



Australian Government

Comcare

ADVICE FOR INJURED WORKERS

PERMANENT IMPAIRMENT PAYMENTS: LUMP SUMS AND SECTION 45 ELECTIONS

WHAT IS A PERMANENT IMPAIRMENT PAYMENT?

If your work-related injury or illness results in a permanent impairment, you may be entitled to 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 part of the body or of any bodily system or function or part of such system or function. A permanent impairment is one which is likely to continue indefinitely.

In most cases, to be eligible for a permanent impairment payment, a doctor must assess you as having a permanent impairment of at least 10 per cent [or a loss of a finger (or use of one), toe (or use of one), taste, smell or binaural hearing loss of 5 per cent].

A permanent impairment payment does not affect other benefits you receive from Comcare.

If your work-related injury or illness became permanent before 1 December 1988, under the SRC Act, you are also subject to the requirements of the compensation act in force at the time your injury became permanent. Earlier acts have different provisions and do not award a lump sum payment if, for example, you were totally incapacitated for work.

WHAT IS A SECTION 45 ELECTION?

You have an alternative to receiving a lump sum payment as discussed above. If you believe your employer, or another employee caused your injury by negligence, you can elect in writing to start legal proceedings for damages for non-economic loss. This is called a section 45 election, as your right to make this election is detailed in section 45 of the SRC Act.

If you are eligible to receive a lump sum payment under sections 24, 25 or 27 of the SRC Act, you can choose to make a section 45 election at any time before you receive the lump sum payment. The maximum amount of damages that you can be awarded if you make a section 45 election is \$110 000.

It is important to note that once you make a section 45 election you cannot cancel it.

It is also important to understand that you may or may not be successful if you start legal proceedings for damages.

HOW DOES A SECTION 45 ELECTION AFFECT ANY PERMANENT IMPAIRMENT PAYMENT OFFERED TO ME BY COMCARE?

If you make a section 45 election, you are not entitled to a permanent impairment payment from Comcare.

As soon as you sign an election to proceed under section 45, and return it to Comcare, you have waived your right to a permanent impairment payment from Comcare.

SHOULD I SIGN A SECTION 45 ELECTION FORM?

You may wish to sign a *Section 45 election form* if you:

- > believe the negligence of your employer or another employee caused your accident
- > want to start legal proceedings for damages against your employer or the employee responsible
- > consider the amount of damages you might obtain from the proceedings for damages against your employer or other employee will be **greater** than the payment offered by Comcare.

You should not sign a *Section 45 election form* if:

- > the negligence of your employer or another employee was not responsible for your injury
- > you want to receive a permanent impairment payment from Comcare
- > Comcare has determined you are not eligible for a permanent impairment payment.

WHAT DO I DO IF I WANT TO MAKE A SECTION 45 ELECTION?

If you want to make a section 45 election, you should obtain legal advice before making a decision to sign a *Section 45 election form*.

HOW DO I FIND OUT MORE?

Please visit www.comcare.gov.au/claims or phone us on 1300 366 979.

PRIVACY INFORMATION

Your privacy is important to us. For information about how we handle your personal information, please visit www.comcare.gov.au/privacy or contact us on 1300 366 979 and request a copy of our Privacy Policy.

This information is based on the provisions of the *Safety, Rehabilitation and Compensation Act 1988* and is intended as general advice only. For advice specific to your circumstances, please contact your Claims Services Officer on 1300 366 979.