



Australian Government

Comcare

GUIDE TO THE ASSESSMENT OF THE DEGREE OF PERMANENT IMPAIRMENT

Edition 3

Stakeholder
Consultation Paper

June 2021

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1.0 INTRODUCTION

Comcare has drafted a new *Guide to the Assessment of the Degree of Permanent Impairment* – Edition 3 (Guide).

The current Guide – Edition 2.1, is due to expire (sunset) on 1 April 2022. To allow for ongoing assessment of claims for permanent impairment and non-economic loss made under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) a remade Guide must be in place by then. The Guide is a legislative instrument prepared by Comcare and approved by the Minister¹.

It is proposed that the draft Guide – Edition 3, form the basis of the new legislative instrument and replace the use of the current Guide.

The draft Guide is based on the national guide template that was developed through a national process facilitated by Safe Work Australia (SWA).

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

As part of this process, this consultation paper outlines and seeks your views on the:

- > Structure and design of the Guide.
- > Application of the Guide’s Principles of Assessment.
- > Interaction between the body system chapters of the Guide and the American Medical Association’s Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA5).
- > Assessment of the degree of non-economic loss.
- > Possible implementation and support guidance.

Broader reform, such as changes to the permanent impairment and non-economic loss provisions of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act), are outside the scope of this project.

1.1 MAKING A SUBMISSION

Submissions are requested by 04/08/2021.

Submissions can be made in one of the following ways:

- > by completing the online feedback form
- > by downloading and completing the pdf submission template attached and forwarding a copy of your submission to PI.Review@comcare.gov.au; or
- > by providing a hard copy of the completed template by mail to:
Comcare
Attention: PI Review, Scheme Management Group
GPO Box 9905
Canberra ACT 2601

The use of the submission template will streamline Comcare’s consideration of key stakeholder views. You do not need to respond to each focus question. Submissions that do not use the submission template will be considered.

¹ Legislative instruments are laws on matters of detail made by a person or body authorised to do so (i.e. Minister) by the relevant enabling legislation (i.e. SRC Act). Under the *Legislation Act 2003*, all legislative instruments must be registered on the Legislation Register.

1.2 PRIVACY STATEMENT

Comcare is the Commonwealth agency authorised by the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (SRC Act) to collect personal information relevant to the performance of its functions and powers under the SRC Act. Your Privacy is important to us.

Participation in this consultation is voluntary and we do not need you to provide any personal information (other than your contact details) in your response. We will only use the contact details you provide to contact you to discuss your feedback on the Guide to the Assessment of the Degree of Permanent Impairment or where otherwise authorised by the *Privacy Act 1988* (Cth) (Privacy Act). Any other personal information you provide in your response will only be used to evaluate the Guide. We will not disclose your personal information overseas.

For more information about how Comcare manages personal information, for a copy of our Privacy Policy (which contains information about how to access and seek correction of your personal information), or to make a privacy complaint, please visit https://www.comcare.gov.au/about_us/privacy, contact us on 1300 366 979, or email privacy@comcare.gov.au.

2.0 BACKGROUND

The Guide provides for the assessment of the degree of permanent impairment and non-economic loss claims made under the SRC Act.

The draft Guide does not change the permanent impairment and non-economic loss provisions of the SRC Act. It is used, generally by medical practitioners, to assess the degree of permanent impairment as a result of work-related injury. Relevant authorities remain responsible for the determination of such claims.

Comcare contracted the services of an expert medical consultancy to assist with the development of the draft Guide body system chapters.

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

3.0 DRAFT GUIDE – EDITION 3

3.1 STRUCTURE AND DESIGN

The draft Guide is based on the SWA national guide template and adopts the AMA5, in most cases.

The draft Guide adopts, amends, or replaces the methods and criteria for the evaluation of permanent impairment set out in the AMA5. The draft Guide must therefore be applied in conjunction with the AMA5 for the purpose of assessing permanent impairment and non-economic loss claims made under the SRC Act (unless otherwise stated).

Where the draft Guide provides alternative methods and criteria for the assessment of the degree of permanent impairment, and/or provides additional guidance to enable the requirements of the SRC Act, it operates to override the operation of the AMA5.

Applying this approach represents best practice for the assessment of the degree of impairment in Australia because:

- > AMA5 impairment tables have been reviewed/or modified by expert Australian medical specialists, Associations and Colleges to align with clinical practice in Australia.
- > The methods and criteria for the assessment of the degree of impairment provides greater clarity and consistency across workers' compensation schemes in Australia.
- > Five workers' compensation schemes in Australia have adopted the national guide template, with amendment (as necessary) to enable their workers' compensation laws.
- > SWA continue to monitor and evaluate the effectiveness of the national guide template.

Although the draft Guide adopts the national guide template, changes have been made in order to comply with the requirements of the SRC Act, including:

- > Transitional arrangements to support date of effect.
- > Addition of SRC requirements.
- > Amended Principles of Assessment, where necessary.
- > Amended body system chapters, where necessary, to enable the SRC Act requirements and the Principles of Assessment that operate to override the AMA5 methods and criteria for the evaluation of permanent impairment.
- > Addition of Division 2 to provide for the assessment of non-economic loss claims.
- > Addition of Division 3 to provide for the calculation of the permanent impairment and non-economic loss compensation.
- > Updated key definitions (Appendix 1).

Focus questions – Structure and design

1. In terms of usability do you have any comments on the structure and design of the proposed Guide?
2. In most cases the Guide works in conjunction with the AMA5. Can you identify any benefits or barriers with the adoption of the national guide template in this way?
3. Are there any other terms or phrases that could be defined (Appendix 1)?

3.2 PRINCIPLES OF ASSESSMENT

Division 1, Part 2 of the 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 the Guide.

The following Principles of Assessment in the national guide template have been significantly modified by the draft Guide to ensure compliance with the permanent impairment provisions of the SRC Act:

- > **Permanent impairment considerations:** An employee's impairment will be considered permanent if it is likely to continue indefinitely. Certain matters may be taken into consideration but where a relevant authority decides the impairment is permanent the assessment of the degree of that impairment should go ahead.
- > **Multiple impairments:** Each injury, including an injury which arises as a result of the same injury or another injury, requires a separate assessment of the degree of permanent impairment.
- > **Isolating the effects of work-related injury:** It is not permissible to assess the degree of work-related injury resulting in permanent impairment by first performing an overall assessment of impairment and then applying a deduction attributed to non work-related injury.
- > **Percentage of impairment:** In most cases the range of impairment values must provide for the 10 percent threshold degree of impairment value.

The draft Guide adopts an important national guide template Principle of Assessment to support the introduction of impairment value ranges, that may apply under the AMA5:

- > **Activities of Daily Living:** Many tables in the AMA5 give class values for impairment, with a range of possible impairment values within each class. Commonly, these tables require the medical assessor to consider the impact on the injury on activities of daily living in order to determine the precise impairment value.

The draft Guide amends this principle (in part) to highlight the provision of non-economic loss compensation under Division 2 of the draft Guide and avoid, if applicable, the provision of dual compensation for the impact on the injury on activities of daily living.

Focus questions – Principles of Assessment

4. Are you able to follow and understand the Principles of Assessment in the proposed Guide?
5. Can you identify any benefits or barriers with the operation of the Principles of Assessment in practice?

3.3 BODY SYSTEM CHAPTERS

In most cases AMA5 is used, except for impairment resulting from psychiatric and psychological injury, chronic pain, visual and hearing injuries:

- > The AMA5 chapter on Mental and Behavioural Disorders (Chapter 14) is omitted. The draft Guide contains a substitute chapter.
- > The AMA5 chapter on pain (Chapter 18) is excluded entirely. Symptoms of pain should be based on the injury that they arise from.
- > The AMA4 is to be used for the assessment of impairment from visual injuries.
- > Assessment of hearing loss adopts the criteria and methods in the draft Guide, with some references to AMA5.

With the adoption of the national guide template the following tables in the current Guide are repealed:

- > Table 9.14: Upper extremity function. Chapter 2 of the draft Guide provides the methods and criteria for the assessment of upper limb impairment.
- > Table 9.7: Lower extremity function. Chapter 3 of the draft Guide provides the methods and criteria for the assessment of lower limb impairment.
- > Table 5.1: Psychiatric and psychological impairment. Chapter 11 of the draft Guide provides the methods and criteria for the assessment of psychological/psychiatric impairment.

Each body system chapter of the draft Guide provides a comprehensive introduction. Introductory commentary has been revised and where applicable, amended to enable the requirements of the SRC Act. This includes:

- > Cross referencing to the key Principles of Assessment that override the operation of the AMA5.
- > Removing requirement for diagnosis confirmation and/or medical assessor speciality type.

Focus questions – Body system chapters

6. Are you able to follow and understand the body system chapters in the proposed Guide?
7. For the purpose of assessing the degree of permanent impairment under the SRC Act, can you identify any benefits or barriers with the interaction between the proposed Guide and AMA5?

4.0 NON-ECONOMIC LOSS

Division 2 of the draft Guide has been inserted to provide for the assessment of non-economic loss compensation under the SRC Act.

The requirements for the assessment of non-economic loss compensation have not changed: where compensation is payable for permanent impairment an additional amount of compensation is payable for non-economic loss.

Non-economic loss compensation provides for the impact of the impairment on the employee's life.

The amount of compensation payable applies the following formula:

$$A+B = \$\text{Total}$$

WHERE A = the percentage assessment of permanent impairment (derived from Division 1 of the Guide)

AND B = a reasonable percentage have regard to the non-economic loss suffered.

The tables that establish a reasonable percentage for B apply similar criteria to the activities of daily living that may be used to assess the degree of permanent impairment in Division 1.

Division 2 of the draft Guide therefore suggests that medical assessors, in consultation with the employee, carefully consider the employee's self-reported non-economic loss scores.

Focus questions – Non- economic loss

8. Can you identify any benefits or barriers with the application of activities of daily living for the purpose of permanent impairment assessment (Division 1) and the application of non-economic loss assessment (Division 2)?

5.0 IMPLEMENTATION AND SUPPORT

Current Comcare scheme guidance, including e-guidance, supports the operation of the permanent impairment and non-economic loss provisions of the SRC Act and is published [here](#).

Although the draft Guide does not change the operation of these provisions the application of the new Guide differs from the current approach by adopting, modifying, or replacing the methods and criteria for the evaluation of permanent impairment set out in the AMA5.

Focus questions – Implementation and support

9. What support tools would assist you to implement the Guide? Do you have a view on whether different tools are needed for different audiences (for example, medical practitioners and claims managers)?
10. Can you identify any operational benefits or barriers associated with implementing the Guide in your workplace?

6.0 SUMMARY

6.1 WHAT HAS CHANGED

- > The draft Guide replaces a single 'standalone' Guide and is used in conjunction with the AMA5, to adopt, modify or replace the AMA5 methods and criteria for the assessment of permanent impairment.
- > Introduction of impairment tables that provide for a range of impairment values, by reference to the impact of the impairment on activities of daily living.
- > Adopting the national guide assessment method for psychiatric and psychological impairment.
- > Repeal of Part 2 of the Guide. Part 2 of the current Guide applies to members of the Australian Defence Force eligible to receive compensation under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA). The Military, Rehabilitation and Compensation Commission is the responsible authority for the remaking of the DRCA Guide.

6.2 WHAT HAS STAYED THE SAME

- > All SRC Act requirements remain the same, including:
 - Provision of non-economic loss compensation.
 - Interest payable on late payment of permanent impairment compensation.
 - The employee right to elect to take an action for damages.
- > Administrative arrangements, including:
 - Roles and responsibilities – The relevant authority is responsible for the determination of claims for permanent impairment and non-economic loss compensation claims. To do this they may arrange for a medical assessor to undertake the assessment of the degree of impairment by reference to the Guide.

Summary

11. Your opportunity to provide your views about the proposed approach, including any benefits or barriers that inform the final development of the Guide

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 loss 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 2021 the maximum amount is \$197,952.37.

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 2021 the maximum amount for Part A \$37,116.10 and Part B is also \$37,116.10.

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.