



Western Australia

# **Motor Vehicle (Catastrophic Injuries) Regulations 2016**

Compare between:

[18 Jun 2021, 00-d0-00] and [30 Jun 2021, 00-e0-00]



## Motor Vehicle (Catastrophic Injuries) Regulations 2016

### Part 1 — Preliminary

**1. Citation**

These regulations are the *Motor Vehicle (Catastrophic Injuries) Regulations 2016*.

**2. Commencement**

These regulations come into operation on the day on which section 34 of the Act comes into operation.

**3. Terms used**

In these regulations, unless the contrary intention appears —  
***application for registration*** means an application for registration under section 23 of the Act;

***ASIA Impairment Scale*** has the meaning given in regulation 4(1);

***CISS application*** means an application made under section 9(1) or 13 of the Act;

***Commission officer*** means —

- (a) a person appointed as an officer or employee of the Commission under the *Insurance Commission of Western Australia Act 1986* section 12(1); or
- (b) a person engaged by the Commission under section 12(4) of that Act;

**conditions of registration** means conditions determined under section 23(5) of the Act in respect of a registration;

**expert review panel** means an expert review panel constituted under Part 5 Division 5;

**experts list** means the list referred to in regulation 52(1);

**FIM<sup>TM</sup>** has the meaning given in regulation 4(2);

**Glasgow Coma Scale** has the meaning given in regulation 4(3);

**injured person**, in relation to an expert review panel, means the injured person to whom the proceedings before the panel relate;

**medical decision** means —

- (a) a decision referred to in paragraph (a)(iv) of the definition of **eligibility decision** in section 24 of the Act; or
- (b) a decision referred to in paragraph (a)(iii) of that definition if the decision does not involve a question of law or a question of mixed fact and law;

**non-medical decision** means —

- (a) a decision referred to in paragraph (a)(i) or (ii) or (b) of the definition of **eligibility decision** in section 24 of the Act; or
- (b) a decision referred to in paragraph (a)(iii) of that definition if the decision involves a question of law or a question of mixed fact and law;

**original review decision** means a decision made under regulation 39(1);

**referred decision**, in relation to an expert review panel, means a decision referred to the panel under Part 5 Division 3 or 4;

**review application** means an application made under section 25 or 26 of the Act;

**review officer** means a person designated as a review officer under regulation 37;

**second review panel** has the meaning given in regulation 41(3);

*Snellen Scale* has the meaning given in regulation 4(4);

*WeeFIM*<sup>®</sup> has the meaning given in regulation 4(5);

*Westmead Post-Traumatic Amnesia Scale* has the meaning given in regulation 4(6).

#### 4. **Assessment tools**

- (1) The ASIA Impairment Scale is the scale known by that name that is used to describe a person's functional impairment as a result of a spinal cord injury.
- (2) The FIM<sup>™</sup> is the instrument known by that name that is used to assess a person's functional independence.
- (3) The Glasgow Coma Scale is the scale known by that name that is used to assess a person's response to stimuli after a head injury.
- (4) The Snellen Scale is the standardised test known by that name that is used to measure a person's visual acuity.
- (5) The WeeFIM<sup>®</sup> is the instrument known by that name that is similar to the FIM<sup>™</sup> but adapted for paediatric use.
- (6) The Westmead Post-Traumatic Amnesia Scale is the standardised test known by that name that is used to measure a person's post-traumatic amnesia.

#### 5. **Excluded treatment, care and support needs**

The care, support and services listed in Schedule 1 are prescribed for the purposes of the definition of *excluded treatment, care and support needs* in section 3(1) of the Act.

## **Part 2 — Participation in CISS**

### **Division 1 — Criteria for catastrophic injury**

#### **6. Purpose of Division**

This Division sets out the criteria for eligibility for participation in the CISS for the purposes of the definition of *catastrophic injury* in section 3(1) of the Act.

#### **7. Spinal cord injury**

The criteria for a spinal cord injury are —

- (a) the injury results in permanent neurological deficit as evidenced by an ASIA Impairment Scale score of A to D conducted as part of a medical assessment; and
- (b) the injury occurs on or after 1 July 2016.

#### **8. Traumatic brain injury**

- (1) The criteria for a traumatic brain injury suffered by a person who has reached 8 years of age at the time of medical assessment are —

- (a) either or both of the following —
  - (i) a recorded post-traumatic amnesia of 7 days or more measured using the Westmead Post-Traumatic Amnesia Scale or a similar clinically accepted, validated scale for post-traumatic amnesia;
  - (ii) a significant brain imaging abnormality or evidence of a very significant impact to the head causing coma for longer than one hour;

and

- (b) a score of 5 or less on any item on the FIM<sup>TM</sup> or WeeFIM<sup>®</sup> due to the injury; and
- (c) the injury occurs on or after 1 July 2016.

- (2) The criteria for a traumatic brain injury suffered by a person who has reached 3 years of age but is under 8 years of age at the time of medical assessment are —
- (a) one or more of the following —
    - (i) a Glasgow Coma Scale score of less than 9 (assessed after resuscitation or on admission to the emergency department of a hospital);
    - (ii) a recorded post-traumatic amnesia of 7 days or more measured using the Westmead Post-Traumatic Amnesia Scale or a similar clinically accepted, validated scale for post-traumatic amnesia;
    - (iii) a significant brain imaging abnormality or evidence of a very significant impact to the head causing coma for longer than one hour;
- and
- (b) a score 2 less than the age norm on any item on the WeeFIM<sup>®</sup> due to the injury; and
  - (c) the injury occurs on or after 1 July 2016.
- (3) The criteria for a traumatic brain injury suffered by a person who is under 3 years of age at the time of medical assessment are —
- (a) a medical certificate from a paediatric rehabilitation physician or specialist that states the person will probably have permanent impairment due to the injury resulting in a significant adverse impact on the person's normal development; and
  - (b) the injury occurs on or after 1 July 2016.

## **9. Amputations**

- (1) The criteria for an injury resulting in amputation, or the equivalent impairment, are —
- (a) the criteria set out in subregulation (2); and

- (b) the injury occurs on or after 1 July 2016.
- (2) For subregulation (1)(a), the criteria are —
  - (a) a brachial plexus or lumbosacral avulsion equivalent to an amputation; or
  - (b) one amputation of either of the following types —
    - (i) forequarter amputation or shoulder disarticulation;
    - (ii) amputation of a lower limb at or above 65% of the femur;or
- (c) more than one amputation of either or both of the following types —
  - (i) amputation of a lower limb at or above 50% of the tibia;
  - (ii) amputation of an upper limb at or above the first metacarpophalangeal joint of the thumb and index finger of the same hand.

**10. Burns**

- (1) The criteria for a burns injury suffered by a person who has reached 8 years of age at the time of medical assessment are —
  - (a) the criteria set out in subregulation (4); and
  - (b) a score of 5 or less on any item on the FIM<sup>TM</sup> or WeeFIM<sup>®</sup> due to the injury; and
  - (c) the injury occurs on or after 1 July 2016.
- (2) The criteria for a burns injury suffered by a person who has reached 3 years of age but is under 8 years of age at the time of medical assessment are —
  - (a) the criteria set out in subregulation (4); and
  - (b) a score 2 less than the age norm on any item on the WeeFIM<sup>®</sup> due to the injury; and



- (c) the injury occurs on or after 1 July 2016.
- (3) The criteria for a burns injury suffered by a person who is under 3 years of age at the time of medical assessment are —
  - (a) the criteria set out in subregulation (4); and
  - (b) a medical certificate from a paediatric rehabilitation physician or specialist that states the person will probably have permanent impairment due to the injury resulting in a significant adverse impact on the person's normal development; and
  - (c) the injury occurs on or after 1 July 2016.
- (4) For subregulations (1)(a), (2)(a) and (3)(a), the criteria are —
  - (a) full thickness burns greater than 40% of total body surface area or, for a person under 16 years of age, greater than 30% of total body surface area; or
  - (b) inhalation burns causing long-term respiratory impairment (as assessed by a respiratory physician); or
  - (c) full thickness burns to the hands, face or genital area.

## **11. Permanent blindness**

The criteria for an injury resulting in blindness are —

- (a) permanent legal blindness as demonstrated by —
  - (i) visual acuity on the Snellen Scale after correction by suitable lenses being less than 6/60 in both eyes; or
  - (ii) field of vision being constricted to 10 degrees or less of arc around central fixation in the better eye irrespective of corrected visual acuity (equivalent to 1/100 white test object); or
  - (iii) a combination of visual defects resulting in the same degree of visual loss described in subparagraph (i) or (ii);

and

- (b) the injury occurs on or after 1 July 2016.

**Division 2 — Application to participate in CISS**

**12. Application under s. 9 of Act**

- (1) In this regulation —  
*relevant accident* means the motor vehicle accident that resulted in the motor vehicle injury to which the application relates.
- (2) An application under section 9 of the Act must be made within 3 years after the day on which the relevant accident occurred or any longer period allowed under subregulation (3).
- (3) The Commission may extend the 3 year period referred to in subregulation (2) if satisfied that there are exceptional reasons to do so.

**13. Deferral of consideration of application**

- (1) The Commission may defer consideration of an application under section 9 of the Act until the Commission is satisfied that the motor vehicle injury to which it relates has stabilised.
- (2) The Commission must give the applicant written notice of a deferral under subregulation (1).

**14. Application under s. 13 of Act**

An application under section 13 of the Act must be —

- (a) made in the form approved by the Commission; and  
(b) accompanied by any information specified in the form as information required to accompany the application.

**15. Additional information relevant to CISS application**

- (1) The Commission may, by written notice, require an applicant to provide additional information the Commission considers relevant to its consideration of a CISS application.

- (2) The Commission may refuse to deal with, or to continue to deal with, the CISS application until the additional information is provided.

**16. Consent to obtain information**

- (1) The Commission may, by written notice, require an applicant to provide a consent or other authorisation the Commission considers necessary in order to obtain information relevant to its consideration of a CISS application.
- (2) The Commission may refuse to deal with, or to continue to deal with, the CISS application until the consent or authorisation is provided.

**17. Notice of decision on CISS application**

- (1) The Commission must give written notice of its decision on a CISS application to the applicant.
- (2) If the decision is to refuse the CISS application, the notice must include —
  - (a) the reasons for the decision; and
  - (b) information about the dispute resolution process under Part 5 of the Act and these regulations.

**18. Functional independence assessments**

- (1) In this regulation —

*functional independence assessment* means an assessment conducted using the FIM<sup>TM</sup> or WeeFIM<sup>®</sup>.
- (2) When determining an injured person's eligibility for participation in the CISS, the Commission is not required to consider a functional independence assessment in respect of the injured person unless it is conducted —
  - (a) by a person who, in the opinion of the Commission, is appropriately qualified to use the FIM<sup>TM</sup> or WeeFIM<sup>®</sup>, as the case requires; and

- (b) within one month before the day on which the injured person's CISS application is made or within one month after that day.

### **Division 3 — Interim participation**

#### **19. Period of interim participation**

- (1) For the purposes of section 11(1) of the Act, but subject to subregulation (2), the period for which an interim participant remains a participant in the CISS is —
  - (a) the period ending 2 years after the day on which the interim participant is accepted as a participant in the CISS; or
  - (b) if, at the end of the period referred to in paragraph (a), the Commission is not satisfied that the interim participant's injury has stabilised, any longer period the Commission considers necessary to allow the injury to stabilise.
- (2) A person's interim participation in the CISS ends if the person is accepted as a lifetime participant.

### **Division 4 — Suspension of participation**

#### **20. Commission may suspend participation**

The Commission may suspend the participation of a person in the CISS if —

- (a) there is evidence of fraud by the person (or another person with lawful authority to act on the person's behalf) in connection with a payment received pursuant to an agreement referred to in section 18(5) of the Act; or
- (b) the person (or another person with lawful authority to act on the person's behalf) fails to comply with a requirement under regulation 23(2); or

- (c) the person fails to comply with a requirement under regulation 24(1); or
- (d) the person fails to comply with regulation 25(2).

**21. Notice of decision to suspend**

- (1) If the Commission decides under section 14(1) of the Act or regulation 20 to suspend the participation of a person in the CISS, the Commission must give the person written notice of its decision.
- (2) The notice must include —
  - (a) the reasons for the decision; and
  - (b) information about the dispute resolution process under Part 5 of the Act and these regulations.

### **Part 3 — Treatment, care and support needs**

**22. Principles to be observed in assessment of treatment, care and support needs**

- (1) When assessing the treatment, care and support needs of a participant in the CISS, the Commission must take into account the principles set out in subregulation (2).
- (2) The principles are as follows —
  - (a) any treatment, care, support or service for the participant should be necessary and reasonable to achieve the participant's treatment, care and support goals and to maximise the participant's capacity to undertake daily activities independently, whether in employment or in the community generally;
  - (b) any treatment, care, support or service for the participant should be demonstrably beneficial in terms of the participant's treatment, care and support goals and should reasonably be expected to provide for a positive outcome for the participant that outweighs any known risks based on information from comparable cases;
  - (c) any treatment, care, support or service for the participant should be provided by a suitably qualified and experienced person who is appropriate to the participant's personal circumstances and who is readily accessible to the participant;
  - (d) any treatment, care, support or service for the participant should represent value for money and should be delivered in a manner that ensures maximum benefits at minimum cost.

**23. Requirement to provide information**

- (1) In this regulation —  
*service provider* means a person who, under the CISS, provides treatment, care, support or another service to a participant in the CISS.
- (2) The Commission may, by written notice, require a participant in the CISS or a service provider to provide information the Commission considers relevant to its assessment of the participant's treatment, care and support needs.
- (3) In the case of a participant in the CISS, the notice must inform the participant that failure to comply with the requirement may result in suspension of the person's participation in the CISS under regulation 20.
- (4) In the case of a service provider, the notice must inform the service provider that failure to comply with the requirement may constitute an offence.
- (5) A service provider who, without reasonable excuse, fails to comply with a requirement under subregulation (2) commits an offence.

Penalty for this subregulation: a fine of \$10 000.

**24. Requirement to undergo examination**

- (1) For the purposes of determining the treatment, care and support needs of a participant in the CISS, the Commission may, by written notice, require the participant to undergo a medical examination or other examination by a health professional, or other appropriately qualified person, specified in the notice.
- (2) The notice must inform the participant that failure to comply with the requirement may result in suspension of the person's participation in the CISS under regulation 20.

**25. Participant to comply with requirements in treatment, care and support assessment**

- (1) In this regulation —
- specified* means specified in the participant’s treatment, care and support assessment;
- treatment, care and support requirement* means a requirement for —
- (a) the participant to participate in a specified activity; or
  - (b) the participant to receive specified treatment, care or support or another specified service.
- (2) A participant in the CISS must take reasonable steps to comply with each specified treatment, care and support requirement.



## Part 4 — Registered providers

### 26. Services to be provided by registered provider

For the purposes of section 23(1) of the Act, the following services are to be provided by a registered provider —

- (a) attendant care services;
- (b) case management services;
- (c) counselling services;
- (d) dietetic services;
- (e) disability employment services;
- (f) domestic assistance services (for example, cleaning, gardening or home maintenance);
- (g) education services;
- (h) exercise services (for example, exercise physiology or personal training);
- (i) home modification services;
- (j) orthotic or prosthetic services;
- (k) recreational services;
- (l) social work services;
- (m) speech pathology services;
- (n) therapy assistance services;
- (o) vocational training or vocational rehabilitation services.

### 27. Application for registration

An application for registration must be —

- (a) made in the form approved by the Commission; and
- (b) accompanied by any information specified in the form as information required to accompany the application.

**28. Notice of decision on application**

- (1) The Commission must give written notice of its decision on an application for registration to the applicant.
- (2) If the Commission decides to grant a registration, the notice must include any conditions of registration.

**29. Variation, addition or cancellation of conditions of registration**

- (1) The Commission may, by written notice given to a registered provider, vary, add to or cancel any of the conditions of registration.
- (2) Before varying or adding to the conditions of registration, the Commission must give the registered provider a reasonable opportunity to make written submissions on the proposed variation or addition.

**30. Revocation of registration**

- (1) The Commission may, by written notice given to a registered provider, revoke its registration.
- (2) Before revoking the registration, the Commission must give the registered provider a reasonable opportunity to make written submissions on the proposed revocation.

## Part 5 — Dispute resolution

### Division 1 — Review applications

#### 31. Review application

- (1) In this regulation —  
*decision*, in relation to a review application, means the decision to which the review application relates.
- (2) A review application must —
  - (a) be in writing; and
  - (b) include the applicant's name, address and contact details; and
  - (c) give details of the decision; and
  - (d) give details of the injury or alleged injury to which the decision relates; and
  - (e) set out the reasons for disputing the decision; and
  - (f) be accompanied by all documents relating to the decision that are in the possession, custody or control of the applicant; and
  - (g) be accompanied by any medical reports or other information the applicant considers relevant to the application.
- (3) A review application must be made within 28 days after the day on which notice of the decision is given or any longer period allowed under regulation 65.

#### 32. Commission may request further information

If the Commission considers that additional information is required in connection with a review application, the Commission —

- (a) may, by written notice, ask the applicant to provide the information within 28 days after the notice is given; and

- (b) may defer the making of a referral under regulation 33(1), 38(1) or 46(1), as the case requires, until the information is provided or the end of the 28 day period, whichever occurs first.

### **Division 2 — Review of non-medical decisions**

#### **33. Referral of decision to review officer**

- (1) If the Commission receives an application under section 25 of the Act in respect of a non-medical decision, the Commission must refer the decision to a review officer for review.
- (2) Subregulation (1) is subject to regulation 32(b).
- (3) The Commission must give the applicant written notice of the referral and of the name of the review officer.

#### **34. Objection to review officer**

- (1) The applicant may, within 14 days after notice is given under regulation 33(3) or any longer period allowed under regulation 65, object in writing to the person named in the notice being the review officer.
- (2) An objection under subregulation (1) must set out the applicant's reasons for the objection.
- (3) If the applicant makes an objection under subregulation (1), the Commission may refer the decision to a different review officer.

#### **35. Conduct of review**

- (1) When conducting a review, the review officer —
  - (a) may adopt the procedures the review officer considers appropriate; and
  - (b) is not bound by the rules of evidence but may inform themselves in any way the review officer considers appropriate.

- (2) The review officer may, by written notice, require a person to appear before the review officer at a specified time and place to answer questions or to produce material, or both.
- (3) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subregulation (2).  
Penalty for this subregulation: a fine of \$10 000.

**36. Decision on review**

- (1) On completion of a review, the review officer must make a decision that either —
  - (a) confirms or varies the non-medical decision; or
  - (b) revokes the non-medical decision and substitutes another decision.
- (2) The review officer must give written notice of the decision to the applicant and to the Commission.
- (3) The notice must include —
  - (a) the reasons for the decision; and
  - (b) information about the applicant's right to appeal against the decision under section 27 of the Act.

**37. Review officers**

The Commission may designate a Commission officer as a review officer for the purposes of this Division.

**Division 3 — Review of medical decisions**

**38. Referral of decision to expert review panel**

- (1) If the Commission receives an application under section 25 of the Act in respect of a medical decision, the Commission must refer the decision to the convenor for review by an expert review panel.
- (2) Subregulation (1) is subject to regulation 32(b).

- (3) The Commission must give written notice of the referral to the applicant.
- (4) The convenor must convene an expert review panel to conduct the review.

**39. Decision of expert review panel**

- (1) On completion of a review, the expert review panel must make a decision that either —
  - (a) confirms or varies the medical decision; or
  - (b) revokes the medical decision and substitutes another decision.
- (2) The expert review panel must give written notice of the decision to the applicant and to the Commission.
- (3) The notice must include —
  - (a) the reasons for the decision; and
  - (b) information about the applicant's right to apply for a review of the decision under regulation 40(1).

**40. Application for review of original review decision**

- (1) The applicant to whom an original review decision relates may apply to the Commission to have the original review decision reviewed by another expert review panel.
- (2) An application under subregulation (1) must be made in writing and set out the grounds for review.
- (3) The grounds for review are restricted to one or more of the following —
  - (a) a change in the condition of the person to whom the original review decision relates has occurred, being a change that —
    - (i) occurred or first became apparent after the medical decision was referred for review under regulation 38(1); and

- (ii) is capable of having a material effect on the original review decision;
- (b) additional information about the injury suffered by the person to whom the original review decision relates has become available, being information that —
  - (i) was not available, or could not reasonably have been obtained, before the medical decision was referred for review under regulation 38(1); and
  - (ii) is capable of having a material effect on the original review decision;
- (c) the original review decision was not made in accordance with these regulations;
- (d) the original review decision is demonstrably incorrect in a material respect.

**41. Referral of original review decision to another expert review panel**

- (1) If the Commission receives an application under regulation 40(1), the Commission must refer the original review decision to the convenor for review by another expert review panel.
- (2) The Commission must give written notice of the referral to the applicant.
- (3) The convenor must convene an expert review panel (the *second review panel*) to conduct the review.
- (4) The second review panel must consist of members who were not members of the expert review panel that made the original review decision.

**42. Decision of second review panel**

- (1) On completion of a review, the second review panel must make a decision that either —
  - (a) confirms or varies the original review decision; or

(b) revokes the original review decision and substitutes another decision.

(2) The second review panel must give written notice of the decision to the applicant and to the Commission.

(3) The notice must include the reasons for the decision.

**43. Effect of decision of second review panel**

(1) A decision made by a second review panel under regulation 42(1) is final and binding for the purposes of the Act and cannot be reviewed or appealed against.

(2) Subregulation (1) does not affect judicial review for jurisdictional error.

**44. Commission to reimburse treatment, care and support expenses in certain circumstances**

(1) This regulation applies if —

(a) a medical decision the subject of a review under this Division results in a person who was an interim participant ceasing to be eligible to be a participant in the CISS; and

(b) the decision on the review revokes or has the effect of revoking the medical decision and results in the person who was an interim participant again being eligible to be a participant in the CISS.

(2) The Commission must reimburse the person for any necessary and reasonable expenses incurred by the person in relation to the person's treatment, care and support needs in the period beginning on the day on which the medical decision was made and ending on the day on which the decision on the review was made.



**Division 4 — Review of treatment, care and support assessments**

**45. Term used: assessment**

In this Division —

*assessment* means a treatment, care and support assessment.

**46. Referral of decision to expert review panel**

- (1) If the Commission receives an application under section 26 of the Act in respect of an assessment, the Commission must refer the assessment to the convenor for review by an expert review panel.
- (2) Subregulation (1) is subject to regulation 32(b).
- (3) The convenor must convene an expert review panel to conduct the review.

**47. Decision of expert review panel**

- (1) On completion of a review, the expert review panel must make a decision that either —
  - (a) confirms or varies the assessment; or
  - (b) revokes the assessment and substitutes another assessment.
- (2) The expert review panel must give written notice of the decision to the applicant and to the Commission.
- (3) The notice must include the reasons for the decision.

**48. Effect of decision of expert review panel**

- (1) A decision made by an expert review panel under regulation 47(1) is final and binding for the purposes of the Act and cannot be reviewed or appealed against.

- (2) Subregulation (1) does not affect judicial review for jurisdictional error.

**49. Commission to revise assessment**

- (1) If an expert review panel makes a decision under regulation 47(1) in relation to an assessment, the Commission must revise the assessment to include any changes that are needed to give effect to the decision.
- (2) The Commission's revised assessment replaces the earlier assessment.

**Division 5 — Expert review panels**

**50. Establishment**

There are to be such expert review panels as are necessary for the purposes of this Part.

**51. Appointment of medical experts**

- (1) In this regulation —  
*health professional* means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* to practise a health profession (other than as a student).
- (2) The Minister must appoint health professionals as medical experts for the purposes of this Part.
- (3) A person appointed under subregulation (2) —
- (a) is to be appointed on terms and conditions, and for a term (not exceeding 3 years), determined by the Minister; and
  - (b) on the expiration of a term of office, is eligible for reappointment; and
  - (c) is entitled to be paid any remuneration and allowances that the Minister determines on the recommendation of the Public Sector Commissioner.

- (4) The office of a person appointed under subregulation (2) becomes vacant if the person —
- (a) resigns by written notice addressed to the Minister; or
  - (b) is removed from office by the Minister for —
    - (i) breach of, or non-compliance with, a condition of appointment; or
    - (ii) mental or physical incapacity to carry out duties of office satisfactorily; or
    - (iii) misconduct; or
    - (iv) neglect of duty; or
    - (v) incompetence;
- or
- (c) completes a term of office and is not reappointed; or
  - (d) ceases to be registered under the *Health Practitioner Regulation National Law (Western Australia)*; or
  - (e) is convicted of an indictable offence or of an offence which, if committed in this State, would be an indictable offence; or
  - (f) is sentenced to imprisonment for an offence.

**52. Experts list**

- (1) The Minister must compile and maintain a list of the medical experts appointed under regulation 51(2).
- (2) The Minister must ensure that the experts list is publicly available.

**53. Convenor and deputy convenor**

- (1) From the experts list, the Minister must appoint on terms and conditions determined by the Minister —
  - (a) a convenor; and
  - (b) a deputy convenor.

- (2) The deputy convenor may, subject to the direction of the convenor, exercise the functions and powers conferred on the convenor under this Division.
- (3) The deputy convenor has, and may exercise, the functions and powers conferred on the convenor under this Division while the office of the convenor is vacant.

**54. Constitution of expert review panel**

- (1) An expert review panel convened under regulation 38(4) or 41(3) must consist of 3 members selected by the convenor from the experts list.
- (2) An expert review panel convened under regulation 46(3) must consist of the number of members, not exceeding 3, selected by the convenor from the experts list.
- (3) If a person appointed under regulation 51(2) (the *medical expert*) has been engaged to treat or examine, or to furnish a report in relation to, a person (other than as a member of an expert review panel), the medical expert must not sit as a member of an expert review panel examining the person.
- (4) The convenor must appoint a presiding member for each expert review panel constituted by more than one person, who is to have general responsibility for managing the operations of the panel in a particular case.

**55. Convenor to give notice of members of panel**

When the convenor convenes an expert review panel under regulation 38(4), 41(3) or 46(3), the convenor must give the applicant written notice of the names of the members of the panel.

**56. Objection to member of panel**

- (1) The applicant may, within 14 days after notice is given under regulation 55 or any longer period allowed under regulation 65,

object in writing to a person named in the notice being a member of the expert review panel.

- (2) An objection under subregulation (1) must set out the applicant's reasons for the objection.
- (3) If the applicant makes an objection under subregulation (1), the convenor may replace the member of the expert review panel.

**57. Procedures: general provisions**

- (1) An expert review panel is not bound by the rules of evidence but may inform itself in any way it considers appropriate.
- (2) An expert review panel may act informally and without regard to technicalities and legal forms.
- (3) An expert review panel may engage consultants and seek expert advice as it considers necessary in any particular case.
- (4) The convenor may give directions as to the arrangement of the business of the expert review panels.
- (5) The convenor may give directions as to the procedures of the expert review panels but may not give directions inconsistent with any guidelines issued by the Minister under regulation 63(1).
- (6) Subject to this regulation and the other provisions of this Division, an expert review panel may determine its own procedures.

**58. Acts and decisions of 2 or 3 member panel**

- (1) In the case of an expert review panel constituted by 2 members —
  - (a) an act or decision of both members of the panel constitutes an act or decision of the panel; and
  - (b) if the members cannot agree on a matter, another person selected by the convenor from the experts list must

determine the matter as if the person constituted the expert review panel.

- (2) In the case of an expert review panel constituted by 3 members, an act or decision of a majority of the members of the panel constitutes an act or decision of the panel.

**59. Powers and procedures on review**

- (1) The applicant must give the expert review panel —
- (a) a document specifying —
    - (i) the injury or alleged injury to which the referred decision relates; and
    - (ii) the facts or questions of fact relevant to the referred decision which the applicant is satisfied have been agreed and the facts or questions that are in dispute;
- and
- (b) copies of all documents relating to the referred decision that are in the possession, custody or control of the applicant.
- (2) An expert review panel may, by written notice, require —
- (a) the injured person (or a person with lawful authority to act on the injured person's behalf) to meet with the panel and answer questions; and
  - (b) the injured person (or a person with lawful authority to act on the injured person's behalf) to give to the panel copies of all documents relating to the referred decision that are in the possession, custody or control of the person; and
  - (c) the injured person to submit to an examination by the panel or by a member of the panel.
- (3) If the injured person (or a person with lawful authority to act on the injured person's behalf) consents, the expert review panel

may, by written notice, require a person who has provided a service to the injured person in relation to the injury or alleged injury to which the referred decision relates —

- (a) to meet with the panel and answer questions; and
  - (b) to give to the panel copies of all documents relating to the referred decision that are in the possession, custody or control of that person.
- (4) Any attendance of a person before an expert review panel must be in private, unless the panel considers that it is necessary for another person to be present.
- (5) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subregulation (2) or (3).

Penalty for this subregulation: a fine of \$10 000.

**60. Use of information in subsequent proceedings**

Information given to an expert review panel cannot be used in subsequent proceedings unless —

- (a) the proceedings are before a court; or
- (b) the injured person, or a person with lawful authority to consent on the injured person's behalf, consents to the use of the information.

**61. Admissibility**

An opinion, report, notice of determination or other document given by an expert review panel is admissible in evidence in any proceedings before a court.

**62. Services and facilities**

- (1) The Minister must ensure that the convenor, deputy convenor and each expert review panel are provided with the services and facilities that are reasonably necessary to enable them to perform their functions.

- (2) Without limiting subregulation (1), the Minister may, by arrangement with the Commission, allow the convenor, the deputy convenor or an expert review panel to make use, either full-time or part-time, of —
  - (a) the services of a Commission officer; and
  - (b) any services or facilities of the Commission.

**63. Guidelines**

- (1) The Minister may issue guidelines as to the procedures of expert review panels for the purposes of —
  - (a) ensuring procedural fairness in those procedures; and
  - (b) facilitating the proper administration of those panels.
- (2) The Minister must ensure that guidelines issued under subregulation (1) are publicly available.

**Division 6 — Other matters**

**64. Costs**

- (1) In this regulation —

*travel costs* means necessary costs of travel and accommodation.
- (2) The Commission must pay travel costs incurred by an applicant, or by a parent or other carer who accompanies an applicant, in order to attend proceedings relating to a review under this Part.
- (3) The Commission is not liable for legal costs for or in respect of legal services provided to an applicant in relation to a review under this Part.

**65. Extension of period for application or objection**

The Commission may extend the period for making an application or objection under this Part if the Commission considers it appropriate to do so.



**66. Correction of errors**

- (1) In this regulation —  
*reviewer* means a review officer or an expert review panel.
- (2) A reviewer may correct a notice of decision given by the reviewer under regulation 36(2), 39(2), 42(2) or 47(2) (the *original notice of decision*) if it contains a clerical or typographical error or an obvious omission or inconsistency.
- (3) A reviewer may exercise the power in subregulation (2) on the application in writing of a person to whom the original notice of decision was given or on the reviewer's own initiative.
- (4) If a reviewer exercises the power in subregulation (2), the reviewer must give a replacement notice of decision to each person to whom the original notice of decision was given.
- (5) A replacement notice of decision —
  - (a) supersedes the original notice of decision; and
  - (b) has effect as if given on the day on which the original notice of decision was given.

**67. Period for commencing appeal**

For the purposes of section 27(5) of the Act, the period is 28 days.

## **Part 6 — Miscellaneous**

### **68. Maximum amounts payable for certain services**

- (1) The maximum amount for which the Commission is liable in respect of any claim for a fee for a service referred to in the 1<sup>st</sup> column of Schedule 2 is the corresponding amount referred to in the 2<sup>nd</sup> column of that Schedule.
- (2) A term used in Schedule 2 that is also used in the *Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998* has the same meaning in that Schedule as it has in those regulations.
- (3) In subregulation (2) and in Schedule 2 a reference to the *Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998* is a reference to those regulations as in force on 1 July 2016.

## **Schedule 1 — Excluded treatment, care and support needs**

[r. 5]

### **1. Terms used**

In this Schedule —

**participant** means a participant in the CISS;

**relevant injury**, in relation to a participant, means the motor vehicle injury in respect of which the participant is a participant in the CISS;

**relevant legislation** means legislation of this State, the Commonwealth, another State or a Territory.

### **2. Attendant care services**

Attendant care services of the following kinds —

- (a) services for a participant who resides overseas;
- (b) services provided while a participant in the CISS is an inpatient in a hospital or undergoing inpatient rehabilitation;
- (c) services included in a bed day rate (for example, services provided in an aged care facility);
- (d) services provided in an unsafe environment or in circumstances that place an attendant care worker at risk of harm;
- (e) services that replace parental responsibilities (for example, supervision of a young child).

### **3. Domestic assistance**

Domestic assistance services of the following kinds —

- (a) the provision of cleaning products or equipment;
- (b) waste removal or disposal;
- (c) work carried out for the purpose of ordinary household repairs (for example, fencing, painting or plumbing);
- (d) services provided while a participant is away from the participant's usual place of residence.

**cl. 4**

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**4. Aids and appliances**

The provision of equipment of the following kinds —

- (a) equipment that, under normal circumstances, is considered to be general household equipment or leisure equipment;
- (b) equipment to replace equipment neglected, abused or misused by a participant;
- (c) equipment that is more expensive than is required to meet a participant's identified necessary and reasonable treatment, care and support needs.

**5. Education support**

Education support or services of the following kinds —

- (a) support or services that a participant is entitled to under relevant legislation;
- (b) support or services that are more appropriately funded by another person or body as part of a common or universal service obligation;
- (c) support or services that a participant accessed, was assessed as needing, or was on a waiting list for, before the participant suffered the relevant injury;
- (d) support involving payment of amounts charged by a school or other educational institution (for example, school or course fees, fees for excursions or school camps, stationary costs or uniform costs).

**6. Vocational support**

Vocational support or services of the following kinds —

- (a) support involving capital expenditure (for example, the costs of establishing and running a business);
- (b) support or services that a participant was receiving before the participant suffered the relevant injury;
- (c) the provision of equipment that an employer has a duty to provide to an employee under relevant legislation;
- (d) support to keep a business open (for example, paying for temporary staff to do a participant's job);

- (e) support involving wages subsidies for a person who employs a participant;
- (f) support involving payment of ordinary expenses associated with employment or training (for example, travel costs, meal costs or uniform costs);
- (g) support involving payment of the fees or other costs of a training course that a participant was enrolled in before the relevant injury.

**7. Home modifications**

- (1) In this clause —

*belongs, community titles scheme and scheme by-laws have the meanings given in the Community Titles Act 2018 section 3(1);*

*leasehold scheme, strata company and strata titles scheme* have the meanings given in the *Strata Titles Act 1985* section 3(1);

*leasehold scheme owner* has the meaning given to owner, in relation to a leasehold scheme, by the *Strata Titles Act 1985* section 3(1).

- (2) Modifications to a participant's usual place of residence of the following kinds —

- (a) modifications involving maintenance or repairs identified in a strata report, building report or pest inspection report;
- (b) modifications that have not been permitted by the owner of the place of residence;
- (c) if the place of residence is subject to a strata titles scheme, modifications that have not been permitted by —
  - (i) the relevant strata company; or
  - (ii) if the strata titles scheme is a leasehold scheme — the leaseholder scheme owner;

(ca) if the place of residence is subject to a community titles scheme, modifications that have not been permitted by —

(i) the scheme by-laws for the scheme; or

(ii) the scheme by-laws for a community titles scheme to which the scheme belongs;

**cl. 8**

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- (d) modifications involving the construction or installation of a pool, spa or aquatic therapy facility;
- (e) modifications involving the provision of ordinary household items (for example, furniture, whitegoods, fans, lights, smoke alarms or surge protectors).

[Clause 7 inserted: Gazette 31 Dec 2019 p. 4651-2; [amended: SL 2021/76 r. 4.](#)]

**8. Transport modifications**

Modifications to a motor vehicle of the following kinds —

- (a) modifications to change a manual transmission system to an automatic transmission system;
- (b) modifications to more than one motor vehicle used by a participant at a particular time;
- (c) modifications that do not comply with relevant legislation or vehicle standards;
- (d) modifications to a motor vehicle that is outside Australia;
- (e) modifications involving repairs or replacement carried out under warranty or because of a participant's neglect, abuse or misuse;
- (f) modifications that an employer has a duty to make under relevant legislation.

**9. Respite care**

Respite care provided in an unsafe environment or in circumstances that place a participant at risk of harm.

**10. Prostheses**

The repair or replacement of prostheses because of a participant's neglect, abuse or misuse.

## Schedule 2 — Maximum amounts payable

[r. 68]

Service	Maximum amount
1. Attendance, treatment, or compilation of treatment report, by clinical psychologist	Hourly rate prescribed in the <i>Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998</i> regulation 6
2. Counselling service provided by psychologist	Hourly rate prescribed in the <i>Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998</i> regulation 6A
3. Consultation with osteopath	Amount prescribed in the <i>Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998</i> regulation 7A
4. Consultation with acupuncturist	Amount prescribed in the <i>Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998</i> regulation 7C
5. Vocational rehabilitation service provided by registered provider	Hourly rate prescribed in the <i>Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998</i> regulation 8
6. Attendance or treatment by physiotherapist	Amount prescribed for the relevant service in the <i>Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998</i> Schedule 2

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**Schedule 2** Maximum amounts payable

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<b>Service</b>	<b>Maximum amount</b>
7. Attendance or treatment by chiropractor	Amount prescribed for the relevant service in the <i>Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998</i> Schedule 3
8. Attendance or treatment by occupational therapist	Amount prescribed for the relevant service in the <i>Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998</i> Schedule 4
9. Attendance or treatment by speech pathologist	Amount prescribed for the relevant service in the <i>Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998</i> Schedule 5
10. Attendance or treatment by exercise physiologist	Amount prescribed for the relevant service in the <i>Workers' Compensation and Injury Management (Scales of Fees) Regulations 1998</i> Schedule 5A

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## Notes

This is a compilation of the *Motor Vehicle (Catastrophic Injuries) Regulations 2016* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. ~~For provisions that have not yet come into operation see the uncommenced provisions table.~~

### Compilation table

Citation	Published	Commencement
<i>Motor Vehicle (Catastrophic Injuries) Regulations 2016</i>	13 May 2016 p. 1441-85	r. 1 and 2: 13 May 2016 (see r. 2(a)); Regulations other than r. 1 and 2: 14 May 2016 (see r. 2(b) and <i>Gazette</i> 13 May 2016 p. 1421)
<i>Motor Vehicle (Catastrophic Injuries) Amendment Regulations 2019</i>	31 Dec 2019 p. 4651-2	r. 1 and 2: 31 Dec 2019 (see r. 2(a)); Regulations other than r. 1 and 2: 1 May 2020 (see r. 2(b) and SL 2020/39 cl. 2)
<a href="#"><u><i>Motor Vehicle (Catastrophic Injuries) Amendment Regulations 2021</i></u></a>	<a href="#"><u>SL 2021/76</u></a> <a href="#"><u>18 Jun 2021</u></a>	<a href="#"><u>r. 1 and 2: 18 Jun 2021</u></a> <a href="#"><u>(see r. 2(a));</u></a> <a href="#"><u>Regulations other than r. 1 and 2:</u></a> <a href="#"><u>30 Jun 2021 (see r. 2(b) and</u></a> <a href="#"><u>SL 2021/69 cl. 2)</u></a>

### ~~Uncommenced provisions table~~

~~To view the text of the uncommenced provisions see *Subsidiary legislation as made on the WA Legislation website*.~~

Citation	Published	Commencement
<del><i>Motor Vehicle (Catastrophic Injuries) Amendment Regulations 2021</i></del>	<del>SL 2021/76</del> <del>18 Jun 2021</del>	<del>30 Jun 2021 (see r. 2(b) and</del> <del>SL 2021/69 cl. 2)</del>