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# THE RETURNED & SERVICES LEAGUE OF AUSTRALIA LIMITED

NATIONAL HEADQUARTERS

ABN 63 008 488 097

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24 April 2009

The Director  
Permanent Impairment Project  
Comcare  
GPO Box 9905  
Canberra ACT 2601

## Review of Comcare's Permanent Impairment Guide 2009

Dear Sir/Madam,

I am writing to you in response to the Policy review of Comcare's permanent impairment guide. The Returned and Services League of Australia (RSL) is most concerned about the short response time allowed for important comment by Ex-Service- Organisations (ESO) and the subsequent lack of consultation with the ESO.

These same issues of concern were raised with Comcare when the previous Permanent Impairment Guide (PIG) review occurred in 2005. The RSL recognises the Policy review will impact on a much larger workforce than just the current or ex-serving members of Defence but, it is disappointing that no earlier consultation was considered.

### **The Nature of Australian Defence Force Service**

There has been longstanding recognition by the Australian community and the Government that ADF service is different to other forms of employment. The Commonwealth Government has recognised that the nature of ADF service is different to other forms of employment by introducing Military Rehabilitation and Compensation Act (MRCA) in 2004. The special nature of ADF service is the liability to train for operational combat duties and the limited ability to control risk.

The ADF personnel we are concerned with are those defence personnel who served during the period 1988 to 2004 who are covered under the Safety Rehabilitation and Compensation Act (SRCA) 1988 and have not made a claim for compensation to date.

The analysis of trials conducted by Comcare in 2004/05 certainly identified that the required 10% whole person impairment threshold would be more difficult to reach for most claimants claiming injury or illness under the musculoskeletal tables of PIG which may substantially reduce entitlement to lump sum payments.

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## **Permanent Impairment**

The first statutory provisions for English war veterans were probably made by Queen Elizabeth 1. In 1601, the Act 43 Elizabeth C3 granted a statutory right to pension for soldiers ‘maimed’ in the Queen’s Service.

Members of the ADF are required to maintain high levels of physical fitness and combat readiness at all times and therefore have a right to obtain compensation benefits including permanent impairment payments associated with a work related injury or illness.

Current serving members of the ADF claiming compensation under the current MRCA legislation have a choice of lump sum payment or weekly payments. There is evidence that they prefer to accept lump sum payment over periodic payments. If there is a move to an alternative method of permanent impairment payment then the claimants should have a onetime choice.

The SRCA is broadly categorized as a no-fault scheme. If compensation is payable under the permanent impairment provisions and the employer is liable for damages, then the claimant is able to make an irrevocable election to take action for damages under section 45 of the Act.

Statutory compensation law provides advantages to employees and employers by providing a benchmark values which states the amount and the forms of compensation to which an employee is entitled. The RSL view on the current principles of assessment thresholds under the permanent impairment guide is reasonable for current and ex-service personnel that may be eligible to claim under the SRCA.

The SRCA provides that compensation is not payable where it is determined that the degree of permanent impairment of an employee is less than 10% whole person impairment (WPI) except in relation to an impairment resulting from the loss or injury to hearing, finger or toe, or the loss of the sense of taste or smell. Prior to the statutory establishment of worker’s compensation, employees who were injured on the job were only able to pursue their employer through civil or tort law. Under the current SRCA there is limited liability to pursue civil or tort law remedies.

## **What is the fairest and most equitable basis for assessing the permanent impairment associated with psychological conditions?**

The policy review document provides a summary jurisdictional comparison of permanent impairment used within the various Australia States and Territories. The high variation in threshold for psychological conditions, from 0% to 30% confirms the unsuitability of the AMA guide to adequately address assessment. The Veteran’s Entitlement Act (VEA) and Military Rehabilitation and Compensation Act (MRCA) both use the Guide to the Assessment of Rates of Veterans’ Pensions (GARP) when assessing emotional and behavioural consequences of an accepted psychiatric condition. We believe that GARP provides a fairer basis for assessing the permanent impairment associated with psychiatric conditions.

## Conclusion

We hope that Comcare are determined in a desire to consult with the ESO Stakeholders. Prior to the introduction of the MRCA legislation in 2004, the RSL and other ESO were invited to participate in a joint working group involving DVA and Defence to work through issues affecting all stakeholders. The previous review of PIG in 2005, Comcare and ESO community worked through the review process to achieve desired outcomes for ADF members covered under the SRCA legislation. We encourage Comcare to be committed to:

- The provision of fair and equitable compensation system;
- Ensuring injured workers receive the assistance and support they need;
- The efficient delivery of existing benefits; and
- Consider the special nature of ADF service.

Yours sincerely,



John M Hodges  
NATIONAL VETERANS' AFFAIRS ADVISOR