essential for a participant's access or safety; or
  - b) are for any wear and tear to a home modification that is a direct result of the motor accident injury.
- 12.2 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to repairs and maintenance will not generally include those required:
- a) as a result of normal wear and tear. *For example, replacement of bathroom fittings/fixtures;*
  - b) for the upkeep of a residence. *For example, house painting;* or
  - c) maintenance of any additional works not funded by Lifetime Care.
- 12.3 Lifetime Care may fund the cost of repairs or maintenance to home modifications proportional to the original costs paid, where the original home modification was not fully funded by Lifetime Care, on the basis that this represents a reasonable expense. *For*

*example, where a property owner also contributed to the original cost of the home modification.*

### **13 Agreement**

- 13.1 Lifetime Care may enter into an agreement with the participant that specifies conditions of use, maintenance, insurance and ownership of the home. The agreement may include or concern one or more of the following:
- a) changes of ownership or sale of the home;
  - b) frequency of future home modifications;
  - c) maintenance and repairs to the home modifications;
  - d) ongoing costs related to the home modification such as insurance; or
  - e) any requirement to repay the reasonable contribution amount to Lifetime Care if the home is sold.
- 13.2 Requests for home modifications that do not fall within the situations above will be considered on a case by case basis.

## Part 15: Prostheses

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 15 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs relating to prostheses made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### 1 Definitions

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

**Prosthesis** is an artificial substitute for a missing body part, such as a leg, used for functional or cosmetic reasons, or both. Any reference to a prosthesis in this guideline includes any associated componentry. Any reference to a prosthesis in this Guideline relates to an external prosthesis or orthosis and does not include a surgically implanted prosthesis.

**Provider** refers to an accredited medical prescriber, an amputee clinic or a limb manufacturer, as relevant or applicable.

### 2 Prostheses

2.1 Lifetime Care considers a treatment and care need for a prosthesis to be reasonable and necessary where:

- a) the need has arisen through amputation of a limb because of the motor accident injury;
- b) the prosthesis promotes functional independence, self-management or cosmetic improvement; and
- c) any provider is, and the prescription, clinic services and manufacturing services are provided by, a person or persons accredited by Enable NSW or an equivalent body for interstate participants.

2.2 Lifetime Care considers a treatment and care need in connection with maintenance and repairs to prostheses to be reasonable and necessary where the need arises due to:

- a) normal wear and tear;
  - b) routine maintenance as recommended by the manufacturer or to meet industry standards;
- and

- c) the prescription and supply of maintenance and repairs of the prostheses is completed by a provider or providers that is or are accredited by Enable NSW or an equivalent body for interstate participants.
- 2.3 Reasonable and necessary treatment and care needs in connection with prostheses do not include the repair or replacement of a prosthesis if its repair or replacement is required due to neglect or misuse.
- 2.4 Lifetime Care may regard a prosthesis for a recreational activity to be reasonable and necessary, in addition to a primary prosthesis, where the participant is likely to engage in the activity on a regular and ongoing basis. *For example, Lifetime Care may fund specialised limbs for a sporting activity where involvement in the activity can be demonstrated by sporting club membership and evidence of attendance and participation.*
- 2.5 Lifetime Care will not consider an expense connected with a prosthesis to be a reasonable expense if the prosthesis does not comply with Australian Standards (if applicable), or if it is not registered with the Therapeutic Goods Administration (if applicable).

## **Part 16: Vocational rehabilitation and vocational training**

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 16 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs relating to vocational rehabilitation and vocational training made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### **1 Vocational rehabilitation**

- 1.1 Vocational rehabilitation is the process of restoring or attempting to restore the person, through a combined and coordinated use of services, to the maximum level of employment or other work-related activity the person is capable of, or which the person wishes to achieve. Work-related activity is an activity that enables the participant to acquire skills to improve their ability to attain employment in the future.
- 1.2 Vocational rehabilitation will be reasonable and necessary where a need for vocational rehabilitation has been identified in an assessment by a suitably qualified rehabilitation provider and is supported by:
  - a) evidence that the need relates to a participant's motor accident injury; and
  - b) specific, measurable, achievable, realistic and time-based vocational goals that have been clearly defined.
- 1.3 All requests for vocational rehabilitation must be in writing and must outline how vocational rehabilitation will:
  - a) promote progress towards identified realistic vocational goals; and
  - b) aim to return the participant to their original employment with their pre-injury employer or, if this is unattainable, assist the participant to obtain alternative employment with a different employer.
- 1.4 When determining whether vocational rehabilitation is reasonable and necessary, Lifetime Care may consider:
  - a) the participant's pre-accident life roles, career and intended study plans;
  - b) the participant's ability to engage in vocational rehabilitation because of the motor accident;

- c) assessment by a suitably qualified vocational rehabilitation provider to determine the participant's vocational goal and their capacity to achieve the goal;
  - d) whether the participant and their medical/rehabilitation team agree with the choice of vocational goal;
  - e) existing vocational rehabilitation services that the participant may be able to access; and
  - f) the participant's capacity to achieve a sustainable employment outcome.
- 1.5 Reasonable and necessary treatment and care needs in connection with vocational rehabilitation do not include services:
- a) of no clear benefit to a participant;
  - b) that address needs that are not related to the motor accident injury;
  - c) for a person other than the participant; and/or
  - d) the participant can access or is required to access under other state or federal legislation.
- 1.6 The following expenses will not generally be considered reasonable expenses in relation to the participant's assessed treatment and care needs in relation to vocational rehabilitation:
- a) assistance to keep a business open, such as paying for temporary staff to do the participant's job;
  - b) standard furniture and other capital items associated with the participant's place of employment or occupational health and safety requirements; and
  - c) everyday living expenses associated with employment, such as travel to and from a place of employment, clothing/uniforms or lunches.

## **2 Vocational training**

- 2.1 Vocational training is formal training that maintains or develops job-related and technical skills.
- 2.2 Vocational training (which includes pre-vocational training) may be considered reasonable and necessary where:
- a) a suitably qualified rehabilitation provider identifies a need relating to a participant's motor accident injury for a participant to undertake vocational training;
  - b) specific, measurable, achievable, realistic and time-based vocational goals have been clearly defined; and
  - c) it can be demonstrated that vocational training will progress these goals.
- 2.3 All requests for vocational training must be in writing and must outline how vocational training will promote progress towards the identified vocational goals.
- 2.4 When determining whether a participant's vocational training care needs are reasonable and necessary, Lifetime Care may consider:
- a) the participant's pre-accident life roles, career and intended study plans;
  - b) the participant's ability to engage in vocational training because of their motor accident injury;

- c) assessment by a suitably qualified vocational rehabilitation provider to determine the participant's goal and capacity;
- d) agreement by the participant and their medical/rehabilitation team to the identified vocational goal;
- e) existing vocational training services that the participant can access;
- f) the participant's capacity to achieve a sustainable employment outcome without vocational training;
- g) identifiable labour market opportunities on completion of the training;
- h) the involvement of the participant in the decision-making process and the participant's willingness to commit to the vocational training;
- i) alternatives to vocational training;
- j) previous vocational training expenses paid for by Lifetime Care;
- k) the cost and duration of any requested vocational training; and
- l) the cost and duration of any travel that may be required to attend vocational training.

2.5 The following vocational training activities are not considered reasonable and necessary treatment and care needs:

- a) training that is related to maintaining an existing qualification, licence, registration or accreditation once the qualification, licence, registration or accreditation has been obtained;
- b) training that would be considered to form part of induction, ongoing skill maintenance or development that is within the responsibility of the employer or the participant to maintain their employment;
- c) training associated with voluntary career changes or personal development;
- d) ongoing training costs where the training or educational institution determines that the participant is guilty of serious academic misconduct; and

2.6 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to vocational training will not generally include:

- a) phone calls, photocopying, stationery, meals at training venues and all other expenses associated with training;
- b) costs of training courses that the participant had enrolled in or commenced prior to the injury; and
- c) ongoing training costs where the participant fails to maintain satisfactory academic progress as determined by the educational institution and Lifetime Care.

### **3 Payments to assist the commencement of employment**

3.1 Lifetime Care may make payments for incidental expenses, not exceeding \$1,000, to assist a participant to commence employment. Lifetime Care will not consider incidental expenses in connection with assistance in the commencement of employment to be reasonable and necessary, or a reasonable expense, if the participant is already entitled to those services

under applicable state or federal legislation. This payment is regarded as a reasonable expense in connection with vocational education and vocational training only when:

- a) it will address an immediate or short-term barrier that directly prevents the participant from commencing employment or accepting an offer of employment;
- b) there is written evidence of a job offer to the participant;
- c) the need arises before the participant commences employment and receives their first payment from their employer; and
- d) not provided or to be provided by the employer.

3.2 In general, Lifetime Care will consider it reasonable to make one or more payments in relation to incidental expenses only where the total amount of such incidental expenses for a participant (over the course of the participant's participation in the Scheme) is no more than \$1,000.

3.3 Lifetime Care will not consider payments to assist the commencement of employment to be reasonable and necessary, or a reasonable expense, if the participant is already entitled to those services under applicable state or federal legislation.

3.4 The payment for incidental expenses is unable to be used for:

- a) items or services that an employer has a legal obligation to provide, such as personal protective equipment or orientation training;
- b) items that an employer will provide to the employee at no cost to the employee, such as a standard-issue uniform;
- c) household and everyday living costs; and
- d) income support.

## Part 17: Buying into the Lifetime Care and Support Scheme

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 7A (5), 7B(5), 28 and 58.

This version of Part 17 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any application to buy into the Lifetime Care and Support Scheme (the Scheme) made on and from that date, whether for interim or lifetime participation and whether determined or otherwise, and to all participants in the Scheme, whether interim or lifetime and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### 1 Background

#### Relevant sections of the legislation

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

#### **7A Persons injured before commencement of Scheme may “buy in”**

- (1) A person who has suffered a motor accident injury as a result of a motor accident occurring before the relevant Scheme commencement date (a pre-commencement injury) may be accepted as a lifetime participant in the Scheme if the person pays to the Authority, for payment into the Fund, a contribution determined by the Authority.
- (2) The contribution is to be the amount that the Authority determines as the amount required to fund the treatment and care needs of the person as a lifetime participant in the Scheme in respect of the injury.
- (3) A person is eligible to participate in the Scheme in respect of a pre-commencement injury only if the person would have been eligible to participate in the Scheme:
  - (a) had the motor accident occurred immediately after the relevant Scheme commencement date, and
  - (b) if the person has been awarded damages in respect of the injury—had those damages not been awarded.
- (4) An application for a person to become a participant in the Scheme in respect of a pre-commencement injury cannot be made by an insurer.
- (5) The LTCS Guidelines may make provision for or with respect to how a person’s contribution for participation in the Scheme in respect of a pre-commencement injury is to be determined.

## **7B Persons injured in motor accidents occurring outside NSW may “buy in”**

- (1) A person who has suffered a motor accident injury as a result of a motor accident occurring outside New South Wales (whether before or after the commencement of this section) may be accepted as a lifetime participant in the Scheme if the person pays to the Authority, for payment into the Fund, a contribution determined by the Authority.
- (2) The contribution is to be the amount that the Authority determines as the amount required to fund the treatment and care needs of the person as a lifetime participant in the Scheme in respect of the injury.
- (3) A person is eligible to participate in the Scheme under this section only if the person would have been eligible to participate in the Scheme:
  - (a) had the motor accident occurred in New South Wales, and
  - (b) if the person has been awarded damages in respect of the injury—had those damages not been awarded.
- (4) An application for a person to become a participant in the Scheme under this section cannot be made by an insurer.
- (5) The LTCS Guidelines may make provision for or with respect to how a person’s contribution for participation in the Scheme under this section is to be determined.

1.1 An injured person who sustained a motor accident injury prior to the commencement of the Scheme or was injured in a motor accident occurring outside NSW may buy in to become a lifetime participant in the Scheme if their injury meets the eligibility criteria specified in Part 1 of the Guidelines.

1.2 Lifetime Care will calculate the amount required to provide services to meet the injured person’s reasonable and necessary treatment, rehabilitation and care needs because of the motor accident injury, for the injured person’s lifetime. Buying into the Scheme is voluntary and will be subject to an agreement between Lifetime Care and the injured person or their guardian.

## **2 Application to buy in**

2.1 An application to buy into the Scheme can be made by or on behalf of the injured person. An application must be in writing and must be accompanied by sufficient information to allow Lifetime Care to determine that the injured person’s motor accident injury meets the criteria in the Guidelines and the injured person would have been eligible to participate in the Scheme, had their motor accident occurred after the applicable Scheme commencement date or within NSW.

2.2 Lifetime Care may deny an application to buy into the Scheme if the injured person’s injury does not meet the eligibility criteria in Part 1 of the Guidelines, being the current version in force at the time of the application to buy in. If an application is denied, the injured person

may dispute Lifetime Care's decision about their eligibility to the Scheme in accordance with the Guidelines.

### **3 How Lifetime Care calculates cost to buy in**

- 3.1 Lifetime Care requires information about the injured person's previous and current treatment, rehabilitation and care needs to calculate the cost for the injured person to buy into the Scheme. This information includes, but is not limited to:
- a) the current age of the injured person, and their age at the time of injury;
  - b) the nature and severity of the injured person's injury;
  - c) current objective assessment of the injured person's functional status. *For example, using the FIM™ or WeeFIM®, the Care and Needs Scale (CANS) and American Spinal Injury Association (ASIA) scale for spinal cord injury;*
  - d) objective assessments of the injured person's previous and current treatment, rehabilitation and care needs; and
  - e) the nature, frequency and duration of services utilised to meet these treatment, rehabilitation and care needs, including any variations in care needs during periods of transition.
- 3.2 Lifetime Care may arrange for the injured person to be assessed for the above information to be obtained. Lifetime Care will fund the reasonable and necessary cost of any assessment/s required. A copy of the assessment/s will be provided to the injured person.

### **4 What the buy-in amount includes**

- 4.1 The amount determined by Lifetime Care to buy into the Scheme will include:
- a) the full lifetime expenses in providing for the injured person's reasonable and necessary treatment, rehabilitation and care needs as they relate to the motor accident injury in respect of which the injured person is a participant in the Scheme and as are reasonable and necessary in the circumstances, as outlined in section 6(1) of the Act and the LTCS Guidelines, and
  - b) the administrative and associated costs incurred by Lifetime Care in managing the injured person as a lifetime participant in the Scheme.

### **5 Lifetime Care's notification of the amount required to buy in**

- 5.1 Lifetime Care will notify the injured person in writing of the amount required for the injured person to buy in, which includes information as to how Lifetime Care has calculated the buy-in amount.
- 5.2 The entire buy-in amount will be paid to Lifetime Care upfront.
- 5.3 Lifetime Care will pay the buy-in amount into the Lifetime Care and Support Authority Fund (the Fund) in full once received.

5.4 In exceptional cases, Lifetime Care may consider security over real property in lieu of cash payment after liquidation of personal assets to meet the buy-in amount.

**6 Buy in as a lifetime participant**

6.1 After the injured person has paid the buy-in amount to Lifetime Care in full, Lifetime Care will write to the injured person to confirm that they have become a lifetime participant and that the buy-in amount has been paid into the Fund. Lifetime Care cannot request any additional payments from the injured person once a buy-in amount has been paid.

6.2 Once the injured person has become a lifetime participant, the person has the same obligations and entitlements as any other lifetime participant in the Scheme.

## **Part 18: Payments under the Scheme (Approved Providers and special circumstances)**

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11B, 11C, 28 and 58.

This version of Part 18 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to the provision of treatment, care, support or services by approved providers which commence on and from that date in respect of any participant in the Scheme, whether interim or lifetime and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

Lifetime Care may direct employees to provide case management and assessment of care needs services to participants. This part does not apply to employees of Lifetime Care.

### **1 Approved providers of attendant care services**

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

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

#### **11C Approved providers**

- (1) The following treatment, care, support or services (provided in connection with the provision of assessed treatment and care needs of a participant in the Scheme) are to be provided only by an approved provider of the treatment, care, support or service:
  - (a) attendant care services,
  - (b) any other treatment, care, support or services (other than the services of a medical practitioner) identified in the LTCS Guidelines as treatment, care, support or services that are to be provided by an approved provider.
- (2) An approved provider of a service is a person, or a person of a class, approved by the Authority (or by any other person specified in the LTCS Guidelines), in accordance with the LTCS Guidelines, to provide the treatment, care, support or service under the Scheme.
- (3) The LTCS Guidelines may also make provision for or with respect to the standards of competency of approved providers.

- 1.1 The Act requires that attendant care services are to be provided only by an approved provider except when a payment is made to a participant in accordance with section 11A(4) of the Act.
- 1.2 Lifetime Care will undertake a competitive selection process to appoint approved providers of attendant care services within NSW and the ACT.
- 1.3 Lifetime Care requires that an approved attendant care provider hold the *Australian Community Industry Alliance*, formerly known as the *Attendant Care Industry Association (ACIA)* endorsed certification to the Attendant Care Industry Standard or current equivalent.
- 1.4 Without limitation, Lifetime Care will consider that special circumstances exist to justify payment to a non-approved provider with equivalent compliance to the Attendant Care Industry Standard to deliver attendant care services if a participant permanently resides outside NSW and the ACT.

## **2 Approved providers of rehabilitation services (Case Management)**

- 2.1 Reasonable and necessary services for or in connection with rehabilitation, under Part 7 of the Guidelines, include case management services. Community-based case management services are to be provided only by a case manager approved by Lifetime Care unless special circumstances exist.
- 2.2 Without limitation, Lifetime Care will consider that special circumstances exist to justify payment to a non-approved provider to deliver case management services if a participant permanently resides outside NSW and the ACT or outside Australia.
- 2.3 Case managers not employed by icare must submit an application to become an approved case manager (Lifetime Care) within NSW and the ACT.
- 2.4 Approved providers of case management services are required to meet Lifetime Care's expectations for case management service providers as available on Lifetime Care's website at: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au).
- 2.5 Lifetime Care may, at any time, further define the expectations of approved case managers to include areas of specialist service provision.

## **3 Approved providers of assessments of care needs**

- 3.1 Assessment of a participant's care needs is to be completed by an approved provider when a participant's needs are complex or extensive.
- 3.2 Approved providers of assessments of care needs are required to meet Lifetime Care's expectations for these assessments as available on Lifetime Care's website at: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au)
- 3.3 Lifetime Care will undertake a competitive selection process to appoint approved providers of assessments of care needs.
- 3.4 Lifetime Care may, at any time, further define the expectations of approved providers of assessments of care needs.

3.5 Lifetime Care may consider that special circumstances exist to justify payment to a non-approved provider to conduct an assessment of the participant's care needs if a participant permanently resides outside Australia.

#### **4 Approved providers of major home, workplace and educational facility modifications**

4.1 In this Part, and in Parts 14 and 23 of the Guidelines, a major home, workplace or educational facility modification refers to:

- a) any building modification that alters the internal or external structure of a residence;
- b) is complex;
- c) involves multiple tradespeople;
- d) requires a detailed plan or Council approval; and
- e) costs over \$30,000.

4.2 Reasonable and necessary services in connection with major home, workplace and educational facility modifications include the services of an occupational therapist and building modifications project manager.

4.3 Occupational therapy as a service in connection with these major modifications is only to be provided by an approved provider, referred to in the Guidelines as a building modifications occupational therapist.

4.4 Project management as a service in connection with these major modifications is only to be provided by an approved provider, referred to in the Guidelines as a building modifications project manager.

4.5 Clauses 4.2 to 4.4 of the Guidelines do not apply if the participant requiring major home modifications permanently resides outside Australia.

4.6 Lifetime Care will undertake a competitive selection process to appoint approved providers who are building modification occupational therapists and building modification project managers.

#### **5 Other approved providers**

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

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

##### **11B Payment not required in certain circumstances**

- (1) The Authority is not required to make a payment in relation to the following:
  - (a) any treatment, care, support or service provided to a participant in the Scheme on a gratuitous basis (that is, anything provided to a participant for which the participant has not paid and is not liable to pay),
  - (b) any treatment, care, support or service that is required to be provided by an approved provider but is provided by a person who is not, at the time of the provision, an approved provider.

- (2) However, the Authority may elect to make a payment in relation to any treatment, care, support or service referred to in subsection (1) if the Authority is of the opinion that special circumstances exist that justify such payment.
- (3) The LTCS Guidelines may make provision for or with respect to determining whether special circumstances exist that justify payment in relation to any treatment, care, support or service referred to in subsection (1).
- (4) To avoid doubt, this section applies even if the treatment, care, support or services concerned are provided in connection with the provision of the assessed treatment and care needs of a participant in the Scheme.
- (5) This section has effect despite section 11A.

5.1 Under Sections 11B and 11C of the Act, Lifetime Care may, at any time, include additional service provider types to be subject to approval.

5.2 In the event a new provider type becomes subject to approval, the terms of approval, expectations of the role and application process will be made available on Lifetime Care's website at: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au).

## **6 Payments under the Scheme – Special circumstances**

6.1 This part of the Guidelines makes provision with respect to determining whether special circumstances exist that justify payment to a person who is not, at the time of the provision, an approved provider.

6.2 Lifetime Care will consider whether any special circumstances exist to justify payment of a non-approved provider, where a service is required to be provided by an approved provider.

6.3 Special circumstances may exist based on a participant's geographic location or because of cultural or religious reasons. This is not an exhaustive list of special circumstances.

6.4 Lifetime Care will consider whether any special circumstances exist on a case-by-case basis. The existence of one of the circumstances specified in clause 4.3 will not necessarily result in the approval of payments to a non-approved provider.

6.5 To determine whether special circumstances exist, Lifetime Care requires a written request from the person or organisation seeking to deliver services. The request must include:

- a) the reason(s) why none of the approved providers are appropriate;
- b) their suitability to provide services to the participant. *For example, their relevant experience and training;*
- c) the circumstances said to justify approval of that person or organisation to provide services to the participant;
- d) the participant's agreement to the provision of services by that provider; and
- e) any other information Lifetime Care considers relevant.

- 6.6 If approval is granted to pay a non-approved provider, Lifetime Care's written agreement to fund the services will set out the duration of the approval. Lifetime Care will not pay expenses for services delivered before a provider has obtained written approval.
- 6.7 If approval is granted to pay a non-approved provider, Lifetime Care's written agreement to fund the services will set out the rates of payment.

## Part 19: Alternative expenditure option

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 19 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to requests for the Lifetime Care and Support Authority (Lifetime Care) to make a contribution to alternative expenditure on and from that date in respect of any participant in the Scheme, whether interim or lifetime and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### Relevant section of the legislation

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

#### **11AA Option of contribution to other cost-effective expenditure for meeting treatment and care needs**

- (1) The Authority has the option of satisfying its liability under this Part to pay for expenses incurred in relation to a participant's assessed treatment and care needs by contributing to alternative expenditure (incurred by or on behalf of the participant) that the Authority is satisfied will provide for those needs in a cost-effective manner.
- (2) The Authority's contribution to alternative expenditure is limited to the amount of a reasonable contribution to that expenditure and is not to exceed the amount for which the Authority would otherwise have been liable under this Part to pay for expenses incurred in relation to a participant's assessed treatment and care needs.
- (3) An assessment of the option of contributing to alternative expenditure under this section is part of the assessment of the treatment and care needs of a participant in the Scheme.

Note. Because an assessment of this option is part of the assessment of the treatment and care needs of a participant, Part 4 and the LTCS Guidelines extend to an assessment of that option.

- 1.1 Lifetime Care will consider making a contribution to alternative expenditure under section 11AA of the Act where the treatment, care, support or service outcome for the participant will achieve the same or better outcome that would result from paying expenses to meet the initial assessed care need. *For example, the parents of a child participant request that Lifetime Care makes a contribution to enable the joint purchase of a second-hand wheelchair accessible van as an "alternative expenditure option". This will be the same outcome for the*

*participant that would result from Lifetime Care paying expenses to modify a new van for wheelchair access. This will enable the participant to access a wheelchair accessible van, more quickly than the modification of a new van.*

- 1.2 An alternative expenditure option may be requested by the participant or another person on their behalf.
- 1.3 Lifetime Care is not required to consider an alternative expenditure option as part of its assessment of needs under Part 5 of the Guidelines, but may suggest an alternative expenditure option, which is optional for the participant.
- 1.4 Lifetime Care must obtain agreement in writing from the participant, or their parent or legal guardian, if the participant is a minor or lacks legal capacity to make an agreement.
- 1.5 If the participant is a minor or lacks legal capacity to agree to a decision made in accordance with section 11AA of the Act and this Part, Lifetime Care must be satisfied that making a contribution to alternative expenditure is in their best interests.
- 1.6 Lifetime Care may need to seek agreement, or enter into a legal agreement, with a person other than the participant where the alternative expenditure is being made or contributed to by such other person.

## Part 20: Ambulance transportation

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 20 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs relating to ambulance transportation made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### 1 Reasonable and necessary ambulance transportation

1.1 Lifetime Care considers treatment and care needs for ambulance transportation, provided by organisations such as Ambulance NSW or St John's Ambulance, to be reasonable and necessary when the transportation is:

- a) not otherwise funded by Lifetime Care and is required because of the motor accident injury;
- b) required to provide assistance for a participant to access, enter or be positioned in a vehicle, and the physical assistance required is greater than that expected to be provided by a taxi driver, attendant care worker or family member;
- c) for receiving medical or hospital services related to the motor accident injury, or for receiving other services to meet the participant's treatment and care needs; and
- d) there are no other alternatives and ambulance transportation is the only suitable means of transport for the participant. *For example, a participant with complex wounds after surgery is required to lie on their back, because sitting upright in a wheelchair or in a car seat would risk breakdown of their surgical wounds.*

1.2 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to ambulance transportation will not generally include:

- a) ambulance transportation provided under an existing fee agreement;
- b) attendance-only charges for ambulance services; or
- c) active 'waiting time' for an outpatient driver service upon request by the hospital or facility unless there is a clinical need for the participant to be actively managed or supervised and an attendant care worker or family member is not present, in which case, active waiting

time will only be paid for the time the outpatient driver has provided active supervision and assistance for the participant.

## **2 Method of assessment and criteria used to determine reasonable and necessary treatment and care needs in connection with ambulance transportation**

- 2.1 To determine whether a participant's need for ambulance transportation is reasonable and necessary in the circumstances, the following factors are relevant:
  - a) the participant's individual needs for ambulance transportation in the context of other treatment and services provided, such as medical treatment and surgery;
  - b) the circumstances where the ambulance transportation is required, such as:
    - i. between hospitals; from a hospital to the participant's residence after a stay in hospital as an in-patient; or for other medical treatment or therapy services;
    - ii. consideration of whether other services have been provided, such as vehicle modifications, that will eliminate the need for ambulance transportation; and
    - iii. consideration of the period for which ambulance transportation is required.
- 2.2 Information required by Lifetime Care to assess a participant's treatment or care need in connection with ambulance transportation includes information:
  - a) from a medical practitioner or health professional as to the need for ambulance transportation compared with other alternatives;
  - b) on any pre- or co-existing medical conditions that may impact on their needs for or in connection with ambulance transportation;
  - c) about whether supervision for behavioural management is required; and
  - d) whether a family member or attendant care worker is available to provide assistance.
- 2.3 The following procedures are to be followed when assessing treatment and care needs in connection with ambulance transportation (unless the treatment is urgent or occurring immediately following the motor accident):
  - a) Lifetime Care will assess the participant's needs for ambulance transportation on request and prior to service delivery; and
  - b) the ambulance transportation must be requested using an itemised quotation.

## Part 21: Dental treatment

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 21 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs relating to dental treatment made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### 1 Reasonable and necessary dental treatment

- 1.1 Lifetime Care considers treatment and care needs in connection with dental treatment to be reasonable and necessary when treatment is:
- a) required as a direct result of the motor accident injury;
  - b) related to, or caused by, side effects of medications for the motor accident injury, and this is evidenced by supporting information from a medical or dental practitioner;
  - c) required because of failure to maintain dental health due to treatment required as a result of the motor accident (such as an extended stay in an intensive care unit);
  - d) in accordance with accepted dental practice;
  - e) provided by a dental practitioner or other specialist (such as an oral and maxillofacial surgeon) registered with the Australian Health Practitioner Regulation Agency (AHPRA) or other appropriate professional body if the participant resides outside Australia; and
  - f) intended to restore a participant's dentition to a level that is consistent with their pre-injury standard of dental care.
- 1.2 Lifetime Care considers treatment and care needs for routine dental treatment to be reasonable and necessary only when treatment is:
- a) a direct result of the motor accident injury (such as severe traumatic brain injury affecting the participant's ability to brush their teeth);
  - b) required in addition to the level of pre-injury routine dental treatment (such as oral spasticity requiring more frequent dental treatment by a dental practitioner); and
  - c) required to ensure that other forms of dental treatment can be provided (such as a participant with traumatic brain injury requiring a general anaesthetic to treat dental caries).

- 1.3 The following dental treatments are not considered reasonable and necessary treatment and care needs:
- a) a treatment or service solely for aesthetic purposes, such as teeth whitening;
  - b) a treatment or service that is of no clear benefit to a participant; and
  - c) repeat treatment required due to a participant's lack of dental hygiene, unless the reason for treatment is assessed as related to the motor accident injury. *For example, cognitive and behavioural issues associated with traumatic brain injury.*
- 1.4 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to dental treatment will not generally include:
- a) a treatment or service inconsistent with the participant's pre-injury standard of dental care unless the reason for treatment is assessed as being exacerbated or aggravated by the motor accident injury;
  - b) a treatment or service where there is no published evidence relating to its safety or effectiveness;
  - c) fees associated with non-attendance (unless the reason for non-attendance is beyond the participant's control); and
  - d) standard household expenses associated with dental care such as toothbrushes,
  - e) toothpaste, dental floss and mouthwash.

## **2 Method of assessment and criteria used to determine reasonable and necessary treatment and care needs for or in connection with dental treatment**

- 2.1 The assessment of treatment and care needs in connection with dental treatment must:
- a) be made in collaboration with the participant and dental practitioner; and
  - b) take into account the participant's injury-related needs and their impact on the participant's ability to perform or be assisted with dental hygiene tasks.
- 2.2 Information required by Lifetime Care to assess a participant's treatment or care need for or in connection with dental treatment includes:
- a) information relating to the motor accident, to establish whether dental injuries may have occurred through direct trauma to the mouth or facial injuries;
  - b) information from a medical practitioner as to the likely cause of the presenting dental needs, if the participant has pre- or co-existing medical conditions that may impact on their needs for or in connection with dental treatment;
  - c) information from any or all dentists where the participant received treatment prior to their injury;
  - d) a fully itemised account or quotation from a registered practitioner;
  - e) an outline of the goals of the proposed treatment; and
  - f) information about the participant's injury-related needs and the ability to perform, or be assisted with, any recommended dental hygiene that the treatment may require.

2.3 Information required by Lifetime Care to assess a participant's treatment or care need in connection with dental treatment may include a second opinion or quote in circumstances where:

- a) the relationship to the motor accident injury is unclear; or
- b) Lifetime Care regards the dental treatment as complex or extensive.

2.4 The dental treatment must be requested prior to commencement of the treatment in all circumstances unless the treatment is emergency treatment or is otherwise urgent.

### **3 Dentures**

3.1 Where the participant required dentures prior to the motor accident, Lifetime Care will not replace dentures lost or damaged in the motor accident, in hospital or inpatient rehabilitation unless:

- a) there is a direct impact on other accident-related dental treatment if the dentures were not replaced at the same time; and
- b) there is evidence of direct trauma to the mouth from the accident.

## **Part 22: Medical treatment including pharmaceuticals**

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 22 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs relating to medical treatment made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### **1 Reasonable and necessary medical treatment**

- 1.1 Lifetime Care considers treatment and care needs in connection with medical treatment to be reasonable and necessary when treatment is:
  - a) required as a result of the motor accident injury; and
  - b) provided by a medical practitioner who is appropriately qualified and registered under the relevant regulation agency.
- 1.2 Lifetime Care considers reasonable and necessary treatment and care needs in connection with medical treatment to include:
  - a) medical and surgical treatment;
  - b) pharmaceuticals;
  - c) diagnostic tests such as imaging services;
  - d) inpatient or outpatient treatment provided by a hospital;
  - e) medical treatment, reports, case conferences or other contact with other professionals treating the participant; and
  - f) other specialised medical treatment such as assisted fertility treatment and treatment for chronic pain.
- 1.3 Reasonable and necessary treatment and care needs in connection with medical treatment do not include:
  - a) a treatment or service not in accordance with the Medical Benefits Schedule (MBS), which contains explanations, definitions, rules and conditions for services provided by medical practitioners, unless otherwise specified by Lifetime Care;
  - b) a treatment or service without an MBS code;

- c) a treatment or service where there is no published evidence relating to its safety or effectiveness;
  - d) a treatment or service for any other member of the participant's family unless the family member or partner is the recipient of assisted fertility treatment in accordance with 5.6 below; and
  - e) a treatment or service that is of no clear benefit to the participant.
- 1.4 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to medical treatment will not generally include:
- a) fees associated with medico-legal reports or any medical reports not requested by Lifetime Care;
  - b) additional expenses incurred while receiving inpatient or outpatient medical treatment such as food, laundry, newspapers, magazines, additional television charges, internet rental, phone line rental and phone calls; and
  - c) non-attendance fees where a participant failed to attend unless the MBS states otherwise or the reason for non-attendance is beyond the participant's control.

## **2 Method of assessment and criteria used to determine reasonable and necessary treatment and care needs in connection with medical treatment**

- 2.1 The assessment of treatment and care needs in connection with medical treatment must:
- a) be made in consultation with the participant and medical practitioner; and
  - b) take into account the participant's individual needs for medical treatment in the context of other treatment and services provided.
- 2.2 Information required by Lifetime Care to assess a participant's treatment or care need in connection with medical treatment may include:
- a) information relating to the medical treatment that has an item number in the MBS;
  - b) information about pre-existing or co-existing medical conditions;
  - c) information from a medical practitioner as to the likely cause of the presenting medical treatment, if the participant has pre- or co-existing medical conditions that may impact on their needs for or in connection with medical treatment or pharmaceuticals;
  - d) clinical assessments and reports;
  - e) justification for the proposed treatment, including the relationship to the motor accident; reasonable and necessary criteria listed in Part 6 of the Lifetime Care Guidelines; and
  - f) justification for the treatment process, including any associated medical treatment as part of an overall treatment plan.
- 2.3 The following procedures are to be followed when assessing treatment and care needs in connection with medical treatment:
- a) the medical treatment must be prescribed by an appropriate specialist or medical practitioner registered with the Australian Health Practitioner Regulation Agency (AHPRA) or other appropriate professional body if the participant resides outside Australia; and

- b) the treatment must be requested prior to commencement in all circumstances, unless the treatment is urgent or delivered under an existing fee schedule; and
- c) the medical practitioner or specialist is to provide medical services using the Australian Medical Association (AMA) item numbers, where there is a corresponding Medical Benefits Schedule (MBS) number.

### **3 Reasonable and necessary pharmaceuticals**

- 3.1 Lifetime Care considers reasonable and necessary treatment and care needs in connection with pharmaceuticals to include:
  - a) prescription pharmaceuticals;
  - b) over-the-counter medications;
  - c) prescribed vitamins and supplements, including health products such as fibre laxatives or probiotics;
  - d) topical skin creams such as sorbolene; and
  - e) other items such as consumable preparation solutions for a medical procedure.
- 3.2 Bandages, dressings and other wound care items, and consumable items for continence needs, may either be pharmaceuticals or aids and appliances (equipment) under Part 13 of the Guidelines.
- 3.3 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to pharmaceuticals will not generally include:
  - a) pharmaceutical expenses that form part of the bed day fee in a hospital or inpatient rehabilitation facility;
  - b) toilet paper, shampoo or other items for personal grooming;
  - c) any other standard items able to be purchased from a pharmacy such as cosmetics, food and beverages;
  - d) sunscreen, which is regarded a standard household cost unless prescribed for scar management;
  - e) contraceptive prescriptions; and
  - f) any pharmaceuticals that are illegal.

### **4 Method of assessment and criteria used to determine reasonable and necessary treatment and care needs in connection with pharmaceuticals**

- 4.1 The following procedures are to be followed when assessing treatment and care needs in connection with pharmaceuticals:
  - a) pharmaceuticals must be prescribed by an appropriate medical practitioner registered with the Australian Health Practitioner Regulation Agency (AHPRA) or other appropriate professional body if the participant resides outside Australia;

- b) the participant's treating medical practitioner may be requested to provide a list of pharmaceuticals related to the motor accident injury before Lifetime Care is able to assess a participant's needs for pharmaceuticals; and
- c) the pharmaceuticals must be provided by an appropriate pharmacist registered with the appropriate professional body (unless the participant resides outside Australia).

## **5 Assisted fertility treatment**

5.1 Lifetime Care considers reasonable and necessary treatment and care needs in connection with fertility treatment when:

- a) the need for the assisted fertility treatment arises from the motor accident injury;
- b) a referral is made by a suitably qualified fertility medical specialist; and
- c) a suitably qualified fertility medical specialist has prescribed the most appropriate fertility treatment for the participant and their partner.

5.2 Lifetime Care considers reasonable and necessary treatment and care needs in connection with fertility treatment to include:

- a) fertility medication, ovulation induction or assisted insemination;
- b) in-vitro fertilisation (IVF) treatment;
- c) assisted ejaculation or obtaining sperm by other means such as testicular aspiration;
- d) egg and sperm storage. The length of time that storage is paid for by Lifetime Care will depend on individual circumstances and the advice of the fertility medical specialist;
- e) obtaining donor eggs or sperm, including retrieval and storage, in circumstances where a participant is unable to produce viable eggs or sperm as a result of the motor accident injury;
- f) fertility counselling only as an inclusive component of the assisted fertility intervention for a participant and or their partner; and
- g) all other forms of assisted fertility or assisted reproductive technology treatment.

5.3 Reasonable and necessary treatment and care needs in connection with assisted fertility treatment do not include:

- a) surrogacy, whether commercial or altruistic surrogacy;
- b) assisted fertility intervention to address the fertility needs of the participant's partner if these are not the result of the motor accident injury;
- c) any treatment or service where there is no objective evidence that the treatment or service is safe and effective;
- d) any treatment or service that is experimental or not consistent with intervention offered to the general community;
- e) counselling for a participant's partner which is not inclusive of the assisted fertility treatment program;
- f) membership of fertility support/ self-help groups for participants or their partners;

- g) any treatment or service that is not consistent with the guidelines of the assisted fertility treatment facility that the participant and their partner are attending;
- h) any treatment or service that is inconsistent with relevant State or Commonwealth legislation; and
- i) any assisted fertility treatment that is elective, or for medical conditions not related to the motor accident injury, such as pre-implantation genetic diagnosis.

5.4 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to assisted fertility treatment will not generally include:

- a) the costs of raising a child; and
- b) the costs associated with the pregnancy and birth of the baby conceived through assisted fertility treatment that are not related to the motor accident injury, such as obstetrician, hospital, midwife and/or other birthing costs.

5.5 Lifetime Care considers reasonable and necessary treatment or care needs in connection with fertility treatment to include a reasonable number of IVF treatments per pregnancy attempt, in line with usual practice. Lifetime Care will consider up to 5 stimulated cycles per pregnancy attempt to be reasonable and necessary. If over 5 stimulated cycles are required, Lifetime Care will consider the recommendation of the fertility medical specialist in determining whether further treatments are reasonable and necessary.

5.6 Lifetime Care will consider it reasonable and necessary for both the participant and the participant's partner to receive assisted fertility treatment when it is the participant's fertility status that is affected by the motor accident injury.

## **6 Method of assessment and criteria used to determine reasonable and necessary treatment and care needs in connection with assisted fertility treatment**

6.1 Information required by Lifetime Care to assess a participant's treatment or care need in connection with assisted fertility treatment may include:

- a) information about the relationship between the participant's need for fertility treatment and their motor accident injury;
- b) the likely permanence of the participant's compromised fertility status;
- c) the nature and extent of treatment that the participant and partner will require;
- d) the anticipated outcome and success rate of the assisted fertility treatment;
- e) information about any other treatment or services that may impact on the proposed treatment; and
- f) any other relevant information relating to the participant's or their partner's fertility status.

## **Part 23: Workplace and education facility modifications**

This Part of the Lifetime Care and Support Guidelines is made under the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act), including sections 11A, 11AA, 23, 28 and 58.

This version of Part 23 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any assessment of treatment and care needs relating to workplace and education facility modifications made on and from that date in respect of any participant in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any 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 or any other Guideline in any other circumstances.

### **1 Modifications to a workplace or education facility**

1.1 Lifetime Care considers treatment and care needs in connection with workplace and education facility modification to be reasonable and necessary only when:

- a) it has been confirmed that the proposed modifications are not available under another scheme or legislation, including any reasonable adjustments an employer or education provider may be obliged to make;
- b) a suitably qualified occupational therapist has recommended the modifications to meet a participant's injury-related need in a workplace or education facility modifications report; and
- c) the employer or education provider and the building owner (if different) both agree in writing to the modifications.

1.2 The following workplace or education facility modifications are not considered reasonable and necessary treatment and care needs:

- a) modifications to any workplace or education facility that constitute, are likely to constitute, or will result in, an illegal structure. An illegal structure is one that is contrary to relevant building and construction codes or local council planning guidelines, statutes and/or laws;
- b) modifications that are undertaken without approval from Lifetime Care;
- c) modifications where the owner, body corporate or other responsible authority has not given permission for the modifications and such permission is required;
- d) modifications required as a result of a condition that existed before the motor accident or that is not a result of the motor accident; and
- e) modifications that provide no clear injury-related benefit to the participant.

- 1.3 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to workplace or education facility modifications will not generally include:
- a) additional costs or other modifications or renovations intended to add value to an existing workplace or education facility and are not related to the participant's motor accident injury;
  - b) the cost of upgrades of any materials required for workplace or education facility modifications;
  - c) costs for the removal of modifications from a workplace or education facility; and
  - d) any loss of value of any property resulting from any modifications to, or removal of, modifications from the property.

## **2 Method of assessment and criteria used to determine reasonable and necessary treatment and care needs in connection with workplace and education facility modifications**

- 2.1 To determine whether a participant's need for workplace or education facility modifications is reasonable and necessary in the circumstances, the following factors are relevant:
- a) the physical and social environment of the workplace or education facility;
  - b) the participant's physical, cognitive and behavioural impairments such as impairments to:
    - i) mobility including type of wheelchair use where relevant
    - ii) arm and/or hand function
    - iii) thermo-regulation
    - iv) bladder and bowel function
    - v) cognition
    - vi) behaviour;
  - c) whether any future improvement or change in the above factors is likely; and
  - d) the effects of aids or appliances, including wheelchairs, on the participant's ability to function within their work or education environment.
- 2.2 Information required by Lifetime Care to assess a participant's treatment or care needs in connection with workplace or education facility modifications may include one or more of the following relating to:
- a) the safety of the participant, attendant care workers and other employees or students;
  - b) the ownership of the property; and
  - c) consents required for modifications with any other parties such as a landlord, body corporate or local Council.

## **3 Workplace modifications**

- 3.1 Lifetime Care considers treatment and care needs in connection with workplace modification to be reasonable and necessary only when:

- a) the long term impact of the participant's motor accident injury prevents them from performing their duties within the existing workplace environment without modification to the layout or fittings;
- b) there is an employer who has confirmed in writing they will provide permanent employment for the participant;
- c) the workplace modification is the most cost-effective means for enabling the participant to return to work and all other alternatives have been considered; and
- d) a workplace assessment or work options plan has been conducted and Lifetime Care has agreed to support the work goal.

3.2 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to workplace modifications will not generally include:

- a) items that are normal workplace or household items (such as furniture or whitegoods, smoke alarms, surge protectors, towel rails, fans, lights, hot water services, security doors and windows); and
- b) items not directly related to the participant's need arising from their motor accident injury.

3.3 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to workplace modifications will not generally include workplace modifications for a participant where Lifetime Care has already funded substantial modifications in the past 5 years.

#### **4 Method of assessment and criteria used to determine reasonable and necessary treatment and care needs in connection with workplace modifications**

4.1 To determine whether a participant's need for workplace modification is reasonable and necessary in the circumstances, the following factors are considered:

- a) any reasonable adjustments an employer may be obliged to make under state and federal legislation or law; and
- b) whether the modifications could be funded partly or wholly under another scheme or by another payer.

4.2 Information required by Lifetime Care to assess a participant's treatment or care needs in connection with workplace modifications may include one or more of the following:

- a) the participant's entry to and exit from the workplace;
- b) the participant's access to all necessary areas of the workplace; and
- c) the cost and extent of the modifications when considered in relation to the likely benefit to the participant and alternative employment options.

#### **5 Educational facility modifications**

5.1 Costs for modifications to educational facilities are primarily the responsibility of the education facility.

- 5.2 Lifetime Care may consider funding for an education facility modification to be reasonable and necessary when:
- a) there is no other funding source and the modifications would not be provided under any other legislation or scheme;
  - b) the long-term impact of the participant's motor accident injury prevents them from learning within the existing education facility without modification to the layout or fittings;
  - c) the education facility modification is the most cost-effective means for enabling the participant to participate in the education activity and all other alternatives have been considered; and
  - d) for adult learners, the education program has been identified through a work options plan and Lifetime Care has agreed to support the work goal.
- 5.3 The reasonable expenses in relation to the participant's assessed treatment and care needs in relation to education facility modifications will not generally include:
- a) items that are normal educational or household items (such as furniture) and are not directly related to the participant's need arising from their motor accident injury; and
  - b) modifications that may be considered an education provider's obligation as a type of reasonable adjustment under relevant state and federal legislation or law.

## **6 Method of assessment and criteria used to determine reasonable and necessary treatment and care needs in connection with education facility modifications**

- 6.1 To determine whether a participant's need for education facility modification is reasonable and necessary in the circumstances, the following factors are relevant:
- a) the participant's ability to participate in educational activities as well as access to other facilities such as bathrooms; and
  - b) whether the modifications could be funded partly or wholly by the education provider.
- 6.2 Information required by Lifetime Care to assess a participant's treatment or care needs in connection with education facility modifications may include one or more of the following:
- a) the length of time the student is likely to remain in the education facility;
  - b) reasonable adjustments available to timetable and class allocation. *For example, conducting the student's classes in ground floor rooms;*
  - c) accessibility for the participant to all necessary areas of the facility; and
  - d) the cost and extent of the modifications when considered in relation to the likely benefit to the participant and alternative options for education.

## **7 Repairs and maintenance to workplace or education facility modifications**

- 7.1 The cost of repairs and maintenance for modifications funded by Lifetime Care that are essential for the participant's access or safety will generally be considered a reasonable expense.

- 7.2 Lifetime Care may fund the cost of repairs or maintenance proportional to the original costs paid, where the original modification was not fully funded by Lifetime Care on the basis that this represents a reasonable expense. *For example, where an employer or property owner also contributed to the original cost of the modification.*
- 7.3 The cost of repairs and maintenance as a result of normal wear and tear (such as replacement of bathroom fittings/fixtures), for the upkeep of a workplace or education facility will not generally be considered a reasonable expense in relation to the participant's reasonable and necessary treatment and care needs.
- 7.4 The cost of repairs and maintenance when the participant is no longer attending the workplace or education facility is not a reasonable expense in relation to the participant's reasonable and necessary treatment and care needs.