

Statement from NIIS

Whilst we cannot comment on individual applications, every application received by the National Injury Insurance Agency Queensland (NIISQ Agency) is assessed in accordance with the *National Injury Insurance Scheme (Queensland) Act 2016* and the *National Injury Insurance Scheme (Queensland) Regulation 2016*.

Eligibility criteria regarding 65 per cent loss of femur is a minimum benchmark that applies in all jurisdictions across Australia, under a national agreement.

An applicant can apply for an internal review of an original case decision within 28 days.

Should an applicant not agree with the internal review regarding a medical matter they may ask the NIISQ Agency to refer the matter to a medical tribunal for external review.

Background

Eligibility criteria

Eligibility decisions are made in accordance with the eligibility criteria set out in section 7 of the *National Injury Insurance Scheme (Queensland) Regulation 2016*.

Section 7 relevantly states:

- (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*
 - (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.*

Catastrophic injury relating to motor vehicle accidents was defined initially in the *Agreed Minimum Benchmarks for Motor Vehicle Accidents*.

The Queensland Government agreed to the minimum benchmarks when they signed the *Heads of Agreement on the National Disability Insurance Scheme* on 8 May 2013. The minimum benchmark of 65 per cent applies in all jurisdictions, not just Queensland.

Further information regarding the minimum benchmarks can be found at this link:
<http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/National-Injury-Insurance-Scheme/Benchmarks-for-motor-vehicle-accidents>

The internal and external review processes for eligibility decisions are outlined under Chapter 6 of the *National Injury Insurance Scheme (Queensland) Act 2016* (the Act).

Internal Review

Section 106 and 107 of the Act provide the review application must be in the approved form, and is to be made within 28 days after the applicant has been given the information notice. (The information notice contains the original decision).

The NIISQ Agency is required to internally review the original decision within 28 days of receiving the internal review request (Note: extensions may occur if further information is required). In accordance with section 109, the internal review can only be conducted by a person who did not make the original decision and is a more senior officer than the person who made the original decision.

The NIISQ Agency is to notify the applicant of the internal review decision within 14 days of making the decision.

External Review

If the applicant does not agree with the internal review decision regarding a medical matter (whether a serious personal injury meets the eligibility criteria for the injury) the applicant may ask the NIISQ Agency to refer the medical matter to a medical tribunal (external review sections 112 to 116 of the Act).

The referral request is to be made within 28 days after the internal review decision is given.

Section 123 of the Act notes a decision of a medical tribunal on a medical matter referred to it is final and is not reviewable by QCAT.

The review processes and required forms are on the website: <https://niis.qld.gov.au/motor-vehicle-accidents/review-of-eligibility/>

The Information Sheets also steps through both the internal and external review process.
<https://niis.qld.gov.au/motor-vehicle-accidents/information-sheets/>