

Review Panel Terms of Reference

As at 1 July 2025

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), within the 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 Cabinet's decisions and relevant policy and service specifications.

Application of the Operational Policy and Guidelines 2025/26

- 2 The Review Panel must comply with the Operational Policy and Guidelines 2025/26 in carrying out its work.

How the Review Panel must carry out its work

- 3 In carrying out its work, the Review Panel must:
 - 3.1 have regard to the needs of individuals, fairness, and equity within the legal requirements to manage the budget for disability supports;
 - 3.2 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
 - 3.3 consider alternatives to residential care and higher cost community packages, in a way that is equitable and ensures overall affordability of packages.

Appointment and Composition of the Review Panel

- 4 The Review Panel members are appointed by the ADCE, DSS, who can also approve changes to the membership of the panel.
- 5 The Review Panel will comprise four employees of DSS who, collectively, have a deep understanding and knowledge of the following:
 - 5.1 delivery of residential care;
 - 5.2 pricing of DSS funded supports;
 - 5.3 budget and financial management;

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

- 5.4 equity principles, including the provision of support that is culturally appropriate for tāngata whaikaha Māori and Pacific disabled people;
 - 5.5 the NASC, EGL site and provider operating environment and processes;
 - 5.6 clinical care for those with high needs;
 - 5.7 any other skills and knowledge considered necessary.
- 6 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.
 - 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 Deputy Chief Legal Advisor DSS within MSD or their delegate;
 - 10.2 any other person, whether employed by MSD 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, the secretariat will write to the NASC or EGL site setting out the reasons for not endorsing their decision. 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 supply additional relevant information to the Review Panel. The Review Panel will consider this additional information.
- 17 In carrying out this work, the Review Panel and the ADCE, DSS, will be exercising MSD'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 MSD has in place with NASCs.
- 18 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

- 19 The Review Panel will continue to provide an assurance function for at least the next 12 to 18 months while the disability support system is stabilised and strengthened, and assurance processes are built into the system.

- 20 While NASCs and EGL sites will have discretion about how they manage expenditure within their Annual Budgets, certain decisions about high-cost packages will continue to require endorsement from the Review Panel prior to implementation.
- 21 From 1 July 2025, NASCs and EGL sites are required to seek consideration by the Review Panel in the following situations:
 - 21.1 A persons' residential care, EGL Personal Budget, or community support package exceeds \$105,000 for the first time.
 - 21.2 A person's residential care, EGL Personal Budget, or community support package already exceeds \$105,000 and increases.
- 22 NASCs and EGL sites can only request consideration of a decision by the Review Panel if they can provide assurance that they have sufficient funding available within their Annual Budget, or that all of the exceptional circumstances criteria have been met.
- 23 A NASC or an EGL site can make an exception to the residential affordability criterion in the following circumstances:
 - 23.1 there is a reasonably foreseeable and imminent risk of serious harm that cannot be addressed through non-residential support options;
 - 23.2 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
 - 23.3 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 their Annual Budget by year-end.

Further detail on the application of the thresholds

- 24 Decisions on whether the thresholds for referring funding packages to the Review Panel should exclude the following:
 - 24.1 Expenditure that is not funded through the DSS appropriation².
 - 24.2 One-off expenditure (such as for Early Investment or Immediate Resourcing within EGL sites) that is for less than 12 months.
 - 24.3 Community participation and Very High Needs funding for people within EGL sites that has been transferred to the DSS appropriation.
 - 24.4 Specialist Behaviour Support.

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 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.
- 26 Price increases in the following situations do not need to be referred to the Panel:
- 26.1 Price increases of less than \$5,000 a year to the DSS contribution to support packages that are managed by Health NZ.
- 26.2 Price increases for residential care that result solely from implementation of the CGH Pricing Model from 1 December 2025.
- 27 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).

Quality of information required

- 28 The evidence required to support a referral shall:
- 28.1 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);
- 28.2 be sufficient to show that all the criteria relevant to a decision have been met; and
- 28.3 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

- 29 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.
- 30 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:
- 30.1 the situation falls within one of the priority groupings for residential service;
- 30.2 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;
- 30.3 doing so will not compromise another higher priority entry; and
- 30.4 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.

- 31 The Chair of the Review Panel has the authority to advise the NASC or EGL site, as appropriate, that:
- 31.1 Either the information supplied supported their decision, and the Panel endorses their decision, so they are able to implement it.
 - 31.2 Or the information supplied does not support their decision, so the Panel is unable to endorse it, so they are unable to implement it.
- 32 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:
- 32.1 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.
 - 32.2 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

- 33 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.
- 34 The principles of natural justice apply to any appeal.
- 35 Following the Appeal, the Deputy Chief Executive, DSS can:
- 35.1 decide whether to accept the Panel's advice; or
 - 35.2 refer the Panel's advice back to the Panel for re-consideration.
- 36 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

- 37 The Review Panel must provide regular reports to, and at a frequency agreed with, the ADCE on:
- 37.1 the recommendations it has made (including packages it has not endorsed to review);
 - 37.2 the costs involved;
 - 37.3 the rationale for its recommendations; and

37.4 any trends and emerging issues.

- 38 The Review Panel must do so at a level of detail consistent with maintaining the privacy and anonymity of the individuals involved.