

Guide to claiming for a permanent impairment lump sum payment

What is a permanent impairment lump sum payment?

If your work-related injury or illness results in a permanent impairment ('PI'), you may be entitled to claim a lump sum payment under Sections 24, 25 or 27 of the *Safety, Rehabilitation and Compensation Act 1988* ('SRC Act'). Impairment means the loss, the loss of use, or the damage or malfunction, of any bodily system or function or part of such system or function. A *permanent* impairment is one that is likely to continue indefinitely.

In most cases, to be eligible for a PI lump sum payment a doctor must assess you as having a permanent impairment of at least 10% of your whole person. The maximum PI lump sum payment is \$134,016.69 as at 1 July 2004. Compensation may also be payable for non economic loss ('NEL') up to a total of \$50,256.30 as at 1 July 2004. These rates are indexed on 1 July each year.

A PI lump sum payment *does not* affect other help and benefits provided by Comcare.

Note that if you are still receiving treatment and/or undergoing a rehabilitation program to improve your condition it may be too early for Comcare to assess your claim for PI lump sum payment.

What do I need to do to claim permanent impairment lump sum payment?

- Inform Comcare of your intention to claim. Comcare will send you the *Compensation Claim for Permanent Injury* form and *Non-Economic Loss Questionnaire*
- Ensure that you and your doctor complete both forms. Your appointment with the doctor to fill out the form will be paid for by Comcare
- If there is insufficient information to make a decision, you could be requested to see an independent medical examiner. Comcare will pay for this consultation.
- **Advise Comcare if at any time in the past you have received a lump sum payment for this injury or instigated common law action**
- If you elect to use the common law to receive compensation and consequently waive your PI lump sum payment claim, you may wish to consult a solicitor. Please note that once you have exercised this option such election to sue under Common Law is irrevocable.

Types of permanent impairment lump sum payments

Employees with 10% or greater Whole Person Impairment ('WPI') whose impairment has stabilised may be entitled to the PI lump sum payment and compensation for NEL (see Table 1). Claims for impairment of fingers, toes, hearing loss, taste and smell have lower threshold requirements i.e. < 10% WPI.

An interim payment under Section 25 of the SRC Act is available to employees whose impairment has *not* stabilised but will do so. The impairment needs to be found in the interim to be 10% or greater WPI and unlikely to improve. A written request for this interim payment will need to be made to Comcare. Comcare will provide you with further details should an interim award appear appropriate. The NEL benefit cannot be assessed until the final PI lump sum is assessed.

Table 1: Types of PI payments potentially available and criteria for eligibility

Status of impairment	% Whole person impairment (WPI)	
	<10%	>=10%
Stabilised	No entitlement	Lump sum (sect 24) and NEL payment (sect 27)
Unstabilised	No entitlement	Interim payment (sect 25). No NEL claim

The % WPI is used to calculate the amount of PI lump sum and NEL employees can claim.

How is the %WPI determined?

Doctors use the approved “Comcare Guide to the Assessment of the Degree of Permanent Impairment” (“the Guide”), to assess the percentage of whole person impairment and NEL suffered by you. Once Comcare is satisfied that the assessment is reasonable, an award is made under s.24 and 27 or 25. The Guide can be purchased in hardcopy or downloaded from Comcare’s website.

Where more than one impairment is claimed, a combined values chart in the Guide calculates the total percentage of impairment. Note this chart is not used to combine impairments caused by *separate* injuries and incidents.

Non economic loss

You can claim compensation for the NEL you have sustained from the PI. You will need to complete a questionnaire, providing evidence to support your rating on categories such as

- Pain and suffering
- Loss of amenities
- Other loss

If you require any assistance to fill in the forms, please contact our Claims Manager in Comcare.

Requests for review (if relevant)

Comcare’s legislation requires payment be made within 30 days once an amount has been determined under Sections 24, or 25. Payment is deemed to be made upon posting of cheque or electronic transfer. If the 30 day deadline is breached, Comcare is obliged to pay interest on the outstanding payment.

The 30 day deadline for payment does not apply when a request for review is made.

If you are dissatisfied with the level of award or a decision not to award you a payment for PI you have a right to ask Comcare to reconsider this decision. If you request a reconsideration of the level of award, payment of the award will still be made, pending the decision. If the decision results in a lesser amount being payable you will be required to return the difference.

Your employer will be advised of the decision in respect of your claim for permanent impairment and, as they are a party to your claim, they are also entitled to request a reconsideration. You will be advised should this occur.

Alternative rights under the common law – Section 45

What is a common law election?

If you are eligible for a PI lump sum payment, you can choose to make a Section 45 common law election at any time prior to receiving it. This election institutes an action in negligence for damages against the employer or employee responsible for your injury. The maximum amount of damages available for a successful common law action is \$110,000.

Comcare will give you the election form when writing to you about your PI assessment.

How does a common law election affect any permanent impairment lump sum payment offered to me by Comcare?

As soon as you sign an election to institute a common law action, you have *waived your right* to a permanent impairment lump sum payment. A signed election under Section 45 is irrevocable.

When should I consider signing a common law election?

If you consider that the amount of damages you might obtain will be **greater** than the payment offered by Comcare, and that you have a good chance at successfully suing the employer/employee for negligence.

Comcare strongly recommends you obtain legal advice before making a decision to sign a common law election form. Note that claiming a permanent impairment lump sum payment under Sections 24, 25 or 27 of the SRC Act *does not* require the use of lawyers and argument within a court of law. Comcare is not obliged to pay for costs associated with receiving legal advice or with any litigation that takes place.

IT IS IMPORTANT TO NOTE THAT ONCE YOU MAKE A COMMON LAW ELECTION, YOU CANNOT REVOKE IT.

An employee may elect to sue the Commonwealth through common law at any time (that is even without having made a claim for permanent impairment or having undergone an assessment). However, if a determination is made under Section 24 denying the claim, the employee cannot make a common law election under Section 45 unless and until a new claim for permanent impairment is made.

You SHOULD NOT sign common law election if:

- ⇒ the negligence of your employer or a third party was not responsible for your injury
- ⇒ you wish to receive a permanent impairment lump sum payment from Comcare

The permanent impairment lump sum claim process is outlined in the following diagram.

Permanent Impairment lump sum payment claim process

