

Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No 1)

Disallowable instrument DI2014–192

made under the

Lifetime Care and Support (Catastrophic Injuries) Act 2014, section 93 (Making of Guidelines)

1 Name of instrument

This instrument is the *Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No 1)*.

2 Making of determination between notification and commencement

Section 81(6) of the *Legislation Act 2001* applies to this instrument.

3 Delegation

In the LTCS Guidelines any reference to the LTCS Commissioner includes any delegate of the LTCS Commissioner.

4 Commencement

This instrument commences on the day after its notification.

5 Guidelines

The Guidelines at Schedule 1 are Part 1 of the LTCS Guidelines made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* and relate to eligibility for participation.

Karen Doran

Lifetime Care and Support Commissioner of the Australian Capital Territory

26 June 2014

PART 1 – Eligibility for participation

This part of the LTCS Guidelines is issued under section 93 of the LTCS Act for the purposes of sections 15, 16, 18 and 19. Only people injured in a motor accident in the ACT who have sustained an injury as defined in section 15 and meet the criteria set out in the LTCS Guidelines are eligible for participation in the LTCS Scheme.

1. Application for participation

An application to become a participant in the LTCS Scheme is made by or on behalf of the injured person or by the insurer of a claim. The application must demonstrate that:

- a.) the person had a motor accident within the meaning of section 7 of the *Road Transport (Third-Party Insurance) Act 2008*;
- b.) the accident must have happened in the ACT on or after 1 July 2014 (section 6(1)(a) of the LTCS Act);
- c.) the injury was a result of the motor accident;
- d.) at least one motor vehicle had CTP cover within the meaning of section 6(1)(c) and 6(3) of the LTCS Act; and
- e.) the motor accident injury meets the criteria under section 15 of the LTCS Act and in this part of the LTCS Guidelines set out below.

2. Injury criteria

Eligibility for interim participation, and eligibility for lifetime participation, is limited to people injured in a motor accident, who meet the following injury criteria at the time that the application is made.

A medical specialist must certify that the injured person meets the injury criteria, including certification that the specialist has examined the injured person and has sighted the FIM™ or WeeFIM® score sheet where applicable.

2.1 Spinal cord injury (section 15(1)(a)(i) LTCS Act)

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 or bladder/bowel dysfunction.

A person who as a result of the motor accident has a spinal cord injury is eligible to enter the LTCS Scheme if the following criteria are met.

Criteria for spinal cord injury

- The spinal cord injury was caused by the motor accident; and
- There is a spinal cord injury resulting in permanent neurological deficit.

2.2 Brain injury (section 15(1)(a)(ii) LTCS Act)

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.

A person who as a result of the motor accident has had a brain injury is eligible to enter the LTCS Scheme if the following criteria are met.

Criteria for brain injury

- The brain injury was caused by the motor accident; and
- 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 child 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
- One of the following criteria is met:
 - if over 8 years of age at the time of assessment, a score of 5 or less on any of the items on the FIM™ or WeeFIM®) due to the brain injury; or
 - if aged from 3 to 8 years at the time of assessment, a score two less than the age norm on any item on the WeeFIM® due to the brain injury; or
 - if aged under 3 years at the time of assessment, a medical certificate from a paediatric rehabilitation physician or a specialist otherwise approved in writing by the LTCS Commissioner that states the child will probably have permanent impairment due to the brain injury resulting in the need for daily attendant care services.

2.3 Amputations (section 15(1)(a)(iii) LTCS Act)

A person who as a result of the motor accident has had amputations as described below, or the equivalent impairment, is eligible to enter the LTCS Scheme if the following criteria are met.

Criteria for amputations

- The injury resulting in the amputations, or the equivalent impairment, was caused by the motor accident; and
- 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 “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;

- 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.

Criteria for unilateral amputation

- The injury resulting in the amputation, or the equivalent impairment, was caused by the motor accident; and
- The injured person has had one of the following types of amputation:
 - forequarter amputation (complete amputation of the humerus, scapula and clavicle) or shoulder disarticulation;
 - hindquarter amputation (hemipelvectomy by trans-section at sacroiliac joint, or partial pelvectomy);
 - hip disarticulation (complete amputation of the femur); or
 - “short” transfemoral amputation as defined by the loss of 65% or more of the length of the femur.

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.

2.4 Burns (section 15(1)(a)(iv) LTCS Act)

A person who has sustained burns as a result of the motor accident is eligible to enter the LTCS Scheme if the following criteria are met.

Criteria for burns

- The injury was caused by the motor accident; and
- there are full thickness burns greater than 40% of total body surface area, or greater than 30% of total body surface area in children under 16 years; or
- inhalation burns causing long term respiratory impairment; or
- full thickness burns to the hand, face or genital area; and
- one of the following criteria is met:
 - if over 8 years of age at the time of assessment, a score of 5 or less on any of the items on the FIM™ or WeeFIM® due to the burns; or

- if aged from 3 to 8 years at the time of assessment, a score two less than the age norm on any item on the WeeFIM® due to the burns; or
- if aged under 3 years at the time of assessment, a medical certificate from a paediatrician or a specialist otherwise approved in writing by the LTCS Commissioner that states the child will probably have permanent impairment due to the burns resulting in the need for daily attendant care services.

2.5 Permanent blindness (section 15(1)(a)(v) LTCS Act)

A person who has lost sight in both eyes as a result of the motor accident is eligible to enter the LTCS Scheme if the following criteria are met.

Criteria for permanent blindness

- The injury was caused by the motor accident; and
- The person is legally blind, that is:
 - Visual acuity on the Snellen Scale after correction by suitable lenses is less than 6/60 in both eyes; or
 - 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
 - A combination of visual defects resulting in the same degree of visual loss as that occurring in (a) or (b) above.

3. Functional Independence Measure (FIM™) assessment

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
- an assessor approved, in writing, by the LTCS Commissioner to conduct FIM™ or WeeFIM® assessments.

Timing of FIM™ or WeeFIM® assessments – initial application to LTCS Scheme

The FIM™ or WeeFIM® assessment must be conducted within one month of the date of the initial completed application to the LTCS Scheme, unless this requirement is waived by the LTCS Commissioner under section 16(4) LTCS Act. If more than one FIM™ or WeeFIM® assessment has been conducted then the assessment closest to the date of the application must be used.

Timing of FIM™ or WeeFIM® assessments – application for lifetime participation

The FIM™ or WeeFIM® assessment must be conducted within two months of the date of an application for an interim participant to become a lifetime participant, unless this is varied or waived by the LTCS Commissioner under sections 21(4)(b) or 21(5) LTCS Act.

WeeFIM® age norm

Any 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 issued by Uniform Data System for Medical Rehabilitation.

4. Deferring the making of an application

The LTCS Commissioner may require that the making of an application for eligibility be deferred until such time as the injury has stabilised or is unlikely to change. An example of this would be if the injured person lodged an application and did not meet the eligibility criteria at the time of application, however amputation surgery is likely in the near future as a result of the motor accident injury and the surgery would result in the injured person meeting the eligibility criteria.

5. Making an application

Under section 17, the LTCS Commissioner requires the applicant to provide authorisation for the LTCS Commissioner to obtain information and documents relevant to the injury, motor accident or motor vehicle from specified persons in connection with the application. This is part of the initial Application Form.

The form must be signed, all questions completed and all required information attached. If the form does not contain the information necessary for the LTCS Commissioner to make a decision about eligibility, the applicant will be requested to provide the required information.

There may be circumstances where the LTCS Commissioner may require additional information besides that provided with or in the initial Application Form. An applicant must comply with any reasonable request by the LTCS Commissioner to supply specified additional information or provide authorisation for the LTCS Commissioner to obtain specified additional information. This could be in circumstances where the LTCS Commissioner cannot make a decision about eligibility without this information, or when it is unclear whether the injured person has sustained a motor accident injury. This information could include:

- the Motor Accident Notification Form or other personal injury claim forms;
- ambulance or air ambulance/retrieval records;
- hospital records;
- treating doctor's reports;
- past medical records or school records;
- accident investigations; and
- police reports.

6. The LTCS Commissioner's determination

The LTCS Commissioner will acknowledge all applications in writing within 10 working days of receipt of the complete Application Form. The LTCS Commissioner may require information additional to that provided by the applicant in the Application Form before the form can be regarded as complete.

The LTCS Commissioner will make a determination as soon as possible after the application is lodged, taking into account:

- the information on the Application Form;
- any information attached to the Application Form;
- any additional information that the LTCS Commissioner may request in order to make a determination; and
- the eligibility criteria in this Part of the LTCS Guidelines.

Applicants will receive the LTCS Commissioner's determination in writing, including reasons for the decision.

When the LTCS Commissioner denies an application for participation in the LTCS Scheme, the LTCS Commissioner will provide the applicant with information about the LTCS Commissioner's process for resolving disputes about eligibility to the LTCS Scheme or resolving disputes about motor accident injury.

7. Interim and lifetime participation

Once eligibility for the LTCS Scheme has been established, all participants will be accepted as interim participants for 2 years under section 20 of the LTCS Act. This is because of the possibility of recovery and ongoing improvement in the injured person's condition, such that the injured person may not meet the eligibility criteria after the two year period. The period of interim participation in the LTCS Scheme commences from the date of the LTCS Commissioner's determination.

The decision about whether an interim participant is a lifetime participant in the LTCS Scheme will typically be made before the end of the interim participation period.

A child will not be assessed for lifetime participation before the age of 5 years. For a child that becomes an interim participant under the age of 3 years, their interim participation may be longer than 2 years.

8. Application for lifetime participation

A new Application Form, including the medical certificate, must be submitted to the LTCS Commissioner for lifetime participation in the LTCS scheme under section 21. Before the Application Form for lifetime participation is completed, the LTCS Commissioner will notify the injured person and any other interested party if any additional information is required. The medical certificate, in particular the FIM™ or WeeFIM® scores, must be completed within two months of the date of the completed application for lifetime participation, unless varied or waived by the LTCS Commissioner (sections 21(4)(b) and 21(5)).