



Australian Government

Comcare

GUIDE TO THE ASSESSMENT OF THE DEGREE OF PERMANENT IMPAIRMENT

Edition 3

Making a submission –
Stakeholder consultation paper

September 2022

CONTENTS

1.0 Introduction	3
2.0 Making a submission	3
3.0 Draft Guide – Edition 3	4
3.1 Structure and design	4
3.2 Principles of Assessment	4
3.3 Body system chapters	4
3.4 Non-economic loss	4
4.0 Implementation and support	5
5.0 Attachments	5
Attachment A – Overview of the legislative framework and application of the Guide	6
Attachment B – Summary of changes from Edition 2.1	7

1.0 INTRODUCTION

Comcare has drafted a new Guide to the *Assessment of the Degree of Permanent Impairment* – Edition 3 (Guide). The Guide provides for the assessment of the degree of permanent impairment and non-economic claims made under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

The current Guide – Edition 2.1, is due to expire (sunset) on 1 April 2023. To allow for ongoing assessment of claims for permanent impairment and non-economic loss made under the SRC Act a remade Guide must be in place by then.

It is proposed that the draft Guide – Edition 3, replace the current Guide. This Guide remakes the current Guide, with minor changes to form and content and corrections to known errors.

Attachment A provides an overview of the legislative framework and application of the Guide.

2.0 MAKING A SUBMISSION

Stakeholder feedback will inform Comcare’s final development of this Guide.

This consultation paper outlines and seeks your views on the:

- > Structure and design of the Guide.
- > Application of the Guide’s Principles of Assessment.
- > Corrections to identified chapters.
- > Possible implementation and support guidance.

Broader reform, such as changes to the permanent impairment and non-economic loss provisions of the SRC Act, are outside the scope of this review.

Submissions can be made by:

- > email to: PI.Review@comcare.gov; or
- > mail to:
Comcare
Attention: PI Review, Scheme Management Group
GPO Box 9905
Canberra ACT 2601

3.0 DRAFT GUIDE – EDITION 3

Attachment B provides a summary of the changes made in the remaking of this Guide – Edition 3 from the current Guide – Edition 2.1, including changes to the body system chapters.

3.1 STRUCTURE AND DESIGN

Changes to form and content have been made to comply with modern drafting practices recommended by the Office of Parliamentary Counsel (OPC) for the making of Commonwealth legislative instruments.

Gender neutral language has been applied, where possible, and improvements made to paragraph numbering to assist referencing. References to the Divisions of the Guide and Impairment Tables are unchanged.

This Guide will repeal Part 2 of the current Guide (Defence related claims).

This Guide will be made available electronically, at no cost, with navigation and hyperlinks designed to assist users cross-link to related pages in a non-linear fashion.

3.2 PRINCIPLES OF ASSESSMENT

Division 1 of this Guide sets out the SRC Act requirements and Principles of Assessment.

The Principles of Assessment provide guidance on how to assess the degree of impairment resulting from injury under the SRC Act, by reference to this Guide.

Improvements to the current operation of the Principles of Assessment include:

- > Pre-existing conditions and aggravation: Clarification of the methodology in response to precedent Court decisions.
- > Survival of claims: New content to provide guidance for the assessment of the degree of permanent impairment when such a claim is made by a deceased employees' dependant or their legal representative.
- > Exceptions to the use of this Guide: New content to clarify use of clinical judgment and the assessment of chronic pain conditions.

3.3 BODY SYSTEM CHAPTERS

This Guide provides a standalone method for the assessment of the degree of permanent impairment claims made under the SRC Act. The body system chapters, tables and figures have been retained and like the current Guide are largely based on the *American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA5)*.

This Guide corrects typographical and transcription errors found in the current Guide. It also provides methods of assessment that correct anomalies with the operation of the current Guide:

- > revised approach for the assessment of lower limb arthroplasty procedures; and
- > broader application for the assessment of chronic pain conditions by removing the diagnostic and labelling requirement for assessment of regional complex pain syndrome only.

3.4 NON-ECONOMIC LOSS

Division 2 of this Guide provides for the assessment of non-economic loss compensation. No changes have been made to this division.

4.0 IMPLEMENTATION AND SUPPORT

Your views on what would assist you implement the remade Guide are welcomed and can be provided in your submission.

5.0 ATTACHMENTS

- > **Attachment A** provides an overview of the legislative framework and application of the Guide
- > **Attachment B** provides a summary of the changes made in the remaking of this Guide – Edition 3 from the current Guide – Edition 2.1.

ATTACHMENT A

OVERVIEW OF THE LEGISLATIVE FRAMEWORK AND APPLICATION OF THE GUIDE

Approved Guide

Section 28 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) gives Comcare the power to prepare the *Guide to the Assessment of the Degree of Permanent Impairment* (Guide).

The Guide must be approved by the Minister and registered as a legislative instrument.

The current Guide (edition 2.1) applies to permanent impairment (PI) and non-economic claims (NEL) made after 1 December 2011. Earlier editions of the Guide apply to PI and NEL claims made before then.

How it works

Section 24 of the SRC Act provides compensation for employees who suffer from an injury resulting in impairment.

To be eligible for compensation the impairment must be permanent (likely to continue indefinitely) and the degree of the impairment must be at least 10 percent (except for hearing loss, loss of the use of fingers or toes or sense of smell or taste). This section also stipulates the maximum amount of compensation payable for PI. From 1 July 2022 the maximum amount is \$204,880.70.

Where a PI compensation is payable under section 24, a further lump sum amount is payable under section 27 of the SRC Act for NEL. NEL provides for the impact of the injury on the employee's life and is divided into two parts. From 1 July 2022 the maximum amount for Part A \$38,415.15 and Part B is also \$38,415.15.

The maximum amounts for PI and NEL compensation are indexed annually on 1 July by the consumer price index (CPI)

PI and NEL compensation are paid as a lump sum and in addition to any ongoing entitlement to compensation for incapacity, medical, rehabilitation, household or attendant care services and aids, modifications or appliances.

The legislative framework to access PI and NEL compensation is based on the provisions of the Guide.

Application of the Guide

The Guide is organised into body system chapters which capture an extensive variety of systemic injuries and diseases. Each chapter is then organised into body sub-system impairment tables which provide values of impairment, expressed as a percentage, against medically verifiable criteria.

To determine whether PI and NEL compensation is payable relevant authorities should request that a legally qualified medical practitioner undertake an assessment of the degree of impairment, by reference to the methods and criteria specified in the Guide, expressed as a percentage.

ATTACHMENT B

SUMMARY OF CHANGES FROM EDITION 2.1

Content	Page	Paragraph
Instrument		
2. Commencement > Date to be confirmed (prior to sunset of Edition 2.1).	1	
6. Application of the approved Guide > Simplified application provisions (all claims and requests (other than requests for reconsideration and applications for review) received after commencement date are assessable under Edition 3.0).	2	
Schedule 1		
Global changes: > Internal consistency edits (text and formatting). > Improved consistency with text of enabling legislation. > Typographical and transcription errors corrected. > Clarification regarding when criteria are cumulative (e.g. 'and', 'or', 'and/or'). > Consistent use of new defined term 'assessor'. > Replaced 'radiographically' and 'radiologically' with 'objectively'. > Reinstated text emphasis that appeared in Edition 2.0. > Gender neutral language adopted, where possible. > Updated and corrected references to entities. > Numbered paragraphs to assist referencing. > Hyperlinking to assist online navigation. > Simplification of some tables to assist online presentation.	3-145	
Introduction to Edition 3.0 of the Guide		
Structure of this Guide > Part 2 (Defence-related claims) omitted. > References to divisions and tables retained for ease of reference.	12	
Application of this Guide > Amended to reflect new application provisions.	12	[6] – [7]
Whole person impairment > Clarified WPI methodology and possibility of 0% rating.	12	[10] – [11]
Entitlements under the SRC Act > Clarified threshold for fingers, toes and taste. > Clarified threshold for hearing loss.	13	[14] [15]
Increase in degree of whole person impairment > Clarified threshold for hearing loss.	14	[22]
Survival of claims > New content.	14	[24] – [25]

Content	Page	Paragraph
Principles of Assessment		
Pre-existing conditions and aggravation > Clarified methodology in light of judicial authority.	16	[35] – [38]
Pre-existing conditions and injury other than aggravation, to same body part, system or function > New content to clarify methodology in light of judicial authority; previously covered in <i>Combined values</i> in Edition 2.1.	17	[39] – [40]
Exceptions to use of this Guide > Replaced 'complex regional pain syndrome' with 'chronic pain conditions'. > New content clarifying use of clinical judgment.	19	[56] [57]
Glossary		
> Added terms: aggravation, AMA4, AMA5, commencement date, medical treatment, permanent, SRC Act. > Updated terms: disease, injury, whole person impairment. > New terms: assessor, binaural hearing loss.	21	[56]
Chapter 1 – The cardiovascular system		
No substantive changes	22-30	
Chapter 2 – The respiratory system		
No substantive changes	31-36	
Chapter 3 – The endocrine system		
3.0 Introduction > Replaced 'The degree of impairment caused by secondary conditions ... accompanying an endocrine system condition' with 'The impairment resulting from an endocrine system condition'.	37	[124]
Chapter 4 – Disfigurement and skin disorders		
4.0 Introduction > Replaced 'Impairments assessed under Chapter 4 include those caused by secondary conditions accompanying an endocrine system condition' with 'Impairments assessed under Chapter 4 – Disfigurement and skin disorders include those resulting from an endocrine system condition'. > Added 'to the injury resulting in impairment'.	41	[139] [141]
Chapter 5 – Psychiatric conditions		
No substantive changes	44-46	
Chapter 6 – The visual system		
6.5 Other conditions causing permanent deformities causing up to 10% impairment of the whole person > Replaced title 'Other conditions involving permanent deformities causing up to 10% impairment of the whole person' with 'Other conditions causing permanent deformities causing up to 10% impairment of the whole person'.	51	[171]

Content	Page	Paragraph
Chapter 7 – Ear, nose and throat disorders		
7.1 Hearing loss > Replaced 'Hearing defects are assessed' with 'Hearing loss is to be assessed'. > Replaced references to 'percentage loss of (binaural) hearing' with 'percentage of binaural hearing loss'.	56	[181] [182] – [183]
7.2 Tinnitus > Added new paragraph 'Where an injury suffered by an employee results in tinnitus but not unilateral or bilateral hearing loss, the degree of permanent impairment of the employee resulting from the tinnitus is 0%'.	56	[185]
7.3 Olfaction and taste > Replaced 'WPI ration is 0' with 'degree of permanent impairment of the employee resulting from the injury is 0%'.	57	[187]
Chapter 8 – The digestive system		
No substantive changes	60-67	
Chapter 9 – The musculoskeletal system		
Part I – The lower extremities – feet and toes, ankles, knees and hips	70	
Part I – Introduction > Replaced arthroscopy text with 'Where a hip or knee arthroplasty procedure has been undertaken, assess the lower extremity impairment rating for arthroplasty in accordance with the AMA5, then convert that rating into a WPI rating using Table 17-33 of the AMA5. Compare that WPI rating with the WPI rating obtained in accordance with this Part. The highest of the two WPI ratings is to be used as the WPI rating in this Part for the injury affecting that lower extremity.'	70	[223]
9.1 Feet and toes > Added paragraph 'In relation to impairment constituted by the loss, or the loss of the use, of a toe, the threshold for compensation for an injury resulting in a permanent impairment constituted by such a loss is 1% WPI under this Guide.'	71	[223]
9.6 Spinal nerve root impairments and peripheral nerve injuries affecting the lower extremities > Added paragraph 'The grading system set out in Figure 9-C: Grading system is to be used with Table 9.6.1: Spinal nerve root impairment affecting the lower extremity, Table 9.6.2a: Sensory impairment due to peripheral nerve injuries affecting the lower extremities and Table 9.6.2b: Motor impairment due to peripheral nerve injuries affecting the lower extremities.'	76	[250]
9.7 Lower extremity function > Added text 'The impairments assessed in this way are to be combined using the combined values table (see Appendix 1).'	79	[258]
Part II – The upper extremities – hands and fingers, wrists, elbows and shoulders	81-82	
Part II – Introduction > Replaced 'radiographically demonstrated' with 'objectively demonstrated'.	81-82	[271]

Content	Page	Paragraph
9.9 Wrists > Replaced arthroscopy text with 'Where an arthroplasty procedure has been undertaken, refer to the AMA5. Assess the upper extremity impairment rating for abnormal motion and the upper extremity impairment rating for arthroplasty in accordance with the AMA5, then convert each of those ratings into WPI ratings using Table 16-3 of the AMA5. Combine those WPI ratings obtained from the AMA5 using the combined values chart (see Appendix 1).'	90	[296]
9.10 Elbows > Replaced arthroscopy text with 'Where an arthroplasty procedure has been undertaken, refer to the AMA5. Assess the upper extremity impairment rating for abnormal motion and the upper extremity impairment rating for arthroplasty in accordance with AMA5, then convert each of those ratings into WPI ratings using Table 16-3 of the AMA5. Combine those WPI ratings obtained from the AMA5 using the combined values chart (see Appendix 1).'	91	[304]
9.11 Shoulders > Replaced arthroscopy text with 'Where an arthroplasty procedure has been undertaken, refer to the AMA5. Assess the upper extremity impairment rating for abnormal motion and the upper extremity impairment rating for arthroplasty in accordance with the AMA5, then convert each of those ratings into WPI ratings using Table 16-3 of AMA5. Combine those WPI ratings obtained from the AMA5 using the combined values chart (see Appendix 1).'	93	[312]
9.13.3 Chronic pain conditions > Replaced section 9.13.3 of Edition 2.1 with a section that provides for the assessment of degree of permanent impairment of an employee who suffers a chronic pain condition (however described) where no other diagnosis better explains the signs and symptoms of the condition and the condition is an injury.	102	[330] – [335]
9.14 Upper extremity function > Replaced 'radiographically demonstrated' with 'objectively demonstrated'.	104	[336]
Part III – The spine	106	
9.15 Cervical spine – diagnosis-related estimates > Edits to Table 9.15 to reflect corresponding tables in AMA5.	109	
9.16 Thoracic spine – diagnosis-related estimates > Edits to Table 9.16 to reflect corresponding tables in AMA5.	110	
9.17 Lumbar spine – diagnosis-related estimates > Edits to Table 9.17 to reflect corresponding tables in AMA5.	111	
Chapter 10 – The urinary system		
No substantive changes	113-116	
Chapter 11 – The reproductive system		
No substantive changes	117-122	
Chapter 12 – The neurological system		

Content	Page	Paragraph
No substantive changes	123-135	
Chapter 13 – The haematopoietic system		
No substantive changes	136-138	
Division 2 – Assessment of the degree of non-economic loss suffered by an employee as a result of an injury or impairment		
No substantive changes	139-144	
Division 3– Calculation of the total entitlement to compensation for permanent impairment and non-economic loss		
No substantive changes	145	