



Queensland

# National Injury Insurance Scheme (Queensland) Regulation 2016

## Subordinate Legislation 2016 No. 89

made under the

*Motor Accident Insurance Act 1994*

*National Injury Insurance Scheme (Queensland) Act 2016*

*Queensland Civil and Administrative Tribunal Act 2009*

*Statutory Bodies Financial Arrangements Act 1982*

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## **Part 1 Preliminary**

### **1 Short title**

This regulation may be cited as the *National Injury Insurance Scheme (Queensland) Regulation 2016*.

### **2 Commencement**

- (1) This regulation, other than part 5, commences on 1 July 2016.
- (2) Part 5 commences on 1 October 2016.

### **3 Definitions**

The dictionary in schedule 2 defines particular terms used in this regulation.

## **Part 2 Eligibility criteria for serious personal injuries**

### **Division 1 Eligibility criteria**

#### **4 Purpose of division**

This division prescribes, for section 12(1)(b) of the Act, the eligibility criteria for particular serious personal injuries.

#### **5 Eligibility criteria for permanent spinal cord injury**

- (1) The eligibility criteria for a permanent spinal cord injury resulting in a permanent neurological deficit suffered by an adult or a child aged more than 8 years are—
  - (a) the permanent neurological deficit is classified as grade A, B, C or D on the ASIA impairment scale, as assessed under the ISNCSCI; and

- 
- (b) the injury has resulted in a residual significant impact on the function of the autonomic nervous system, evidenced by a score of 0 for an item relating to bladder, bowel or sexual function, as assessed under the ISAFSCI.
- (2) The eligibility criteria for a permanent spinal cord injury resulting in a permanent neurological deficit suffered by a child aged 8 years or less are—
- (a) the injury has resulted in an ongoing bladder or bowel dysfunction; and
  - (b) an appropriately qualified medical specialist has given a medical certificate or report stating that, in the medical specialist’s opinion, the injury has resulted in—
    - (i) the condition mentioned in paragraph (a); and
    - (ii) a permanent neurological deficit.

- (3) In this section—

*ASIA impairment scale* means the scale, known as the American Spinal Injury Association impairment scale, used for measuring impairment resulting from a spinal cord injury and published by the American Spinal Injury Association.

*ISAFSCI* means the document called ‘International standards to document remaining autonomic function after spinal cord injury’, published by the American Spinal Injury Association.

*ISNCSCI* means the document called ‘International standards for neurological classification of spinal cord injury’, published by the American Spinal Injury Association.

## **6 Eligibility criteria for traumatic brain injury**

- (1) The eligibility criteria for a traumatic brain injury resulting in a permanent impairment suffered by an adult or a child aged more than 8 years are—
- (a) any or all of the following apply—

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- (i) the injury results in post-traumatic amnesia lasting 7 days or more as evidenced by an assessment using an approved scale;
    - (ii) the person is or was in a coma, other than an induced coma, for 1 hour or more as a result of the injury;
    - (iii) brain imaging shows a significant brain abnormality as a result of the injury; and
  - (b) the person's functional ability as a result of the injury is assessed as 5 or less for a motor or cognitive item using—
    - (i) for an adult—the functional independence measure instrument; or
    - (ii) for a child—the childrens functional independence measure instrument.
- (2) The eligibility criteria for a traumatic brain injury resulting in a permanent impairment suffered by a child aged between 3 years and 8 years are—
- (a) either or both of the following apply—
    - (i) on resuscitation or admission to an accident or emergency department of a hospital, the child was given a score of less than 9 on the Glasgow coma scale;
    - (ii) brain imaging shows a significant brain abnormality as a result of the injury; and
  - (b) the child's functional ability as a result of the injury is assessed as 2 points or more below the age norm for the child for a motor or cognitive item using the childrens functional independence measure instrument.
- (3) The eligibility criteria for a traumatic brain injury resulting in a permanent impairment suffered by a child aged less than 3 years are—
- (a) the injury is likely to cause a significant adverse impact on the child's normal development; and

- 
- (b) a relevant medical specialist has given a medical certificate or report stating that, in the medical specialist's opinion, the injury is likely to cause a significant adverse impact mentioned in paragraph (a).
- (4) In this section—
- approved scale*, for assessing post-traumatic amnesia, means—
- (a) the Westmead PTA scale; or
  - (b) a clinically accepted scale similar to the Westmead PTA scale approved by the agency for this definition.

*Glasgow coma scale* means the scale, known as the Glasgow coma scale, used for assessing the level of consciousness of a person following a traumatic brain injury, using eye, verbal and motor responses.

*relevant medical specialist* means—

- (a) a paediatric rehabilitation specialist; or
- (b) a paediatric neurologist.

*Westmead PTA scale* means the clinical tool, known as the Westmead Post-traumatic Amnesia Scale, used to assess the period a person suffers post-traumatic amnesia.

## **7 Eligibility criterion for the amputation of a leg through or above the femur**

- (1) The eligibility criterion for the amputation of a leg through or above the femur is that the amputation involves the loss of 65% or more of the length of the femur.
- (2) For subsection (1), the percentage of the length of the femur lost must be worked out by—
  - (a) comparing the length of the femur before and after the amputation using X-rays taken before and after the amputation; or

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- (b) if X-rays of the femur are not available—comparing the length of the femur of the amputated leg with the length of the contralateral femur.
- (3) To remove any doubt, it is declared that the eligibility criterion in subsection (1) may be satisfied even if the person suffers from a personal injury that is the amputation of more than 1 limb or parts of different limbs.

## **8 Eligibility criteria for the amputation of more than 1 limb or parts of different limbs**

- (1) The eligibility criteria for the amputation of more than 1 limb or parts of different limbs are—
  - (a) the amputations involve the loss of 50% or more of the length of each of the person’s tibias; or
  - (b) both of the person’s upper limbs are amputated at or above the first metacarpophalangeal joint of the thumb and index finger of each hand; or
  - (c) the amputations involve—
    - (i) the loss of 50% or more of the length of 1 of the person’s tibias; and
    - (ii) 1 of the person’s upper limbs being amputated at or above the first metacarpophalangeal joint of the thumb and index finger of the same hand.
- (2) For subsection (1), the percentage of the length of the tibia lost must be worked out by—
  - (a) comparing the length of the tibia before and after the amputation using X-rays taken before and after the amputation; or
  - (b) if X-rays of the tibia are not available—comparing the length of the tibia of the amputated leg with the length of the contralateral tibia; or
  - (c) if the length of the contralateral tibia can not be determined—using the estimated knee height based on overall height before the amputation.



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**9 Eligibility criteria for a full thickness burn to all or part of the body**

The eligibility criteria for a full thickness burn to all or part of the body are—

- (a) the full thickness burn is to—
  - (i) for a child aged less than 16 years—more than 30% of the total body surface area; or
  - (ii) for a person other than a child aged less than 16 years—more than 40% of the total body surface area; or
  - (iii) both hands; or
  - (iv) the face; or
  - (v) the genital area; and
- (b) if the injured person is an adult or child aged more than 8 years—the person’s functional ability as a result of the injury is assessed as 5 or less for a motor or cognitive item using—
  - (i) for an adult—the functional independence measure instrument; or
  - (ii) for a child—the childrens functional independence measure instrument; and
- (c) if the injured person is a child aged between 3 and 8 years—the child’s functional ability as a result of the injury is assessed as 2 or more points below the age norm for the child for a motor or cognitive item using the childrens functional independence measure instrument; and
- (d) if the injured person is a child aged less than 3 years—
  - (i) the child is, as a result of the injury, likely to suffer permanent impairment requiring attendant care and support services; and
  - (ii) an appropriately qualified medical specialist has given a medical certificate or report stating that, in

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the medical specialist's opinion, the child is, as a result of the injury, likely to suffer the permanent impairment mentioned in subparagraph (i).

## **10 Eligibility criteria for an inhalation burn resulting in a permanent respiratory impairment**

The eligibility criteria for an inhalation burn resulting in a permanent respiratory impairment are—

- (a) if the injured person is an adult or child aged more than 8 years—the person's functional ability as a result of the injury is assessed as 5 or less for a motor or cognitive item using—
  - (i) for an adult—the functional independence measure instrument; or
  - (ii) for a child—the childrens functional independence measure instrument; or
- (b) if the injured person is a child aged between 3 and 8 years—the child's functional ability as a result of the injury is assessed as 2 or more points below the age norm for the child for a motor or cognitive item using the childrens functional independence measure instrument; or
- (c) if the injured person is a child aged less than 3 years—
  - (i) the child is, as a result of the injury, likely to suffer permanent impairment requiring attendant care and support services; and
  - (ii) an appropriately qualified medical specialist has given a medical certificate or report stating that, in the medical specialist's opinion, the child is, as a result of the injury, likely to suffer the permanent impairment mentioned in subparagraph (i).

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**11 Eligibility criterion for permanent blindness caused by trauma**

- (1) The eligibility criterion for permanent blindness caused by trauma is that the injured person has a visual defect, or a combination of visual defects, that result in visual loss that is, or is equivalent to—
- (a) visual acuity of less than 6/60 in both eyes, assessed using the Snellen scale after correction by suitable lenses; or
  - (b) the constriction of the person's field of vision to 10 degrees or less of the arc around central fixation in the person's better eye, regardless of corrected visual acuity (equivalent to 1/100 white test object).
- (2) In this section—

*Snellen scale* means the scale for measuring visual acuity using rows of letters printed in decreasing sizes.

**Division 2                      Assessing eligibility criteria**

**12 Requirements for using functional independence measure instrument or childrens functional independence measure instrument to assess injuries**

An assessment using the functional independence measure instrument or childrens functional independence measure instrument may be used for deciding whether a serious personal injury meets the eligibility criteria for the injury only if the assessment is carried out by a person who is—

- (a) accredited by the Australasian Rehabilitation Outcomes Centre to carry out the assessment; and
- (b) approved by the agency to carry out the assessment.

## **Part 3**

# **Application to participate in scheme and information exchange**

### **13 Requirements for application—Act, s 19(1)(b)**

- (1) For section 19(1)(b) of the Act, an application must be accompanied by the following information—
- (a) the injured person’s full name, contact details and date of birth;
  - (b) if the application is made by a person other than the injured person—
    - (i) the person’s full name and contact details; and
    - (ii) the reason why the person is making the application instead of the injured person;
  - (c) details of the circumstances of the motor accident resulting in the serious personal injury, including the day the motor accident happened;
  - (d) details of the serious personal injury;
  - (e) information demonstrating how the serious personal injury meets the eligibility criteria for the injury;
  - (f) details of hospitalisation or other medical treatment the injured person has undergone for the serious personal injury, including the name and address of the hospital or medical provider that provided the medical treatment;
  - (g) details of any other medical condition, or injury, suffered by the injured person before or after the motor accident that may affect the person’s eligibility to participate in the scheme;

*Examples of a medical condition or injury for paragraph (g)—*

a pre-existing serious personal injury, respiratory disease, cancer or chronic cardiovascular disease

- 
- (h) whether the injured person has made or intends to make a claim for the serious personal injury under the Workers' Compensation Act.
  - (2) If a person other than the injured person makes the application, the information under subsection (1) need only be provided to the best of the person's knowledge.

**14 Entities agency may exchange information with—Act, s 19(3)**

The following entities are prescribed for section 19(3) of the Act—

- (a) the commission;
- (b) the Nominal Defendant under the Insurance Act;
- (c) an entity that is the same as or similar to the Nominal Defendant under a law of the Commonwealth or another State;
- (d) an insurer carrying on the business of providing workers' compensation insurance, personal accident or illness insurance, or insurance against loss of income through disability;
- (e) an entity that is the same as or similar to the agency under a law of the Commonwealth or another State;
- (f) a department, agency or instrumentality of the Commonwealth, the State or another State;
- (g) the agency under the *National Disability Insurance Scheme Act 2013* (Cwlth);
- (h) a hospital, including a private hospital;
- (i) an ambulance or other emergency service;
- (j) a doctor;
- (k) a person who is appropriately qualified to assess the treatment, care or support needs of a person;

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- (l) a provider of treatment, care or support services, including, for example, attendant care and support services;
- (m) an employer or previous employer of an injured person;
- (n) an educational institution.

**15 Entities agency may give personal information to—Act, s 131(2)(c)**

The agency may give personal information about a participant, or a person who applies to participate, in the scheme to an entity mentioned in section 14 if giving the information is for the purpose of the agency performing its functions under the Act.

## **Part 4 Assessing needs**

### **Division 1 Necessary and reasonable treatment, care and support needs**

**16 Purpose of division**

- (1) This division prescribes, for section 15(b) of the Act, matters the agency must consider in deciding whether a person's treatment, care and support needs as a result of a serious personal injury are necessary and reasonable in the circumstances.
- (2) This division does not limit the matters the agency may consider in making a decision mentioned in subsection (1).

**17 Benefit to person**

- (1) The agency must consider whether providing the treatment, care or support for, or relating to, the person's treatment care and support needs—

- 
- (a) is likely to maximise the person's independence, participation in the community and employment; and
  - (b) will assist the person in managing the injury.
- (2) In considering the matters mentioned in subsection (1), the agency must also have regard to the following matters—
- (a) whether the treatment, care or support relates directly to the person's individual goals;
  - (b) whether the treatment, care or support will improve or maintain the person's ability to conduct daily activities or participate in the community or employment;
  - (c) whether the treatment, care or support has been provided to the person previously, resulting in an improvement to, or assistance in managing, the person's injury;
  - (d) whether the treatment, care or support has a measurable outcome;
  - (e) whether the person has agreed or is likely to agree that the treatment, care or support will benefit the person in the ways mentioned in subsection (1);
  - (f) any associated risks of the treatment, care or support to the person, weighed against the expected benefit of the treatment, care or support to the person.

## **18 Appropriateness of service**

- (1) The agency must consider whether the treatment, care or support for, or relating to, the person's treatment care and support needs—
- (a) is consistent with other treatment, care or support being received by the person; and
  - (b) is consistent with current clinical practice and other industry best practice for the treatment, care or support of persons with similar injuries.

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- (2) In considering the matters mentioned in subsection (1), the agency must also have regard to the following matters—
- (a) whether the treatment, care or support will be consistent with the person's future treatment, care or support needs;
  - (b) whether the treatment, care or support relates directly to the person's individual goals;
  - (c) whether the treatment, care or support could be harmful to the person;
  - (d) whether similar treatment, care or support is already being, or is to be, provided to the person for the injury;
  - (e) whether there is evidence that supports the effectiveness of the treatment, care or support.

*Examples of evidence—*

- peer reviewed journal articles
- inclusion of the treatment in clinical guidelines and frameworks
- successful clinical trials
- inclusion in the medical benefits schedule administered by the Commonwealth

## **19 Appropriateness of provider**

- (1) The agency must consider whether the treatment, care or support for, or relating to, the person's treatment care and support needs is provided by an appropriate provider.
- (2) In considering the matter mentioned in subsection (1), the agency must also have regard to the following matters—
- (a) whether the provider, or the provider's staff, are appropriately qualified to provide the treatment, care or support;
  - (b) whether the provider is appropriate having regard to, for example, the person's location, age, culture and ethnicity;



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- (c) whether the provider is acceptable to the person;
  - (d) whether the provider has or may have a conflict of interest in providing the treatment, care or support to the person;
  - (e) whether the provider's fee is reasonable;
  - (f) if the treatment, care or support must be provided by a registered provider—whether the provider is a registered provider.

## 20 Cost-effectiveness

- (1) The agency must consider whether the treatment, care or support for, or relating to, the person's treatment care and support needs is cost-effective.
- (2) In considering the matter mentioned in subsection (1), the agency must also have regard to the following matters—
  - (a) the likely benefit to the person of receiving the treatment, care or support weighed against the cost of providing the treatment, care or support to the person;
  - (b) the cost of the treatment, care or support compared with the cost of the same or similar treatment, care or support provided by other suitable providers;
  - (c) whether there is a more cost-effective way to provide the treatment, care or support;

### *Examples—*

- considering whether leasing equipment would be more cost-effective than purchasing new equipment
  - considering whether the treatment, care or support can be more appropriately funded under another scheme
- (d) whether the cost of the treatment, care or support is reasonable having regard to the period for which it is required;
- (e) whether the cost of the treatment, care or support exceeds an amount prescribed for the treatment, care or support under section 37(5)(a) of the Act.

[s 21]

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## **Division 2                      Other matters for assessing needs**

### **21            Treatment, care or support that must be provided by a registered provider—Act, s 9(2)(b)**

The following treatment, care or support is prescribed for section 9(2)(b) of the Act—

- (a) a home modification;
- (b) a service for the coordination of treatment, care or support.

*Example for paragraph (b)—*

a case manager engaged to coordinate a participant's treatment, care and support

### **22            Matter that may be considered when assessing treatment, care or support**

- (1) This section applies if the agency is assessing a person's needs for, or relating to—

- (a) home modification;
- (b) vehicle modification;
- (c) attendant care and support services that are personal assistance services or services to assist a person to participate in the community.

- (2) In carrying out the assessment, the agency must obtain and consider information about the needs mentioned in subsection (1) from a person who is—

- (a) appropriately qualified to give advice about the needs; and

*Example—*

an occupational therapist specialising in home modifications

- (b) approved by the agency for this section.

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**23 Intervals for carrying out assessments—Act, s 25(4)**

- (1) For section 25(4) of the Act, an assessment under section 25(1) of the Act for a participant must be carried out—
  - (a) as soon as practicable after the participant is accepted as a participant in the scheme; and
  - (b) if an assessment has been previously carried out for the participant—within 1 year after the last assessment was carried out.
- (2) The intervals mentioned in subsection (1)(b) must, under section 26(1)(f) of the Act, be stated in the participant's support plan.

**Part 5 Levy**

**24 Amount of levy—Act, s 99**

- (1) The levy fixed for the 2016–2017 financial year for each class of motor vehicle stated in schedule 1 is the amount stated in schedule 1 opposite the class of motor vehicle.
- (2) For subsection (1), a motor vehicle has, for a registration period, the same class as it has for working out the appropriate insurance premium payable for the registration period in relation to the vehicle under the Insurance Act, section 21.
- (3) The levy fixed under subsection (1) is the amount appropriate to a registration period of 1 year and, if the registration period is more or less than 1 year, the amount of the levy is worked out using the formula—

$$\frac{A \times N}{365}$$

where—

*A* is the amount of the levy fixed under subsection (1).

*N* is the number of days in the registration period.

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(4) However, if the motor vehicle is a motor vehicle, other than a trailer, for which an unregistered vehicle permit has been or is to be issued, the levy under subsection (1) applies irrespective of the period of the permit.

(5) In this section—

*motor vehicle* see the Insurance Act, section 4.

*registration period* see the *Motor Accident Insurance Regulation 2004*, schedule 4.

*unregistered vehicle permit* see the *Motor Accident Insurance Regulation 2004*, schedule 4.

## **25 Levy not refundable if class of motor vehicle changes or registration is cancelled**

The levy paid for a motor vehicle is not refundable if—

- (a) there is a change of class of the motor vehicle to a class for which a lower levy is payable; or
- (b) the registration of the motor vehicle under the *Transport Operations (Road Use Management) Act 1995* is cancelled.

# **Part 6 Amendment of Motor Accident Insurance Regulation 2004**

## **26 Regulation amended**

This part amends the *Motor Accident Insurance Regulation 2004*.

## **27 Amendment of s 18 (Notice of claim—Act, s 37(1)(a) and (c))**

(1) Section 18(1)—

*insert—*

- (ia) whether the claimant is a participant in the injury insurance scheme in relation to an injury resulting from the motor vehicle accident the subject of the claim; and
  - (ib) whether an application has been made under the National Injury Act for approval for the claimant to participate in the injury insurance scheme in relation to an injury resulting from the motor vehicle accident the subject of the claim; and
- (2) Section 18(1)(ia) to (m)—  
*renumber* as section 18(1)(j) to (o).

**28 Amendment of s 19 (Notice of claim—Act, s 37(1)(b))**

Section 19—

*insert—*

- (l) the insurance agency.

**29 Amendment of s 31 (Exchange of information—Act, s 92)**

- (1) Section 31(1)—

*insert—*

- (d) the insurance agency.

- (2) Section 31(2)—

*insert—*

- (k) the insurance agency.



**34 Amendment of sch 4 (Statutory bodies allocated category 2 investment power)**

Schedule 4—

*insert—*

*National Injury Insurance Scheme (Queensland) Act 2016* National Injury Insurance Agency,  
Queensland

**35 Amendment of sch 8 (Statutory bodies that may enter into derivative transactions)**

Schedule 8—

*insert—*

*National Injury Insurance Scheme (Queensland) Act 2016* National Injury Insurance Agency,  
Queensland

## **Schedule 1      Levy for classes of vehicles**

section 24

<b>Motor vehicle class</b>	<b>Levy</b>
	<b>\$</b>
1	69.00
2	69.00
3	492.00
4	98.00
5	21.00
6	73.00
7	182.00
8	90.00
9	82.00
10A	171.00
10B	635.00
11	218.00
12	53.00
13	136.00
14	23.00
15	68.00
16	104.00
17	77.00
19	88.00



<b>Motor vehicle class</b>	<b>Levy</b>
	<b>\$</b>
20	23.00
21	27.00
22	6.90
23	69.00
24	12.40

## Schedule 2      Dictionary

### section 3

*childrens functional independence measure instrument* means the functional independence measure instrument adapted for paediatrics and described on the agency's website.

*functional independence measure instrument* means a clinical tool used to assess the functional ability of a person by scoring motor and cognitive items against a scale and described on the agency's website.

*medical specialist* means a person registered or eligible for registration under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant.

ENDNOTES

- 1 Made by the Governor in Council on 23 June 2016.
- 2 Notified on the Queensland legislation website on 24 June 2016.
- 3 The administering agency is Queensland Treasury.

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