

## Disputes about eligibility (companion to Part 2)

You can dispute a decision we made about your eligibility to participate in the Scheme if you disagree with the decision we made about whether you meet or don't meet the criteria in Part 1 of our Guidelines.

This companion explains how you can dispute a decision we have made about your eligibility to participate in the Scheme.

*When we use the word 'you', we mean the person covered by the Lifetime Care and Support Scheme (also known as 'the participant') or someone representing them, such as a parent, guardian or legal representative.*

### What is a dispute about eligibility?

A dispute is a disagreement about whether your motor accident injury satisfies criteria specified in the Guidelines for eligibility to participate in the Scheme.

You or someone on your behalf can dispute a decision only after we've written to you about whether you're eligible or not.

### Time frame for making a dispute

We must receive your dispute application within 6 months of the date of our decision. We might give a longer time frame if there's a genuine reason for why you didn't dispute the decision within 6 months.

### Lodging a dispute

We can suggest that you make a dispute application, or you can notify us in writing, in person or by telephone that you'll be lodging a dispute. Dispute applications can also be made by someone on your behalf, or by the insurer of your CTP claim.

The dispute application must include:

- your name, address and contact details
- the date of our eligibility decision

- a statement that you dispute the decision
- the reasons why you dispute the decision about whether or not you meet the eligibility criteria in Part 1 of the Guidelines
- the reasons why you think you do or don't meet the eligibility criteria in Part 1 of the Guidelines, with reference to any relevant information, including medical reports
- any information or reports relevant to the eligibility criteria. This may include information about other medical conditions that happened before or at the same time as the accident.

You need to give us documents in English, unless they come with an English translation. Any translated documents must also have 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).

If you don't give us this information, we might ask you for it before we can assess your dispute application.

### Informing you that we've received your application

We'll write to you to acknowledge the dispute application within 5 working days of receiving it. If there's another party to the dispute, we'll give them a copy of the application within 10 working days of receiving it. Then, they have 20 working days to respond to the application by making a submission.

Any information given to us regarding the dispute will be shared with any other party to the dispute, even if they're not a party when the information is given to us.

### Further information or documentation required

If we think that we need more information about the application to help resolve the dispute, we might:

- ask you, a service provider, or CTP insurer to give us this information within 20 working days
- go ahead with the application without the information, but only after 20 working days, to make sure you've had an opportunity to provide us with the information we need.

We can contact any party, or any of your treating health practitioners or service providers, in order to clarify the issues in dispute or to assist with getting information relevant to the dispute.

At any stage during the dispute, we could contact any of your treating health practitioners about health or physical safety issues, if an assessor thinks they are urgent or serious.

## Not accepting a dispute application

We might not accept a dispute application if it:

- doesn't clearly seem to be about your eligibility
- hasn't been made by you, someone on your behalf, or by the CTP insurer of your claim.

## Alternatives to dispute applications

If you aren't a participant (interim or lifetime) when the dispute application is made:

- we might decide that the dispute application gives us enough information to make a decision about your eligibility, and/or
- the dispute application might give us enough information for us to decide that you should apply to the Scheme rather than applying to dispute a decision.

If this happens, we might ask you to withdraw the dispute. This could mean that we treat your dispute application as a new application to the Scheme, or you could lodge a new application to the Scheme. If you lodge a new application, Part 2 of the Lifetime Care and Support Guidelines doesn't apply. Part 1 of the Guidelines applies to that application instead.

## An Assessment Panel will consider the dispute application

We'll convene an Assessment Panel from our list of assessors as soon as possible, and within 20 working days of giving the other party your application or receiving any submission from the other party.

When we convene the Assessment Panel, we'll consider:

- your needs, such as the nature of your injury
- which parts of the eligibility criteria you don't agree with
- your location, and the location of the assessors
- the specialty and expertise of the assessors
- the availability of the assessors
- whether you need an interpreter.

We'll tell you and the other party the assessment details within 5 working days of convening the Panel. These details will include the names and specialties of the assessors on the Assessment Panel.

We'll appoint a chairperson and send the Assessment Panel copies of the dispute application and all accompanying documents, including our decision about your eligibility and any additional information received since the dispute application.

Before any assessment happens, we might contact you to make sure that your needs are going to be met during any part of the assessment.

## Asking for a different Assessment Panel

If you think that the assessor/s is not appropriate, you or the other party can ask us to reallocate the dispute to a different assessor or assessors. This could be for any or all of the assessors on the Assessment Panel.

If you or the other party would like a different Assessor or Assessment Panel, ask us to reallocate your dispute. You have to do this within 10 working days of finding out the names of the assessors on the Assessment Panel. Tell us, in writing, exactly why you think the assessor/s is not appropriate and send this to both us and the other party.

Within 10 working days of receiving your request we'll ask the other party to respond. We'll decide whether or not to reallocate your dispute within 10 working days of receiving the request, or within 10 working days of receiving a response from the other party.

If we think there are sound reasons or think that any of the assessors originally appointed to the Assessment Panel are not appropriate, we'll change the members of the Panel.

## Same assessor but different dispute

If an assessor has resolved a previous dispute, we could ask them to be a part of a Panel to determine the current unrelated dispute. *For example, a dispute assessment for a different type of dispute under another part of the Guidelines.*

## Other reasons for reallocating disputes

We might reallocate a dispute to a different assessor or a whole new Assessment Panel if:

- someone is ill
- an assessor asks us to, or
- the Panel can't resolve the dispute within a reasonable time frame.

## How the Assessment Panel assesses your dispute application

### 1. Panel holds an initial meeting

The Assessment Panel will hold an initial meeting or teleconference within 20 working days of the date the Assessment Panel was convened. At this meeting the Assessment Panel will decide:

- whether they will ask you to do a clinical examination, or if they can complete their assessment on the information they have
- who will write and sign the certificate on behalf of the Panel
- whether the panel needs to meet again.

The Assessment Panel's initial meeting or teleconference will not involve you or any other party to the dispute.

### 2. Panel assesses the dispute

The Assessment Panel can decide its own way to assess the dispute, but they have to follow the Guidelines and any practice notes. They may hold as many meetings or teleconferences as they need in order to resolve the dispute, but they have to try to resolve the dispute as quickly as possible.

When assessing the dispute, the Assessment Panel may:

- contact each other by teleconference, email or face-to-face
- contact any of the medical or health professionals that are treating you now, or have treated you in the past
- ask for medical records or other documentation that they think is relevant to the dispute
- ask that you attend a clinical examination with any or all members of the Assessment Panel
- ask that you attend a clinical examination with another health professional who is not part of the Assessment Panel. If this happens, the health professional will assess you and give a report to you, the Assessment Panel, and any other party to the dispute.

If the Assessment Panel asks you to attend a neuropsychological assessment, this assessment will occur in accordance with the State Insurance Regulatory Authority's 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*.

We'll provide administrative support to the Assessment Panel during the assessment process from a person or team that has not been involved in the eligibility decision.

### We may need to arrange a clinical examination

We'll arrange a clinical examination with a member or members of the Assessment Panel if they ask us to as this is part of the administrative support we provide. The Assessment Panel will decide if any or all members examine you.

We'll arrange the time, date and location of the clinical examination with you, and tell you the name and specialty of the assessor or assessors or other persons conducting the clinical examination. We'll confirm this with you and the other party in writing.

## Preparing for the clinical examination

Before the examination, we'll tell you what to wear and bring, what to expect and what might happen. *For example, the kind of questions you or your support person might be asked.*

We'll pay the necessary costs and expenses of travel and accommodation for you, and another person with you such as a parent, carer or legal guardian or other support person.

## What happens during a clinical exam?

The Assessment Panel will decide who can be there at a clinical examination and how it goes ahead. A parent, legal guardian, carer or other support person can be there to help or support you.

If you would like your legal or medical representatives there, we need to approve it so please advise us and also provide the reasons why.

Your legal guardian, carer or other support person may provide information to the assessor/s during a clinical examination, but only when the assessor asks for this information.

Sometimes, the assessor might have to ask your legal guardian, carer or other support person to leave the clinical examination. *For example, if your support person is shouting and speaking over you. The assessor asks your support person to let you speak, but they don't. This is affecting the assessment and causing you to be upset.*

When the clinical examination happens, the assessor/s will try to make sure that you and your support person understand:

- why the examination is happening and what's involved,
- the things the Assessment Panel will consider in assessing the dispute; and
- the role of the Panel as an independent decision-maker in making a decision that will must be followed.

## Using interpreters in assessments and clinical examinations

If you need an interpreter, we'll arrange one who is accredited by NAATI (National Accreditation Authority for Translators and Interpreters). If a NAATI interpreter is not available, a non-NAATI interpreter may be

used if the Assessment Panel or Review Panel agree to this. Anyone who is with you at an examination or assessment, such as a carer or support person, can't be your interpreter.

## 3. Certificate issued by Assessment Panel

The Assessment Panel will issue their decision in a written report, called a certificate. The certificate will include written reasons for their decision. We'll send this to you and to any other party to the dispute within 15 working days of the Panel's final contact, clinical examination or final teleconference. Depending on the decision, we'll implement it within 5 working days of receiving the decision.

## Reviews

You, or another party to a dispute, can ask for a review of the Assessment Panel's decision. To apply for a review, you need to write to us.

Applications for review can only be about a decision made by an Assessment Panel, not a Review Panel.

An application for review has to:

- be in writing (letter or email)
- include your name, address and contact details
- state why you're asking for a review, including which ground or grounds for review in section 15 of the Act apply, together with reasons
- attach any relevant information or medical reports that are relevant to the review application.

## Time limit extensions

We can extend the 6-month time limit if exceptional circumstances exist. We might ask the other party or parties to the dispute to submit a response to your review application before deciding to extend any time limit.

If you apply for review, we might decline to make submissions in response to your application. However, if we find a potential ground for review or we agree with any of the grounds you state, we must make a submission in response to your application.

If we don't apply for the review, we'll acknowledge the application, and provide a copy of the review application to any other party within 10 working days of receiving it.

If you're a party to the review application, other than the review applicant, you have 20 working days from the date of the review application to make a submission about whether the dispute application should be referred to the Review Panel or dismissed.

We'll advise you, the review applicant and any other party about whether the application will be referred to a Review Panel or dismissed, including the reasons why within 5 working days of receiving submissions from any or all parties. If there is a party that doesn't make a submission, we'll respond within 5 working days from the last date of the final submission.

## Grounds for review

Any or all of the following reasons justify a review of a decision we have made about your eligibility:

- there has been a change in your condition, being a change that occurred or that first became apparent after the dispute was referred to the assessment panel and that change is capable of having a material effect on the determination.
- there is additional relevant information about your injury, being information that was not available, or could not reasonably have been obtained, before the dispute was referred to the panel and that information is capable of having a material effect on the determination.
- the decision was not made in accordance with the Guidelines.
- the decision is demonstrably incorrect in a material respect.

## The Review Panel

We'll convene a Review Panel from our list of assessors within 10 working days of deciding to refer your application to a Review Panel. This will happen if we didn't apply for the review.

When we convene the Review Panel, we'll consider:

- your needs, such as the nature of your injury
- which parts of the eligibility criteria you don't agree with

- the grounds for review in the review application
- your location, and the location of the assessors
- the specialty and expertise of the assessors
- the availability of the assessors
- whether you need an interpreter.

## Who's on the Review Panel?

If we applied for the review, we'll let you or the other party choose who will be on the Review Panel. If the other parties can't agree who should be on the panel, then each party will choose one panel member, and we'll choose the third panel member. If there are three parties, each party will choose a panel member. The Review Panel won't include anyone who was on the Assessment Panel.

We'll tell you and the other party the details of the review within 5 working days of convening the Panel. This will include the names and specialties of the assessors on the Review Panel.

We'll appoint a chairperson and send the Review Panel copies of:

- the dispute application
- all accompanying documents, including our decision about your eligibility and
- any additional information we've received since the dispute application.

We might contact you before the Review Panel assesses you. This is to make sure that your needs can be met in any assessment or examination.

## If you disagree with who is on the Review Panel

You or the other party can ask us to reallocate the dispute to a different assessor or assessors if you think the assessor is not appropriate. This could be for any or all of the assessors on the Review Panel. However, if you or another party were involved in choosing an assessor for the Panel, you can't ask us to reallocate the assessor you chose.

To reallocate the dispute that is under review you have to:

- ask us to reallocate the dispute within 10 working days of finding out the names of the assessors on the Review Panel

- tell us in writing exactly why you think the assessor is not appropriate to assess the dispute and
- send a copy to the other party and to us.

We'll ask the other party to provide submissions within 10 working days of receiving the request to reallocate the dispute. We'll decide within 10 working days of receiving the request, or within 10 working days of receiving a submission from another party.

We'll reconvene the Review Panel, in whole or in part, if we think there are reasonable grounds for thinking that any of the assessors originally appointed to the Review Panel are not appropriate.

### Same assessor but different dispute

If an assessor has resolved a previous dispute, we could ask them to be a part of a Panel to determine the current unrelated dispute. *For example, a dispute assessment for a different type of dispute under another part of the Guidelines.*

We might reallocate a review of a dispute to a different assessor or a whole different Review Panel if we need to. This could be because of illness, if an assessor asks us to, or if the panel can't resolve the dispute in a reasonable timeframe.

## Review panel procedures

### 1. Review Panel holds initial meeting

When the Review Panel is convened, the panel will appoint a chairperson. We'll send the Review Panel copies of:

- all information that was sent to the previous Assessment Panel, including our eligibility decision and reasons
- the review application
- the Assessment Panel certificate
- any additional information since the review application was made.

The Review Panel will hold an initial meeting or teleconference within 20 working days of the date the Review Panel was convened. This might not involve you or any other party to the dispute.

### 2. Review Panel assesses your dispute application

The Review Panel can decide its own way to assess the review of the dispute, but they have to follow the Guidelines and any practice notes.

The Review Panel's assessment process will consider all aspects of the Assessment Panel's decision and decide if any or all of the reasons for the review were justified.

The Review Panel will decide how to assess the review of the dispute and may:

- ask you to have another clinical examination, or whether the Review Panel assessment will be done on the information they have
- ask you to attend a clinical examination with another health professional who is not part of the Assessment Panel or Review Panel. If this happens, the health professional will make an assessment and give you, the Review Panel and any other party to the dispute a report.
- decide whether they need any additional information from you, another party to the dispute or anyone else to make a decision.
- decide whether and how to contact you, any party to the dispute or anyone else.
- consider any new information that the Assessment Panel did not have.

### Other information

If the Review Panel decides that they need another clinical examination or additional information, the same criteria as for the Assessment Panel applies. The Review Panel have to try to resolve the dispute as quickly as possible.

We'll provide administrative support to the Review Panel during this process. This support will be from a person or team that has not been involved in the eligibility decision, or the previous dispute assessed by the Assessment Panel.

### 3. Certificate issued by Review Panel

The Review Panel will hold as many meetings or teleconferences as they need in order to make a decision to resolve the dispute, but they have to try to resolve the dispute as quickly as possible.

The Review Panel can confirm the decision of the Assessment Panel or revoke it and substitute its own decision.

The Review Panel will issue their decision in a written report, called a certificate. The certificate will include written reasons for their decision. We'll send this to you and to any other party to the dispute within 15 working days of their final contact, clinical examination or final teleconference. Depending on the decision, we will implement the Panel's decision within 5 working days of receiving it.

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

If an Assessment Panel or a Review Panel has made an obvious error on a certificate you or another party can ask us to correct it. An obvious error is a clerical or typographical error in the certificate, or an error arising from an omission or inconsistency.

You need to write to us within 30 working days of the date on the certificate, tell us the error and how it should be corrected. We, an Assessment Panel or Review Panel might also find an error and ask for it to be corrected. If an Assessment Panel or Review Panel identifies an obvious error in the certificate, they have to tell us within 30 working days of the date on the certificate.

We might ask for submissions from other parties before asking an Assessment Panel or Review Panel to correct an obvious error.

The Assessment Panel or Review Panel must decide whether to issue a replacement certificate within 20 working days of receiving the application to correct the obvious error or receiving the submission from the other party.

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 that replaces the previous certificate.

### **We may not agree with the Assessment Panel's decision**

If we don't agree with the Assessment Panel's decision we could apply for the review.

If we do, we have to tell you and any other party in writing, prior to any review application, and ask you what you think about it.

### **We may not accept an application for review**

We might dismiss a review application if it:

- isn't received within 6 months of receiving the Assessment Panel certificate or
- doesn't clearly identify which one or more grounds for review apply.

### **Alternatives to review**

If the review application relates to section 15(1)(a) and/or 15(1)(b) of the Act, and you aren't a participant (interim or lifetime) when the review application is made:

- we might decide that the review application gives us information to make a decision about your eligibility, and/or
- the review application might give us the information we need to ask you to apply to the Scheme, rather than make a dispute.

If this happens, we might ask you to withdraw your review application. You could then ask us to treat your review application as a new application to the Scheme, or you could lodge a new application to the Scheme.

If you lodge a new application, this Part doesn't apply, and Part 1 applies to that application instead.

### **Will it cost me anything?**

No. The cost of the review panel assessment is paid by us, including any necessary travel and accommodation. We can't pay any legal costs for you, for example, if you engage a solicitor to assist you with the review.

### **For more information contact Lifetime Care**

9am to 5pm, Monday to Friday

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