



ASSESSING PERMANENT IMPAIRMENT WHERE MULTIPLE INJURIES ARE INVOLVED

PURPOSE

To provide scheme guidance about assessing claims for compensation for permanent impairment under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) where an employee suffers from multiple compensable injuries.

BACKGROUND

Sections 24 and 27 of the SRC Act allow for the payment of compensation if an employee suffers a compensable injury that has resulted in permanent impairment. To enable medical practitioners to assess the degree of permanent impairment, Comcare issued the *Guide to the Assessment of the Degree of Permanent Impairment* (approved Guide) under section 28 of the SRC Act.

The SRC Act requires an injury based approach to determining claims for permanent impairment, as opposed to an incident based approach. This means that claims for permanent impairment may be assessed differently depending on whether the impairments relate to distinct injuries arising from an incident, or whether a single injury has resulted in multiple impairments.

This guidance addresses the following issues when determining claims for permanent impairment:

- > the principles to be considered when assessing multiple injuries
- > the principles to be considered when assessing a single injury with multiple impairments
- > when a decision maker can use the combined values table in the approved Guide
- > how the non-economic loss provisions are considered for multiple injuries.

GUIDANCE

The approved Guide is based on a concept known as whole person impairment (WPI). However, over time a number of significant judicial decisions have provided clarification on how that concept actually operates, confirming that the SRC Act requires an injury based approach. Under this system:

- > the assessment tables within the approved Guide provide impairment ratings expressed as a percentage of the maximum whole person impairment (100% WPI)
- > a combined values chart within the approved Guide enables the assessor to account for the degree of permanent impairment resulting from a single injury, with a cumulative rating that cannot exceed 100% WPI.

Care needs to be taken when making any assessments where multiple injuries are involved.

Separate injuries cannot be combined

If an employee suffers two or more compensable injuries that result in multiple impairments, a separate permanent impairment rating must be awarded for the degree of impairment arising from each of those compensable injuries.¹ This means that impairments resulting from different compensable injuries cannot be combined using the Combined Values Table in the approved Guide, even if one of those injuries is a sequela or secondary to the initial injury.

Each injury is to be assessed separately with compensation only payable for those injuries that meet the applicable threshold.² If a permanent impairment arising from an injury meets or exceeds the threshold, it is also eligible to attract a separate payment for non-economic loss under section 27 of the SRC Act.

Example 1

Multiple injuries arising as a result of a single incident

An employee suffers multiple injuries as a result of a motor vehicle accident. The injuries are assessed as 7% WPI for the left ankle, 8% WPI for the right foot, and 9% WPI for the left shoulder.

The decision maker determines that the employee is not entitled to compensation under the permanent impairment provisions as none of the injuries have reached the 10% permanent impairment threshold. Despite the impairments arising from the same incident, they cannot be combined as they are separate injuries.

Example 2

A single injury with a sequela

An employee suffers a compensable back injury which 12 months later results in an adjustment disorder. The employee lodges a successful permanent impairment claim for the back injury, which is assessed at 10% WPI. They later submit a further claim for permanent impairment for the adjustment disorder, which is assessed at 15% WPI.

The decision maker determines that the employee is eligible for a second, separate permanent impairment payment for the adjustment disorder noting that this is a separate injury to their earlier back injury. The impairment values of the back injury and the adjustment disorder cannot be combined using the combined values chart even though there is a causal relationship between the two injuries. The employee is therefore entitled to a further permanent impairment payment at 15% WPI and a further NEL payment.

Assessing a single injury with multiple impairments

If an employee suffers a compensable injury that results in multiple impairments (to different parts of their body, bodily systems or functions), irrespective of whether the impairments are above or below the threshold, they must be combined to give a single impairment rating, unless they are featured in a table or section of the approved Guide that states that they cannot be combined. This should be undertaken following the instructions in the approved Guide using combined values table. Liability for compensation will only arise if the permanent impairment from the combined impairments meets the threshold.

Note that careful consideration must be given to medical evidence in distinguishing multiple impairments from multiple injuries.

¹ Re *Canute v Comcare* [2006] HCA 47.

² Re *Black and Comcare* [2009] AATA 593.

Example 3

Multiple impairments arising from a single injury

An employee suffers a single spinal cord injury resulting in a 5% WPI loss of function of their lower extremities, a 5% WPI to their urinary system and a 10% WPI to their reproductive functions.

The employee is concerned that they will only receive compensation for the permanent impairment to their reproductive functions given that this is the only impairment to have reached the 10% threshold. The decision maker informs the employee that as all three impairments are the consequence of the one injury, their WPI values will be combined using the combined values chart within the approved Guide. In doing so, the decision maker confirms that the employee's overall WPI rating is 19%.

Assessing permanent impairment when two or more injuries are assessed under the same impairment table

If the impairments from two or more compensable injuries can be assessed using the same impairment table in the approved Guide, a decision maker must still ensure that each injury is assessed as a separate claim for permanent impairment and awarded a separate impairment rating.³ It is not possible to combine the impairment rating resulting from separate injuries, regardless of whether the same impairment table is used to assess those injuries.

In order to assess each injury in isolation, a decision maker must assess the impairment suffered by the employee due to their injury against the functional capacities of a hypothetical normal, healthy person rather than the actual capacity of the employee just prior to the injury in question.

Example 4

Assessing multiple claims for permanent impairment using the same impairment tables

An employee falls down the stairs at their workplace and suffers two compensable injuries to their left and right knees. The employee submits a claim for permanent impairment for these injuries and undergoes two separate assessments under Table 9.3 (Knees) in Part 1 of the approved Guide. The assessment of the employee's left knee results in a 13% WPI and the assessment of their right knee results in a 5% WPI.

Despite the injuries having resulted from the same incident and having been assessed under the same table within the approved Guide, the decision maker cannot combine the impairments for each knee because the impairments arose from two separate injuries. As such, the decision maker finds the employee is only entitled to a permanent impairment payment for the left knee.

Assessing permanent impairment when two or more injuries affect the same body part, system or function

Separate injuries and their associated impairments must be assessed separately and in isolation, even if they relate to the same body part, system or function.⁴ It is not appropriate to discount compensation in situations where the impairment is assessed under a functional table. That is, the amount the employee had already been paid for their first injury cannot be deducted from the amount determined for their second injury.

³ *Re Fellowes v Military Rehabilitation & Compensation Commission* [2009] HCA 38.

⁴ *Re Robson v Military Rehabilitation & Compensation Commission* [2013] FCAFC 101.

Example 5

Injuries affecting the same body part, system or function

An employee has an accepted claim for Post Traumatic Stress Disorder (PTSD) and receives a permanent impairment rating of 50% WPI under Table 5.1 (Psychiatric conditions). Sometime later they suffer a further compensable injury, Paranoid Personality Disorder (PPD). The assessment reveals that the second injury would produce approximately 60% WPI under Table 5.1.

When reviewing the second permanent impairment claim for PPD, the decision maker understands that even though the medical assessor has referred to the same impairment table used to assess the WPI for the employee's PTSD, the assessment of the PPD needs to be viewed as if it has taken place on a hypothetical normal, healthy person with no previous history of mental illness. That is, the decision maker cannot discount the earlier assessment of 50% WPI for PTSD as the PPD is a separate injury. As such, the decision maker determines the claim for PPD separately and, after having had regard to the medical assessment, finds that the employee has suffered a further 60% WPI impairment as a result of the work-related PPD. This 60% WPI is payable in addition to the earlier 50% WPI in respect of the PTSD, even though when viewed together this exceeds 100% WPI.

Assessing Non-Economic Loss (NEL)

Section 27 of the SRC Act provides that where there is liability to pay compensation for permanent impairment under section 24, compensation for NEL is also payable. NEL is not payable for interim permanent impairment compensation paid under section 25 of the SRC Act. NEL deals with the effects of the impairment on the employee's life or lifestyle in relation to pain and suffering, loss of amenities, loss of expectation of life, and other loss of a non-economic nature.

An injured employee is entitled to receive a separate NEL payment for each accepted injury that results in permanent impairment compensation being payable under section 24 of the SRC Act. Where an employee has already received NEL compensation for an injury and is found to have suffered another permanent impairment, the decision maker will need medical or other relevant evidence to be satisfied that the employee is not being compensated twice for the same effects on their lifestyle (part B of the NEL formula). This may be determined more simply in cases where the injuries have distinct effects, such as a physical injury followed by a psychological sequela given that the physical injury is more likely to cause pain or potential mobility issues, whereas a psychological injury is likely to have more of an emotional impact, such as reduced social functioning. Understanding whether each injury has negatively impacted different life or lifestyle factors will be a matter for medical opinion, with the decision maker ensuring that they have obtained appropriate evidence to differentiate between the various causes of the NEL.

Example 6

Assessing claims for NEL where there are multiple injuries – different lifestyle factors impacted

An employee has previously been found eligible to receive a permanent impairment and NEL payment in relation to a knee injury. The NEL rating for this injury in relation to recreation and leisure attracted a rating of three due to an inability to continue playing netball and compete in athletics. A year later, the employee lodged a second claim for permanent impairment in relation to a wrist injury. The employee again applied for NEL in relation to 'recreational and leisure activities' with a further score of three. The decision maker was initially concerned that the employee's two NEL claims exceeded the maximum score of five in relation to 'recreation and leisure', however upon further review of the evidence understood that this could be accepted as the second claim related to the employee's inability to play guitar and continue art classes.

FURTHER INFORMATION

For further information regarding the Permanent Impairment provisions of the SRC Act see the [scheme guidance](#) on:

- > [Interest rate for late compensation payments for permanent impairment](#)
- > [Assessment of the degree of permanent impairment where an arthroplasty procedure has been undertaken](#)

Scheme e-guidance is also available through the:

- > [Permanent impairment provisions module](#)

This module, along with other training products, can also be accessed through Comcare's [Learning Management System](#).

For further information, please contact Comcare's Scheme Policy and Design team on 1300 366 979 or email: SchemePolicyAndDesign@comcare.gov.au.