



Terms of Reference – Review Panel Amended (15/11/2024)

Purpose of the Review Panel

- 1 The purpose of the Review Panel is to provide assurance to the Associate Deputy Chief Executive (ADCE), Disability Support Services (DSS) Ministry of Social Development (MSD) that certain Needs Assessment and Service Coordination (NASC) organisation and Enabling Good Lives (EGL) site decisions are in accordance with the criteria arising from Cabinet’s decisions on the Independent Review and relevant policy and service specifications.
- 2 In carrying out its work, the Review Panel must:
 - 2.1 have regard to the needs of individuals, fairness and equity within the legal requirements to manage the budget for residential and community-based disability supports;
 - 2.2 operate in ways that are consistent with the principles of good public decision making, including ensuring all relevant factors have been taken into consideration and that the decision is reasonable, transparent, consistent, and appropriately documented¹; and
 - 2.3 consider alternatives to residential care and higher cost community packages, in a way that is equitable and ensures overall affordability across residential and community packages.

Appointment and Composition of the Review Panel

- 3 The Review Panel was appointed by the Deputy Chief Executive, Commissioning, Design and Delivery, Ministry of Disabled People and transferred to DSS as part of a wider transfer of functions on 16 September 2024 under section 86 of the Public Sector Act 2020.
- 4 The Review Panel comprises of four employees of DSS within MSD, who collectively have deep understanding and knowledge of the following:
 - 4.1 delivery of residential care;
 - 4.2 pricing of DSS funded supports;
 - 4.3 budget and financial management;
 - 4.4 equity principles, including the provision of support that is culturally appropriate for tāngata whaikaha Māori and Pacific disabled people;

¹ For more information, see The Judge Over Your Shoulder » Crown Law

- 4.5 the NASC, EGL site and provider operating environment and processes;
 - 4.6 clinical care for those with high needs;
 - 4.7 any other skills and knowledge considered necessary.
- 5 The Review Panel will include at least one registered health professional. The role of the registered health professional on the Panel is to analyse any health evidence that it receives with a referral and provide advice on the implications of that health evidence for the issues the panel is considering. The health professional will not carry out health assessments for the Panel.
 - 6 The ADCE, DSS can approve changes to the membership of the panel.
 - 7 The Review Panel will make recommendations by consensus wherever possible. Where consensus is not possible, the Chair will call for a vote, in which case the matter will be decided on a simple majority. In the event of a tie, the Chair will have a casting vote.
 - 8 The provision of advice by registered health professionals on the panel will be provided in accordance with the standard required by the appropriate regulatory body.
 - 9 Complaints directed at Panel members in the conduct of their responsibilities, in good faith, under these terms of reference will be responded to by MSD.
 - 10 The Review Panel may from time-to-time seek advice from:
 - 10.1 the Chief Legal Advisor within the Ministry of Disabled People up until 2 December 2024 or their delegate and from that date the Deputy Chief Legal Advisor DSS within MSD or their delegate;
 - 10.2 the Kaihautū Māori within the Ministry of Disabled People; or
 - 10.3 any other person, whether employed by MSD or the Ministry of Disabled People or otherwise, they consider has expertise on any matter that the Review Panel otherwise feels unable to resolve.
 - 11 The Review Panel will be supported by a secretariat of employees of DSS who will:
 - 11.1 triage applications to the Review Panel, and send them back to the NASC or EGL site for reconsideration or more information as required;
 - 11.2 collate agendas, prepare papers, take minutes, prepare reporting, ensure that decisions are reported back to all parties in a timely way and with the rationale clearly explained, and
 - 11.3 bring to the Chair's attention any urgent matters for consideration between meetings.

Frequency of meetings and a Quorum

- 12 The frequency of meetings will be determined by the Chair in consultation with other members of the Review Panel, having regard to the volume of requests, the need to consider them comprehensively and in a timely way, and the need to be responsive to emerging situations.

- 13 A quorum will exist when two of the four panel members attend the meeting, either in person or online.

Status of recommendations by the Review Panel

- 14 The Panel provides assurance to the ADCE, DSS that certain decisions by NASCs and EGL sites are in accordance with relevant criteria (arising from the Independent Review, other relevant policy and service specifications) by
 - 14.1 reviewing information supporting the decision supplied by the NASC or EGL site to determine:
 - i whether the evidence shows that the criteria have been met; or
 - ii whether the evidence does not show that the criteria have been met.
 - 14.2 The Review Panel then make recommendations to the ADCE, DSS on which NASC or EGL site decisions satisfy the relevant criteria, and which ones do not satisfy the relevant criteria. These recommendations are based on the outcomes of their work and are from them collectively.
- 15 Following final sign-off, a NASC or EGL site will be advised that:
 - 15.1 Either the information supplied supported their decision, and they can implement it;
 - 15.2 Or the information supplied does not support their decision, and they are not able to implement it.
- 16 If they wish to do so, a NASC or EGL site can submit a further referral to the Review Panel based on new information.
- 17 In carrying out this work, the Review Panel and the ADCE, DSS, will be exercising the Ministry's contract management responsibilities of providing assurance as to the proper and consistent application of relevant criteria. We consider this is not the exercise of a power or function of the Chief Executive beyond what has already been agreed under the contracts the Ministry has in place with NASCs.
- 18 The Assurance Team will write to the NASC or EGL site setting out the reasons for declining the recommendation.
- 19 The Review Panel's decisions relate to levels of support that can be allocated within existing contracts or through personal budgets or individualised funding arrangements (where these are allowed within existing policy). The Review Panel holds no delegation to make decisions about new contracts, or funding outside of existing arrangements.

Matters in scope of the Review Panel process

Thresholds for going to Review Panel

- 20 Packages managed by NASCs must be referred to the Review Panel where they meet at least one of the following criteria:
 - 20.1 They are a new individual rate for residential services.

20.2 They involve an increase in an existing individual rates for residential services

20.3 They are a new entry to residential care.

- 21 Any community packages where the DSS component exceeds \$105,000 for the first time, and any existing packages exceeding \$105,000 that increase, must be referred to the Review Panel.

The Review Panel and EGL sites

- 22 Packages managed by EGL sites must be referred to the Review Panel when they meet at least one of the following criteria:

22.1 the site is proposing that someone enter residential care;

22.2 the site is proposing a new individual rate for a person in residential care, or an increase to an existing individual rate;

22.3 the site is proposing a new community package that the DSS funding component exceeds \$105,000, or an increase to an existing package that exceeds \$105,000;
or

22.4 it is a personal budget being put in place in line with the requirements for maintaining parity in 24/7 care set out in the interim operational guideline for implementing the revised Purchase Rules in EGL personal budgets.

Further detail on the application of some thresholds

- 23 Decisions on whether the thresholds for referring funding packages to the Review Panel should exclude the following:

23.1 Expenditure that is not funded through the DSS appropriation.²

23.2 One-off expenditure (such as for Early Investment or Immediate Resourcing within EGL sites) that is for less than 12 months.

23.3 Community participation and Very High Needs funding for people within EGL sites that has been transferred to the DSS appropriation.

23.4 Behaviour support funding.

- 24 Price increases in the following situations do not need to be referred to the Panel:

24.1 Price increases of less than \$5,000 a year to the DSS contribution to support packages that are managed by Health NZ.

24.2 Price increases for residential care that result solely from the Transparent Pricing Model spreading joint costs across fewer residents when a person moves out of a facility, or the reallocation of joint costs within a facility.

Other issues

² DSS funding is currently contained within the Supporting Tāngata Whaikaha Māori and Disabled People Multi-Category Appropriation, although this may change in the future.

- 25 Residential and community packages allocated by either NASCs or EGL sites do not need to be referred to the Review Panel if they remain the same or decrease (unless they meet one of the other criteria for being considered by the Panel).
- 26 When the Review Panel is considering a package that includes funding that is excluded from the calculation of thresholds, it may need to consider whether the package, as a whole, including the funding from other sources, appropriately responds to all of the disability-related needs identified.

Relevant criteria

- 27 In considering proposed new or increased individual rates and high-cost community packages, the Review Panel will have regard to the proportionality of the proposed allocation to the person's needs including:
 - 27.1 evidence that the NASC or EGL site referring the proposal to the Review Panel has thoroughly explored alternatives, as set out in the *Operational Policy and Guidelines 2024/25 – Freeze on residential costs and management of NASC indicative budgets and EGL site fixed budgets*.
 - 27.2 what is necessary to mitigate any safety risks to the person;
 - 27.3 what is necessary to mitigate safety risks to staff or others supporting or providing care for the disabled person;
 - 27.4 the costs and benefits of alternative options for meeting the person's needs and the necessity of working within budget,
 - 27.5 the expectation that some prices will be higher and some prices lower than the actual costs of supporting disabled people living in residential care
- 28 Overall, there is an expectation that individual rates will generally be much less available than they have been previously.
- 29 In considering higher cost community packages the Review Panel must have regard to whether:
 - 29.1 prioritisation has been appropriately applied;
 - 29.2 support is proportionate to disability-related need; and
 - 29.3 affordability within the NASC or EGL site budget.

Affordability within a residential budget in exceptional circumstances

- 30 A NASC or an EGL site can make an exception to the residential affordability criterion in the following circumstances:
 - 30.1 there is a reasonably foreseeable and imminent risk of serious harm that cannot be addressed through non-residential support options;
 - 30.2 the initial assessment of the NASC or EGL site is that they are unable to provide immediate assurance that they can afford the residential entry within their current annual budget; and

- 30.3 the NASC or EGL site provides assurance to the Panel that they are or will take reasonable and practicable steps to return to being within the residential budget by year-end.

Quality of information required

- 31 The evidence required to support a referral shall:
- 31.1 whenever possible, be primary evidence (e.g., recent health practitioner notes or reports, needs assessments or good life plans) rather than secondary information (e.g., discussions about primary evidence);
 - 31.2 be sufficient to show that all the criteria relevant to a decision have been met; and
 - 31.3 be sufficiently recent to show what has changed, resulting in a decision needing to be referred to the Panel.

Ability of the Chair to consider NASC or EGL site decisions urgently

- 32 From time-to-time situations may arise between Review Panel meetings where urgent action is required to protect the health and safety of the disabled person and those supporting them, or to avoid a person being held in an inappropriately restrictive environment.
- 33 In this situation, the Chair of the Review Panel may consider the issue without a full meeting of the Review Panel being called. In these cases, the criteria they consider are whether the information shows that:
- 33.1 the situation falls within one of the priority groupings for residential service;
 - 33.2 all other reasonably practicable options to effectively manage immediate risks to the health and safety of the disabled person or those who support them have been considered;
 - 33.3 doing so will not compromise another higher priority entry; and
 - 33.4 the temporary placement has been consented to by the disabled person in line with Right 7 of the Code of Health and Disability Services Consumers' Rights.
- 34 The Chair of the Review Panel has the authority to advise the NASC or EGL site, as appropriate, that:
- 34.1 Either the information supplied supported their decision, and the Panel endorses their decision, so they are able to implement it.
 - 34.2 Or the information supplied does not support their decision, so the Panel is unable to endorse it, so they are unable to implement it.
- 35 It is recognised there may be less information available when urgent action is proposed than would normally be required by the Review Panel. As a result:

- 35.1 If the NASC or EGL site is advised by the Chair of the Review Panel that they have reached a view that the available information supports their decision, the arrangement must be put in place for the shortest duration in which it is reasonable to manage the risk and maintain the wellbeing of the disabled person. This will generally be less than 6 weeks.
- 35.2 The Review Panel will reconsider the decision as soon as possible, to maintain oversight of residential and community support costs generally and to set expectations of longer-term solutions – in particular whether a transitional period in residential care will be considered, or whether a community alternative should be pursued.

Appeal of Review Panel Recommendations

Seeking reconsideration

- 36 Where a disabled person, their family, or the NASC/EGL site involved is concerned that the Review Panel has not followed this Terms of Reference in making its recommendation, they may seek a review of the decision by the Deputy Chief Executive for DSS at MSD.
- 37 The principles of natural justice apply to any appeal.
- 38 Following the Appeal, the Deputy Chief Executive, DSS can:
- 38.1 decide whether to accept the Panel's advice; or
 - 38.2 refer the Panel's advice back to the Panel for re-consideration.
- 39 The Deputy Chief Executive of DSS must set out their reasons in writing to the disabled person or their nominated representative, and the NASC/EGL site involved, within six weeks of the review being sought.

Reporting of Review Panel Recommendations

- 40 The Review Panel must provide regular reports to the Taskforce implementing the DSS Independent Review on:
- 40.1 the recommendations it has made (including packages it has not endorsed to review);
 - 40.2 the costs involved;
 - 40.3 the rationale for its recommendations; and
 - 40.4 any trends and emerging issues.
- 41 The Review Panel must do so at a level of detail consistent with maintaining the privacy and anonymity of the individuals involved.
- 42 The frequency of this reporting will be set by the Taskforce, reflecting the need for input from the Review Panel into monitoring implementation of the Independent Review recommendations.