

# The Lifetime Support Authority of South Australia

## The LSS Rules

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## Preamble

- The *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013 (SA)* (**the Act**) establishes the Lifetime Support Authority (**the LSA**) and authorises the making of the *Lifetime Support Scheme Rules (the LSS Rules)*.
- The Lifetime Support Scheme (**the Scheme**) provides Treatment, care and support (TCS) to people who have suffered a catastrophic injury in a Motor Vehicle Accident (see Part 2 of the LSS Rules) and who meet the eligibility criteria (and are not excluded by other provisions).

The LSS Rules cover any matter that the Act requires them to do and the matters the Act permits them to cover. The LSS Rules:

- give content to the Scheme as authorised by the Act, and
- provide practical processes for implementing the Scheme.
- The LSA keeps the LSS Rules under review and consults with stakeholders during review.
- The LSS Rules are statutory instruments under the *Legislation Interpretation Act 2021 (SA)*. The LSA interprets them under that Act and the ordinary principles of statutory interpretation.
- As a statutory decision-maker, the LSA applies the LSS Rules according to administrative law.
- In administering the Act and the LSS Rules, the LSA is not adversarial.
- If a dispute can only be resolved by recourse to the South Australian Civil and Administrative Tribunal, the LSA and its legal representative (if any) will comply with the duties of the Crown as a model litigant. (For details of the Crown's model litigant duties, refer to Legal Bulletin No. 2, 10 June 2011 – as amended from time to time)

# PART 1 – Introduction

## 1. Philosophy

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- 1.1 The purpose of the LSS Rules is to facilitate the LSA's statutory function of administering the Scheme in accordance with the purposes of the Act by providing:
- 1.1.1 Clear and efficient processes for supporting Participants;
  - 1.1.2 A clear understanding of how applications to the Scheme are assessed, as well as how Treatment, care and support (TCS) needs are assessed;
  - 1.1.3 A clear understanding of what TCS needs are offered under the Scheme;
  - 1.1.4 Clear and efficient processes for review of the LSA's decisions; and
  - 1.1.5 Recognition of the need to be responsive to Participant's individual needs and capacities.
- 1.2 As far as is practicable, the Rules are to be interpreted in a manner that is consistent with the following:
- 1.2.1 Based on the impact of the Motor Vehicle Injury – TCS is focused on supporting the Participant's health and wellbeing that has been impacted by the Motor Vehicle Injury.
  - 1.2.2 Providing necessary and reasonable TCS - TCS must be necessary and reasonable, as defined by these Rules and the Act in order to be approved.
  - 1.2.3 Financial sustainability – The Scheme is in place for the benefit of all South Australians now and into the future and the LSA seeks to manage the Scheme in a manner that is financially sustainable and affordable for the community –so the Scheme can continue to support people over the course of their lives and be available to people who are not yet injured, but may be injured in the future. The LSA manages the Lifetime Support Scheme Fund in accordance with the Act.
  - 1.2.4 Person-Centred Approach – The LSA provides approved TCS through a Person-Centred Approach, enabling the Participant or Decision Maker or both, as the case may require, to be involved in choosing and controlling support and service arrangements within the requirements of these Rules and other relevant legislation. Early intervention to optimise long term benefits for the LSS participant and LSS is an important consideration in the LSA's person-centred approach.
  - 1.2.5 Choice and independence -The LSA supports the Participant or Decision Maker or both, as the case may require, to make or be involved in the decisions that affect their lives. This includes medical treatment, rehabilitation, supports that impact on the quality of their life, as well as assisting their participation in and contribution to social and economic life. Choice and independence can be exercised within the requirements of these Rules and other relevant legislation.
  - 1.2.6 Local Government, State, Commonwealth or other jurisdictional supports – the Scheme does not pay for supports that are paid for by Local, State or Commonwealth Government

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departments (or other jurisdictions/schemes) which are available to the community (wholly or in part) for which the Participant remains eligible. The Scheme may provide support, from time to time, to assist a Participant in accessing those benefits where their Motor Vehicle Injury hinders them from doing so.

*For example:*

- *a child Participant would receive education supports available to all children with disability and the LSA would fund additional TCS services that were needed.*
- *a Participant who is an NDIS Participant due to other injuries or disabilities would continue to receive support from the NDIS for that injury or disability and the LSA would fund the TCS services related to the Motor Vehicle Injuries.*
- *a Participant who is eligible for aged care supports would receive services and supports required due to their ageing, whilst the LSA would continue to fund supports related to the motor vehicle injuries.*

1.2.7 Co-contribution – where a Participant or Decision Maker or both, as the case may require, prefers a service that, whilst it is related to the Motor Vehicle Injury, exceeds what the LSA considers to be necessary and reasonable, the Participant or Decision Maker or both, as the case may require, may be offered the opportunity to receive the desired service by contributing the additional costs.

1.2.8 The LSA will be respectful of the dignity, the individuality and diversity of Participants, families and their Decision Makers.

#### Editorial Notes –

- (1) Irrespective of the interpretation of the various principles outlined in Rule 1.2, sections 58A of the *Civil Liability Act 1936* (SA) outlines the impact of being a Participant in the Lifetime Support Scheme on CTP settlements:

**58A—Limitations on damages for participants in lifetime support scheme**

- (1) *No damages may be awarded to a person who is a participant in the Scheme under the Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013 in respect of any of the treatment, care and support needs of the person, or any excluded treatment, care and support needs, as defined or determined under that Act (whether being past or future needs), that relate to the motor vehicle injury (as defined by that Act) in respect of which the person is a Participant in that Scheme and that arise (or will arise) during the period in respect of which the person is a Participant in the Scheme.*
- (2) *Subsection (1) applies—*
- (a) *whether or not the treatment, care and support needs are assessed treatment, care and support needs under the Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013; and*
  - (b) *whether or not the Lifetime Support Authority is required to make a payment in respect of the treatment, care and support needs concerned; and*
  - (c) *whether or not any treatment, care, support or service is provided on a gratuitous basis.*
- (3) *A reference in subsection (1) to a person who is a Participant in the Scheme under the Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013 will be taken to include a reference to a person who has been an interim Participant in that Scheme (and who has received any treatment, care and support needs under that Act).*

## 2. Interpretation

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### 2.1 Definitions:

In the Rules, these words and phrases have the following meanings:

**Act** means the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013 (SA)*. A reference in these Rules to a section “X” is a reference to a section of the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013 (SA)*.

**AHPRA** is the Australian Health Practitioner Regulation Agency.

**AMA** is the Australian Medical Association.

**Applicant** is a person applying, or on behalf of whom an application was made, to be part of the Scheme.

**Application Form** means the form developed by the LSA to enable application to the Scheme and made available on its website.

**Appropriately Qualified** for the purposes of these Rules, any reference to “appropriately qualified” is an assessment of the LSA with respect to the specialist skills that a person has in assessing, prescribing, recommending or providing services.

**ASIA Impairment Scale Score** refers to the published scale of the American Spinal Injury Association: International Standards for Neurological Classification of Spinal Cord Injury, revised 2019, Richmond, VA, USA.

**Assessed Care Needs** means the LSA’s assessment of the Participant’s TCS needs which relate to the Motor Vehicle Injury and are necessary and reasonable in the circumstances, as defined in subsection 4(1) of the Act and these Rules.

**Assessor** means a person appointed or engaged as an Assessor under section 30(4) of the Act.

**Assistive Technology** means products, equipment and systems that enhance learning, working and daily living for people with disabilities, and represents aids and appliances referred to in section 4(1) of the Act.

**Attendant Care Worker** means an employee of, or person engaged by, an approved provider of attendant care services to perform services or assist the Participant, such as (but not limited to):

- a. personal care (assistance to move around and take care of basic personal needs such as bathing, dressing, eating, toileting, grooming, fitting and use of Assistive Technology, hearing and communication devices); or
- b. therapy support to implement a therapy program under the guidance and supervision of a health professional.

**Australian Standards** means standards published by Standards Australia.

**Brachial Plexus Avulsion** means avulsion of the nerve roots of the brachial plexus from the spinal cord, as assessed by an Appropriately Qualified Medical Specialist.

**Brachial Plexus Rupture** means a disruption of the roots, trunks or cords of the brachial plexus, as assessed by an Appropriately Qualified Medical Specialist.

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**Business Day** means any day except Saturday, Sunday or a Public Holiday.

**Calendar Day** means each day of the Calendar, including Saturday, Sunday or a Public Holiday.

**Certificate** means a Certificate issued:

- a. for assessment under section 30(3) of the Act (Discharge Plans and MyPlans); or
- b. for reassessment or Review, under the Rules and section 38(5) of the Act.

**Community Access Support** are support services relating to the completion of daily living tasks, social activities and community participation.

**Decision Maker** means a person with legal authority to take an action or give an authorisation under the Act or LSS Rules on behalf of the Participant to whom their legal authority relates. Where used in these Rules, parent or legal guardian will imply 'Decision Maker'. The Decision Maker must take reasonable steps to involve the Participant in the decision making process.

**Editorial Notes –**

(1) See Section 54 of the Act

(2) Legal authority may be conferred by any lawful means, including:

- a. Appointment by the Participant, including under a general or enduring power of attorney under the *Powers of Attorney and Agency Act 1984* (SA),
- b. Appointment by SACAT as guardian (either partial, full or full with special powers) under the *Guardianship and Administration Act 1993* (SA),
- c. Appointment by SACAT as administrator under the *Guardianship and Administration Act 1993* (SA),
- d. Appointment under a Family Court order,
- e. Appointment under the *Advanced Care Directives Act 2013* (SA),
- f. Appointment as guardian under a Will, where probate or letters of administration have been granted,
- g. The parent(s) of a child (as defined by subsection 3(1) of the Act as a person under the age of 18 years).

**Discharge Plan** is the plan that usually documents a Participant's assessed TCS needs required post-discharge from an inpatient facility. It is prepared by the LSA, in consultation with the Participant and their treating team. The Discharge Plan represents the certification of TCS needs as required under section 30 of the Act.

**Dispute** means a Dispute about a non-medical matter or any aspect of a non-medical matter under Part 5 Division 1 of the Act or a Dispute about eligibility under Part 5 Division 2 of the Act.

**Domestic Services** include a variety of household services such as cleaning, cooking, laundry, and ironing.

**Eligible Injury** means the injury assessed as eligible under Part 2 of the Rules.

**Expert Review Panel (ERP)** means an Expert Review Panel constituted under Schedule 1 of the Act.

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**Family** includes key people who are identified to be a member of the Participant's Family or an integral part of the Participant's close personal support network.

**Functional Independence Measure™ – FIM™** is a tool used to assess a person's function. Where referred to in these Rules, the version used is published on the LSA's website.

The FIM™ is an assessment of a person's function conducted by a Service Provider or Service Providers who are trained in FIM™ and are credentialed through the Australasian Rehabilitation Outcomes Centre or equivalent international jurisdictions.

**Fund** means the Lifetime Support Scheme Fund established under Part 7 of the Act.

**Glasgow Coma Score (GCS)** is a neurological scale that aims to deliver a reliable, objective way of recording the conscious state of a person for initial, as well as subsequent assessment.

**Greenwood Burns Scale** is the assessment for burns designed by Professor John Greenwood.

**Home Environment** is the Participant's principal place of residence.

**Home Modification** is a modification to the structure, layout or fittings of the Home Environment where the Motor Vehicle Injury restricts or prevents the ability to utilise the home's standard fittings or facilities.

**In Writing** means when a notification, Certificate, letter or document is provided to the LSA, a Participant or Decision Maker by post or email.

**Interim Participant** refers to a person accepted for interim participation in the Lifetime Support Scheme, as provided for under the Act.

**International Standards to document remaining Autonomic Function after Spinal Cord Injury (ISAFSCI)** is the standard published by the American Spinal Injury Association and International Spinal Cord Society documenting the remaining autonomic functions following spinal cord injury.

**International Standards for Neurological Classification of Spinal Cord Injury (ISNCSCI)** is the sensory and motor examination used to determine the neurological level of the injury and whether the injury is complete or incomplete. The completeness of the injury is graded according to the ASIA Impairment Scale Score A to E.

**Lifetime Participant** refers to a person accepted for lifetime participation in the Lifetime Support Scheme, as provided for under the Act

**MBS** is the Medicare Benefits Schedule.

**Medical Specialist** means doctors and medical practitioners who have completed advanced education and clinical training in a specific area of medicine (their specialty area) as per the AHPRA revised list of specialties, fields of specialty practice and related specialist titles.

**Metacarpophalangeal Joint** means the joints between the metacarpal bones and the Proximal phalanges of the fingers.

**Model Litigant** means the duties of the Crown to act as a Model Litigant, as specified in Legal Bulletin No. 2, issued on 10 June 2011 by the Attorney General of the South Australian Government, as or amended from time to time.

**Motor Vehicle Accident** has the same meaning as the definition in section 3(1) of the Act.

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**Motor Vehicle Injury** means any injury caused by or arising from the Motor Vehicle Accident that caused the Eligible Injury, and includes the Eligible Injury.

**Motor Vehicle Modification** is any modification to the structure or fittings of a vehicle where the Motor Vehicle Injury restricts or prevents the use of the motor vehicle without modification.

**MyPlan** is the plan that documents the Participant's assessed TCS needs and is prepared by the Participant or Decision Maker or both, as the case may require, and the LSA. The MyPlan represents the certification of TCS needs as required under section 30 of the Act.

**Offeree** means the Participant or Decision Maker provided with the offer by the LSA to enter into a Self-Directed Support Agreement.

**Orthotic device** means an externally applied device used to compensate for impairments of the structure and function of the neuro-muscular and skeletal systems.

**Part** means a Part of the LSS Rules or relevant legislative instrument.

**Participant** means a person accepted under the Act as a Participant in the Scheme (either as a Lifetime Participant or as an Interim Participant).

**Participant Choice** means the lawful preferences and decisions made by the Participant or their Decision Maker or both, as the case may require regarding the Participant's goals, MyPlan, choice of provider as well as TCS where relevant.

**Person-Centred Approach** is the LSA's approach in supporting Participants, that is respectful of, and responsive to the preferences, needs and values of Participants.

**Pharmaceutical Products** include prescribed and non-prescribed (over-the-counter) medications. Pharmaceutical Products also encompasses different mediums of Pharmaceutical Product administration including oral, intravenous and topical.

**Prosthetic device** is a device used to replace wholly, or in part, an absent or deficient limb segment. Any reference to a Prosthetic device in the Rules includes any associated componentry.

*For example, socket, prosthetic joints, pylon, liner, valve, adaptor, foot.*

**Proximal** means situated nearer to the centre of the body or the point of attachment.

**Public Holiday** has the same meaning as defined in the *Holidays Act 1910 (SA)*.

**Rehabilitation** is a set of interventions designed to optimise functioning and reduce disability in individuals with motor vehicle injuries in interaction with their environment. Rehabilitation helps a Participant to be as independent as possible in everyday activities and enables participation in education, work, recreation and meaningful life roles. This includes physical, cognitive, social, emotional, vocational and education support.

**Reimbursement Arrangement** means an arrangement under which the LSA agrees to reimburse the Participant or Decision Maker or both, as the case may require, for the cost of already incurred necessary and reasonable TCS.

**Rental Property** is a home lived in by a Participant whereby rent is paid to a private owner, Government or Public Authority or a Community Housing Association.

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**Return to Work Corporation of South Australia (RTWSA)** is a statutory authority established pursuant to the *Return to Work Act 2014* (SA) to administer the South Australian Return to Work Scheme.

**Review** means a review of a:

- a. Dispute about non-medical matters (sections 33 and 34 of the Act) or eligibility (section 36); or
- b. determination of TCS needs (section 38).

**Review Officer** means those persons assigned or appointed by the Lifetime Support Authority to act as Review Officers under section 34(11) of the Act.

**Rules** means the Lifetime Support Scheme Rules.

**Schedule of Fees** refers to fees set by the LSA and published on the LSA's website.

**Scheme** refers to the Lifetime Support Scheme.

**Self-Directed Support** means treatment care and support services that an eligible Participant or Decision Maker, engages, organises and funds themselves, from an amount agreed with, and paid over to the Participant or Decision Maker by the LSA, under a Self-Directed Support Agreement.

**Self-Directed Support Agreement** means an agreement (in a form determined by the LSA) that prescribes the terms and conditions for Self-Directed Support.

**Service Order** means the document issued to Service Providers to contract for the services provided to Participants.

**Service Provider** means a provider providing TCS services under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* (SA).

**Snellen Scale** is used by eye care professionals to measure visual acuity.

**Standard Property** means a home consisting of no more than four bedrooms, on land up to, but no greater than 1,000 square metres.

**Support Services** are those services that complement Rehabilitation services and focus on interventions that engage natural and community supports.

*For example, this might include assistance in learning to use public transport, accessing community facilities or engaging with informal networks.*

**Treatment, Care and Support (TCS)** means treatment, care and support authorised by the Act.

**Treatment, Care and Support needs (TCS needs)** means the needs defined in section 4(1) of the Act (that have not been excluded under subsection 4(2) of the Act) and which have been assessed as necessary and reasonable in the circumstances of an individual Participant.

**Treatment Care and Support services (TCS services)** means any service that addresses an assessed TCS need.

**TCS Travel Plan** means the TCS Travel Plan referred to in Part 15.

**TCS Permanent International Residence Plan** means the TCS Permanent International Residence Plan referred to in Part 15.

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**WeeFIM®** is the paediatric version of the FIM™. It is a similar tool to the FIM™ though it differs in its scoring processes taking into account the child’s developmental stages. The WeeFIM® has norms and a different scoring system to the adult FIM™. WeeFIM® is an assessment of a child’s function conducted by a Service Provider or Service Providers who are trained in WeeFIM® and are credentialed through the Australasian Rehabilitation Outcomes Centre or equivalent international jurisdictions.

**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® issued by Uniform Data System for Medical Rehabilitation.

**Westmead PTA Scale** measures the period of post-traumatic amnesia and is used in South Australian health services.

**Workplace Modifications** are modifications to fittings of a workplace beyond the requirements of the *Disability Discrimination Act 1992* (Cth).

- 2.2 The Lifetime Support Scheme Rules (the Rules) are to be read as a whole and in conjunction with the Act but to the extent there any inconsistencies, the Act will prevail.

**Editorial Notes –**

These Rules are a “legislative instrument” within the meaning of the *Legislation Interpretation Act 2021* (SA).

Subsection 14(a) of the *Legislation Interpretation Act 2021* (SA) provides that, [I]n interpreting a provision of an Act or a legislative instrument, the interpretation that best achieves the purpose or object of the Act or the instrument (whether or not that purpose or object is expressly stated in the Act or instrument) is to be preferred to any other interpretation.

The principles of legislation interpretation apply to the interpretation of these Rules, including:

- a. The principle that an Act, and legislative instruments made under it, are read as a whole.
- b. The principle that to the extent there is an inconsistency between an Act, and legislative instruments made under it, the Act will prevail to the extent of the inconsistency.

- 2.3 Throughout these Rules, any reference to Treatment, Care and Support or TCS services is a reference only to Treatment, Care and Support services that, as defined by these Rules and the Act:

2.3.1 are necessary and reasonable in the circumstances; and

2.3.2 relate to the Motor Vehicle Injury.

- 2.4 A person is eligible to participate in the Scheme if their Motor Vehicle Accident and Motor Vehicle Injury satisfy:

2.4.1 the eligibility criteria in Part 3 of the Act and Part 2 of these Rules, or

2.4.2 the buy in eligibility criteria in section 6 of the Act and Part 17 of these Rules, and none of the exclusions in the Act or these Rules apply to their circumstances.

**Editorial Notes –**

Part 17, Rule 2.2 incorporates the eligibility criteria of Part 2 of these Rules.

## PART 1 – Introduction

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Exclusions to participation are contained in subsection 24(5) of the Act and grounds of suspension from participation are Part 1, Rule 5.2 of these Rules.

2.5 Words and expressions used, but not defined in these Rules, have the same meanings as in the Act.

2.6 The LSA may, as it thinks fit, either on its own motion or on application:

2.6.1 waive compliance with a Rule (or a Part of a Rule); or

2.6.2 extend or abridge any time limit in the Rules that affects a Participant, Decision Maker acting on behalf of a Participant, an Applicant, the LSA, a Review Officer, a member of an Expert Review Panel or an Assessor.

### Editorial Notes –

Subsection 56(3)(d) of the Act authorises Part 1 Rule 2.6.

## 3. Use of ‘motor vehicle’ in the Rules

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3.1 Pursuant to section 3(2) of the Act (but without derogating from the operation of section 5(2) of the Act), a reference in the Act and these Rules to a motor vehicle is a reference to:

3.1.1 a motor vehicle that is subject to a policy of insurance under Part 4 of the *Motor Vehicles Act 1959* (SA); or

3.1.2 a motor vehicle which is required to be subject to a policy of insurance under Part 4 of the *Motor Vehicles Act 1959* (SA) and is driven on a road; or

3.1.3 a motor vehicle that is registered under a law of some other State or Territory which corresponds to the *Motor Vehicles Act 1959* (SA) (if the Motor Vehicle Accident occurred in South Australia),

but does not include a motor vehicle in relation to the use of which an action could not be brought against the nominal defendant under section 116(2) of the *Motor Vehicles Act 1959* (SA).

3.2 Pursuant to section 3(4) of the Act, a Motor Vehicle Injury will only be regarded as being caused by or arising out of the use of a motor vehicle that is a tractor, agricultural machine such as a quad bike, a mobile fork lift or a self-propelled lawn care machine, if:

3.2.1 the relevant motor vehicle is conditionally registered under section 25 of the *Motor Vehicles Act 1959* (SA); and

3.2.2 the motor vehicle is being used on a road.

## 4. Interaction with other legislative requirements

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4.1 Pursuant to section 27(3)(c) of the Act, the following TCS needs are excluded from the operation of section 27:

4.1.1 TCS that a government department or another government agency is liable to provide, or to pay for; or

PART 1 – Introduction

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4.1.2 TCS that must be provided under a requirement imposed under another Act or any regulations (including under an Act or subordinate legislation of the Commonwealth).

*For example, a requirement to provide disability access to work premises.*

## 5. Suspension of participation

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- 5.1 The LSA may suspend a Participant from the Scheme by notice In Writing in accordance with the relevant section of the Act and these Rules.
- 5.2 The LSA may suspend a Participant (whether lifetime or interim) if any of the following defaults occur:
- 5.2.1 the Participant is convicted of fraud in connection to decisions relating to eligibility or TCS expenses; or
  - 5.2.2 the Participant or Decision Maker or both, as the case may require, fails to provide consent, impacting the LSA's ability to undertake assessments; or
  - 5.2.3 the Participant or Decision Maker or both, as the case may require, fails to comply with a requirement to provide information for the LSA's decision-making or functions in relation to the Participant's TCS or eligibility; or
  - 5.2.4 the Participant fails to comply with a requirement to undergo a medical examination or a requirement to undergo a needs assessment for the purpose of determining eligibility or TCS needs or the Decision Maker, if relevant, fails to permit or assist the Participant to comply with either requirement; or
  - 5.2.5 the Participant or Decision Maker or both, as the case may require, fails to participate or cooperate with assessments required for the MyPlan process or assessments required for the delivery of the TCS services contained within the Participant's MyPlan; or
  - 5.2.6 the Participant commences to reside internationally without complying with the requirements of Part 15 – Temporary International Travel and Participants Living in International Locations.
- 5.3 The LSA will provide the Participant or Decision Maker or both, as the case may require, 28 Calendar Days notice In Writing (**the notice period**) of its intention to suspend.
- 5.4 The notice must specify:
- 5.4.1 The default giving rise to the intended suspension; and
  - 5.4.2 The steps, if any, the Participant or Decision Maker or both, as the case may require, must take in order to rectify the default during the notice period.
- 5.5 During the suspension, the Participant or Decision Maker or both, as the case may require, may make good the default. In order for the suspension to be lifted, the Participant or Decision Maker or both, as the case may require, must inform the LSA, In Writing, of the rectification and if relevant provide documentary evidence.
- 5.6 The LSA must evaluate the evidence of rectification provided under Rule 5.5 and:
- 5.6.1 If the LSA is satisfied that rectification has occurred:

## PART 1 – Introduction

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5.6.1.1 The suspension will be taken to have ended on the day that the LSA received the written communication referred to in Rule 5.6; and

5.6.1.2 The LSA will notify the Participant or Decision Maker or both, as the case may require, In Writing, that the suspension has ended.

5.6.2 If the LSA is not satisfied that rectification has occurred:

5.6.2.1 The LSA must notify the Participant or Decision Maker or both, as the case may require, In Writing, that it is not satisfied and the reasons why; and

5.6.2.2 What further action, if any, the Participant or Decision Maker or both, as the case may require, may take to make good the default.

5.7 Participants will not be suspended from the Scheme if they reside outside Australia, provided the requirements under Part 15 - Temporary International Travel and Participants Living in International Locations are satisfied.

5.8 In accordance with subsection 28(6) of the Act, the LSA is not liable to pay for any TCS or service provided during the period of the suspension.

### **Editorial Notes –**

Subsection 28(6) of the Act authorises Part 1 Rule 5.8. A Participant is not entitled to recover from the LSA any costs incurred during the period of suspension.

5.9 A suspended Participant remains a LSS Participant during the period of suspension.

5.10 Suspension will run until the Participant rectifies the default or participation ceases due to death.

### **Editorial Notes –**

Section 58A of the *Civil Liability Act 1936* (SA) outlines the impact of being a Participant in the Lifetime Support Scheme on CTP settlements.

## **6. Use of interpreters in interactions with Participants or Decision Makers**

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6.1 Interpreters accredited by National Accreditation Authority for Translators and Interpreters (NAATI) should be used if an interpreter is required.

6.2 If a NAATI interpreter is not available, a non-NAATI interpreter may be used at the discretion of the LSA. Any person accompanying the Participant or Decision Maker or both, as the case may require, or applicant, such as a Family member, carer or support person, cannot act as an interpreter.

## **7. Sending documents to or from the LSA**

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7.1 To deliver or send documents to the LSA, the postal address is:

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Lifetime Support Authority  
PO BOX 1218  
Adelaide SA 5000

- 7.2 It is also possible to send documents to the LSA via its email address, which is [lifetime.support@sa.gov.au](mailto:lifetime.support@sa.gov.au).
- 7.3 Documents sent to the LSA via its email address will be taken to be received on the same day as they were sent, or on the next Business Day if sent on a Saturday, Sunday or Public Holiday.
- 7.4 Documents sent to or from the LSA via mail will be taken to be received six Business Days after the date they were posted.

## 8. Documentation and other supporting material

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- 8.1 Except for the Application Form, the Participant, Decision Maker or Applicant should only submit copies of documents to the LSA, not original documents.

## 9. Medical documentation

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- 9.1 Any medical documentation:
- 9.1.1 provided to the LSA with an application, must clearly state the Applicant's name and date of birth, and be identifiable as information relevant to the application process; or
  - 9.1.2 provided to the LSA at any other time must clearly state the Participant's name and date of birth.
- 9.2 In the case of X-rays, Computerised Tomography (CT or CAT scans), Magnetic Resonance Imaging or other radiological or similar investigations, only the resulting report should be sent to the LSA. No original films or scans should be submitted to the LSA. These can be brought to any examination by the Participant.

## 10. Approved providers

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- 10.1 Section 29 of the Act provides for the LSA to approve specified persons or persons of a specified class to provide TCS or services ("approved providers").
- 10.2 For the purposes of s29 of the Act, approved providers are:
- a. Medical practitioners (as defined by s3 of the Act).
  - b. Health professionals (as defined by s3 of the Act).
  - c. Persons or organisations currently registered by the LSA to provide TCS services and other services under s4 of the Act.
  - d. Service Providers engaged as Assessors under s30(4) of the Act.
- 10.3 The LSA reserves the right to, consistent with its responsibilities under the Act:
- a. Approve a provider at any time, subject to the provider satisfying the LSA's requirements.

## PART 1 – Introduction

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- b. Remove an approved provider.
  - c. Impose limits or conditions on the LSA's funding of services provided by an approved provider or a group of approved providers.
  - d. Investigate, review the performance of, or audit approved providers from time to time.
  - e. Investigate, review the performance of, or audit a provider who is not approved in the following circumstances:
    - i. When previously an approved provider, for the purposes of reviewing quality, safety or invoicing practices in relation to services previously funded under the Scheme; or
    - ii. As part of the process to approve a provider.
  - f. Impose conditions on approved providers that permit information to be provided to the LSA regarding a provider's compliance and performance, from other organisations, Government agencies or Schemes.
- 10.4 Subject to section 48(2) of the Act, the South Australian Cabinet's Information Privacy Principles Instruction (the IPPs), and the terms of any contract with a provider, the LSA may disclose information regarding a provider's compliance and performance with other organisations, Government agencies or Schemes.

### Editorial Notes -

The LSA may disclose or receive information in relation to a provider with relevant Commonwealth, State and Territory authorities (including the National Disability Insurance Agency, NDIA Quality and Safeguards Commission, AHPRA, Department for Child Protection, Aged Care Quality and Safety Commission, personal injury schemes, etc.) or other organisations, where required to manage quality and safety issues in the conduct of its business operations or when legislatively required to do so.

- 10.5 If an approved provider is removed, they are no longer an approved provider. The LSA reserves the right to approve a provider again, at a later date.
- 10.6 A Participant or Decision Maker or both, as the case may require, may choose a provider to provide TCS services from the list of approved providers, subject to the services being approved by the LSA as being necessary and reasonable.
- 10.7 An approved provider must:
- a. Charge no more than the LSA's Scheduled Fees, where published on the LSA's website, unless the LSA has agreed otherwise.
  - b. Comply with invoicing and contractual requirements, where relevant.
  - c. Provide services in accordance with LSA Service Orders, where relevant.
  - d. Comply with relevant State and Commonwealth legislative requirements.

## 11. Legal representation for Disputes

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- 11.1 If the Participant/ Decision Maker/Applicant has legal representation in respect of any Dispute, the LSA will send copies of any document required to be sent to the Participant/ Decision Maker/ Applicant to their legal representative.

## 12. Participant/Decision Maker/Applicant access to documents – Disputes

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## PART 1 – Introduction

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- 12.1 If a Participant/Decision Maker/Applicant has applied for a determination in a Dispute to a Review Officer, or referred a Dispute/Review to an Expert Review Panel, they are entitled to:
- 12.1.1 view and receive a copy of all assessment documents held by the LSA in relation to the Dispute;
  - 12.1.2 make submissions In Writing about any aspect of the Dispute or issues in Dispute which will be forwarded to the Review Officer or Expert Review Panel; and
  - 12.1.3 receive the determination In Writing issued by the Review Officer, or the Certificate issued by the Expert Review Panel.

## 13. Corrections of obvious errors in determinations/Certificates

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- 13.1 If a party considers that an Assessor, a Review Officer or an Expert Review Panel has made an obvious error in a determination/Certificate, that party may apply to the LSA to have the error corrected within 14 Calendar Days of the date on the determination/Certificate.
- 13.2 The application to have the error corrected must be made In Writing, including the details of the considered obvious error and the suggested correction. An obvious error may only include an obvious clerical or typographical error in a determination/Certificate.
- 13.3 The LSA will forward this request to any other party within seven Calendar Days of receipt, after which time that party has seven Calendar Days in which to make a submission to the LSA on the application to have the error corrected.
- 13.4 The Assessor/Review Officer/Expert Review Panel may issue a replacement determination/Certificate that corrects any obvious error and that will replace the previous determination/Certificate. If a replacement determination/Certificate is issued, it is to be titled as a replacement determination/Certificate and will supersede the previous determination/Certificate.

## 14. Privacy and confidentiality/release of information

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- 14.1 Subsection 48(1) of the Act authorises the LSA to disclose or release:
- 14.1.1 information concerning the TCS needs of Participants (including the expenses that are paid or payable by the LSA under the Scheme in relation to those needs) to such persons, and subject to such conditions, as the LSA thinks fit; and
  - 14.1.2 other information under an authorisation (if any) prescribed by the regulations.

### **Editorial Notes -**

For “other information” refer to Regulation 5 of the *Motor Vehicle Accidents (Lifetime Support Scheme) Regulations 2014 (SA)*.

## PART 1 – Introduction

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14.2 The LSA is an agency to which the IPPs apply.

14.2.1 In addition to any other condition imposed under Rule 14.1,1 it will be a condition of all disclosures or releases of information under subsection 48(1) of the Act that the person or body to whom the information is disclosed or released, will comply with the IPPs.

### **Editorial Notes -**

The IPPs can be found on the Department of the Premier and Cabinet website as Circular PC012 'Information Privacy Principles'.

## 15. Commencement date

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15.1 In accordance with section 56(5) of the Act this updated version of the Rules will commence on the day of publishing in the South Australian Government Gazette

15.2 The updated version of the Rules will apply to all decisions made regarding Applicants and Participants from the date of commencement of the Rules, unless otherwise provided for in the Rules.

## PART 2 – Eligibility for Participation in the Scheme

### 1. Preliminary

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- 1.1 For the purpose of this Part, any reference to motor vehicle is that defined in Part 1 Rule 3 of these Rules.

### 2. Application for participation

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- 2.1 An application to become a Participant in the Scheme is made by, or on behalf of the eligible person, or by the insurer or the nominal defendant. In addition to the requirements outlined in Part 1, Rule 3 of these Rules, the application must demonstrate that:
- 2.1.1 the person sustained a bodily injury; and
  - 2.1.2 the injury was caused by or arose out of the use of a motor vehicle; and
  - 2.1.3 the relevant Motor Vehicle Accident occurred in South Australia; and
  - 2.1.4 the injury meets the criteria set out in these Rules.

### 3. Injury criteria

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- 3.1 Eligibility for interim and lifetime participation is limited to people injured in a Motor Vehicle Accident who meet one or more of the following injury criteria at the time that the application is made.
- 3.2 An Appropriately Qualified Medical Specialist must certify that the eligible person meets the following injury criteria, unless otherwise provided for in these Rules.

#### **Injury criteria for spinal cord injury**

- 3.3 The injury criteria for spinal cord injury (SCI) are:
- 3.3.1 Permanent neurological deficit as evidenced by an ASIA Impairment Scale Score of A to D conducted as part of an assessment using ISNCSCI; and/or
  - 3.3.2 Residual significant impact on the function of the autonomic nervous system (with particular reference to resultant bladder, bowel, infertility), as evidenced by a 0 score in any of the elements assessed by an Appropriately Qualified medical practitioner using the ISAFSCI.
  - 3.3.3 The most recent assessment will be considered by the LSA, where there is more than one assessment.

## PART 2 – Eligibility for Participation in the Scheme

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### Injury criteria for traumatic brain injury

3.4 The injury criteria for traumatic brain injury are:

3.4.1 For adults and children over eight years of age, a traumatic brain injury with:

- a. a recorded Post-Traumatic Amnesia (PTA) of seven Calendar Days or more measured using the Westmead PTA Scale or a similar clinically accepted, validated scale for PTA as Gazetted by the LSA; and/or
- b. a significant brain imaging abnormality;

and a score of five or less on any item in the FIM™ due to the traumatic brain injury.

3.4.2 For children aged three to eight years of age, a traumatic brain injury with:

- a. a Glasgow Coma Scale (GCS) of less than nine (assessed post resuscitation or on admission to Accident and Emergency) and/or PTA of seven Calendar Days or more, measured using the Westmead PTA Scale or a similar clinically accepted, validated scale for PTA; and/or
- b. a significant brain imaging abnormality;

and a score of two less than the age norm on any item on the WeeFIM® due to the brain injury.

3.4.3 For children under three years of age, a medical certificate from a paediatric rehabilitation physician or specialist that states the child will probably have permanent impairment due to the brain injury resulting in a significant adverse impact on their normal development.

### Injury criteria for amputations

3.5 The injury criteria for amputations are:

3.5.1 The injury resulting in amputation or the equivalent impairment, is of the following types:

3.5.1.1 Limb amputation:

- a. of the upper limb Proximal to the first Metacarpophalangeal Joint of the thumb and the index finger; or
- b. of the lower limb Proximal to the ankle.

or

3.5.1.2 A Brachial Plexus Avulsion or rupture with an impairment equivalent to an eligible upper limb amputation.

### Injury criteria for burns

3.6 The injury criteria for burns (as evidenced by a burn impact of 50 points or more on the Greenwood Burns Scale or similar clinically accepted assessment) are:

3.6.1 full thickness burns to at least 40 per cent of the body or in the case of children aged 16 and under, 30 per cent of the body; or

3.6.2 permanent inhalation burns causing long term significant respiratory impairment; or

## PART 2 – Eligibility for Participation in the Scheme

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3.6.3 full thickness burns to the hands, face or genital area.

3.6.4 For lifetime participation, the criteria in Rules 3.6.1, 3.6.2 or 3.6.3 of this Part must be fulfilled and

- 3.6.4.1 if over eight years of age at the time of assessment, a score of five or less on any item in the FIM™ or WeeFIM® due to the burns; or
- 3.6.4.2 if aged from three to eight 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
- 3.6.4.3 for children under three years of age, a medical certificate from a paediatric rehabilitation physician or a specialist that states the child will probably have permanent impairment due to the burns resulting in a significant adverse impact on their normal development.

### Injury criteria for permanent blindness

3.7 The injury criteria for blindness are:

3.7.1 Permanent legal blindness as demonstrated by:

- a. Visual acuity on the Snellen Scale after correction by suitable lenses is less than 6/60 in both eyes; or
- b. 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
- c. A combination of visual defects resulting in the same degree of visual loss as that occurring in (a) or (b) above.

## 4. Making an application

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4.1 An application to become a Participant:

4.1.1 must be made no later than three years from the date of the relevant Motor Vehicle Accident;

4.1.2 should be made as soon as practicable once it is clinically apparent that the person has an Eligible Injury;

4.1.3 must be made on the form published on the LSA's website (as updated from time to time);

4.1.4 must be made by a person authorised by the Act to make an application;

4.1.5 must give the LSA authorisation to obtain and disclose information and documents relevant to the injury, Motor Vehicle Accident and motor vehicle;

4.1.6 must be signed by a person authorised by the Act to make an application;

4.1.7 must attach all required information reasonably able to be obtained.

4.2 If the application does not contain the information necessary for the LSA to make its decision about eligibility, the Applicant may be requested to provide the required information.

**PART 2 – Eligibility for Participation in the Scheme**

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- 4.3 Where the insurer or nominal defendant is the Applicant, the insurer or nominal defendant must pay for and provide the medical assessment reports required to determine eligibility.
- 4.4 In exceptional circumstances, the LSA may extend the time limit to make an application by up to two years, but the total time limit must not exceed an aggregate of five years from the date of the relevant motor vehicle accident (section 25(7) of the Act).

**Editorial Notes –**

Subsections 25(7) and 56(3)(d) of the LSS Act authorise Part 2 Rule 4.1.1 and Part 2 Rule 4.4.

- 4.5 For the purposes of Part 2, Rule 4.4, exceptional circumstances include, but are not limited to consideration of the following factors:
  - 4.5.1 The LSA's assessment of the certainty of causation and extent of severity of the injury to the relevant Motor Vehicle Injury; and
  - 4.5.2 The LSA's assessment that a full and satisfactory explanation has been provided regarding the factors that have prevented an application being submitted within time or the person engaging in required assessments; and
  - 4.5.3 The LSA's assessment of prejudice to other relevant parties.
- 4.6 An Applicant must comply with any reasonable request by the LSA (including requests for information to support decision-making about eligibility) to supply specified additional information or provide authorisation for the LSA to obtain specified additional information.

**Editorial Notes –**

Subsection 56(3)(d) of the LSS Act authorise Part 2 Rule 4.6.

- 4.7 Such information includes, but is not limited to:
  - 4.7.1 the South Australia Compulsory Third Party (CTP) Injury Claim Form (if it has been completed) or other personal injury claim forms;
  - 4.7.2 ambulance or air ambulance/retrieval records;
  - 4.7.3 hospital records;
  - 4.7.4 treating doctor's reports;
  - 4.7.5 past medical, employment or school records;
  - 4.7.6 records held by departments, agencies or instrumentalities of the Commonwealth, the State or another State, administering laws about health, police, transport, taxation or social welfare;
  - 4.7.7 records held by insurance companies including RTWSA; or
  - 4.7.8 police reports.
- 4.8 The LSA will acknowledge all applications In Writing within 14 Calendar Days of receipt.

**PART 2 – Eligibility for Participation in the Scheme**

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## **5. Timing of FIM™ or WeeFIM® assessments – application to Scheme**

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- 5.1 The FIM™ or WeeFIM® assessment must be conducted within two months (before or after) of the date of the completed application to the Scheme. If more than one FIM™ or WeeFIM® assessment has been conducted, then the most recent assessment must be used.
- 5.2 Prior to approving eligibility, the LSA may require that a FIM™ or WeeFIM® assessment is conducted by an Appropriately Qualified person.

## **6. The LSA's determination**

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- 6.1 The LSA shall determine whether to:
  - 6.1.1 accept a person as a Participant and if so, whether they will be accepted as an Interim Participant, or as a Lifetime Participant (regardless of whether the Applicant stated that they sought acceptance as either type of Participant);
  - 6.1.2 not accept a person as a Participant, either as an Interim or Lifetime Participant;
  - 6.1.3 extend interim participation;
  - 6.1.4 suspend a Participant; or
  - 6.1.5 when making a lifetime participation decision for an Interim Participant, defer making a decision until the injury has stabilised sufficiently.
- 6.2 The LSA will make its determination as soon as practicable, taking into account:
  - 6.2.1 the information on the Application Form;
  - 6.2.2 any information attached to the Application Form;
  - 6.2.3 any additional information that the LSA may request in order to make its determination.
- 6.3 The Applicant will receive the LSA's determination In Writing, including reasons for the decision and, if applicable, information about the LSA's process for resolving Disputes.

## **7. Interim participation timeframes**

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- 7.1 Rule 7 applies to an Applicant accepted as an Interim Participant.
- 7.2 In accordance with subsection 26(4) of the Act, the LSA shall accept as a Lifetime Participant, an Applicant initially accepted as an Interim Participant, if the LSA becomes satisfied that the person is eligible to be a Lifetime Participant.
- 7.3 Subject to the other provisions of Part 2 Rule 7, a Participant should not remain an Interim Participant for more than two years from the date they were first accepted as an Interim Participant, including any period of suspension.

## PART 2 – Eligibility for Participation in the Scheme

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7.4 Subject to Part 2, Rule 7.5 and in accordance with subsection 26(7) of the Act, the maximum period for interim participation, including any period of suspension, is three years from the date they were first accepted as an Interim Participant.

### Editorial Notes -

Subsection 26(7) of the Act authorises the LSS Rules to include Rules relating to the period for interim participation.

7.5 The LSA may extend the interim participation period outlined in Part 2, Rules 7.3 and 7.4 if:

7.5.1 the person is engaged in legal proceedings relating to their status under the *Return to Work Act 2014* (SA); or

7.5.2 it considers it necessary to do so, on the advice of an Appropriately Qualified Medical Specialist; or

7.5.3 the LSA is satisfied, at its sole discretion, that exceptional circumstances exist, which include but are not limited to:

7.5.3.1 A child Participant with a traumatic brain injury who is less than six years of age;

7.5.3.2 A child Participant with a traumatic brain injury who is between the ages of six and 18 years of age, and the lifetime impact of the impairment is not apparent;

7.5.3.3 The Interim Participant is suspended;

7.5.3.4 There is insufficient contemporaneous evidence to make a lifetime participation decision, and the Participant has not cooperated in undertaking the assessments required by the Lifetime Support Authority to make the lifetime participation decision.

7.6 Interim participation may be extended on more than one occasion.

7.7 The LSA may make a decision regarding lifetime participation at any time where the LSA determined the lifetime impact of the impairment is apparent.

## 8. Timing of assessments – Interim Participant

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8.1 At any time during the interim participation period, the LSA may require an eligibility assessment regarding whether the Participant's injury meets the eligibility criteria, but no more frequently than six monthly intervals. The LSA will notify the Participant or Decision Maker or both, as the case may require, In Writing that an eligibility assessment is required for the LSA to make an eligibility decision.

8.2 If, as a result of the eligibility assessment, the LSA decides that the Participant is no longer eligible for the Scheme, then participation ceases from the date specified in the written notification from the LSA to the Participant or Decision Maker or both, as the case may require. This notification must be In Writing and accompanied by information regarding the eligibility Disputes process.

## PART 2 – Eligibility for Participation in the Scheme

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- 8.3 Where the decision of the LSA, that the Interim Participant is no longer eligible, is disputed in accordance with sections 33 to 37 of the Act, the person will be deemed to be an Interim Participant until the Dispute is resolved.

## 9. Request for lifetime participation

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- 9.1 An Interim Participant or Decision Maker or both, as the case may require, may request that the LSA make a determination on whether they are eligible, in accordance with the relevant criteria, to become a Lifetime Participant in the Scheme.
- 9.2 The LSA will notify the eligible person and any other interested party if any additional information is required, including the requirement for the Participant to undergo relevant medical assessments.

## 10. No request for lifetime participation

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- 10.1 An Interim Participant can be transitioned to lifetime participation if the LSA is satisfied that the person is eligible for lifetime participation in the Scheme.
- 10.2 If a Participant or Decision Maker or both, as the case may require, does not request the LSA to make the Participant a Lifetime Participant at least 90 Calendar Days prior to the expiration of the 2 years that a person should be an Interim Participant, the LSA may consider their lifetime participation eligibility, unless
- 10.2.1 the person has been granted an extension to 3 years under Part 2, Rule 7.4, or
  - 10.2.2 the person has been granted an extension under Part 2 Rule 7.5.
- 10.3 If the person has been granted an extension under either Part 2, Rule 7.4 or Part 2 Rule 7.5, then If the Participant or Decision Maker or both, as the case may require, does not request the LSA to make the Participant a Lifetime Participant at least 90 Calendar Days prior to the expiration of the extended period, the LSA may consider their lifetime participation eligibility.
- 10.4 If relevant medical assessments are required to determine eligibility, the Participant is required to undergo relevant medical assessments identified by the LSA.
- 10.5 If a Participant or Decision Maker or both, as the case may require, refuses to engage with the process set out in this Part, the LSA may suspend the Participant.

## 11. Timing of FIM™ or WeeFIM® assessments – lifetime participation

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- 11.1 The FIM™ or WeeFIM® assessment must be conducted:
- 11.1.1 within two months (before or after) of the date of a request from a Participant or Decision Maker; or
  - 11.1.2 when the LSA requires it,

**PART 2 – Eligibility for Participation in the Scheme**

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in order to make an eligibility determination. The most recent assessment will be used.

## **PART 3 – Rules for Disputes about Eligibility for Participation**

### **1. Preliminary**

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- 1.1 This Part applies in relation to a Dispute or proceedings under Part 5 Division 1 and 2 of the Act.
- 1.2 The LSA shall conduct itself as a Model Litigant in Dispute matters.

### **2. Lodging a dispute application**

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- 2.1 A Dispute application must be made to the LSA In Writing and can be in the form of a letter or email, or submitted via the LSA website.
- 2.2 The Dispute application must include:
  - a. the Dispute Applicant's name, address and contact details;
  - b. a clear statement that the LSA's decision is disputed;
  - c. detailed reasons why the LSA's decision is disputed; and
  - d. any information or relevant reports.
- 2.3 If the Dispute Applicant does not provide the above information, then the LSA may request that information is provided to the LSA before the Dispute application can proceed to assessment.
- 2.4 The LSA will send an acknowledgement of the Dispute application In Writing to the sender within 14 Calendar Days of receipt.
- 2.5 A copy of the Dispute application will be provided to any other interested party within 14 Calendar Days of receipt, after which time that party has 14 Calendar Days in which to apply to become a party to the Dispute and make a submission to the LSA on the Dispute application.
- 2.6 Any information provided to the LSA may be shared with any other party to the Dispute.

### **3. Further information or documentation required**

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- 3.1 If the LSA is satisfied that further information or documentation is required in connection with the Dispute application, or is likely to assist in the resolution of the Dispute, the LSA may:
  - 3.1.1 request that the information be provided within a period of up to 28 Calendar Days; and
  - 3.1.2 process the Dispute application without the information, but only after the stated time above has passed for the submission of the information.

## PART 3 – Rules for Disputes about Eligibility for Participation

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- 3.2 The LSA may obtain any relevant information as required.
- 3.3 The LSA may contact any of the Dispute Applicant's treating health practitioners or Service Providers to clarify the issues in dispute or to assist with obtaining information relevant to the Dispute.
- 3.4 At any stage during the Dispute, the LSA may contact any of the Dispute Applicant's treating health practitioners about health or physical safety issues that the LSA considers are urgent or serious.

## 4. Parties to a Dispute

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- 4.1 All parties to a Dispute will:
  - 4.1.1 receive a copy of the Dispute application, and any other documents related to the Dispute submitted to the LSA;
  - 4.1.2 receive a copy of the LSA's decision that is being disputed, and any documents related to that decision that were submitted to the LSA, including the Application Form to the Scheme (where relevant);
  - 4.1.3 have an opportunity to make a submission or submissions in relation to the Dispute; and
  - 4.1.4 receive the written determination issued by the Review Officer or Certificate issued by the Expert Review Panel In Writing (as relevant depending on Dispute type).

## 5. Disputes about non-medical matters

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- 5.1 Under section 34 of the Act, a Dispute can be made in relation to a relevant determination:
  - 5.1.1 a threshold determination under s 33 (1)(a) to (d) of the Act; or
  - 5.1.2 a determination of the LSA that results in the suspension of the participation of a person in the Scheme.
- 5.2 A Dispute application must be received within six months of receipt of the LSA's decision referred to in Rule 5.1 and, in accordance with section 34 of the Act, will be determined by a Review Officer.
- 5.3 The LSA may reject any such request if the LSA is satisfied that the request:
  - 5.3.1 does not establish that it relates to a Dispute about threshold determination;
  - 5.3.2 has not been made by persons specified in section 33(2) of the Act.

## 6. Determination issued by the Review Officer

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- 6.1 Under section 34 of the Act, a Review Officer is not bound by the rules of evidence and may adopt such procedures as the Review Officer thinks fit.

## PART 3 – Rules for Disputes about Eligibility for Participation

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- 6.2 Review Officers will provide all parties with the opportunity to make submissions in person or In Writing.
- 6.3 The Review Officer must produce a determination In Writing with reasons for the decision outlined in plain English within 14 Calendar Days from completion of Review proceedings. The LSA will provide the parties with these reasons.
- 6.4 Under section 35 of the Act such a determination of a Review Officer may be appealed to the South Australian Civil and Administrative Tribunal.

## 7. Disputes about eligibility

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- 7.1 A Dispute application must be received by the LSA within six months of receipt of the LSA's decision on eligibility In Writing.
- 7.2 Under section 36 of the Act Disputes relating to medical considerations on eligibility may be referred to an Expert Review Panel by the LSA, or by notice to the LSA given:
  - 7.2.1 by or on behalf of an Applicant; or
  - 7.2.2 by an insurer; or
  - 7.2.3 by the nominal defendant.

## 8. Expert Review Panel

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- 8.1 An Expert Review Panel, consists of between one and three medical experts appointed by the Convenor under Schedule 1 of the Act.
- 8.2 The Expert Review Panel's procedures will be in accordance with Schedule 1 of the Act and the *ERP Guidelines* issued by the Minister.
- 8.3 The LSA will provide secretariat services to an Expert Review Panel.
- 8.4 The Expert Review Panel will give a Certificate as to its determination setting out the reasons for the determination.
- 8.5 Further information on Expert Review Panels is found in Schedule 1 of the Act and on the LSA website.

## **PART 4 – Necessary and Reasonable Treatment, Care and Support Decision Making in the Scheme**

### **1. Background**

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- 1.1 This Part applies for the purposes of Part 4 of the Act.
- 1.2 The LSA will only pay for necessary and reasonable TCS needs that relate to the Motor Vehicle Injury.

### **2. Treatment, care and support**

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- 2.1 The LSA will pay for the Participant's necessary and reasonable TCS needs related to the Motor Vehicle Injury, where the LSA is satisfied that:
  - 2.1.1 there is clinical justification for services;
  - 2.1.2 there is evidence that the service is necessary and reasonable in relation to the Motor Vehicle Injury;
  - 2.1.3 the service is likely to be effective and achieve or maintain a measurable functional improvement; and
  - 2.1.4 the service promotes progress towards functional autonomy, participation in community life and the economy.
- 2.2 TCS services included in the bed day fee when the Participant is an inpatient will not be paid for separately.
- 2.3 TCS needs are defined in section 4 of the Act to include:
  - a. medical treatment, including pharmaceuticals;
  - b. dental treatment;
  - c. rehabilitation;
  - d. ambulance transportation;
  - e. respite care;
  - f. attendant care and support services;
  - g. aids and appliances;
  - h. prostheses;
  - i. education and vocational training;
  - j. home and transport modification;
  - k. workplace modification;
  - l. such other kinds of TCS or services as may be prescribed by the regulations; and

## PART 4 – Necessary and Reasonable Treatment, Care and Support Decision Making in the Scheme

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- m. such other kinds of TCS or services as may be determined by the LSA (either generally, for specified classes of cases, or for a particular person).
- 2.4 The LSA may, in limited circumstances, determine funeral services to be within the ambit of Rule 2.3 (m) above.
- 2.5 There may be items that are related to the Motor Vehicle Injury that are necessary and reasonable in the circumstances, but are not regarded as TCS or services under the scope of the Act, regulations or these Rules. In this case, the LSA will not pay for any such services or supports, but may work with the Participant or Decision Maker or both, as the case may require, Service Providers and other authorities to facilitate access to such services where there may need to be congruence with TCS or services funded by the LSA.

### 3. ‘Necessary and reasonable’ criteria

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- 3.1 TCS will be dealt with on an individual basis and decided taking into account the ‘necessary and reasonable’ criteria outlined below.
- 3.2 If a specific service (incorporating TCS or items of Assistive Technology) is not the subject of a specific Rule in these Rules, the LSA may pay the costs of that service, if it is determined by the LSA to be necessary and reasonable in the circumstances.
- 3.3 In determining whether TCS is ‘necessary and reasonable’ the LSA will consider a number of factors, including the following:
  - a. benefit to the Participant;
  - b. appropriateness of the service;
  - c. appropriateness of the provider;
  - d. cost effectiveness; and
  - e. relationship of the services to the injuries sustained in the accident.
- 3.4 Each of these factors involves several considerations, detailed below. No one consideration is determinative or required.

#### **Benefit to the Participant**

- 3.5 The proposed service will be considered by the LSA to be of benefit to the Participant if:
  - 3.5.1 it can be demonstrated that the proposed service is expected to assist the Participant in achieving their goals;
  - 3.5.2 the outcome of the service is expected to progress or maintain the Participant’s functional capability or participation;
  - 3.5.3 it is a service or related service which has been provided in the past with positive results or outcomes;
  - 3.5.4 the service has a specific goal or goals, and expected duration and expected outcome/s; and
  - 3.5.5 any potential risk is sufficiently offset by the expected benefits from providing the service.

#### **Appropriateness of service**

**PART 4 – Necessary and Reasonable Treatment, Care and Support Decision Making in the Scheme**

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3.6 The proposed service will be considered by the LSA to be appropriate for the Participant if:

3.6.1 it is consistent with the Participant's current medical or Rehabilitation management that is required as a result of the Motor Vehicle Injury;

3.6.2 it relates to the Participant's goals in the MyPlan (if relevant);

3.6.3 it is consistent with current clinical practice, evidence-based practice or clinical rules;

3.6.4 a similar service is not already being provided to the Participant;

3.6.5 there is evidence acceptable to the LSA that the requested service is effective;

3.6.6 it is consistent with other services currently being offered or proposed;

3.6.7 the cost is reasonable in the context of the person's injury and severity assessment;

3.6.8 the service is not, in the course of ordinary circumstances, paid for by Local, State and Commonwealth Governments (or other jurisdictions/schemes) as benefits available to the community (wholly or in part) and the Participant remains eligible for; and

*For example:*

- *a child Participant would receive education supports available to all children with disability and the LSA would fund additional TCS services that were needed.*
- *a Participant who is an NDIS Participant due to other injuries or disabilities would continue to receive support from the NDIS for that injury or disability and the LSA would fund the TCS services related to the Motor Vehicle Injuries.*
- *A Participant who is eligible for aged care supports would receive services and supports required due to their ageing, whilst the LSA would continue to fund supports related to the motor vehicle injuries.*

3.6.9 it is new or innovative, there is sufficient rationale for offering it and measures exist to quantify its outcomes.

3.7 Where a Participant or Decision Maker or both, as the case may require, prefers a service that, whilst it is related to the Motor Vehicle Injury, exceeds what the LSA considers to be necessary and reasonable, the Participant or Decision Maker or both, as the case may require, may be offered the opportunity to receive the desired service by contributing the additional costs.

**Appropriateness of provider**

3.8 The proposed Service Provider will be considered by the LSA to be appropriate if they are:

3.8.1 qualified and appropriately experienced to provide the service;

3.8.2 registered with the LSA (if applicable);

3.8.3 appropriate considering the Participant's age, ethnicity and any cultural and linguistic factors;

## PART 4 – Necessary and Reasonable Treatment, Care and Support Decision Making in the Scheme

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3.8.4 it is consistent with Participant or Decision Maker or both, as the case may require, choice;

3.8.5 expected to be found acceptable by the Participant or Decision Maker or both, as the case may require; and

3.8.6 readily accessible by the Participant.

### Cost effectiveness

3.9 The proposed service will be considered by the LSA to be cost effective if:

3.9.1 consideration has been given to the long-term compared to the short-term benefits, taking into account evidence-based practice, clinical experience and costs;

3.9.2 the cost of the proposed service is comparable to those charged by providers in the same geographical area or clinical area;

3.9.3 the service is required because other services or Assistive Technology are not available or not appropriate;

3.9.4 lease or rental costs of Assistive Technology or modifications have been considered in comparison to purchase costs; and

3.9.5 any realistic alternatives to purchasing Assistive Technology/modifications have been considered, including the impacts of technology advances and changes to Participant's needs over time.

### Relationship to motor vehicle injuries

3.10 The proposed service will be considered by the LSA to be directly related to the motor vehicle injuries if:

3.10.1 there is sufficient evidence to demonstrate that the service relates to the motor vehicle injuries including exacerbation of pre-existing injuries or conditions; and

3.10.2 the impact of time since injury, previous and subsequent injuries, ageing, other disabilities and co-morbidities have been taken into account.

## 4. Treatment, care and support service funding exclusions

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4.1 The LSA or these Rules may place limits, terms or conditions on the provision of particular TCS services. The LSA may determine such limits, terms and/or conditions from time to time and publish any such determination in the Gazette or on its website.

4.2 The LSA may determine not to pay for TCS services that are not provided in a manner consistent with the LSA's limits, terms or conditions.

4.3 The LSA will not pay for TCS costing more than the maximum amount for which the LSA is liable in respect of:

4.3.1 any claim for fees for services not provided at public hospitals, as published by the Minister in the Gazette under subsection 41(3) of the Act;

**PART 4 – Necessary and Reasonable Treatment, Care and Support Decision Making in the Scheme**

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4.3.2 services or expenses that are not TCS under the scope of the Act, in particular under subsection 28(1), such as gratuitous services, ordinary costs of raising a child, services not provided by an approved provider or provided in contravention of these Rules.

- 4.4 The LSA will not pay for economic loss, capital items, rent or bond for rental properties, lost wages, maintenance and income support, assistance to keep a business open (such as paying for temporary staff to do a Participant's job), additional expenses incurred during inpatient or outpatient treatment or Rehabilitation (such as food, laundry, newspapers and magazines).
- 4.5 The LSA will not pay for experimental or non-established treatment where the LSA is not satisfied that:
- 4.5.1 peer reviewed journal articles demonstrate efficacy;
  - 4.5.2 interventions are widely supported by practitioners in the field;
  - 4.5.3 interventions have progressed past the early stages of clinical trial; or
  - 4.5.4 there is an MBS item number (for medical treatment, procedures and surgery).
- 4.6 The LSA will not provide TCS for any complications arising out of any experimental or non-established treatment that is undertaken without the LSA's approval.

## **PART 5 – Treatment, Care and Support Needs Assessments**

### **1. Preliminary**

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- 1.1 This Part applies for the purposes of Part 4 Division 2 of the Act.
- 1.2 It is the intention of the LSA that the process of assessing a Participant's TCS needs is interactive and ongoing. This allows for the accurate assessment of and fluctuations in a Participant's TCS needs, and the ability to increase or decrease services where this is necessary and reasonable.

### **2. Procedures for assessing Treatment, care and support needs**

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- 2.1 The LSA will collaborate with a Participant or Decision Maker or both, as the case may require, and Service Providers to assess the Participant's TCS needs.
- 2.2 Necessary and reasonable TCS services will be approved if they relate to the Participant's needs arising from their Motor Vehicle Accident.
- 2.3 The LSA's process for determining services will be through discussions with:
  - 2.3.1 a Participant or Decision Maker or both, as the case may require, and their Family;
  - 2.3.2 health professionals working in acute care, Rehabilitation, the community, hospitals and within institutions, providing services to Participants;
  - 2.3.3 Service Providers seeking to deliver services to Participants;
  - 2.3.4 LSA staff; and
  - 2.3.5 Assessors engaged by the LSA.
- 2.4 The LSA may request further information from the Participant or Decision Maker or both, as the case may require, or Service Providers to enable accurate assessment of TCS needs.
- 2.5 The LSA may appoint Assessors or engage other Service Providers to obtain additional relevant information to assist with planning TCS.
- 2.6 Participants, Decision Makers, Assessors or other Service Providers must give the LSA relevant documentation to assist with assessment and planning of TCS services. The LSA may seek further clarification and documentation from the Participant or Decision Maker or both, as the case may require, Assessor or other Service Provider if necessary.

**PART 5 – Treatment, Care and Support Needs Assessments**

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### **3. LSA to require assessment**

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- 3.1 To assess the Participant's necessary and reasonable TCS needs, the LSA may require the Participant to undergo a medical examination or other assessment by a health professional or other Appropriately Qualified person.
- 3.2 The LSA may require an assessment to determine whether the Participant's TCS needs have changed at any time.
- 3.3 The LSA may require an assessment to determine to what extent the Participant's needs are directly related to the Motor Vehicle Injury or Motor Vehicle Accident.
- 3.4 If the Participant or Decision Maker or both, as the case may require, fails to comply with a requirement in Rule 3.1 of this Part without reasonable excuse, the Participant may be suspended from the Scheme until compliance is achieved, as outlined in Part 1 of these Rules.

### **4. Discharge Plan**

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- 4.1 A Participant's assessed TCS needs during and following discharge from a hospital inpatient stay will be documented in the Participant's Discharge Plan.
- 4.2 The Discharge Plan includes the necessary and reasonable TCS related to the Motor Vehicle Injury that the LSA will coordinate and fund to facilitate discharge and ongoing Rehabilitation.
- 4.3 The Discharge Plan fulfils the assessment and certification of needs by the LSA under section 30 of the Act.
- 4.4 The Discharge Plan will remain in operation and be updated as necessary until a Participant's MyPlan is approved.
- 4.5 The Participant or Decision Maker or both, as the case may require, will be provided with their initial approved Discharge Plan (and any update on request) and information on the LSA's process for reviewing an assessment of their TCS needs.

### **5. MyPlan**

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- 5.1 A Participant's assessed TCS needs will be documented in the Participant's MyPlan.
- 5.2 The MyPlan includes:
  - 5.2.1 a statement specifying the Participant's goals and strategies to achieve these goals, taking into account their relevant aspirations, circumstances and cultural background; and
  - 5.2.2 the necessary and reasonable TCS related to the Motor Vehicle Injury that the LSA will coordinate and fund to achieve these goals.
- 5.3 The MyPlan fulfils the assessment and certification of needs by the LSA under section 30 of the Act.
- 5.4 The Participant or Decision Maker or both, as the case may require, will be provided with their MyPlan, In Writing, from time to time, with information on the LSA's process for reviewing an

**PART 5 – Treatment, Care and Support Needs Assessments**

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assessment of their TCS needs. The Participant or Decision Maker or both, as the case may require, will also be able to access the MyPlan at any time through the LSA website.

## **PART 6 – Treatment and Rehabilitation**

### **1. Preliminary**

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- 1.1 This Part applies in relation to services under subsection 4(1) of the Act.
- 1.2 The LSA will pay for the necessary and reasonable cost of treatment and Rehabilitation services for a Participant where those services relate to the Motor Vehicle Injury. Services should be provided by a qualified health professional.

### **2. Treatment and Rehabilitation services funded by the LSA**

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- 2.1 The LSA will pay for the necessary and reasonable costs of treatment and Rehabilitation services for a Participant where:
  - 2.1.1 there is clinical justification for services;
  - 2.1.2 there is evidence that the service is necessary and reasonable in relation to the Motor Vehicle Injury;
  - 2.1.3 the service is likely to be effective and achieve or maintain a measurable functional improvement; and
  - 2.1.4 the service promotes progress towards functional independence, participation and self-management.
- 2.2 The LSA will pay for the necessary and reasonable costs of counselling services for immediate Family members or people who live with the Participant where the need for the services relates to the Participant's Motor Vehicle Injury and will benefit the Participant.

### **3. Hearing Impairment**

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- 3.1 The LSA will pay or contribute to the necessary and reasonable cost of hearing related Assistive Technology and services, based on assessed need and, to the extent of the hearing impairment that is assessed by an ear, nose and throat specialist or other Appropriately Qualified Medical Specialist, the need is a direct result of the Motor Vehicle Accident.
- 3.2 To determine whether a Participant's need for hearing Assistive Technology is necessary and reasonable in the circumstances, the following information is relevant:

## PART 6 – Treatment and Rehabilitation

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3.2.1 information about pre-existing or subsequent medical conditions related to the hearing impairment that affect whether a treatment or Rehabilitation need is related to the Motor Vehicle Accident;

3.2.2 information from an ear, nose and throat specialist or other Appropriately Qualified Medical Specialist as to the likely cause of the presenting hearing impairment need;

3.2.3 if the Participant has pre- or co-existing medical conditions that may impact on their needs for or, in connection with, the hearing impairment; and

3.2.4 clinical assessments and reports relating to the treatment of the hearing impairment.

## 4. Vision Impairment

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4.1 The LSA will pay for the necessary and reasonable cost of prescribed corrective spectacles or contact lenses, based on the assessed need and, to the extent of the impairment of vision that is assessed by an ophthalmologist, the need is as being a direct result of the Motor Vehicle Accident.

4.2 To determine whether a Participant's need for corrective spectacles or contact lenses is necessary and reasonable in the circumstances, the following information is relevant:

4.2.1 information about pre-existing or subsequent medical conditions related to the vision impairment that affect whether a treatment or Rehabilitation need is related to the Motor Vehicle Accident;

4.2.2 information from an ophthalmologist or other Appropriately Qualified Medical Specialist as to the likely cause of the presenting vision impairment need;

4.2.3 if the Participant has pre- or co-existing medical conditions that may impact on their needs for or, in connection with, the vision impairment; and

4.2.4 clinical assessments and reports relating to the treatment of the vision impairment.

## 5. Treatment and Rehabilitation funding exclusions

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5.1 The LSA will not pay for treatment and Rehabilitation services not related to a Participant's Motor Vehicle Injury. Exclusions include, but are not limited to:

5.1.1 Treatment and Rehabilitation needs that are, in the course of ordinary circumstances, the responsibility of the State and Commonwealth Governments (or other jurisdictions/schemes) as benefits available to the community (wholly or in part and not related to the Motor Vehicle Accident) and the Participant remains eligible.

5.1.2 Treatment and Rehabilitation needs that are a result of ageing, other disabilities, injuries, conditions or events.

**PART 6 – Treatment and Rehabilitation**

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5.1.3 Assistive Technology or services related to

- a. Pre-existing or subsequent illness, disease or conditions.
- b. Illness, disease or conditions that occur due to causes other than assessed by an Appropriately Qualified health professional as being the direct result of the Motor Vehicle Accident.
- c. Illness, disease or conditions that develop gradually other than that assessed by an Appropriately Qualified health professional as being the direct result of the Motor Vehicle Accident.

5.1.4 Reimbursements for treatment and Rehabilitation services paid for by the Participant unless:

- a. The LSA has provided prior approval In Writing; and
- b. The service occurred within the preceding 12 month period.

5.1.5 Receipts submitted more than 12 months after the service occurred will not be considered for reimbursement.

## **PART 7 – Support, Attendant Care and Domestic Services**

### **1. Preliminary**

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- 1.1 This Part applies in relation to services referred to in subsection 4(1) of the Act.
- 1.2 The LSA recognises that there are benefits to Participants being offered services in the community. The assistance of funded support staff may enable a Participant to achieve and maintain health and wellbeing, enhance quality of life and provide opportunities to participate and contribute to social and economic life, respecting the abilities and the capacity of the individual.
- 1.3 These supports can also have the effect of providing Participants and their families with respite.
- 1.4 The LSA will only pay for the necessary and reasonable expenses of support, attendant care and Domestic Services to meet the Participant's assessed TCS needs.
- 1.5 The LSA may issue guidelines regarding the appropriate level of support, attendant care or Domestic Services for different injury types and publish these on the LSA's website. Where such guidelines are published, the LSA will use these as a guide to assessing necessary and reasonable levels of service.

### **2. Support Services**

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- 2.1 Support Services are those that are necessary and reasonable to enable participation in the community including (but not limited to):
  - 2.1.1 assistance with cognitive tasks of daily living (such as communication, orientation, planning and task completion);
  - 2.1.2 accessing their community;
  - 2.1.3 selecting and planning activities;
  - 2.1.4 establishing informal networks to reduce the need for formal (paid) services when engaging in activities;
  - 2.1.5 caring for dependents; and
  - 2.1.6 attending Rehabilitation or medical appointments.
- 2.2 Some Support Services may be appropriately delivered by assistance dogs used to reduce reliance on human caregivers and to improve and support community participation. Support is provided where the LSA considers it necessary and reasonable, clinically justified, safe and effective.

## PART 7 – Support, Attendant Care and Domestic Services

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- 2.3 The LSA's assessment of whether Support Services are necessary and reasonable takes into account the Participant's goals, abilities, care needs and pre-injury participation in the community. The Participant's Discharge Plan or MyPlan will also be considered when approving services to be provided.

### 3. Attendant care services

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- 3.1 Attendant care services are those that are necessary and reasonable to maintain the Participant's health and wellbeing including (but not limited to):
- 3.1.1 personal care (assistance to move around and take care of basic personal needs such as bathing, dressing, eating, toileting, grooming, fitting and use of Assistive Technology, fitting and use of hearing and communication devices); and
  - 3.1.2 therapy support to implement a therapy program under the guidance and supervision of a health professional.
- 3.2 Attendant care services may be provided when the Participant is on day leave or weekend leave while an inpatient in hospital or a Rehabilitation facility.
- 3.3 Factors impacting upon whether attendant care services are necessary and reasonable include the degree to which attendant care:
- 3.3.1 facilitates participation in valued roles;
  - 3.3.2 is the appropriate service after considering the Participant's age and circumstances (when compared with alternatives to meet the Participant's care needs);
  - 3.3.3 facilitates development of functional skills and roles;
  - 3.3.4 balances Participant safety, dignity of risk and learning;
  - 3.3.5 reduces or eliminates the risk of harm to the Participant or others;
  - 3.3.6 is the least restrictive response to meet the Participant's injury related needs.
- 3.4 Where a pre-existing injury or condition is exacerbated by the Motor Vehicle Injury, the LSA will only pay for the additional services required as a result of the Motor Vehicle Accident.
- 3.5 Attendant care services will not be 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.*

### 4. Domestic Services

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## PART 7 – Support, Attendant Care and Domestic Services

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- 4.1 Domestic Services are those that are necessary and reasonable to assist the Participant with a variety of household services, including (but not limited to):
- 4.1.1 meal preparation and associated tasks;
  - 4.1.2 cleaning, ironing and similar tasks involved in the everyday operation and maintenance of a household;
  - 4.1.3 routine home maintenance for the purposes of upkeep, that would usually have been undertaken by the Participant (provided the Participant is no longer able to carry out such maintenance as a result of the Motor Vehicle Accident);
  - 4.1.4 home maintenance to ensure safe and easy access; and
  - 4.1.5 gardening where necessary to ensure safe and easy access for a Standard Property – this should occur no more frequently than monthly and be for no longer than four hours each month. The LSA may consider funding additional gardening services in limited circumstances.
- 4.2 The LSA's assessment of whether Domestic Services are necessary and reasonable will take into account:
- 4.2.1 what household tasks the Participant or co-residents of the household were undertaking or funding prior to the Motor Vehicle Accident; and
  - 4.2.2 what normal household tasks it is reasonable to expect other co-residents of the household to perform; and
  - 4.2.3 what supports the Participant or co-residents of the household can access through Local, State or Commonwealth Government services; and
  - 4.2.4 the size of the property, noting that the LSA would consider household tasks for a Standard Property to be necessary and reasonable; and
  - 4.2.5 time since the Motor Vehicle Injury; and
  - 4.2.6 the impact of previous and subsequent injuries, ageing, other disabilities or co-morbidities.
- 4.3 The LSA may consider funding additional Domestic Services in limited circumstances.
- 4.4 In limited circumstances, the LSA may consider paying the necessary and reasonable expenses of support or Domestic Services in place of some attendant care services in order to allow a domestic partner or Family member to meet a care need that is related to the Motor Vehicle Injury. This will only be considered where the arrangement does not result in any increase in the total hours of support needed and the domestic partner or Family member is appropriately trained to provide the relevant care.

## 5. Support, attendant care and Domestic Services for Participants who are children

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- 5.1 Decisions as to the provision of support, attendant care and Domestic Services for a child Participant will be made with reference to:

## PART 7 – Support, Attendant Care and Domestic Services

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- 5.1.1 the care needs of a typically developing child at the same age;
- 5.1.2 the normal care tasks it is reasonable to expect Family members or legal guardian to perform; and
- 5.1.3 the extent to which additional care needs are a result of the Motor Vehicle Accident.
- 5.2 Services provided for children do not include the cost associated with the usual age or developmentally appropriate care and supervision provided by a parent or paid for by a parent, such as babysitters, nannies, child care costs and out of school hours care, including vacation care. Usual care is deemed to be the care that child of the same age who had not sustained the Motor Vehicle Injury would require. The Scheme will find services for children that are necessary and reasonable, and related to the Motor Vehicle Injury.
- 5.3 The role of an Attendant Care Worker is to provide care services to the child Participant and not to provide direct care or supervision to other Family members such as the Participant's siblings or other children.
- 5.4 In the case of children, the LSA may consider paying the necessary and reasonable expenses of support or Domestic Services in place of attendant care services in order to allow the parent/legal guardian/Family member to meet a care need that is related to the Motor Vehicle Injury.
- For example, when a child Participant with behavioural needs, due to cognitive impairment, requires additional supervision beyond that which would be developmentally and behaviourally appropriate given the child's age, support or Domestic Services may be provided in place of attendant care to allow a parent/legal guardian/Family member to supervise the Participant more closely than would be required given the child's age. Alternatively, in the same situation, child-minding for the Participant's siblings may be provided in place of attendant care to allow the parent/legal guardian/Family member to provide one-on-one supervision to the Participant.*
- 5.5 Documentation of the support or attendant care needs of a child Participant, for tasks ordinarily provided by a parent/legal guardian/Family member as part of their parental responsibilities, must include a description of why the Assessed Care Needs of the child Participant require the assistance of a support or Attendant Care Worker.
- For example, a ten year-old Participant who was previously supervised to walk to and from school by an older sibling, now requires the assistance of an Attendant Care Worker due to cognitive and behavioural issues from the Motor Vehicle Injury, because there is an increased need for supervision that is beyond the capabilities of the Participant's sibling.*
- 5.6 The presence of a support or Attendant Care Worker to meet care needs related to the Motor Vehicle Injury does not replace parental responsibility to supervise and provide non-injury related care to the child Participant.

## 6. Support and attendant care services for Participants who have caring responsibilities

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- 6.1 The LSA may pay the necessary and reasonable expenses for the Participant to receive such support and attendant care services, as will enable the Participant to perform activities associated with caring responsibilities, in the following circumstances:
- 6.1.1 The Participant provided the care before sustaining the Motor Vehicle Injury; and

## PART 7 – Support, Attendant Care and Domestic Services

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6.1.2 The person to whom the Participant provided the care was an immediate Family member who:

- 6.1.2.1 lived with the Participant before the Motor Vehicle Injury; and
- 6.1.2.2 still lives with the Participant; and
- 6.1.2.3 No Commonwealth, State or Local Government scheme would provide the same or substantially the same care to the immediate Family member if they applied for it or if someone applied for it on their behalf.

### Editorial Notes –

The purpose of paying the Participant to receive support and attendant care services is to enhance their autonomy and support them in their pre-existing role as a parent or caregiver or both. Services provided to the Participant under the Scheme do not replace the Participant's parental or caregiver responsibility.

*For example, an Attendant Care Worker may assist a Participant to travel with their children to and from school, but is not solely responsible for the children's general care and safety.*

- 6.2 The LSA will not pay for the Participant's caring responsibilities to be performed by another person or service provider.
- 6.3 Support and attendant care services for Participants who have caring responsibilities will not be considered necessary and reasonable, if a suitable alternative, age appropriate caring option is available.
- 6.4 The LSA's assessment will also take into account what standard caring/child care tasks it is reasonable to expect other co-residents of the household to perform.
- 6.5 The LSA may set limits on the provision of these services and will make these available on the LSA website.

## 7. Alternatives to support and attendant care service provision

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- 7.1 Where the LSA is paying for the provision of attendant care to a child Participant, the LSA will consider paying the necessary and reasonable expenses for them to access alternate services such as school holiday programs, child care and community-based groups or community access programs that are:
  - 7.1.1 age and developmentally appropriate to the individual child Participant; and
  - 7.1.2 provide the individual child Participant with suitable support; and
  - 7.1.3 are assessed as a cost-effective alternative to meet the child Participant's TCS needs.

## 8. Care training for Family members

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## PART 7 – Support, Attendant Care and Domestic Services

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- 8.1 The LSA recognises that Family members may want to assist Participants with personal care in addition to paid care providers, and that training may be beneficial to fully understand the care required and provide the most appropriate assistance and care, particularly where Assistive Technology, medical aids or manual handling may be required.
- 8.2 The LSA will pay for training of immediate Family members or people who live with the Participant if, in the opinion of the LSA, the training will assist the Participant and Family to achieve greater independence or cohesion and it represents a cost effective option.
- 8.3 When deciding whether it is necessary and reasonable to pay for training in care provision to Family members or people who live with the Participant, the LSA will consider:
- 8.3.1 whether the training has been recommended by an Appropriately Qualified health or disability professional;
  - 8.3.2 the preference of the Participant or Decision Maker or both, as the case may require, for the Participant's care arrangements;
  - 8.3.3 whether training has been provided before to the Participant's carers;
  - 8.3.4 the cost of training and whether it will lead to greater independence or cohesion for the Family unit;
  - 8.3.5 the risks associated with the proposed care provision;
  - 8.3.6 the availability of suitable training.

## 9. Support and attendant care services when the Participant is away from home

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- 9.1 The LSA will pay the necessary and reasonable expenses of support and attendant care services for a Participant when away from home.

*For example, when on holiday or away from their usual place of residence.*

This does not include nursing, support or attendant care services while the Participant is in hospital or inpatient rehabilitation.

- 9.2 The LSA will consider paying necessary and reasonable expenses for support and attendant care services when the Participant is away from home, additional to a Participant's existing services in the following circumstances:
- 9.2.1 when continuity of support or attendant care is required, that is, when it can be demonstrated that a change would cause secondary care complications, behavioural complications, or may increase the need for care;
  - 9.2.2 when the Participant requires support and attendant care services to travel to and from their destination beyond that provided by airlines, boat, bus or rail systems; or
  - 9.2.3 when there is an additional need for support or attendant care services or a change to service delivery when away from home because of the Participant's level of function, accommodation environment, unfamiliar surroundings, unfamiliar routine or need to access additional Assistive Technology.

## PART 7 – Support, Attendant Care and Domestic Services

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- 9.3 The LSA may require additional documentation of the care needs of the Participant, in order to assess their needs for attendant care when they are away from home, in the following circumstances when:
- 9.3.1 additional support and attendant care hours are being requested for the duration of the Participant's absence;
  - 9.3.2 the Participant will use a different support and attendant care provider from the one engaged to provide their regular attendant care; or
  - 9.3.3 Attendant Care Worker travel or accommodation expenses are being requested.
- 9.4 The LSA will pay the necessary and reasonable expenses of hire of Assistive Technology required for support and attendant care service provision, such as a hoist or shower commode, where it is not practical or reasonable to transport Assistive Technology from the Participant's home to their destination.
- 9.5 The LSA will pay reasonable expenses of any additional cost for recreational Assistive Technology hire that is required as a result of the Motor Vehicle Injury.

## 10. Respite services

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- 10.1 The LSA may fund respite services in limited circumstances:
- 10.1.1 where the Family unit (or equivalent) is providing the equivalent of necessary and reasonable attendant care services that the LSA would have funded for the Participant;
  - 10.1.2 the need for respite is planned and is not more than 28 Calendar Days over a 12 month period;
  - 10.1.3 the respite period is short term and for no longer than 14 Calendar Days at any one time; and
  - 10.1.4 the respite is assessed as supporting the continuing sustainability of the Family unit or usual living arrangements where the Participant lives.
- 10.2 The LSA may fund respite services in emergency circumstances if respite was not reasonably able to be planned.

*For example, the family member providing the equivalent of necessary and reasonable attendant care services is unexpectedly hospitalised.*

## 11. Support, attendant care and Domestic Service funding exclusions

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- 11.1 Attendant care while away from home does not include, without limitation:
- 11.1.1 nursing, support or attendant care services while a Participant is in hospital or inpatient Rehabilitation;

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- 11.1.2 expenses for recreational activities or recreational Assistive Technology, while the Participant is away from home;
  - 11.1.3 expenses for the Participant's entry to tourist attractions or any other participation in activities relating to a holiday;
  - 11.1.4 a Participant's personal holiday expenses such as travel, meals and accommodation;
  - 11.1.5 support or Attendant Care Worker's travel expenses to accompany a Participant to and from their destination, where a Participant is assessed as being able to travel without a support or Attendant Care Worker present and with the support provided by airlines, boat, bus or rail systems;
  - 11.1.6 any Participant travel expenses such as air, rail, bus or boat fares;
  - 11.1.7 costs associated with international travel such as immunisation, passports or visas for the Participant;
  - 11.1.8 attendant care assistance for any tasks other than to meet an Assessed Care Need; or
  - 11.1.9 travel insurance or any other expenses associated with changes to travel plans for the Participant.
- 11.2 In relation to attendant care services in general, the LSA does not pay for:
- 11.2.1 services for an injury, condition or circumstance that existed before, or subsequent to, the Motor Vehicle Accident or that are not a result of the Motor Vehicle Accident;
  - 11.2.2 services for other members of the Participant's Family or household;
  - 11.2.3 travel expenses for the Attendant Care Workers except to and from approved TCS services;
  - 11.2.4 services that replace parental responsibilities, such as the supervision of a young child;
  - 11.2.5 others living with the Participant, family members or legal guardians to provide care services.
- 11.3 In relation to Domestic Services, the LSA will not pay:
- 11.3.1 to undertake ordinary household repairs.  
*For example, painting, fence repairs or plumbing.*
  - 11.3.2 to undertake maintenance outside what would be expected for a Standard Property.  
*For example, pool cleaning and maintenance, heavy pruning outside of access and safety needs, maintenance of a large property or house..*
  - 11.3.3 a Participant's domestic partner or Family members to provide services to the Participant.
- 11.4 The LSA will not pay for:
- 11.4.1 everyday activity costs that are not related to the Participant's TCS needs.

**PART 7 – Support, Attendant Care and Domestic Services**

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- 11.4.2 supports that are, in the course of ordinary circumstances, paid for by State and Commonwealth Governments (or other jurisdictions/schemes) as benefits available to the community (wholly or in part) for ageing or injuries/disabilities and the Participant remains eligible.

## PART 8 – Accommodation

### 1. Transitional accommodation

- 1.1 Transitional accommodation is short term accommodation in the circumstances where the Participant's normal place of residence is temporarily not appropriate to meet their needs related to the motor vehicle injuries.
- For example, when a Home Modification is in progress or where a Participant's care requires a specific setting that is not currently met by the Participant's home.*
- 1.2 The LSA will pay for the costs of transitional accommodation under the following limited circumstances;
- 1.2.1 the need for accommodation is related to the Motor Vehicle Injury;
  - 1.2.2 the Participant's usual place of residence is not accessible due to the Motor Vehicle Injury or is outside the Adelaide metropolitan area which is impacting the Participant's ability to receive appropriate TCS services; and
  - 1.2.3 there is no other existing suitable accommodation option to meet the Participant's needs that arise from the Motor Vehicle Injury.
- 1.3 In determining whether transitional accommodation costs are necessary and reasonable the LSA may consider:
- 1.3.1 whether discharge from hospital or inpatient Rehabilitation, or delivery of a Participant's plan for TCS, is possible without the transitional accommodation;
  - 1.3.2 the length of time for finding appropriate longer-term accommodation, or the expected timeframe for completion of Home Modifications and whether Home Modifications are able to be staged to allow earlier access to the home;
  - 1.3.3 whether the existing home is able to be occupied prior to finding appropriate longer-term accommodation, or during the Home Modification process;
  - 1.3.4 the nature of the Motor Vehicle Injury and whether the Participant requires TCS services that would be required in the transitional accommodation setting and the suitability of the setting in which these services would be delivered; and
  - 1.3.5 whether transitional accommodation is the most cost effective option compared to any other accommodation option (such as when a Home Modification is in progress or when a Participant is travelling regularly from a remote community for treatment care and support over a period of time).
- 1.4 The LSA may require the Participant to make a reasonable rent contribution, which is an ordinary cost of housing. For a Participant in receipt of the Disability Support Pension (DSP), 25 per cent of the base rate plus any relevant Commonwealth Rent Assistance will be considered reasonable rent contribution.

**PART 8 – Accommodation**

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## **2. Specialist Disability Accommodation**

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- 2.1 Specialist Disability Accommodation (SDA) refers to accommodation for Participants who require specialist housing solutions, to assist with the delivery of supports that cater for their extreme functional impairment or very high support needs

*For example where a Participant requires integrated housing and supports.*

- 2.2 SDA is considered by the LSA as when the need for Specialist Disability Accommodation is related to the Motor Vehicle Injury and:

2.2.1 the Participant's usual place of residence is not accessible, and cannot be cost effectively made accessible, due to the Motor Vehicle Injury; and

2.2.2 when modification of a new home is not feasible.

- 2.3 The LSA may consider SDA when the behaviour of the Participant requires specialist, high level support and this support is ideally provided in a dwelling with particular features that are unavailable in the wider community.

*For example, robust build.*

- 2.4 Where SDA is required, the accessible home is expected to be rented by a Participant or their Family from a housing provider.

- 2.5 The LSA will contribute to the costs to the extent the LSA considers it to be necessary and reasonable TCS, and related to the Motor Vehicle Injury, above ordinary housing and living costs.

- 2.6 The LSA will require the Participant to make a reasonable rent contribution, which is an ordinary cost of housing. For a Participant in receipt of the Disability Support Pension (DSP), 25 per cent of the base rate plus any relevant Commonwealth Rent Assistance will be considered reasonable rent contribution.

- 2.7 All SDA arrangements require prior approval In Writing by the LSA.

- 2.8 The Participant should be involved in the decision-making processes relating to their accommodation to the extent that it is practicable.

- 2.9 The LSA's funding of SDA does not negate the responsibilities of another agency or department to provide for it.

## **3. Respite accommodation**

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- 3.1 Respite accommodation is short term accommodation, including care services, for times when Participants need to live away from their usual place of residence for short periods as their informal supports are not available or require a break from their caring role.

- 3.2 The LSA may provide respite accommodation in limited circumstances, consistent with the requirements for respite services outlined in Part 7 (Support, Attendant Care and Domestic Services), Rule 10.

**PART 8 – Accommodation**

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## **4. Accommodation exclusions**

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- 4.1 The LSA will not reimburse accommodation costs retrospectively unless specifically provided for under this Part.
- 4.2 The exclusions outlined in Part 10 Home Modifications apply under this Part where relevant.

## PART 9 – Assistive Technology

### 1. Preliminary

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- 1.1 This Part applies in relation to aids and appliances referred to in subsection 4(1) of the Act.
- 1.2 The LSA will pay for Assistive Technology for Participants where it is assessed as necessary and reasonable to meet a TCS need in relation to the Motor Vehicle Injury.
- 1.3 Assistive Technology may be provided to:
- 1.3.1 sustain or increase autonomy;
  - 1.3.2 sustain or increase participation in community and economic life;
  - 1.3.3 improve mobility;
  - 1.3.4 facilitate communication;
  - 1.3.5 relieve pain or discomfort;
  - 1.3.6 maintain health or prevent ill-health;
  - 1.3.7 sustain or facilitate a return to vocational, educational, or leisure activities; or
  - 1.3.8 increase the safety of the Participant, their Family, carers or Service Providers.

### 2. Assistive Technology prescription

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- 2.1 Assistive Technology prescription is the process of assessing a Participant's needs, selecting, trialling, modifying, evaluating and eliminating options to determine the most appropriate Assistive Technology item(s). Assistive Technology prescription is more detailed than a referral for provision or a needs assessment.
- For example,*
- *the medical specialist refers a Participant for a wheelchair assessment.*
  - *the Assistive Technology prescriber (such as an occupational therapist working at a seating clinic) prescribes the specifications for the Participant's wheelchair.*
- 2.2 Any proposal for Assistive Technology must be developed in consultation with the LSA.
- 2.3 Any prescriptions for Assistive Technology, must be provided to the LSA for approval, consistent with the requirements under Rule 9 of this Part. The Assistive Technology must be prescribed by a health professional or team of professionals Appropriately Qualified in prescribing that item. The

## PART 9 – Assistive Technology

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level of experience required to prescribe the item is determined by the complexity of the item and the Participant's abilities and care needs.

2.4 The prescription must be accompanied by the following information:

2.4.1 completion of the LSA Assistive Technology prescription form available on the LSA website;

2.4.2 identification of the specific model, type, costs and where relevant, maintenance and servicing requirements;

2.4.3 if required by the LSA, a contingency plan for emergency repairs or replacement of the item to ensure continued safety of the Participant;

2.4.4 confirmation In Writing that the Participant or Decision Maker or both, as the case may require, has been consulted and agrees with the provision of the proposed Assistive Technology and contingency plan (where relevant);

2.4.5 an implementation plan, including any associated training requirements, to ensure appropriate and safe use by the Participant or other users; and

2.4.6 detailed specifications and corresponding supplier quote for the prescription of the customised item.

### 3. Assistive Technology requirements

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3.1 Before Assistive Technology is prescribed, it should be assessed as more appropriate than alternative therapies, treatments or management options.

3.2 The LSA will pay the necessary and reasonable cost of Assistive Technology if the LSA is satisfied that:

3.2.1 the Participant's need for the item has been assessed by reference to their abilities and needs as related to the Motor Vehicle Injury;

3.2.2 the item has been successfully trialled, where possible, and the Participant is able to safely use the item within the intended environment of use;

3.2.3 where a cost is involved for a trial of the item, it must be approved by the LSA before commencement; and

3.2.4 the prescribed item is consistent with the Participant's Discharge Plan or MyPlan.

3.3 Once an Assistive Technology recommendation has been approved, the LSA will order the item from the LSA contracted supplier in the first instance or other suppliers as required.

### 4. Assistive Technology funding exclusions

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4.1 The LSA is not responsible for the provision or replacement of Assistive Technology if, in the opinion of the LSA, the item is considered to be a general household or leisure item,

*For example, a vacuum cleaner.*

## PART 9 – Assistive Technology

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However, the LSA may consider the initial purchase where the item is required for therapeutic or disability management purposes and/or a co-contribution for future replacement.

- 4.2 The LSA may pay for any modification to the item or any additional features that are considered necessary and reasonable due to the Motor Vehicle Injury.

*For example, extension handle for an existing vacuum cleaner.*

## 5. Participant contribution to Assistive Technology

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- 5.1 Participants may be required to contribute to the cost of Assistive Technology in cases where the item is only partially related to the Participant's Motor Vehicle Injury, or the item requested is beyond what the LSA considers to be necessary and reasonable in relation to the Participant's Motor Vehicle Injury.
- 5.2 Where the Participant had the item prior to the Motor Vehicle Injury, the LSA will fund necessary and reasonable upgrade or replacement costs of the Assistive Technology on a once-off basis to meet the Participant's need due to the Motor Vehicle Injury. Subsequent upgrades or replacements will be at the Participant's expense. The LSA may fund any additional costs of the subsequent upgrade or replacement if the LSA considers it necessary and reasonable.

## 6. Ownership of LSA funded Assistive Technology

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- 6.1 Assistive Technology funded by the LSA, either directly or through an agreement, is the property of the Participant unless otherwise provided for in an agreement between the LSA and the Participant, or the Assistive Technology is under a hire agreement with a third party.
- 6.2 Items subject to an agreement between the LSA and the Participant or a hire agreement with a third party are made available to the Participant for their sole use for as long as the Participant needs the item, however, it must be returned when no longer necessary, in accordance with the relevant agreement.

## 7. Modifications to existing household or leisure items

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- 7.1 The LSA will pay for the necessary and reasonable cost of upgrading or modifying items that were owned by a Participant prior to the Motor Vehicle Accident, to enable the Participant to access the item if considered by the LSA to be necessary and reasonable.
- 7.2 In circumstances where the cost of modification of the existing item exceeds the cost of purchase, and the item is necessary and reasonable, the LSA may fund the purchase of the new item at its discretion.
- 7.3 Where a household or leisure item previously modified by the LSA needs to be replaced due to normal wear and tear, the LSA will pay for the replacement of any injury-specific modifications or extras that cannot be transferred from that old item.

*For example, a modified tennis racquet.*

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## **8. Maintenance and repair of Assistive Technology**

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- 8.1 The LSA may require the Participant or Decision Maker or both, as the case may require, to enter into an agreement that details the conditions of use, maintenance, insurance and ownership of Assistive Technology.
- 8.2 The Participant or Decision Maker or both, as the case may require, are responsible for the everyday care and maintenance of the Assistive Technology and for ensuring it is kept in safe working order.
- 8.3 The LSA will pay for the cost of Assistive technology relating to:
  - 8.3.1 maintenance and repairs resulting from normal wear and tear, if the Assistive Technology is funded by the LSA;
  - 8.3.2 routine maintenance as recommended by the manufacturer or to meet industry standards;
  - 8.3.3 adjustments due to growth, or other change in the Participant's abilities and need; and
  - 8.3.4 repairs where the LSA has accepted partial liability for the purchase or modification of Assistive Technology, consistent with the level of the LSA's contribution to the purchase or modification of the item.
- 8.4 The LSA will replace necessary and reasonable Assistive Technology worn out as a result of normal use, if the LSA considers the item to be necessary and reasonable for the Participant.

## **9. Order of readily available Assistive Technology on discharge**

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- 9.1 In preparation for inpatient discharge, the LSA may allow a hospital/Rehabilitation facility to order readily available Assistive Technology from the LSA contracted provider to facilitate discharge.
- 9.2 The prescription must be made in accordance with the requirement that Assistive Technology must be necessary and reasonable.
- 9.3 The prescriber must have the appropriate training to prescribe the item(s).
- 9.4 The LSA must be notified where prescriptions have occurred.

## **10. Continence products**

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- 10.1 The LSA will provide continence products that relate to a continence need caused by the Motor Vehicle Injury.
- 10.2 The prescription of continence products must be completed by a medical practitioner or registered nurse Appropriately Qualified for continence prescription. The continence prescription should include the continence product, the frequency of provision as per the recommended usage levels and the period of time for which the prescription applies. A review date based on the Participant's needs should be set at the time of each prescription.

## PART 9 – Assistive Technology

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- 10.3 The LSA may appoint suppliers to provide approved continence products directly to the Participant. In these circumstances a Participant may order continence products as they are needed, providing the orders are within the usage recommended in the continence prescription. If an item is ordered by a Participant or Decision Maker or both, as the case may require, that is outside the prescribed list or the quantity recommended, the continence supplier will need to seek approval prior to supplying the item. Clinically appropriate product substitutions may be ordered without prior approval if the prescribed item is unavailable at the time of ordering.
- 10.4 The LSA will not pay for continence products where the Participant is an inpatient, or where a bed fee includes the provision of these products.

## 11. Beds/mattresses

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- 11.1 The LSA funds the necessary and reasonable cost or contribution to the cost of the purchase of a bed/mattress (and linen) where the need for the replacement bed/mattress is due to the Participant's Motor Vehicle Injury.
- 11.2 In deciding whether the LSA funds the total cost of a bed/mattress or, to determine the extent of contribution towards the reasonable cost of a bed/mattress, the LSA may consider:
- 11.2.1 the age of the Participant's current bed/mattress;
  - 11.2.2 the condition of the Participant's current bed/mattress;
  - 11.2.3 the extent to which the need for a new bed/mattress is related to the Motor Vehicle Injury;
  - 11.2.4 whether the Participant has obstructive sleep apnoea resulting from the Motor Vehicle Injury;  
or
  - 11.2.5 work, health and safety considerations for provision of care related to the Motor Vehicle Injury.
- 11.3 Where the LSA has previously supplied a bed/mattress and a replacement is required, the LSA will consider funding or co-contribution it at its discretion.
- 11.4 The LSA will not pay for antique bed replacements or repairs, waterbeds or waterbed heaters.

## 12. Information and communication technology

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- 12.1 The LSA will pay for electronic Assistive Technology recommended by an Appropriately Qualified professional with relevant experience including modifications to electronic Assistive Technology that, in the opinion of the LSA, are required as a direct result of the Motor Vehicle Injury and is considered necessary and reasonable.
- 12.2 Where a Participant has a substantially reduced capacity for speech, writing or reading as a direct result of their Motor Vehicle Injury, the LSA will pay for or contribute to the cost of augmentative and alternative communication devices or communication software for mainstream personal devices.
- 12.3 The LSA will pay for, or contribute to the cost of, a mainstream personal communication device, when the Participant does not currently own or have access to a mainstream personal communication device, and the need is directly related to the Motor Vehicle Injury.

## PART 9 – Assistive Technology

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- 12.4 The LSA will pay for an upgrade to a Participant's own mainstream personal device when it is necessary and reasonable to assist with independent communication, or cognitive support strategies, where the need is directly related to the Motor Vehicle Injury.
- 12.5 The LSA may also pay for, or contribute to, a mainstream personal device, including computer Assistive Technology, to enable the Participant to return to work or for a vocational retraining or education program.

*For example, working remotely until they can access their workplace.*

- 12.6 The LSA may also provide, or contribute to, a mainstream personal device to increase a Participant's functional autonomy in activities of daily living, where the Participant:
- 12.6.1 lives in a remote location;
  - 12.6.2 has a severe physical or cognitive impairment; or
  - 12.6.3 has a condition that inhibits the Participant's access to the community; or
  - 12.6.4 has a condition that inhibits the Participant's social inclusion.
- 12.7 The LSA may pay for, or contribute to, the necessary and reasonable cost of internet access, where it is not otherwise available to the Participant, or the additional costs of upgrading, if the current service is inadequate in meeting the Participant's needs related to the Motor Vehicle Injury:
- 12.7.1 during a hospital inpatient stay when the Participant is temporarily unable to make use of their regular internet access (unless this is provided by the hospital);
  - 12.7.2 to access a telerehabilitation program/telemedicine;
  - 12.7.3 to access a short-term return to work program;
  - 12.7.4 for an educational program; or
  - 12.7.5 where it demonstrably reduces reliance on support or attendant care services.
- 12.8 Where the LSA has previously supplied a mainstream personal device and a replacement is required, the LSA will consider funding or co-contributing at its discretion.

## 13. Environmental control technology

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- 13.1 The LSA will pay for the necessary and reasonable cost of technology for the purpose of environmental control, where the need for environmental control is directly related to the motor vehicle injuries. This includes technology that requires physical or structural modification to the Participant's home, which is outlined in Part 10 of these Rules.

## 14. Pressure care Assistive Technology

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- 14.1 The LSA will pay for the necessary and reasonable cost of pressure care Assistive Technology where a Participant has been assessed as being at risk of pressure injury development or currently has a pressure injury, and this risk is directly related to their Motor Vehicle Injury.

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## **15. Positioning and seated mobility Assistive Technology**

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- 15.1 The LSA will pay for the necessary and reasonable cost, including the replacement cost, of wheelchairs and other mobility aids to enable Participants to safely access their home, their workplace and the community.
- 15.2 The LSA will pay for positioning and seated mobility Assistive Technology when there is a Motor Vehicle Injury related need to increase the Participant's capacity or safety to participate in activities such as: accessing the community, eating and drinking, sleeping, showering, toileting, study, travel by car, sitting or mobilising, and communicating.

## **16. Orthoses, footwear and walking aids**

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- 16.1 The LSA will pay for, or co-contribute to the necessary and reasonable cost, including the replacement cost, of orthoses, specialist footwear and walking aids to enable Participants to safely access their home, their workplace and the community.
- 16.2 The LSA may pay for or co-contribute to prescribed mainstream footwear, in lieu of specialist footwear, if the item is assessed as being necessary and reasonable.

## **17. Respiratory Assistive Technology**

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- 17.1 The LSA will pay for the necessary and reasonable cost of respiratory Assistive Technology. Types of respiratory Assistive Technology may include:
  - 17.1.1 invasive ventilation (tracheostomy);
  - 17.1.2 non-invasive ventilation; and
  - 17.1.3 associated electro-medical Assistive Technology and supplies.
- 17.2 The LSA may appoint a supplier to provide approved ventilation, tracheostomy or another ostomy Assistive Technology directly to the Participant.
- 17.3 In these circumstances a Participant or Decision Maker or both, as the case may require, may order supplies as they are needed, providing the orders are within the usage recommended in the Assistive Technology prescription. If an item is ordered by a Participant or Decision Maker or both, as the case may require, that is outside the prescribed list or the quantity recommended, the Assistive Technology supplier is required to seek approval prior to supplying the item.

## **18. Assistive Technology for exercise and fitness**

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## PART 9 – Assistive Technology

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- 18.1 The LSA may pay for, or co-contribute to, the necessary and reasonable costs of exercise and fitness Assistive Technology when the Assistive Technology is prescribed by an Appropriately Qualified health professional and is directly related to the Motor Vehicle Injury and the LSA considers it to be necessary and reasonable. Justification should be provided as to why the exercise and fitness Assistive Technology is required and what other options have been considered and discounted, such as a gym membership.
- 18.2 To determine whether the costs are necessary and reasonable the LSA may require that:
- 18.2.1 the Assistive Technology is hired while the Participant trials the activity; and
  - 18.2.2 the purchase of exercise or fitness Assistive Technology only occurs once a successful trial has taken place and the Participant has demonstrated commitment through regular use over a period of time.

## 19. Assistive Technology for recreation or leisure purposes

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- 19.1 The LSA may pay for, or co-contribute to, the necessary and reasonable cost of specialised Assistive Technology or adaptations to Assistive Technology, to:
- 19.1.1 return a Participant to a pre-accident recreational activity;
  - 19.1.2 substitute a pre-accident recreational activity for a new recreational activity; or
  - 19.1.3 to commence a developmentally appropriate activity.
- 19.2 For the purposes of Rule 19.1 under this Part, the LSA will consider the following factors in making its decision:
- 19.2.1 age of the Participant;
  - 19.2.2 pre-accident activities;
  - 19.2.3 demonstrated history of commitment to Rehabilitation and other recreational pursuits;
  - 19.2.4 recreational or leisure Assistive Technology that the LSA has previously funded.

## 20. Funding exclusions

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- 20.1 The LSA will not pay for:
- 20.1.1 the replacement of items funded by the LSA and then on-sold by the Participant or another person, unless otherwise agreed by the LSA as the item is considered to be no longer appropriate for the Participant's needs; or
    - For example, a wheelchair that the Participant has outgrown).*
  - 20.1.2 the purchase of items that the Participant had funded prior to the Motor Vehicle Accident (e.g. mainstream personal devices), unless otherwise provided for under this Part and considered necessary and reasonable; or

**PART 9 – Assistive Technology**

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- 20.1.3 the replacement of items funded by the LSA, if the replacement is required due to neglect, abuse or misuse; or
- 20.1.4 items if the item requested by the Participant or Decision Maker or both, as the case may require, is considered to be more expensive than an item assessed to meet the Participant's identified needs unless the difference is paid through co-contribution by the Participant; or
- 20.1.5 the purchase of upgrades or accessories to the item that are not, as assessed by the LSA, necessary and reasonable in relation to the Motor Vehicle Injury; (e.g. flashing castor wheels, decals, mag wheels); or
- 20.1.6 the provision of an item if the item is included in a bed fee for Participants who are inpatients or receiving residential care (e.g. continence items); or
- 20.1.7 Assistive Technology that is available for use in another setting (such as a gymnasium) that is appropriate for the Participant to access; or
- 20.1.8 items that are used by the Participant solely in other environments (e.g. physiotherapists' rooms); or
- 20.1.9 the replacement or upgrade of Assistive Technology unless directly related to the Motor Vehicle Injury; or
- 20.1.10 antique bed, waterbeds or waterbed heaters; or
- 20.1.11 repair or maintenance of items that have been previously funded by the LSA in the following circumstances:
  - 20.1.11.1 if the LSA has funded a replacement item for the Participant; or
  - 20.1.11.2 the item is no longer considered necessary and reasonable by the LSA; or
  - 20.1.11.3 if the item has been damaged through lack of reasonable care, misuse or neglect; or
  - 20.1.11.4 antique bed, waterbeds or waterbed heaters.

## **PART 10 – Home Modifications**

### **1. Background**

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- 1.1 This Part applies in relation to services referred to in subsection 4(1) of the Act.
- 1.2 The LSA recognises that because of their Motor Vehicle Injury, Home Modifications will be the preferred option for some Participants or Decision Makers or both, as the case may require. In determining funding for Home Modifications, the LSA will consider the Participant's short and long term living arrangements, and all reasonable alternatives. This may include the provision and installation of Assistive Technology or relocation to a more appropriate residence, as well as Home Modifications.

### **2. Preliminary**

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- 2.1 The LSA will pay for the necessary and reasonable cost of Home Modifications for a Participant.
- 2.2 All Home Modifications to be funded by the LSA require prior approval In Writing by the LSA.
- 2.3 The LSA's funding of modifications does not negate the responsibilities of another agency or department to provide them.

### **3. Consent for Home Modifications**

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- 3.1 The Participant or Decision Maker or both, as the case may require, should be involved in the decision-making processes relating to their Home Modifications and agree to any proposed modifications.
- 3.2 Agreement and permission from the home owner and, if necessary, any body corporate, must be obtained In Writing before the Home Modification process can proceed.

### **4. Ensuring the home can be modified**

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- 4.1 The LSA will first ensure that the Participant's home is, in the opinion of the LSA, reasonably able to be modified. This will be assessed on several factors including, but not limited to:
  - 4.1.1 access to and egress from the home;
  - 4.1.2 accessibility to all areas of the home;
  - 4.1.3 the safety of the Participant, Family members and Attendant Care Workers;

## PART 10 – Home Modifications

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- 4.1.4 the ownership of the home;
  - 4.1.5 the cost and extent of the Home Modifications; and
  - 4.1.6 the Participant's expected length of tenancy, if the home is rented/owned by another party.
- 4.2 Any necessary council or planning approvals must be obtained before any work can begin.

## 5. Assessment of the need for Home Modifications

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- 5.1 The LSA will conduct a home assessment using an Appropriately Qualified occupational therapist or other relevant Service Providers.
- 5.2 The assessment will consider the Participant's current functional status, projected long-term needs and their proposed Home Environment.
- 5.3 The assessment should identify environmental barriers relating to the Motor Vehicle Injury, including analysis of alternative options to overcome these barriers.

*For example, non-structural Home Modifications should be considered as an option, if they enable an appropriate level of autonomy or safety for the Participant and Family or support or Attendant Care Workers.*

- 5.4 Recommendations for Home Modifications must include clear clinical and practical justification as to why Home Modifications are necessary and reasonable, the outcomes to be achieved and the feasibility of the proposed Home Modifications compared with other alternatives such as relocation. The clinical justification must make reference to the relevant codes and Australian Standards where appropriate.

## 6. Necessary and reasonable Home Modifications

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- 6.1 Factors that the LSA will take into account when deciding if a Home Modification is necessary and reasonable include:
    - 6.1.1 the anticipated length of time that the Participant will need Home Modifications and whether this need is likely to change;
    - 6.1.2 structural constraints;
- For example, size, surrounding terrain and condition of the home.*
- 6.1.3 ownership of the property;
  - 6.1.4 permission of the owner or body corporate to temporarily or permanently undertake modification to the home;
  - 6.1.5 local planning regulations and building permits;
  - 6.1.6 length of lease of a Rental Property;
  - 6.1.7 anticipated period of occupancy of the home to be modified;

## PART 10 – Home Modifications

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6.1.8 the scale and cost of the proposed modifications when considered in conjunction with alternative residential options; and

6.1.9 the LSA's ability to negotiate any necessary agreement or consent required on modifications with any external parties.

6.2 The LSA will assess whether Home Modifications are necessary and reasonable based on information contained in building modification project plans, reports from the home assessment completed by the occupational therapist and where utilised, the builder, final modification costs, and any other relevant information or reports.

6.3 The LSA may delay permanent or major modifications, where the Motor Vehicle Injury is likely to change or improve. In these circumstances the LSA may approve temporary Assistive Technology or staged modifications to ensure the safety of the Participant in the short term.

6.4 If, prior to the commencement or during the works, the home is found to require maintenance or repair, these works need to be completed at the home owner's cost prior to the LSA funded Home Modification proceeding. Where maintenance or repair work is discovered during the LSA funded Home Modification work, the Home Modification work will cease until the maintenance or repair has been carried out.

*For example: discovery of termite damage, electrical damage/noncompliance.*

6.5 At times, the property owner, the Participant, their legal representative, Family member or Decision Maker may desire additional building works or higher cost finishes because of aesthetic, architectural or other reasons, which are considered by the LSA to be more than is necessary and reasonable. These works need to be quoted separately, agreed upon and the cost borne by the property owner, Participant, their legal representative, Family member or Decision Maker and must take place only after the completion of the funded works (unless the LSA agrees In Writing or they relate to higher cost finishes paid for by the property owner, Participant, their legal representative, Family member or Decision Maker). Any such additional work should not affect Participant access to or within the area being modified, or in any way adversely compromise the impact of any modifications that have been approved.

## 7. Minor modifications to home

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7.1 The LSA will pay for necessary and reasonable minor Home Modifications irrespective of the type of residence or accommodation being modified, if the owner of the premises agrees to the proposed modifications and the home is able to be modified.

## 8. Modifications to a Rental Property

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8.1 The LSA will pay for necessary and reasonable Home Modifications for Participants in a Rental Property if the owner of the premises agrees to the proposed modifications.

8.2 If the Participant moves out of a Rental Property, the LSA will pay for the necessary and reasonable costs of returning a Rental Property to its former state, when the costs:

8.2.1 are related to the services or modifications that were previously approved or installed by the LSA; and

## PART 10 – Home Modifications

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8.2.2 are related to the Participant's Motor Vehicle Injury.

*For example, the LSA may pay for making good the removal of grab rails, wedge ramps or replacement of a shower screen or hob at the end of a long-term tenancy.*

8.3 The LSA will only consider other costs relating to returning a Rental Property to its former state if they are necessary and reasonable, related to the Motor Vehicle Injury and specifically requested by the owner.

*For example, wear and tear to carpets as a result of wheelchair use.*

8.4 The LSA will consider funding the cost of relocating to a more suitable premises such as removalist fees only where the move is required due to the Motor Vehicle Injury.

## 9. Modifications to a home owned by the Participant or their Family

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9.1 The LSA will pay for Home Modifications where:

9.1.1 the home to be modified is the principal place of residence of the Participant or their Family;

9.1.2 the Participant intends to remain living at that residence for the foreseeable future; and

9.1.3 relocation to another residence, or a more suitable residence, is not an appropriate option for the Participant or their Family.

9.2 The LSA may seek an agreement with the Participant or Decision Maker or both, as the case may require, or home owner for Home Modifications regarding the potential for Home Modifications to increase the value of the home. The agreement may require the cost of the Home Modifications to be depreciated at 10 per cent per year over ten years. If the Home Modifications have led to a material increase in the value of the home, the agreement may require that any increase in value to the home as a direct consequence of the Home Modifications to be depreciated at 10 per cent per year over ten years. In the case of a major modification where the home is sold within ten years of installation, the owner may be required to reimburse the LSA for any pro rata costs. Reimbursement will occur on settlement. Home valuation reports will be required and will be the responsibility of the LSA.

9.3 Taking into account the scale and cost of the proposed modifications, and the value of the property, the LSA may consider rebuilding or contributing to the cost of rebuilding, either on the existing land or elsewhere, if considered by the LSA to be cost effective compared with other options.

## 10. Relocation if the home is not suitable for modification

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10.1 If the home is unable to be cost-effectively modified and relocation is the most appropriate option, the LSA may pay for the necessary and reasonable costs of:

10.1.1 assistance to locate an appropriate home where the Participant or Decision Maker or both, as the case may require, is unable to look for alternative properties, or does not have Family or friends to assist them to locate a suitable property;

## PART 10 – Home Modifications

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10.1.2 professional assistance in order to identify suitable residential options for the Participant and Family;

*For example, assessment of a property by an occupational therapist or an Appropriately Qualified person approved by the LSA.*

10.1.3 real estate agent fees;

10.1.4 advertising costs;

10.1.5 legal and conveyancing fees at both ends of the transaction;

10.1.6 stamp duty;

10.1.7 Land Titles Office transfer fee;

10.1.8 cleaning costs associated with preparing a home for sale or rental; and

10.1.9 furniture removal.

## 11. Assistance when relocating to or building a new home

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- 11.1 When considering relocation to or the build of a new home, the LSA expects that the Participant or Decision Maker or both, as the case may require, will locate or design a property that does not require substantial modification. The LSA does not consider it reasonable that a Participant with significant functional limitations chooses to move to or build a home where substantial modifications need to be undertaken to allow them to reasonably access the home or parts of the home.
- 11.2 The LSA will only pay for necessary and reasonable modifications to a new home to enable the Participant to access the following areas of the home:
- 11.2.1 a bathroom and toilet;
  - 11.2.2 a bedroom;
  - 11.2.3 a living/dining area; and
  - 11.2.4 a kitchen (for Participants who can fully or partially prepare their own food or beverages).
- 11.3 If the Participant or Decision Maker or both, as the case may require, or their family is seeking to purchase or rent a new home which would require modifications, the LSA requires an assessment by a suitably qualified occupational therapist, a current building report, pest report and any other relevant documentation be provided before the home is purchased or rented, to ensure that the home is reasonably able to be modified. If such reports are not provided, the LSA will not pay for Home Modifications after purchase or renting. The LSA will meet the cost of the relevant reports.

## 12. Service Providers for Home Modifications

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## PART 10 – Home Modifications

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- 12.1 Modifications will be approved by the LSA if considered necessary and reasonable, following consideration of an agreed scope of works and a quotation for works to deliver the proposed modifications.
- 12.2 All Home Modifications the LSA pays for must be undertaken by an Appropriately Qualified licensed builder or tradesperson who holds current registration as a company or as a business/sole trader and appropriate insurance.
- 12.3 The Home Modification must be in accordance with the scope of works and quotation approved by the LSA and in accordance with the Discharge Plan or MyPlan. Any variations to the job specifications must be approved by the LSA, In Writing, prior to the work being completed.

## 13. Home Modification to a secondary home that is lived in concurrently

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- 13.1 The LSA will pay for the necessary and reasonable cost of basic access, such as ramps, rails, doorway widening, and minor bathroom modifications for a secondary residence which is lived in concurrently by a Participant.

*For example, a Participant who is a child may require a second Home Modification to stay at the residence of the parent/legal guardian/Family member who is not the primary carer but has joint custody, or has agreed regular overnight access visits in an agreement ratified by the Family Court or agreed to by both parents.*

- 13.2 In determining if modifications to a secondary residence are necessary and reasonable, the LSA will consider the nature and extent of any previous Home Modifications approved by the LSA, along with the anticipated amount of time that the Participant is expected to spend in the secondary residence, the reason for this, such as shared parenting arrangements versus a holiday home and the potential benefit of modifying the secondary residence.

## 14. Subsequent Home Modification

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- 14.1 The LSA recognises it may be necessary and reasonable to fund more than one Home Modification as the Participant's circumstances change. Such circumstances may include, but are not limited to:
  - 14.1.1 a Participant living with others who becomes able to live independently, such as a young adult leaving home;
  - 14.1.2 deterioration in the Participant's health as a direct result of the Motor Vehicle Injury;
  - 14.1.3 a Participant who may need to relocate in order to access employment or services more readily; or
  - 14.1.4 other significant changes in the Participant's personal circumstances such as marriage, separation or having children.
- 14.2 If subsequent Home Modifications are requested, the LSA does not consider it reasonable that it funds multiple, major Home Modifications for one Participant.
- 14.3 If subsequent Home Modifications are requested, the LSA will consider in addition to factors set out in Part 10, Rule 6:

## PART 10 – Home Modifications

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- 14.3.1 the extent of the requested modifications;
- 14.3.2 the age of the Participant; and
- 14.3.3 the likely future circumstances of the Participant.

## 15. Repairs and maintenance on Home Modifications

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- 15.1 The LSA will pay for the necessary and reasonable cost of repairs to and maintenance of Home Modifications funded by the LSA that are essential for Participant access or safety and related to the Motor Vehicle Injury, and would not normally be required by the home owner. The LSA will consider funding the costs of repairs and maintenance for any additional wear and tear to a property that is a result of the Motor Vehicle Injury.

*For example, damage to floorboards from wheelchair use.*

- 15.2 If costs for Home Modifications were not paid for in full by the LSA (for example, shared with the property owner), then the LSA will pay for the cost of repairs or maintenance proportional to the original costs paid.
- 15.3 The Participant or Decision Maker or both, as the case may require, or property owner is responsible for any repairs and maintenance as a result of normal wear and tear (such as replacement of bathroom fittings/fixtures), for the upkeep of a residence (such as house painting) or maintenance of any additional works not funded by the LSA.

## 16. Room temperature control Assistive Technology

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- 16.1 The LSA will pay for the cost of room temperature control Assistive Technology if the Participant is unable to self-regulate their body temperature as a result of the Motor Vehicle Injury, or if the lack of room temperature control causes secondary complications.
- 16.2 For a Participant with a complete spinal cord lesion at or above the level of T6, the LSA does not require the certification of a Medical Specialist for the provision of room temperature control Assistive Technology.
- 16.3 For Participants, other than those who have sustained a complete spinal cord lesion at or above the level of T6, the LSA will require certification by an Appropriately Qualified Medical Specialist that the Participant has an impaired or absent ability to regulate their body temperature which will not resolve, or causes significant secondary care complications.
- 16.4 Where an increase in the total consumption of energy can be shown to relate directly to the running of the room temperature control Assistive Technology, the LSA may contribute to the costs associated with its operation, if the Participant is unable to self-regulate their body temperature as a result of the Motor Vehicle Injury.
- 16.5 The LSA will estimate the costs associated with the operation of room temperature control Assistive Technology by considering:
- 16.5.1 government or energy provider calculators of energy costs and usage to estimate average increased running costs and the amount that the LSA would pay;

## PART 10 – Home Modifications

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- 16.5.2 the number and size of rooms to be heated/cooled;
  - 16.5.3 whether the room temperature control Assistive Technology is used by the Participant alone and whether there is a mutual benefit for other household members;
  - 16.5.4 the proportion of the pre-accident utility accounts related to the Participant's usage; and the increase from pre-accident costs to current costs where the comparisons are able to be applied; and
  - 16.5.5 eligibility for energy concessions such as the pensioner concession card.
- 16.6 Any change of domestic circumstances or prolonged absence from home will require a reassessment of the LSA's contribution rate to the operating costs.
- 16.7 The LSA may contribute to the costs associated with maintenance and repair of room temperature control Assistive Technology if the Participant is unable to self-regulate their body temperature as a result of a Motor Vehicle Injury. The LSA may pay a contribution to the reasonable costs of servicing, preventative maintenance and repairs of room temperature control Assistive Technology. The LSA will negotiate this contribution having regard to the Assistive Technology to be operated, e.g. air conditioner or heater and the number and size of rooms to be heated or cooled.
- 16.8 Before the LSA will pay for any contribution to room temperature control Assistive Technology, maintenance or running costs, the Participant or Decision Maker or both, as the case may require, must have fully claimed and utilised any entitlement to concessions, grants or rebates.

## 17. Home Modifications funding exclusions

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- 17.1 The LSA will not pay for:
- 17.1.1 any Home Modifications undertaken without approval from the LSA;
  - 17.1.2 Home Modifications for any residence or property that constitutes, is likely to constitute, or will result in, an illegal structure.
  - 17.1.3 Home Modifications required as a result of a condition that existed before or subsequent to the Motor Vehicle Accident, or that are not required as a result of the Motor Vehicle Accident;
  - 17.1.4 Home Modifications where the owner, body corporate or other responsible authority has not given permission In Writing for the modifications;
  - 17.1.5 the costs of modifications where the Participant or Decision Maker or both, as the case may require, was advised that the home is unsuitable for modification and subsequently proceeded to purchase or rent the home;
  - 17.1.6 the cost of more than one strata report, building report or pest inspection report, per property;
  - 17.1.7 costs of any repairs or maintenance issues identified in strata, building or pest inspection reports;
  - 17.1.8 body corporate/strata fees;
  - 17.1.9 council or water rates;

**PART 10 – Home Modifications**

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- 17.1.10 building or construction of in-ground or above-ground pools, spas or other aqua-therapy facilities;
- 17.1.11 insurance of the home in which the modifications have been installed;
- 17.1.12 any loss of value of any home resulting from any modifications to, or removal of modifications from, the home; or
- 17.1.13 other costs associated with the end of a tenancy that are a condition of the lease, such as advertising costs associated with breaking a lease, steam cleaning of carpets or cleaning a property at the end of a tenancy.
- 17.1.14 items that are normal household items (such as furniture or whitegoods, smoke alarms, surge protectors, towel rails, fans, lights, hot water services, security doors and windows) that are not related to the Participant's need arising from the Motor Vehicle Injury, unless these items have required removal due to the Home Modifications and replacement of like for like items is agreed to and included in the scope of works; or
- 17.1.15 ordinary living expenses such as food, utilities etc.

## **18. Room temperature control Assistive Technology funding exclusions**

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- 18.1 The LSA will not pay for:
  - 18.1.1 any room temperature control Assistive Technology that another agency or department is responsible for providing;
  - 18.1.2 energy services and supply charges;
  - 18.1.3 the entire costs of energy; or
  - 18.1.4 prospective payments for energy costs in advance.

## PART 11 – Motor Vehicle Modifications

### 1. Background

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- 1.1 This Part applies in relation to services referred to in subsection 4(1) of the Act.

### 2. Preliminary

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- 2.1 The LSA will pay for the necessary and reasonable costs of modifications to a motor vehicle where, as a result of the Motor Vehicle Injury, a Participant reasonably requires modifications to travel as a passenger or drive a motor vehicle.
- 2.2 The modified motor vehicle remains the property of the owner.
- 2.3 A Participant is eligible for modifications to a motor vehicle if:
- 2.3.1 the Participant has a physical, sensory or cognitive disability, as a result of the Motor Vehicle Injury, which prevents them from safely driving, accessing or travelling as a passenger in an unmodified motor vehicle; and
  - 2.3.2 the Participant owns or has access to a motor vehicle on a regular basis; and
  - 2.3.3 the Participant has been assessed by an Appropriately Qualified occupational therapist as requiring modifications to a motor vehicle.
- 2.4 In determining whether Motor Vehicle Modifications are necessary and reasonable, the LSA will also:
- 2.4.1 consider if the modification would eliminate the need for a funded attendant carer to travel with the Participant; and
  - 2.4.2 obtain advice on suitability of alternative transport options.

### 3. Motor Vehicle Modifications funded by the LSA

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- 3.1 All Motor Vehicle Modifications require prior approval In Writing from the LSA.
- 3.2 The LSA will pay for the necessary and reasonable modifications to:
- 3.2.1 the Participant's own motor vehicle;
  - 3.2.2 the Participant's legal guardian's motor vehicle, in the case of a dependent child;

**PART 11 – Motor Vehicle Modifications**

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3.2.3 a shared-use motor vehicle where, prior to the accident, the use and costs of a motor vehicle were shared with a spouse or Family member;

3.2.4 a work motor vehicle if, prior to the Motor Vehicle Injury, the Participant had the use of a work motor vehicle, and the Participant has returned to work post-accident and requires the use of the work motor vehicle, subject to the LSA receiving permission In Writing from the owner of the motor vehicle.

3.3 As a guide, the motor vehicle to be modified should generally be less than 5 years old or have travelled less than 80,000 km and deemed roadworthy. Consideration will be given to older vehicles on a case-by-case basis, based on the following factors:

3.3.1 The vehicle being road worthy;

3.3.2 The vehicle being regularly serviced;

3.3.3 Availability of alternative vehicles in the market.

3.4 The LSA will fund the reasonable cost of an Automobile Association vehicle check, or equivalent, to support its consideration under Part 11, Rule 3.3.

3.5 The LSA may pay for modifications to more than one motor vehicle, if the LSA assesses such modifications as being necessary and reasonable.

3.6 If the Participant is to be the driver, the LSA will only pay for the cost of Motor Vehicle Modifications where the Participant's doctor or a member of the treating health care team, such as a qualified driving assessor, has confirmed In Writing the Participant's suitability to drive.

3.7 The LSA will only pay for modifications to a motor vehicle that are commercially available features, required as a result of the Motor Vehicle Injury and when the Participant's motor vehicle does not already have them.

*For example, automatic transmission or electric windows.*

3.8 Modifications, other than minor modifications, must be completed in accordance with the applicable jurisdiction's legislation in force at the relevant time.

*For example, alternative controls for brake and accelerator, wheelchair hoist system, wheelchair restraining devices or wheelchair access ramp.*

3.9 Minor modifications are those that do not alter the structure or safety of the motor vehicle.

*For example, seatbelt buckle covers to enable a Participant to travel safely in a vehicle or panoramic mirrors and fish eye mirrors.*

3.10 The LSA will also pay for the necessary and reasonable cost of:

3.10.1 the assessment conducted by an Appropriately Qualified occupational therapist of the need for Motor Vehicle Modifications;

3.10.2 training the driver in the safe and correct use of Motor Vehicle Modifications;

3.10.3 maintaining, repairing, transferring and replacing modifications; and

## PART 11 – Motor Vehicle Modifications

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3.10.4 any additional insurance costs which are directly related to the Participant's needs as a result of the Motor Vehicle Injury.

- 3.11 As a condition to approving the funding of Motor Vehicle Modifications, the LSA may require the Participant or Decision Maker or both, as the case may require, to obtain and maintain comprehensive car insurance. In these circumstances, the LSA will pay any cost difference in the insurance that is due to the modifications.

## 4. Frequency of funding modifications to a motor vehicle

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- 4.1 The LSA considers it reasonable to pay for modifications to a motor vehicle no more than every eight years, unless there is a change in the Participant's medical condition which prevents the Participant accessing the previously modified motor vehicle.
- 4.2 If the owner of a motor vehicle which has been modified by the LSA, wishes to purchase a replacement motor vehicle, the LSA may pay for the transfer of modifications that are not commercially available to the replacement motor vehicle if this is cost effective.
- 4.3 If the modified vehicle is being replaced by the Participant or Decision Maker or both, as the case may require, consideration in the purchase of a new vehicle should be given to the suitability of existing modification hardware to be re-fitted in the new vehicle where deemed suitable for the Participant's use. The LSA may pay for the installation of existing vehicle modifications in the new vehicle if the LSA considers it to be necessary and reasonable.
- 4.4 When considering Motor Vehicle Modifications, the safety of the Participant and driver or passengers of the motor vehicle is the paramount consideration. The LSA will not pay for modifications to a motor vehicle that do not comply with the intent of the applicable Australian Standards, Australian Design Rules, *Road Traffic Act 1961* (SA) regulations or any other applicable laws of the State or Commonwealth.

## 5. Funding exclusions

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- 5.1 The LSA will not pay for:
- 5.1.1 costs normally associated with motor vehicle ownership, including running costs and servicing which are the owner's responsibility;
  - 5.1.2 modifications to a motor vehicle for a circumstance or condition that existed before the Motor Vehicle Accident or that is not a result of the Motor Vehicle Accident;
  - 5.1.3 the outright purchase of a motor vehicle;
  - 5.1.4 significant modifications to a motor vehicle to travel as a passenger as well as being able to drive it.
- 5.2 The LSA will generally not fund major modifications to more than one motor vehicle.
- 5.3 The LSA may consider funding modifications in some circumstances, such as modifications for the purposes of returning to work, where the Participant may need minor modifications to more than one motor vehicle.

## **PART 12 – Prosthetic and Orthotic Devices and Services**

### **1. Background**

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- 1.1 This Part applies in relation to devices and services referred to in subsection 4(1) of the Act.

### **2. Preliminary**

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- 2.1 The LSA will pay for the necessary and reasonable cost of Prosthetic and Orthotic Devices, for a Participant who has had an amputation as a result of the Motor Vehicle Injury.
- 2.2 The LSA may regard a Prosthetic or Orthotic Device for a recreational activity to be necessary and reasonable, in addition to a primary device, where the Participant is likely to engage in the activity on a regular and ongoing basis.

*For example, the LSA 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 participations.*

### **3. Prosthetic and Orthotic services funded by the LSA**

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- 3.1 Services can only be prescribed by Appropriately Qualified Service Providers. This includes prescriptions, clinic services and manufacturing of devices.

## **PART 13 – Education Support Services**

### **1. Background**

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- 1.1 This Part applies in relation to services referred to in subsection 4(1) of the Act.
- 1.2 Education and training support services aim to minimise the impact of the Motor Vehicle Injury on the Participant's education program, taking into account the Participant's pre-accident condition. They will be based on measurable learning and development outcomes.

### **2. Preliminary**

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- 2.1 The LSA will pay for educational support where the support required relates to the Motor Vehicle Injury, facilitates Participant engagement with the curriculum, the educational community and activities, and delivers educational outcomes.
- 2.2 The LSA may support the Participant's commencement at, or return to, appropriate educational settings within:
  - 2.2.1 preschool;
  - 2.2.2 childcare, including before and after school care;
  - 2.2.3 primary, secondary and special schools; or
  - 2.2.4 higher education.
- 2.3 The LSA will consult with the Participant or Decision Maker or both, as the case may require, and Service Providers to regularly review education or training support services to ensure they continue to meet the Participant's abilities, needs and circumstances.

### **3. Approval of funded education support services**

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- 3.1 To determine whether a Participant is eligible for services under this part, the LSA may consider:
  - 3.1.1 the Participant's pre-accident development and learning history;
  - 3.1.2 services which the Participant accessed, was on the waiting list for, or was assessed as requiring prior to the Motor Vehicle Accident;
  - 3.1.3 measurable changes in the Participant's ability to engage in education and training as a result of their Motor Vehicle Injury;

## PART 13 – Education Support Services

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- 3.1.4 assessment by an independent therapist, special educator, or other specialist professionals in child education and development; and
- 3.1.5 existing education and training support that the Participant is able to access.
- 3.2 Care and support services may include:
  - 3.2.1 social support;
  - 3.2.2 tutorial support;
  - 3.2.3 student aide or assistant;
  - 3.2.4 teacher training;
  - 3.2.5 transitional support;
  - 3.2.6 transport assistance;
  - 3.2.7 Assistive Technology (refer to Part 9 Assistive Technology);
  - 3.2.8 specialist support, such as therapists, special education or other professionals.
- 3.3 The LSA will pay for additional education and training support to cover a Participant's learning missed during an absence from school or tertiary/vocational studies as a result of the Motor Vehicle Injury.

*For example, due to a long hospital admission or continued absences for outpatient appointments.*

## 4. Educational support service exclusions to funding

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- 4.1 The LSA will not pay for services that:
  - 4.1.1 the Participant is entitled to under any applicable Local Government, State, Commonwealth or international legislation;
  - 4.1.2 are more appropriately funded through other persons, agencies or bodies as part of a common or universal community service obligation; or
  - 4.1.3 are reasonable disability adjustments required under a law dealing with discrimination on the basis of disability.
- 4.2 The LSA will not generally pay for education expenses levied by any educational institution including school fees, fees for excursions or school camps, stationery and uniforms that are the responsibility of the parent or legal guardian.

## PART 14 – Vocational Support Services

### 1. Preliminary

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- 1.1 This Part applies in relation to services under subsection 4(1) of the Act.
- 1.2 Vocational support services provide Participants with individualised assistance to enable participation in employment and voluntary work. These necessary and reasonable services support a Participant to transition into, and sustain employment, where these needs are additional to the needs prior to the Motor Vehicle Injury and specifically required as a result of a person's functional impairment.
- For example, support to find paid work, consistent with the Participant's abilities and needs, support to participate in the workplace, additional costs due to the Motor Vehicle Injury relating to travel to and from work and support to sustain employment.*
- 1.3 The funding of vocational support (vocational pre-training, vocational training and retraining), will be considered where, in the opinion of the LSA, there is an evidence base that such support will enable Participants to benefit from socialisation associated with employment participation and to obtain or maintain employment.

### 2. Vocational support services

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- 2.1 Vocational support services enable a Participant, through a combined and coordinated use of services, to minimise the impact of their injuries on their employment or other work-related activity. In the first instance, vocational support services should focus on returning Participants to their original employment with their pre-injury employer/s.
- 2.2 Vocational support services are necessary and reasonable where:
- 2.2.1 there is an assessment and recommendation by an Appropriately Qualified provider;
  - 2.2.2 the service has been agreed to by the Participant or Decision Maker or both, as the case may require, who was involved in the decision-making process and is willing to commit to the training program;
  - 2.2.3 there is a defined, realistic vocational goal;
  - 2.2.4 there are identifiable labour market opportunities on completion of the training; and
  - 2.2.5 such support services increase the likelihood of a Participant retaining employment in their workplace.
- 2.3 Additional factors that the LSA may consider when determining necessary and reasonable support services include, but are not limited to:

## PART 14 – Vocational Support Services

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- 2.3.1 the Participant's pre-accident occupation or career status;
  - 2.3.2 alternatives to pre-vocational, vocational training or retraining;
  - 2.3.3 whether the training is provided by an accredited training organisation and recognised within the relevant industry;
  - 2.3.4 the cost and duration of the training;
  - 2.3.5 previous training expenses paid by the LSA for the Participant;
  - 2.3.6 existing vocational support services that the Participant is able to access; and
  - 2.3.7 whether similar costs would have been incurred by the Participant as an ordinary life expense regardless of their Motor Vehicle Injury.
- 2.4 With respect to training the LSA will pay for:
- 2.4.1 training course fees and compulsory student and administrative charges. Course fees will be payable on a semester-at-a-time basis. Payment of subsequent semester fees will be dependent on successful completion of previous semester course requirements;
  - 2.4.2 compulsory textbooks and materials;
  - 2.4.3 necessary and reasonable travel expenses to and from the approved training; and
  - 2.4.4 training missed during an absence from tertiary/vocational studies that is a result of the Motor Vehicle Injury.

### **3. Excluded vocational support (pre-vocational, vocational training and retraining)**

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- 3.1 The LSA will not pay for:
- 3.1.1 capital expenditure such as the costs of establishing and running a business;
  - 3.1.2 services that the Participant was receiving prior to the Motor Vehicle Accident;
  - 3.1.3 Assistive Technology that employers are required to provide to employees to meet Work Health and Safety requirements;
  - 3.1.4 assistance to keep a business open, such as paying for temporary staff to do a Participant's job;
  - 3.1.5 wage subsidies to an employer;
  - 3.1.6 standard furniture and other capital items associated with a Participant's place of employment;
  - 3.1.7 everyday living expenses associated with employment, such as clothing/uniforms or lunches;

**PART 14 – Vocational Support Services**

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3.1.8 phone calls, photocopying, stationery, meals at training venues and all other expenses associated with training;

3.1.9 costs of training courses that the Participant had enrolled in or commenced prior to the injury;

3.1.10 training or other activities related to maintaining an existing qualification, licence, registration or accreditation once the qualification, licence, registration or accreditation has been obtained;

3.1.11 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; or

3.1.12 training associated with voluntary career changes or personal development.

3.2 The LSA will cease funding if:

3.2.1 the training or educational institution determines that the Participant is guilty of serious academic misconduct; or

3.2.2 the Participant fails to maintain satisfactory academic progress as determined by the educational institution and the LSA.

# PART 15 – Temporary International Travel and Participants Living in International Locations

## 1. Preliminary

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- 1.1 This Part applies in relation to subsections 27(5), 52 and 53 of the Act.
- 1.2 The Act recognises that Participants may choose to travel to international locations for short periods of time (**temporary travel**) or live in international locations (**permanent international residence**). For both types of absences from Australia, the Act gives the LSA discretion, either to pay for TCS services while absent or to suspend the Participant. To exercise that discretion, the LSA will consider the matters outlined in this Part.

### Editorial Notes -

- (i) The structure of this Part is:
- a. the Rule on notice (applicable to temporary travel and permanent international residence). Authorised by subsection 52(1) of the Act;
  - b. temporary travel: considerations for payment of TCS services;
  - c. permanent international residence: considerations for payment of TCS services and ongoing assessment.
- (ii) Payment for TCS services for temporary travel is by account, sent directly to the LSA by the international service provider, by reimbursement to the Participant after they have paid the account, or as determined by the LSA.
- (iii) Payment for TCS services for permanent international residence may be under an agreement under subsection 27(5) of the Act and Part 16 of the Rules, or as for temporary travel.

## 2. Notice

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- 2.1 In accordance with subsection 52(1) of the Act, if a Participant is to be absent from Australia, the Participant or Decision Maker or both as the case may require, must give the LSA notice.
- 2.2 The notice must:
- 2.2.1 be In Writing,
  - 2.2.2 state whether the absence is for temporary travel or permanent international residence,

**PART 15 – Temporary International Travel and Participants Living in International Locations**

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- 2.2.2.1 if the absence from Australia is for temporary travel, include the “TCS Travel Plan” referred to in Rule 3 of this Part.
- 2.2.2.2 if the absence from Australia is for permanent international residence, include “TCS Permanent International Residence Plan” referred to in Rule 4 of this Part.
- 2.2.3 be provided to the LSA at least 28 Calendar Days before the Participant leaves Australia, unless the LSA has previously agreed In Writing, to waive or reduce the 28 Calendar days,
- 2.2.4 state whether the Participant wishes to apply to the LSA for payment of TCS services while absent, and if the Participant wishes to make such an application, the notice must be accompanied by,
  - 2.2.4.1 the location(s) that the Participant intends to visit or the location where the Participant intends to permanently reside as the case may be,
  - 2.2.4.2 for Temporary Travel, a TCS Travel Plan,
  - 2.2.4.3 for Permanent International Residence, a TCS Permanent International Residence Plan.

### **3. Temporary International Travel: Considerations for payment for TCS services**

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- 3.1 Subject to Rule 3.2 of this Part, the LSA will not suspend a Participant, and may pay the necessary and reasonable costs of TCS incurred by a Participant undertaking temporary travel to international locations , provided:
  - 3.1.1 the TCS would have been planned if the Participant remained in Australia, and
  - 3.1.2 the TCS has been planned by the Participant or Decision Maker or both as the case may require, in conjunction with the LSA, which has approved the TCS Travel Plan, and
  - 3.1.3 the cost does not exceed the cost that would be incurred if the Participant remained in Australia, and
  - 3.1.4 the Participant or Decision Maker or both, as the case may require, provides the LSA with verifiable accounts for the international services.
- 3.2 The LSA may suspend a Participant (and therefore not pay for TCS during the period of suspension) if:
  - 3.2.1 the Participant travels to the international location to engage in treatment not approved by the LSA In Writing; or
  - 3.2.2 the Participant or Decision Maker or both, as the case may require, does not inform the LSA of the absence, in accordance with Rule 2.2 of this Part.

## 4. Permanent residence: considerations for payment of TCS services for Participants residing in an international location

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- 4.1 The LSA will not suspend a Participant, and may pay the necessary and reasonable costs of TCS incurred by a Participant permanently residing at an international location, provided:
- 4.1.1 the TCS would be planned as if the Participant remained in Australia, and
  - 4.1.2 the TCS has been planned by the Participant or Decision Maker or both as the case may require, in conjunction with the LSA, which has approved the TCS International Residence Plan, and
  - 4.1.3 the Participant or Decision Maker or both, as the case may require:
    - 4.1.3.1 complies with any relevant requirements under the LSS Rules, (such as the Participant being available for needs assessments as if residing in Australia), and
    - 4.1.3.2 the TCS services for Participants residing in an international location comply with relevant local requirements (with the Participant or Decision Maker or both as the case may require carrying the onus of ensuring such compliance); and
  - 4.1.4 the cost does not exceed the cost that would be incurred if the Participant were living in Australia.
- 4.2 In any consideration of payments, the LSA manages currency risk exposure consistent with South Australian Government requirements.
- 4.3 The LSA may offer the Participant or Decision Maker or both, as the case may require, the opportunity of Self-Directed Support for the Participant, provided that the arrangement complies with the requirements outlined in Part 16.

## PART 16 – Self-Directed Support and Reimbursement Arrangements

### 1. Preliminary

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- 1.1 This Part applies in relation to services under subsection 27(5) of the Act.

**Editorial Notes –**

Section 53 of the Act provides that to the extent possible, the Scheme is to have extra-territorial effect, in relation to the matters listed in subsection 53 (a), (b) and (c). This means that self-directed support can be offered to Participants who wish to reside permanently at an international residence.

- 1.2 This Part contains the rules with respect to Self-Directed Support and reimbursement arrangements.

### 2. Self-Directed Support

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- 2.1 Self-Directed Support means TCS services that an eligible Participant or Decision Maker or both, as the case may require, engages, organises and funds themselves, from an amount agreed with, and paid over to the Participant or Decision Maker by the LSA, under a Self-Directed Support Agreement.

**Editorial Notes –**

Self-Directed Support is sometimes referred to as 'self-managed funding' or 'individualised funding'.

- 2.2 Subject to the Act and these Rules, the LSA, in its absolute discretion, may offer an eligible Participant or Decision Maker or both as the case may require, (the Offeree) the opportunity to enter an Agreement.

- 2.3 The Offeree can refuse or accept the offer.

2.3.1 If the Offeree refuses the offer, TCS will continue to be funded in the normal manner consistent with the requirements of the Act and the Rules.

2.3.2 Before accepting the offer, the Offeree must obtain competent independent financial and any other advice relevant to their circumstances, for which the LSA will pay the reasonable costs.

- 2.4 The LSA may, in its absolute discretion, but subject to the Act and these Rules, grant or refuse a request by an Offeree to self-direct all or part of their funding for TCS services in an Agreement.

- 2.5 The amount paid by the LSA to the Offeree will satisfy any liability that would otherwise arise in relation to the matters to which the Agreement relates.

## PART 16 – Self-Directed Support and Reimbursement Arrangements

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- 2.6 The LSA is not liable for any taxation, social security or other financial issues arising from the Offeree accepting the offer.

### 3. Eligibility

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- 3.1 An offer of self-Directed Support may be made to Interim or Lifetime Participants.
- 3.2 An offer of self-Directed Support must not be made to Interim or Lifetime Participants if they are an insolvent under administration, or if, in the opinion of the LSA, it would create an unreasonable risk.

### 4. Unreasonable risk

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- 4.1 When evaluating unreasonable risk, the LSA will consider:
- 4.1.1 whether material harm, including material financial harm, to the Participant could result if the Offeree were to manage the funding for supports, taking into account the nature of the supports required; and
  - 4.1.2 the vulnerability of the Offeree to:
    - 4.1.2.1 physical, mental or financial harm;
    - 4.1.2.2 exploitation;
    - 4.1.2.3 undue influence.
- 4.2 The LSA will also consider:
- 4.2.1 the ability of the Offeree to make decisions and any decision supports available to the Offeree;
  - 4.2.2 the capacity of the Offeree to manage finances;
  - 4.2.3 whether a court or a tribunal has made an order under Commonwealth, State, Territory or international law under which the property (including finances) or affairs of the Participant or Decision Maker or both, as the case may require, are to be managed, wholly or partly, by another person;
  - 4.2.4 financial and reputation risk for the Scheme; and
  - 4.2.5 whether, and the extent to which, any risks could be mitigated by:
    - 4.2.5.1 the Offeree's informal support network;
    - 4.2.5.2 any safeguards or strategies the LSA could put in place, which, if required, will be outlined in the Agreement or other relevant documents.
- 4.3 The safeguards referred to above may include, but are not limited to:
- 4.3.1 establishing review periods in the Agreement; or

**PART 16 – Self-Directed Support and Reimbursement Arrangements**

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4.3.2 providing funding for supports that would assist the Offeree to manage their TCS.

*For example, budgeting training.*

## **5. The Self-Directed Support Agreement**

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- 5.1 The Agreement will be in a form determined by the LSA.
- 5.2 Subject to Rule 5.3, the LSA must take a Person-Centred Approach when determining the content of each individual Agreement.
- 5.3 The Agreement must contain the following clauses:
- 5.3.1 The term of the Agreement;
  - 5.3.2 The amount of the funds to be provided to the Offeree, which will be determined in accordance with Rule 5.5;
  - 5.3.3 The TCS services agreed between the parties as being necessary and reasonable based on the Person-Centred Approach;
  - 5.3.4 The TCS services covered by the Agreement;
  - 5.3.5 An obligation on the Offeree, which shall be a fundamental term, to spend the funds on, and only on, the agreed services;
  - 5.3.6 The circumstances when the Offeree (or other authorised person) must return unexpended funds to the LSA including but not limited to:
    - 5.3.6.1 If the Participant dies (where the authorised person would be the executor of their will); or
    - 5.3.6.2 If the LSA cancels, suspends or changes the Agreement;
  - 5.3.7 A clause providing that the LSA may seek recovery of funds under Rule 5.3.5 as a debt due to the Crown.
  - 5.3.8 A clause requiring the Offeree to provide financial reports to the LSA (including agreed information, reconciliations and accounts) sufficient for the LSA to effectively review and support the Offeree and ensure they meet the LSS Rules.
  - 5.3.9 The circumstances in which the Agreement may be altered, suspended or terminated by the Offeree;
  - 5.3.10 A clause giving the LSA power to cancel, suspend or change the Agreement in the event of:
    - 5.3.10.1 fraud by the Offeree or a person for whom the Offeree is responsible;
    - 5.3.10.2 undue influence by third parties over the Offeree;
    - 5.3.10.3 death of the Participant or Offeree;

**PART 16 – Self-Directed Support and Reimbursement Arrangements**

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- 5.3.10.4 the emergence of risk that the LSA considers to be unreasonable in the circumstances; or
- 5.3.10.5 the Offeree no longer having decision making capacity; or
- 5.3.10.6 the Participant's Decision Maker no longer having authority to act on the Participant's behalf.

5.3.11 A regime for giving notice of alteration, suspension and termination;

5.3.12 Any applicable clauses usually contained in Crown agreements.

5.4 The Agreement may contain clauses:

5.4.1 Whether the Offeree is authorised to lend or invest the amount paid over, and if so, on what terms or in what asset classes as the case may be; and

5.4.2 Such other provisions as the individual case requires.

5.5 The LSA will determine the amount to be paid over pursuant to the Agreement, based on an independent actuarial calculation and taking into account, including but not limited to, the following factors:

5.5.1 The Participant's age at the time of injury and their current age;

5.5.2 The nature and severity of the Participant's injury;

5.5.3 The current objective assessment of the Participant's functional status, for example, using the FIM™ or WeeFIM® and ASIA Impairment Scale Score;

5.5.4 Objective assessments of the Participant's previous and current TCS needs;

5.5.5 The nature, frequency and duration of services used to meet TCS needs, including any variations in needs during periods of transition;

5.5.6 The term of the Agreement; and

5.5.7 Relevant discounting of the amount, as related to the term of the Agreement.

## **6. Reimbursement Arrangements**

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6.1 Subject to the Act and these Rules, the LSA, in its absolute discretion, may enter into a Reimbursement Arrangement with a Participant or Decision Maker or both, as the case may require.

6.2 The LSA will not reimburse any payment unless there is a valid Reimbursement Arrangement in place.

6.3 A Reimbursement Arrangement must contain the following clauses:

6.3.1 The term of the Reimbursement Arrangement:

6.3.2 The specific TCS services or activity to which the Reimbursement Arrangement will apply;

**PART 16 – Self-Directed Support and Reimbursement Arrangements**

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- 6.3.3 A clause providing that reimbursement will only be made on the presentation of receipts or other evidence that the Participant or Decision Maker have paid for the service in question.
- 6.3.4 A clause providing that receipts submitted more than 12 months after the service occurred will not be considered for reimbursement.
- 6.3.5 The circumstances in which the Reimbursement Arrangement may be altered, suspended or terminated by the Participant or Decision Maker or both as the case may require.
- 6.3.6 A clause giving the LSA power to cancel, suspend or change the Reimbursement Arrangement in the event of:
- 6.3.6.1 fraud by the Participant or Decision Maker or both as the case may require or a person for whom they are responsible;
  - 6.3.6.2 undue influence by third parties over Participant or Decision Maker or both as the case may require;
  - 6.3.6.3 death of the Participant or Decision Maker;
  - 6.3.6.4 the emergence of risk that the LSA considers to be unreasonable in the circumstances; or
  - 6.3.6.5 the Participant or Decision Maker or both as the case may require no longer having decision making capacity; or
  - 6.3.6.6 the Decision Maker no longer having authority to act on the Participant's behalf.
- 6.3.7 A regime for giving notice of alteration, suspension and termination;
- 6.3.8 A clause providing that the LSA may seek recovery of funds under Rule 6 as a debt due to the Crown.

## **PART 17 – Buying into the Scheme**

### **1. Preliminary**

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- 1.1 This Part is made under sections 6 and 56 of the Act.
- 1.2 A person who sustained a Motor Vehicle Injury prior to the commencement of the Scheme may buy in to become a Lifetime Participant in the Scheme under the criteria specified in section 6 of the Act and the conditions below.
- 1.3 The LSA will calculate the amount required to provide services to meet the person's necessary and reasonable TCS needs as a result of the Motor Vehicle Injury, for their lifetime. Buying into the Scheme is voluntary and will be subject to an agreement between the LSA and the person.

### **2. Request to buy in**

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- 2.1 A request to buy into the Scheme can be made by or on behalf of the person. A request must be In Writing and must be accompanied by sufficient information to allow the LSA to determine that the Motor Vehicle Injury meets the criteria in the Rules and the person would have been eligible to participate in the Scheme, had their Motor Vehicle Accident occurred after the applicable Scheme commencement date.
- 2.2 The LSA may refuse a request to buy into the Scheme if the injury does not meet the eligibility criteria in Part 2 of the Rules being the current version in force at the time of the request to buy in. If a request to buy in is denied, the person may dispute the LSA's decision about their eligibility to buy into the Scheme in accordance with Part 3 of the Rules.

### **3. How the LSA calculates cost to buy in**

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- 3.1 The LSA requires information about the person's previous and current TCS needs in order to calculate the cost for buying into the Scheme. This information includes, but is not limited to:
  - 3.1.1 the current age of the person, and their age at the time of injury;
  - 3.1.2 the nature and severity of the person's injury;
  - 3.1.3 current objective evidence of the persons injury and function, for example, using the FIM™ or WeeFIM® and ASIA Impairment Scale Score;
  - 3.1.4 objective assessments of the person's previous and current TCS needs; and
  - 3.1.5 the nature, frequency and duration of services used to meet these TCS needs, including any variations in needs during periods of transition.

## PART 17 – Buying into the Scheme

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- 3.2 The LSA may arrange for the person to be assessed in order for the above information to be obtained. The LSA funds the necessary and reasonable cost of any assessments required. A copy of the assessments will be provided to the person.

## 4. What the buy in amount includes

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- 4.1 The amount determined by the LSA to buy into the Scheme will consider:
- 4.1.1 the full estimated lifetime expenses in providing for the person's necessary and reasonable TCS needs as they relate to the eligible Motor Vehicle Injury, as determined by an assessment and actuarial valuation; and
  - 4.1.2 the administrative and associated costs incurred by the LSA in managing the person as a Lifetime Participant in the Scheme and discounted by a reasonable amount to account for return on investment of the buy in amount; and
  - 4.1.3 discounted by a reasonable amount to account for return on investment of the buy in amount.
- 4.2 The agreement will be structured to cover the rest of the person's lifetime and may include a guaranteed minimum time period.

*For example, a minimum time period may be 10 or 20 years.*

## 5. The LSA's notification of the amount required to buy in

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- 5.1 The LSA will notify the person, In Writing, of the amount required for the person to buy in, which includes information as to how the LSA has calculated the buy in amount.
- 5.2 The entire buy in amount will be paid to the LSA upfront.
- 5.3 Once the funds are received, the LSA will pay the buy in amount into the Fund.
- 5.4 The LSA may consider reaching agreement in relation to the structure of the buy in amount (e.g., 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

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- 6.1 After the person has paid the buy in amount to the LSA in full, the LSA will write to the person or Decision Maker or both, as the case may require, to confirm that they have become a Lifetime Participant and that the buy in amount has been paid into the Fund. The LSA cannot request any additional payments from the Lifetime Participant or Decision Maker or both, as the case may require, during the term of the agreement once a buy in amount has been paid.
- 6.2 The person who has bought in has the same obligations and entitlements as any other Lifetime Participant of the Scheme.

PART 17 – Buying into the Scheme

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## 7. Buy in funds reimbursement

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- 7.1 The buy-in agreement reached with the person or Decision Maker or both, as the case may require, may provide for reimbursement by the LSA of a portion of the buy-in amount in certain circumstances.

*For example, if the buy-in Lifetime Participant dies within a minimum guaranteed period that has been agreed.*

## **PART 18 – Rules for Review of Participant’s Treatment, Care and Support Needs**

### **1. Preliminary**

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- 1.1 This Part applies in relation to a Dispute or proceedings under Part 5 Division 3 of the Act.
- 1.2 The LSA shall conduct itself as a Model Litigant in Dispute matters.

### **2. Reassessment**

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- 2.1 If a Participant or Decision Maker or both, as the case may require, disagrees with an assessment or any aspect of an assessment of their TCS needs, they may request In Writing for one reassessment.
- 2.2 On receipt of a request for reassessment, the LSA will appoint an Assessor who was not the original decision maker. The Assessor will follow the same procedures as for an original assessment.
- 2.3 Prior to completing the reassessment, the Assessor will provide an opportunity for the Participant or Decision Maker or both, as the case may require, to explain why they disagree with the original assessment.
- 2.4 The Assessor may either confirm or vary the original assessment. If the original assessment is varied, the LSA will provide a Certificate of the reassessment as if it were the original assessment under Part 5 of these Rules.
- 2.5 The Participant or Decision Maker or both, as the case may require, will be provided with reasons for the outcome of the reassessment In Writing.
- 2.6 The reassessment must occur as soon as practicable and in any event within 14 Calendar Days of receipt of the request.
- 2.7 Where the LSA considers that the reassessment is unlikely to be completed within 14 Calendar Days of receipt of the request, the LSA will notify the Participant or Decision Maker or both, as the case may require, In Writing of the delay. The notification must include an alternative date for the reassessment to be completed.
- 2.8 At any time, within 28 Calendar Days after notice of the Participant’s assessment of their TCS needs, and irrespective of whether a reassessment has been requested, the Participant or Decision Maker or both, as the case may require, can apply directly to the Expert Review Panel for review. When an Expert Review Panel application is made, any reassessment process will cease.
- 2.9 The reassessment duration will be added to the relevant time period under subsection 38(3) of the Act, in relation to the Review.

### 3. Process

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- 3.1 An application for reassessment must:
  - 3.1.1 be In Writing;
  - 3.1.2 include a clear statement that there is disagreement with the assessment or aspects of the assessment; and
  - 3.1.3 include reasons why there is disagreement with the LSA’s decision. If a treatment or service has not been approved by the LSA and is the subject of the Dispute, the Participant or Decision Maker or both, as the case may require, must outline the reasons as to why the request is necessary and reasonable.
- 3.2 The LSA may request that additional information is provided before the request is reassessed if the reasons for the review are unclear.
- 3.3 The LSA will send an acknowledgement of the application In Writing to the Participant or Decision Maker or both, as the case may require, within seven Calendar Days of receipt.

### 4. Certificate issued by Assessor

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- 4.1 The Assessor will issue a Certificate. The Certificate will include reasons for the decision In Writing and will be in the form approved by the LSA.
- 4.2 The LSA will send the Certificate to the Participant or Decision Maker or both, as the case may require, within 14 Calendar Days of the reassessment decision.

### 5. Application to Expert Review Panel

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- 5.1 A request for review can be made by a Participant or Decision Maker or both, as the case may require, under subsection 38(3) of the Act.
- 5.2 An application may be made to the LSA for review of an assessment as defined in subsection 38(1) of the Act in relation to TCS needs.
- 5.3 The application must:
  - 5.3.1 include a clear statement regarding which aspects of the assessment or reassessment are in Dispute; and
  - 5.3.2 include clear and detailed reasons why there is disagreement with the LSA’s decision. If a treatment or service has not been approved by the LSA and is the subject of the review, the Participant or Decision Maker or both, as the case may require, must outline the reasons as to why it is ‘necessary and reasonable’ referring to the consideration factors outlined in Part 4 of these Rules.
- 5.4 An application can only be made after the LSA has notified the Participant or Decision Maker or both, as the case may require, In Writing as to the LSA’s assessment of their TCS needs as certified under subsection 30(3) of the Act.

**PART 18 – Rules for Review of Participant’s Treatment, Care and Support Needs**

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- 5.5 An application for the LSA to refer the review under subsection 38(3) of the Act must be made by the Participant or Decision Maker or both, as the case may require, within 28 Calendar Days of receiving the LSA’s Certificate of assessment.

## **6. Expert Review Panel**

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- 6.1 An Expert Review Panel consists of between one and three medical experts appointed by the Convenor under Schedule 1 of the Act.
- 6.2 The Expert Review Panel will give a Certificate as to its determination setting out the reasons.
- 6.3 Further information on Expert Review Panels is found in Schedule 1 of the Act.

## PART 19 – Ambulance Services

### 1. Necessary and reasonable ambulance services

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- 1.1 The LSA considers TCS needs for ambulance service to be necessary and reasonable when the service is:
- 1.1.1 not otherwise funded by the LSA;
  - 1.1.2 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;
  - 1.1.3 for the purpose of receiving medical or hospital services related to the Motor Vehicle Injury, or for receiving other services to meet the Participant's TCS needs under these Rules;
  - 1.1.4 the only suitable means of transport for the Participant.
- 1.2 The reasonable expenses in relation to the Participant's assessed TCS needs in relation to ambulance transportation will not include ambulance transportation provided under an existing fee agreement.

### 2. Method of assessment and criteria

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- 2.1 To determine whether Participant's need for ambulance service is necessary and reasonable in the circumstances, the following factors are relevant:
- 2.1.1 the circumstances where the ambulance transportation is required, such as 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; and
  - 2.1.2 whether supervision for behavioural management is required by an ambulance officer.

## PART 20 – Dental Treatment

### 1. Necessary and reasonable dental treatment

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- 1.1 The LSA considers TCS needs in connection with dental treatment to be necessary and reasonable when treatment is provided by an Appropriately Qualified dental practitioner or other specialist (such as an oral and maxillofacial surgeon) and is:
- 1.1.1 required as a direct result of the Motor Vehicle Injury;
  - 1.1.2 related to, or caused by, side effects of Pharmaceutical Products required for the treatment of the Motor Vehicle Injury;
  - 1.1.3 required because of failure to maintain dental health due to treatment related to the Motor Vehicle Accident;
- For example, an extended stay in an intensive care unit.*
- 1.1.4 required in addition to the level of pre-injury dental treatment (such as oral spasticity requiring more frequent dental treatment by a dental practitioner);
  - 1.1.5 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); or
  - 1.1.6 intended to restore a Participant's dentition to a level that is consistent with their pre-injury standard of dental care.

### 2. Method of assessment and criteria

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- 2.1 Information required by the LSA to assess a Participant's TCS needs for or in connection with dental treatment includes:
- 2.1.1 information relating to the Motor Vehicle Accident, to establish whether dental injuries may have occurred through direct trauma to the mouth or facial injuries;
  - 2.1.2 information from a relevant 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;
  - 2.1.3 information from any or all dentists or relevant medical practitioner where the Participant received dental treatment prior to their injury;
  - 2.1.4 a dental consult that includes a fully itemised account or quotation from a registered dental practitioner or other Appropriately Qualified Medical Specialist;
  - 2.1.5 an outline of the goals of the proposed treatment; and

## PART 20 – Dental Treatment

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- 2.1.6 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.
- 2.2 Information required by the LSA to assess a Participant's TCS need in connection with dental treatment may include a second opinion or quote in circumstances where:
  - 2.2.1 The relationship to the Motor Vehicle Injury is unclear; or
  - 2.2.2 The LSA regards the dental treatment as complex or extensive.
- 2.3 The dental treatment must be requested prior to commencement in all circumstances unless the intervention is considered emergency treatment.

## 3. Dentures

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- 3.1 Where the Participant required dentures prior to the Motor Vehicle Accident, the LSA will replace dentures lost or damaged in the Motor Vehicle Accident, in hospital or inpatient Rehabilitation if:
  - 3.1.1 there is evidence of a direct trauma to the mouth from the accident; and
  - 3.1.2 there is a direct impact on other accident-related dental treatment if the dentures were not replaced at the same time; or
  - 3.1.3 there is a direct impact on the Participant's Rehabilitation.

## 4. Exclusions

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- 4.1 The following dental treatments are excluded and not considered necessary and reasonable TCS:
  - 4.1.1 a treatment or service not directly related to the Motor Vehicle Injury;
  - 4.1.2 a treatment or service solely for aesthetic purposes, such as teeth whitening;
  - 4.1.3 a treatment or service that is of no clear benefit to a Participant; and
  - 4.1.4 repeat treatment required due to a Participant's lack of dental hygiene, unless the reason for treatment is assessed as related to the Motor Vehicle Injury (such as cognitive and behavioural issues associated with traumatic brain injury).
- 4.2 The reasonable expenses in relation to the Participant's assessed TCS needs in relation to dental treatment will not generally include:
  - 4.2.1 a treatment or service inconsistent with the Participant's pre-injury standard of dental care unless the reason for treatment or cost of treatment is assessed as being exacerbated or aggravated by the Motor Vehicle Injury, in which case the LSA may contribute (wholly or in part) depending on the impact of the Motor Vehicle Injury;
  - 4.2.2 a treatment or service where there is no published evidence relating to its safety or effectiveness;

**PART 20 – Dental Treatment**

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4.2.3 standard household expenses associated with routine at home dental care such as toothbrushes, toothpaste, dental floss and mouthwash.

## **PART 21 – Medical Treatment including Pharmaceutical Products**

### **1. Necessary and reasonable medical treatment**

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- 1.1 The LSA will pay for necessary and reasonable medical treatment, to the extent it is directly related to the Motor Vehicle Injury including:
- 1.1.1 medical and surgical treatment;
  - 1.1.2 Pharmaceutical Products;
  - 1.1.3 specialised liquid nutrition (gastronomy feeds);
  - 1.1.4 diagnostic tests such as imaging services;
  - 1.1.5 inpatient or outpatient treatment provided by a hospital;
  - 1.1.6 medical treatment, reports, case conferences or other contact with other professionals treating the Participant; and
  - 1.1.7 other specialised medical treatments considered to be necessary and reasonable by the LSA.

### **2. Method of assessment and criteria**

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- 2.1 Information required by the LSA to assess a Participant's TCS needs in connection with medical treatment may include:
- 2.1.1 information relating to the medical treatment including the MBS number where applicable;
  - 2.1.2 information about pre-existing or co-existing medical conditions;
  - 2.1.3 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;
  - 2.1.4 clinical assessments and reports;
  - 2.1.5 justification for the proposed treatment, including the relationship to the Motor Vehicle Injury; necessary and reasonable criteria; and
  - 2.1.6 justification for the treatment process, including any associated medical treatment as part of an overall treatment plan.

## PART 21 – Medical Treatment including Pharmaceutical Products

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- 2.2 The following procedures are to be followed when assessing TCS needs in connection with medical treatment:
- 2.2.1 the medical treatment must be prescribed by an Appropriately Qualified Medical Specialist or medical practitioner registered with the AHPRA (or other appropriate professional body if the Participant resides outside Australia); and
  - 2.2.2 the treatment must be approved by the LSA prior to commencement in all circumstances, unless the treatment is deemed urgent by the treating practitioner (e.g. life threatening); and
  - 2.2.3 the medical practitioner or Medical Specialist, when providing medical services, should reference the relevant MBS item number or the corresponding AMA item number.

### 3. Necessary and reasonable pharmaceuticals

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- 3.1 The LSA will pay for necessary and reasonable Pharmaceutical Products when they are directly related to the Motor Vehicle Injury and:
- 3.1.1 in relation to prescribed pharmaceuticals, are prescribed by an appropriate medical practitioner registered with the AHPRA (or other appropriate professional body if the Participant resides outside Australia) and are provided by an appropriate pharmacist registered with the appropriate professional body (unless the Participant resides outside Australia); or
  - 3.1.2 in relation to other Pharmaceutical Products (e.g. over the counter medications, prescribed vitamins and supplements, topical skin creams, wound care items and consumables), prescribed by an Appropriately Qualified health practitioner.
- 3.2 The Participant's treating medical practitioner may be requested to provide a list of pharmaceuticals related to the Motor Vehicle Injury before the LSA is able to assess a Participant's needs for or in connection with pharmaceuticals.

### 4. Assisted fertility treatment

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- 4.1 The LSA considers necessary and reasonable TCS needs in connection with fertility treatment when the need for the assisted fertility treatment arises directly from the Motor Vehicle Injury.
- 4.2 The LSA considers necessary and reasonable TCS needs in connection with fertility treatment to include:
- 4.2.1 fertility medication, ovulation induction or assisted insemination;
  - 4.2.2 IVF (in-vitro fertilisation) treatment;
  - 4.2.3 assisted ejaculation or obtaining sperm by other means such as testicular aspiration;
  - 4.2.4 egg and sperm storage (individual circumstances to be considered);
  - 4.2.5 obtaining donor eggs or sperm, including retrieval and storage, in circumstances where a Participant is unable to produce viable eggs or sperm because of the Motor Vehicle Injury; and

## PART 21 – Medical Treatment including Pharmaceutical Products

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- 4.2.6 fertility counselling only as an inclusive component of the assisted fertility intervention for a Participant and or their partner.
- 4.3 The LSA considers necessary and reasonable TCS needs in connection with fertility treatment to include a reasonable number of IVF treatments per pregnancy attempt, in line with usual practice. The LSA will consider up to 5 stimulated cycles per pregnancy attempt to be necessary and reasonable (in accordance with the relevant annual report of the Australian & New Zealand Assisted Reproduction Database). If over 5 stimulated cycles are required, the LSA will consider the recommendation of the fertility medical specialist in determining whether further treatments are necessary and reasonable.
- 4.4 The LSA will consider it necessary and reasonable 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 Vehicle Injury.

## 5. Method of assessment and criteria

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- 5.1 Information required by the LSA to assess a Participant's TCS needs in connection with assisted fertility treatment may include:
- 5.1.1 information about the relationship between the Participant's need for fertility treatment and their Motor Vehicle Injury;
  - 5.1.2 the likely permanence of the Participant's compromised fertility status;
  - 5.1.3 the nature and extent of treatment that the Participant and partner will require;
  - 5.1.4 the anticipated outcome and success rate of the assisted fertility treatment;
  - 5.1.5 information about any other treatment or services that may impact on the proposed treatment; and
  - 5.1.6 any other relevant information relating to the Participant's or their partner's fertility.

## 6. Exclusions

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- 6.1 The LSA does not pay for:
- 6.1.1 fees associated with medico-legal reports or any medical reports not requested by the LSA;
  - 6.1.2 additional expenses incurred while receiving inpatient or outpatient medical treatment such as food, magazines, phone line rental and phone calls;
  - 6.1.3 a medical treatment or service not in accordance with the MBS explanations, definitions, rules and conditions for services provided by medical practitioners, unless otherwise specified by the LSA;
  - 6.1.4 a medical treatment or service without a MBS code;
  - 6.1.5 a treatment or service where there is no published evidence relating to its safety or effectiveness;

**PART 21 – Medical Treatment including Pharmaceutical Products**

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- 6.1.6 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;
  - 6.1.7 a treatment or service for any other member of the Participant's Family unless the Family member is the recipient of assisted fertility treatment in accordance with Part 21 Rule 4.4, or when a Family member is receiving counselling services in accordance with Part 6 Rule 2.2; and
  - 6.1.8 a treatment or service that is of no clear benefit to the Participant.
- 6.2 Reasonable expenses in relation to Pharmaceutical Products will not generally include:
- 6.2.1 expenses that form part of the bed day fee in a hospital or inpatient Rehabilitation facility;
  - 6.2.2 shampoo or other items for personal grooming;
  - 6.2.3 any other items able to be purchased from a pharmacy such as cosmetics, food and beverages;
  - 6.2.4 any Pharmaceutical Products that are not related to medical conditions/injuries resulting directly from the Motor Vehicle Accident; and
  - 6.2.5 any Pharmaceutical Products that are illegal.
- 6.3 Necessary and reasonable treatment and care needs in connection with assisted fertility treatment does not include:
- 6.3.1 surrogacy, whether commercial or altruistic surrogacy;
  - 6.3.2 assisted fertility intervention to address the fertility needs of the Participant's partner if these are not the result of the Motor Vehicle Injury;
  - 6.3.3 any treatment or service where there is no objective evidence that the treatment or service is safe and effective;
  - 6.3.4 any treatment or service that is experimental or not consistent with intervention offered to the general community;
  - 6.3.5 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;
  - 6.3.6 any treatment or service that is inconsistent with relevant State or Commonwealth legislation;
  - 6.3.7 any assisted fertility treatment that is elective, or for medical conditions not related to the Motor Vehicle Injury;
  - 6.3.8 the costs of raising a child or children; and
  - 6.3.9 the costs associated with the pregnancy and birth of the baby conceived through assisted fertility treatment that are not related to the Motor Vehicle Injury, such as obstetrician, hospital, midwife or other birthing costs.

## PART 22 – Workplace and Education Facility Modifications

### 1. Preliminary

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- 1.1 The *Disability Discrimination Act 1992* (Cth) requires employers to make reasonable adjustments for any employee with a disclosed disability, unless that adjustment would cause “unjustifiable hardship” to the employer.
- 1.2 Costs for modifications to educational facilities are the primary responsibility of the education facility.
- 1.3 The reasonable expenses in relation to the Participant’s assessed TCS needs in relation to Workplace Modifications will not generally include Workplace Modifications for a Participant where the LSA has already funded substantial Workplace Modifications in the past three years.

### 2. Modifications to a workplace or education facility

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- 2.1 The LSA considers TCS needs in connection with workplace and education facility modification to be necessary and reasonable only when:
  - 2.1.1 it has been confirmed 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;
  - 2.1.2 an Appropriately Qualified occupational therapist has recommended the modifications to meet a Participant’s Motor Vehicle Injury-related need in a workplace or education facility modifications report; and
  - 2.1.3 the employer or education provider and the building owner (if different) both agree In Writing to the modifications.
- 2.2 In relation to Workplace Modifications (see definition in Part 1 Rule 2.1), these will be necessary and reasonable only if:
  - 2.2.1 the long-term impact of the Participant’s Motor Vehicle Injury prevents them from performing their duties within the existing workplace environment without modification to the layout or fittings;
  - 2.2.2 there is an employer who has confirmed In Writing they will provide employment for the Participant for a minimum period of 3 years;
  - 2.2.3 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
  - 2.2.4 a workplace assessment or work options plan has been conducted and the LSA has agreed to support the work goal.

## PART 22 – Workplace and Education Facility Modifications

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- 2.3 In relation to education facility modifications, these will be necessary and reasonable only if:
- 2.3.1 there is no other funding source and the modifications would not be provided under any other legislation or scheme;
  - 2.3.2 the long-term impact of the Participant's Motor Vehicle Injury prevents them from learning within the existing education facility without modification to the layout or fittings;
  - 2.3.3 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
  - 2.3.4 for adult learners, the education program has been identified through a work options plan and LSA has agreed to support the work goal.

### 3. Method of assessment and criteria

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- 3.1 To determine whether a Participant's need for workplace or education facility modifications is necessary and reasonable in the circumstances, the following factors are relevant:
- 3.1.1 the physical and social environment of the workplace or education facility;
  - 3.1.2 the Participant's physical, cognitive and behavioural impairments such as impairments to:
    - 3.1.2.1 mobility including type of wheelchair used where relevant;
    - 3.1.2.2 arm or hand function;
    - 3.1.2.3 thermo-regulation;
    - 3.1.2.4 bladder and bowel function;
    - 3.1.2.5 cognition;
    - 3.1.2.6 behaviour;
  - 3.1.3 whether any future improvement or change in the above factors is likely;
  - 3.1.4 the effects of Assistive Technology, including wheelchairs, on the Participant's ability to function within their work or education environment.
- 3.2 In order to assess a Participant's needs in connection with workplace or education facility modifications, the LSA may require information relating to one or more of the following:
- 3.2.1 the safety of the Participant, attendant care / support workers and other employees or students;
  - 3.2.2 the ownership of the property;
  - 3.2.3 consent required for modifications with any other parties such as a landlord, body corporate or local council;
  - 3.2.4 the Participant's entry and exit to the premises;

## PART 22 – Workplace and Education Facility Modifications

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- 3.2.5 the Participant's access to all necessary areas;
- 3.2.6 the cost and extent of the modifications when considered in relation to the likely benefit to the Participant and alternative employment options;
- 3.2.7 the length of time the Participant is likely to remain in the education or work facility;
- 3.2.8 for education facilities, reasonable adjustments available to timetable and class allocation, for example conducting the Participant's classes in ground floor rooms;
- 3.2.9 the cost and extent of the modifications when considered in relation to the likely benefit to the Participant and alternative options for education or work.

## 4. Repairs and maintenance to workplace or education facility modifications

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- 4.1 LSA may fund the cost of repairs and maintenance for modifications funded by LSA, which are essential for the Participant's access or safety.
- 4.2 LSA may fund the cost of repairs or maintenance proportional to the original costs paid, where the original modification was not fully funded by LSA, for example, where an employer or property owner also contributed to the original cost of the modification.

## 5. Exclusions

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- 5.1 The following workplace or education facility modifications are not considered necessary and reasonable TCS needs and are therefore not funded by the LSA:
  - 5.1.1 modifications to any workplace or education facility that constitute, are likely to constitute, or will result in, an illegal structure;
  - 5.1.2 modifications that are undertaken without approval In Writing from the LSA;
  - 5.1.3 modifications where the owner, body corporate or other responsible authority has not given permission In Writing for the modifications and such permission is required;
  - 5.1.4 modifications required because of a condition that existed before the Motor Vehicle Accident or that is not a result of the Motor Vehicle Accident;
  - 5.1.5 modifications that provide no clear Motor Vehicle Injury-related benefit to the Participant;
  - 5.1.6 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 are not directly related to the Participant's need arising from their Motor Vehicle Injury
  - 5.1.7 the cost of repairs and maintenance because of normal wear and tear (such as replacement of bathroom fittings/fixtures), for the upkeep of a workplace or education facility; and
  - 5.1.8 the cost of repairs and maintenance when the Participant is no longer attending the workplace or education facility.

**PART 22 – Workplace and Education Facility Modifications**

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5.2 Necessary and reasonable expenses in relation to workplace or education facility modifications will not include:

5.2.1 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 Vehicle Injury;

5.2.2 the cost of upgrades of any materials required for workplace or education facility modifications;

5.2.3 any loss of value of any property resulting from any modifications to, or removal of, modifications from the property.