

Workers Compensation and Injury Management Act 2023

Implementation proposals for regulations and administrative instruments

Implementation Consultation Paper 7: Assessment of Permanent Impairment

October 2023

Public comment on the implementation proposals
should be submitted to:

consultation@workcover.wa.gov.au by **1 December 2023**

All submissions will be publicly accessible unless confidentiality is requested.

For further details on making a submission see:

<https://www.workcover.wa.gov.au/resources/modernising-was-workers-compensation-laws/>

*****Draft proposals only*****

The proposals in this consultation paper are in draft form to facilitate public comment and do not represent the final position of WorkCover WA, the Minister or Government.

Implementation Consultation – Assessment of Permanent Impairment

Scope

This document outlines proposed regulations and key administrative instruments used in the impairment assessment process by approved permanent impairment assessors (APIA) that are intended to apply from commencement of the *Workers Compensation and Injury Management Act 2023 (WCIMA23)*:

- WorkCover WA Guidelines for the Evaluation of Permanent Impairment
- APIA Report certifying a worker's degree of permanent impairment

Approved Medical Specialists under the 1981 Act will become APIA upon approval by WorkCover WA (refer to separate Implementation Consultation document on APIA approval framework).

Background and intent

An assessment of a worker's degree of permanent impairment is required for the purpose of determining:

- lump sum compensation for permanent impairment
- access to common law damages
- eligibility to receive a special increase in the medical and health expenses general limit.

There is no intention to make significant changes to the assessment framework. The WorkCover WA Guidelines for the Evaluation of Permanent Impairment (the Guidelines) will continue to be the statutory instrument required to be used by APIA in assessing a worker's degree of permanent impairment. However, revisions to the Guidelines are required due to terminology and legislative references in the *WCIMA23*.

There is also a need to update the template impairment assessment report issued by APIA to include a new checkbox to confirm maximum medical improvement (MMI) is reached or to indicate the assessment is a 'special assessment' authorised by the Guidelines. The template report also includes a new table to show how the degree of permanent impairment was calculated and the conversion factors used for the purpose of the worker claiming permanent impairment compensation (Schedule 2 under the 1981 Act).

WCIMA23 key provisions

s.105, s. 152, s. 187, s. 188, s. 189, s. 190, s. 191, s. 192, s. 195

Regulations and administrative instruments

Revised Impairment Guidelines

Revised Guidelines for the Evaluation of Permanent Impairment will be issued when the *WCIMA23* commences operation (see [Attachment 2 – WorkCover WA Guidelines for the Evaluation of Permanent Impairment 1 July 2024](#)).

There is no intention to make any substantive changes to the impairment assessment methodology or clinical assessment parts of the Guidelines.

The revised Guidelines will incorporate changes in terminology and legislative references and the status of special assessments where MMI has not been reached.

It is a general principle that an assessment of permanent impairment only be done when a worker's condition has stabilised (i.e., has reached MMI), unless the injury is a dust disease. If a worker's condition has not stabilised APIA will be required to issue an approved form certifying that finding, based on current arrangements.

The Guidelines provide for circumstances when a special assessment can be done, notwithstanding MMI not being satisfied.

An assessment of a worker's degree of permanent impairment can be done, notwithstanding the worker's condition has not stabilised (a 'special assessment ') if the following conditions are met:

- if, after the expiry of the period of 18 months after the day on which a claim for compensation is made by a worker, an APIA notifies the worker, employer and insurer that the worker's condition has not stabilised to the extent required for an assessment of the worker's degree of permanent impairment to be made.
- a request is made for a special assessment in the approved form
- the purpose of the special assessment is for an assessment of the degree of impairment in order to make an election to pursue common law damages (s. 421 of the *WCIMA23*), or for an increase in medical and health expenses beyond the standard limit under s. 78 of the *WCIMA23*.

A special assessment cannot be done for the purposes of permanent impairment compensation: MMI must be attained.

In relation to assessments for permanent impairment compensation purposes, the percentage permanent impairment of the relevant item number for the body party or system assessed should be a whole number. Some of the worked examples in the current Guidelines do not round to a whole number after the conversion is applied.

The revised Guidelines set out the correct way to apply the rounding rules to the worked examples and case studies in the Appendix 2 conversion factor table (which has been replicated and shows the unchanged rounding rules correctly applied).

Report certifying degree of permanent impairment

Under the *WCIMA23* a report certifying a worker's degree of permanent impairment must be given in the approved form. It is intended the form at Attachment 2 will be approved for use by APIA from commencement of the *WCIMA23* (see [Attachment 1 – Assessment of Degree of Permanent Impairment – Report & Certificate](#)).

Key changes in the proposed report template compared to the current Act are:

- assessment reports (currently AMS5) will be combined with the assessment certificate (currently AMS6) into a single approved form [Attachment 1 – Assessment of Degree of Permanent Impairment – Report and Certificate](#).
- a table has been inserted in the report to provide greater clarity and transparency as to how the permanent impairment percentage was calculated and converted for permanent impairment compensation purposes (known as Schedule 2 under the 1981 Act)
- APIA must confirm whether MMI is reached when completing the report. If MMI is not reached an assessment cannot be done unless a special assessment is authorised by the Guidelines and the APIA indicates it is a special assessment.

There is a new process by which workers must reach agreement on the percentage of permanent impairment based on an APIA assessment for permanent impairment compensation purposes. The process is in the form of a Permanent Impairment Notice. The report of the APIA, the accuracy of the percentage of permanent impairment and the conversion factor is integral to that process.

Regulated procedures and forms

It is intended the regulations will largely mirror existing arrangements albeit the requirements will incorporate new terminology and legislative references, and some regulated forms will become approved forms.

It is intended the regulations will provide:

- A worker, the insurer of the worker's employer, or a self-insurer may request an assessment of permanent impairment
- If an insurer or self-insurer requests an assessment, the insurer or self-insurer must bear the cost. The first assessment requested by a worker is covered as a miscellaneous expense under s. 91 of the *WCIMA23*. Subsequent assessments sought by a worker are at the worker's expense.
- A worker is required to attend a place specified for the purposes of assessment by an APIA.
- A worker, employer or insurer is required to produce relevant documents or relevant information to an APIA.
- A worker, employer or insurer is to consent to another person who has relevant documents or relevant information to disclose them to the APIA.
- Compliance with a request to produce relevant documents or information to an APIA within 7 days.

Maximum fees and charges for permanent impairment assessments undertaken by APIA will be fixed by Ministerial order (based on the current indexed fee schedule).

Summary of APIA Approved Forms

The following table summarises the proposed changes to the forms applicable to the assessment of permanent impairment.

Process	Current Form	New Form*	Changes Under <i>WCIMA23</i>
Request for Assessment by APIA of Degree of Permanent Impairment	AMS1	APIA1	Minor changes to terminology and legislative references.
Requirement for a Worker to Attend before an APIA	AMS2	APIA2	
Requirement to Produce Relevant Documents or Information for an Impairment Assessment	AMS3	APIA3	
Requirement to Consent to Another Person to Produce Relevant Documents or Information for an Impairment Assessment	AMS4	APIA4	
Requirement to Produce Information for an Impairment Assessment	AMS4A	APIA4A	
Report on Assessment of Degree of Permanent Impairment	AMS5	APIA5	Reports must now include a certificate as to the worker's degree of permanent impairment (see attachment 2).
Certificate of Degree of Impairment	AMS6		
PIRs Rating	AMS6A	APIA6	Minor changes to terminology and legislative references.
Report on Workers Condition Not Stabilised	AMS7	APIA7	TBC
Certificate Where Workers Condition Not Stabilised	AMS8		

* Final codes for approved forms TBC

WorkCover WA expectations

WorkCover WA expects APIA to:

- assess impairment in accordance with the Guidelines
- minimise calculation and administrative errors by carefully checking all reports produced
- use and properly complete new templates for permanent impairment reports (particularly with regard to the table for the impairment rating and calculation for permanent impairment compensation).

Evaluation and monitoring

As part of its audit program WorkCover WA will undertake audits and investigations to ensure compliance with the APIA conditions of approval and high quality assessments to support workers accessing permanent impairment compensation and common law.

Attachments

1. Assessment of Degree of Permanent Impairment – Report and Certificate
2. WorkCover WA Guidelines for the Evaluation of Permanent Impairment Consultation Draft – 1 July 2024.

Attachment 1: Assessment of Degree of Permanent Impairment - Report and Certificate

Worker Details

Name of the worker

Address

Postcode

Date of birth

/ /

Date of injury

/ /

Insurer claim number

Description of injury

Body part (s)

Diagnosis

Contact telephone number

Email address

WorkCover WA claim number

WCCN:

Employer's Details

Organisation name

Contact person

Address

Postcode

Telephone number

Email address

Name of insurer

WorkCover number (if known)

Purpose of assessment

Permanent impairment compensation*
*(*See impairment rating and calculation for permanent impairment (PI) compensation)*

Common law

Special increase in the medical and health expenses general limit

Maximum medical improvement & special assessment

Has worker reached maximum medical improvement?

Is this a special assessment authorised by the Guidelines?

Date of examination

Examination location

Reports and documents provided (list of documents and information provided)

A narrative history (as provided by the worker on history of injury, occupational history, past medical history)

Physical examination

Diagnostic studies

Diagnosis and impairments

The proportion of permanent impairment due to any previous injury that was not asymptomatic

Impairment rating and calculation for permanent impairment compensation

(detail the relevant references used in assessing the percentage of permanent impairment as per the WorkCover WA Guides)

Item #	Chapter #	Table/Figure #	PI Rating (%)	Assessed degree of PI (%)*
Example: 39	AMA5: Chapter 15.4	Table 15-3	5%	$100 \times 6(WPI) / 60 = 10\%$
	WCWA Guides: Chapter 6	ADL's -paragraph 6.31	1%	

* Guides conversion applied

Calculation of the worker's degree of permanent impairment

(Show how degree of permanent impairment was calculated, detail any combination of body part or systems)

Statement as to the reasons for arriving at the calculation of the worker's degree of permanent impairment

