



Terms of Reference – Review Panel

Purpose of the Review Panel

1. The purpose of the Review Panel is to provide assurance to the Deputy Chief Executive, Commissioning, Design and Delivery in the Ministry of Disabled People (MoDP) that certain NASC decisions are in accordance with the criteria arising from the Independent Review and relevant policy and service specifications.
2. In carrying out its work, the Review Panel must:
 - i. 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;
 - ii. 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
 - iii. 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 will be appointed by the Deputy Chief Executive, Commissioning, Design and Delivery, MoDP. It will comprise four employees of the MoDP, and should collectively have deep understanding and knowledge of the following:
 - a. delivery of residential care;
 - b. pricing of Whaikaha funded supports;
 - c. budget and financial management;
 - d. equity principles, including the provision of support that is culturally appropriate for tāngata whaikaha Māori and Pacific disabled people;
 - e. the NASC, EGL site and provider operating environment and processes;
 - f. clinical care for those with high needs;

¹ For more information, see [The Judge Over Your Shoulder » Crown Law](#)

- g. any other skills and knowledge considered necessary.
4. The Review Panel will include at least one registered health professional.
 5. Responsibility for the Review Panel will shift to the Ministry of Social Development (MSD) when disability support services are transferred from the MoDP to MSD. From that point, the Review Panel will provide assurance to the Associate Deputy Chief Executive, DSS, who will also be able to approve changes to the membership of the panel.
 6. 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.
 7. The provision of an advice by registered health professionals on the panel will be provided in accordance with the standard required by the appropriate governing body, for example the Medical Council. Any medical assessment provided by a registered health professional sitting on the panel will be distinct from the recommendation provided by the Panel.
 8. Complaints directed at Panel members in the conduct of their responsibilities, in good faith, under these terms of reference will be responded to with support of Whaikaha and then MSD after the transfer of the DSS function.
 - a. The Review Panel may from time-to-time seek advice from:
 - b. the Chief Legal Advisor or their delegate;
 - c. the Kaihautū Māori; or
 - d. any other person, whether employed by the Ministry of Disabled People or otherwise, they consider has expertise on any matter that the Review Panel otherwise feels unable to resolve.
 9. The Review Panel will be supported by a secretariat of employees of DSS who will:
 - a. triage applications to the Review Panel, and send them back to the NASC or EGL site for reconsideration or more information if necessary;
 - b. 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
 - c. bring to the Chair's attention any urgent matters for consideration between meetings.

Frequency of meetings and a Quorum

10. 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.
11. 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

12. The Panel provides assurance to the Deputy Chief Executive, Commissioning, Design and Delivery that certain decisions by NASCs and EGL sites are in accordance with the criteria (arising from the Independent Review, other relevant policy and service specifications) through 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.
13. The Review Panel then make recommendations to the Deputy Chief Executive, Commissioning, Design and Delivery (the Associate Deputy Chief Executive, Disability Support Services, once responsibility for disability support transfer to MSD) 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.
14. Following final sign-off, a NASC or EGL site will be advised that:
15. Either, that the information supplied supported their decision, and they can implement it, or
16. the information supplied does not support their decision, and they are not able to implement it.
17. A NASC or EGL site can submit a further referral to the Review Panel if they wish to do so based on new information.
18. In carrying out this work, the Review Panel and the Deputy Chief Executive, CDD, MoDP, 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. 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. All new individual rates for residential services must be agreed by the Review Panel.
21. Any increases in existing individual rates for residential services must be agreed by the Review Panel.
22. NASC or EGL site requests to prioritise a planned entry to residential care because it is essential must be referred to the Review Panel. Planned entries to residential care that are not considered essential cannot be prioritised for approval by NASCs or EGL sites under current operational policy.
23. Decisions on community packages exceeding \$105,000 must be agreed by the Review Panel.

The Review Panel and EGL sites

24. Packages managed by EGL sites must be referred to the Review Panel where:
 - a. The site is proposing a new individual rate for a person in residential care, or an increase to an existing individual rate;
 - b. a new community package exceeds \$105,000; or
 - c. 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.

Relevant criteria

25. In considering proposed new or increased individual rates and high-cost community packages, the Review Panel will have regard to:

- a. the proportionality of the proposed allocation to the person's needs including:
 - i. 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*.
 - ii. what is necessary to mitigate any safety risks to the person;
 - iii. what is necessary to mitigate safety risks to staff or others supporting or providing care for the disabled person;
 - iv. the costs and benefits of alternative options for meeting the person's needs and the necessity of working within budget,
 - v. the expectation that providers will realise 'overs and unders' for the care of residents.
26. This means that, whilst the Review Panel must balance these considerations, individual rates will generally be much less available than they have been previously.
27. In considering higher cost community packages the Review Panel must have regard to whether:
- a. Prioritisation has been appropriately applied;
 - b. Support is proportionate to disability-related need; and
 - c. Affordable within the NASC or EGL site budget.

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

28. 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.
29. In this situation, the Chair of the Review Panel considers 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:
- a. the situation falls within one of the priority groupings for residential service;
 - b. 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;

- c. doing so will not compromise another higher priority entry; and
 - d. the temporary placement has been consented to by the disabled person in line with Right 7 of the HDC (Health and Disability Commissioner) code of rights.
30. The Chair of the Review Panel has the authority to advise the NASC or EGL site, as appropriate, that:
- a. Either, the information supplied supported their decision, and they are able to implement it.
 - b. Or, the information supplied does not support their decision, and they are unable to implement it.
31. 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:
- a. If the NASC or EGL site is advised by the Chair of the Review Panel reaches 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.
 - b. The Review Panel will reconsider the decision as soon as possible, in order 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 decisions

Seeking reconsideration

32. 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 Chief Executive of the Ministry for Disabled People (or the Deputy Chief Executive for DSS at MSD following the transfer of disability support services to MSD).
33. The Chief Executive of Whaikaha, or the Associate Deputy Chief Executive, DSS, as appropriate can:
- a. decide whether to accept the Panel's advice; or
 - b. refer the Panel's advice back to the Panel for re-consideration.

34. The Chief Executive of Whaikaha, or the Associate Deputy Chief Executive of DSS, as appropriate, 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 decisions

35. The Review Panel must provide regular reports to the taskforce implementing the DSS Independent Review on:
 - a. the decisions it has made (including packages it has declined to review);
 - b. the costs involved;
 - c. the rationale for its decisions; and
 - d. any trends and emerging issues.
36. The Review Panel must do so at a level of detail consistent with maintaining the privacy and anonymity of the individuals involved.
37. The frequency of this reporting will be set by the taskforce lead, reflecting the need for input from the Review Panel to monitoring the implementation of the Independent Review recommendations.