

# Guidelines as to the procedures of expert review panels

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## 1. Purpose of these Guidelines

- 1.1. The Lifetime Support Authority (LSA) is created under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* (the Act). The LSA administers the Lifetime Support Scheme (LSS) which provides treatment, care and support for people who sustain lifelong disabilities from motor vehicle accidents occurring in South Australia after 1 July 2014.
- 1.2. The Act provides that expert review panels (ERPs) be appointed to:
  - 1.2.1. resolve disputes about eligibility injury criteria for participation in the LSS, and
  - 1.2.2. review a participant's treatment, care and support assessment on application from a participant.
- 1.3. These guidelines are issued under Schedule 1 Clause 5(5) of the Act to ensure procedural fairness in the procedure of ERPs and facilitate their proper administration.

## 2. General Principles

- 2.1. The principles of procedural fairness require that the ERP will always:
  - 2.1.1. provide an opportunity to a person whose interests may be affected by the decision to be heard, and
  - 2.1.2. be unbiased in the matter to be decided.
- 2.2. The ERP's assessment process will consider the dispute or review on its merits, including:
  - 2.2.1. assessing all material provided as part of the decision under review,
  - 2.2.2. deciding whether any additional information is required to make a decision (including clinical examinations);
  - 2.2.3. considering any new information that was not before the previous assessment;

## 3. Procedures

- 3.1. Where an ERP consists of more than one expert, they can meet and confer in person, by teleconference or by electronic means, to reach a decision.
- 3.2. In all cases, the ERP must attempt to resolve the dispute as quickly as possible and must give the parties an opportunity to provide information to the ERP.
- 3.3. For each review or dispute determination, the ERP will decide whether a decision is to be made on the papers or whether they will undertake a clinical examination.

## 4. Support staff

- 4.1. For the purposes of Schedule 1 Clause 8 of the Act, the LSA will provide such administrative and ancillary staff as are necessary for the proper functioning of the ERPs.

## 5. Convenor appoints expert review panel

- 5.1. On receipt of an application, if the Convenor forms the view that the application is not clear or needs further clarification, the Convenor may contact the applicant through the LSA secretariat and seek further information.
- 5.2. In eligibility disputes, the Convenor through the LSA secretariat will provide the application to any other relevant parties and provide them with the opportunity to make submissions within 14 days.
- 5.3. The Convenor will convene an ERP from the list of experts as soon as possible, and within 21 days of acknowledgement of the application. When convening the ERP, the Convenor will consider:
  - 5.3.1. the needs of the injured person, for example, the nature of their injury (e.g. traumatic brain injury, spinal cord injury);
  - 5.3.2. the location of the injured person and the experts;
  - 5.3.3. the specialty and expertise of the experts in relation to the issues in dispute or under review;
  - 5.3.4. the availability of the experts; and
  - 5.3.5. whether an interpreter is required.
- 5.4. The Convenor will appoint at least one suitable expert as the ERP, and can appoint up to three experts where the Convenor believes this is warranted.
- 5.5. When the ERP is convened and consists of more than one expert, the Convenor will appoint a presiding member
- 5.6. The Convenor, through the LSA secretariat, will send the ERP copies of:
  - 5.6.1. the dispute application and all accompanying documents, including the LSA's original determination of eligibility/certification of treatment care and support; and
  - 5.6.2. any additional documentation or information received since the application was made.
- 5.7. The LSA secretariat may contact the injured person prior to any assessment by an ERP in order to ensure that the injured person's individual needs can be considered in any assessment or clinical examination if required.

## 6. Expert review panel hold initial meeting

- 6.1. The presiding member, through the LSA secretariat, will advise the parties of the arrangements for the assessment, in writing, within 5 days of the ERP being convened. This will include the names and specialties of the expert/s on the ERP.
- 6.2. Where the ERP consist of more than one expert, the ERP will hold an initial meeting within 14 days of the date the ERP was convened, where the ERP will decide:
  - 6.2.1. whether a clinical examination of the injured person is required or if the assessment can be completed on the information provided;
  - 6.2.2. whether additional information is required for the ERP to make a decision;
  - 6.2.3. whether the views of the applicant and reasons for the application are clear or whether further information should be sought from the applicant;
  - 6.2.4. whether the submissions of any other parties are clear or whether further information should be sought from the parties;
  - 6.2.5. whether a further meeting of the ERP is required.

## 7. Clinical examination arranged if required

- 7.1. At the request of the ERP, the injured person may need to attend for a clinical examination with a member or members of the ERP. The ERP will decide if any or all members are required to examine the injured person. If an examination is to occur, the parties will be notified in writing of:
  - 7.1.1. the time, date and location of the clinical examination; and
  - 7.1.2. the name and specialty of the assessor or assessors conducting the clinical examination.
- 7.2. Before the examination, the presiding member, through the LSA secretariat will notify the injured person:
  - 7.2.1. how to prepare for the examination (e.g. what to wear and bring) and what to expect; and
  - 7.2.2. what may occur at the examination, for example the kind of questions that may be asked of the injured person and support person.

## 8. Clinical examination procedures

- 8.1. The ERP 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.

- 8.2. Legal or medical representatives of the injured person or any party cannot be present during a clinical examination unless the Convenor gives prior approval and is satisfied that the circumstances warrant it.
- 8.3. 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.
- 8.4. The LSA will pay the reasonable costs associated with attendance of the injured person, and if required, the reasonable expenses of one accompanying person such as the legal guardian, carer or other support person to attend any clinical examination arranged by the ERP.
- 8.5. When the clinical examination occurs, the ERP members will take such measures as are reasonably practicable to ensure that the injured person and anyone accompanying them:
  - 8.5.1. understands the reason for the examination and the issues the ERP will consider in assessing the dispute;
  - 8.5.2. is aware of what the examination will involve; and
  - 8.5.3. is aware of the role of the ERP members as independent decision-makers, making a legally binding decision that will be documented in the ERP's certificate.
- 8.6. The ERP, at its discretion, may discuss the examination findings with the person who was examined.

## 9. Use of interpreters in assessments and clinical examinations

- 9.1. Interpreters accredited by NAATI (National Accreditation Convenor for Translators and Interpreters) should be used during the course of an assessment if an interpreter is required or is requested by an injured person.
- 9.2. If a NAATI interpreter is not available, a non-NAATI interpreter may be used at the discretion of the ERP or the Convenor. Any person accompanying the injured person to an examination or assessment, such as a carer or support person, cannot act as an interpreter.
- 9.3. The LSA secretariat will provide necessary support to obtain a submission from injured persons with communication difficulties.

## 10. Providing reasons in certificate issued by expert review panel

- 10.1. The ERP may hold as many meetings as required after a clinical examination in order to finalise their determination. However, in all cases, the ERP must attempt to resolve the dispute as quickly as possible.
- 10.2. An ERP, in deciding whether it will confirm the decision of the previous assessor or

revoke that decision, will provide written reasons for its decision.

- 10.3. The ERP will issue a certificate as to its determination, either under section 36(4) of the Act- eligibility disputes or s.38(5) of the Act – review of assessments dispute.
- 10.4. If the ERP consists of more than one person, the Presiding member will sign the certificate once a decision is reached.
- 10.5. The ERP will issue the certificate to the Convenor within 15 days of their final contact, clinical examination or final meeting. The Convenor, through the LSA secretariat, will forward a copy of the certificate to the applicant and any other party within 5 days of receipt.

## 11. Grounds for objection to the expert review panel

- 11.1. A party may request the Convenor reallocate the dispute to a different expert on the basis that the expert is unsuitable. This request may apply to any or all of the experts on the ERP.
- 11.2. To do this, the party must:
  - 11.2.1. apply within 10 days of receiving the notification of the names of the experts on the ERP; and
  - 11.2.2. provide detailed reasons as to why the expert is unsuitable.
- 11.3. The Convenor will forward this request to any other party, who must provide any submissions within 10 days of receipt. The Convenor will make a decision on the request for reallocation within 10 days of receipt of the request, or within 10 days of receipt of the submission from the other party. The Convenor will reallocate the dispute if satisfied that there are reasonable grounds for believing that the expert is unsuitable.
- 11.4. It is not unsuitable for an expert who has previously completed a dispute assessment for an injured person to assess another dispute relating to that injured person.

## 12. Appeals against expert review panel determinations

- 12.1. In accordance with section 37(1) an appeal lies to the District Court against a determination of an ERP for an eligibility dispute where a person is ineligible or otherwise does not quality to participate in the Scheme.
- 12.2. In accordance with s 38(7) and (8) of the Act a decision by an ERP in relation to a dispute over the participant’s treatment care and support needs assessment is final and binding, except in relation to any proceedings for judicial review.

## 13. Glossary

- 13.1. **Deputy Convenor** – The Deputy Convenor has, and may exercise, the functions and powers conferred on the Convenor by or under Schedule 1 of the Act while the office of the Convenor is vacant (Clause 2(7) of the Act).

- 13.2. **Expert**- the term in these Guidelines has the same meaning as in clause 1 of the Schedule 1 of the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*(the Act) and the Motor Vehicle Accidents (Lifetime Support Scheme) Regulations 2014; and includes medical experts and persons with at least 5 years' experience in the delivery of disability services.
- 13.3. **Injured person** – refers to the person whose eligibility is in dispute or participant whose treatment care and support needs assessment is being reviewed.
- 13.4. **LSA secretariat** – select staff of the Lifetime Support Authority will provide administrative and secretarial support to the Convenor, Deputy Convenor and the ERPs.
- 13.5. **Meeting** - means any form of communication between the experts on an ERP, such as, but not exclusively, teleconference, exchange of emails or video communication.