

## EXPLANATORY STATEMENT

Issued by authority of the Minister for Employment and Workplace Relations  
under section 28 of the *Safety, Rehabilitation and Compensation Act 1988*

### PURPOSE AND OPERATION OF THE INSTRUMENT

The *Safety, Rehabilitation and Compensation Act 1988* (**SRC Act**) establishes the workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations. The SRC Act provides for the payment of lump sum compensation for permanent impairment and non-economic loss, subject to the provisions in sections 24 to 28 of that Act.

Pursuant to section 28 of the SRC Act, Comcare may prepare a Guide to the Assessment of the Degree of Permanent Impairment (**Guide**) setting out:

- (a) criteria by reference to which the degree of permanent impairment of an employee resulting from an injury shall be determined;
- (b) criteria by reference to which the degree of non-economic loss suffered by an employee as a result of an injury or impairment shall be determined; and
- (c) methods by which the degree of permanent impairment and the degree of non-economic loss, as determined under those criteria, shall be expressed as a percentage.

The percentage of permanent impairment or non-economic loss suffered by an employee as a result of an injury ascertained under the methods referred to in paragraph (c) above may be 0% (subsection 28(5) of the SRC Act).

A Guide prepared in accordance with section 28 of the SRC Act must be approved by the Minister (subsection 28(3) of the SRC Act). An approved Guide is a legislative instrument made by the Minister on the day on which the Guide is approved by the Minister (subsection 28(3A) of the SRC Act).

The purpose of this Instrument is to repeal and substantially remake Part 1 of the *Safety, Rehabilitation and Compensation Act 1988 – Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1* (**Edition 2.1**) with some differences, which are summarised below. This Instrument relies on subsection 33(3) of the *Acts Interpretation Act 1901* to repeal Edition 2.1 of the approved Guide,<sup>1</sup> which would have otherwise sunset on 1 April 2023 by operation of the *Legislation Act 2003*.<sup>2</sup>

This Instrument approves Edition 3.0 of the Guide prepared by Comcare (**Edition 3.0**), which appears at Schedule 1 to the Instrument. The main differences between Edition 2.1 and Edition 3.0 of the approved Guide are summarised as follows:

- Part 2 of Edition 2.1 has not been remade in Edition 3.0 because defence-related claims for permanent impairment and non-economic loss are no longer assessable under the SRC Act and are instead assessable under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*, which is administered by the Minister for Veterans' Affairs.

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<sup>1</sup> Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

<sup>2</sup> *Legislation (Deferral of Sunsetting—Guide to the Assessment of the Degree of Permanent Impairment Instruments) Certificate 2021* [F2021L01344].

- Introduction – Edition 3.0: simplifies the rules concerning application of the approved Guide; clarifies the entitlement to compensation for permanent impairment that is a hearing loss or constituted by the loss, or the loss of the use, of a finger or toe, or the loss of the sense of taste or smell under the SRC Act; confirms that the whole person impairment (**WPI**) methodology used in the approved Guide can result in *either* an assessment of 0% if there is no increase in the employee’s WPI when assessed in accordance with the approved Guide *or* less than the threshold for compensation under section 24 of the SRC Act even if there is an increase in the employee’s WPI when assessed in accordance with the approved Guide; and clarifies the survival of claims for permanent impairment and non-economic loss compensation under the SRC Act.
- Principles of Assessment – Edition 3.0: clarifies the methodology for assessing permanent impairment when the employee has a pre-existing condition or is deceased; and provides a methodology for an assessor to use their use clinical judgment if an impairment is of a kind that cannot be assessed in accordance with either the provisions of the approved Guide or the fifth edition of the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* (2001) (**AMA5**).
- Glossary – Edition 3.0 adds definitions for ‘assessor’ in relation to an employee and ‘binaural hearing loss’.
- Chapter 3 (The endocrine system) – Edition 3.0 clarifies the introduction and amends Table 3.1 (Thyroid and parathyroid glands) and Table 3.3 (Pancreas (diabetes mellitus)) in response to feedback from the Royal Australasian College of Physicians.
- Chapter 4 (Disfigurement and skin disorders) – Edition 3.0 clarifies the introduction in relation to impairments resulting from an endocrine system condition.
- Chapter 6 (The visual system) – Edition 3.0 clarifies the introduction in relation to impairments resulting from an endocrine system condition.
- Chapter 8 (The digestive system) – Edition 3.0 amends Table 8.3 (Lower gastrointestinal tract – anus) to better align this table with the AMA5 table on which it is based.
- Chapter 9 (The musculoskeletal system):
  - Part I (The lower extremities) – Edition 3.0: amends the introduction in relation to the methodology for assessments where a hip or knee arthroplasty procedure has been undertaken and where a chronic pain condition affects the lower extremities; clarifies the threshold for compensation for an injury resulting in a permanent impairment constituted by the loss, or the loss of the use, of a toe; clarifies Section 9.7 (Lower extremity function) by providing that secondary dysfunction (that is, impairment) of the lower extremity consequent to disuse are to be combined; and clarifies Section 9.7 in relation to the methodology for assessments where a pre-existing injury results in permanent impairment to the same lower extremity function.
  - Part II (Upper extremities) – Edition 3.0: amends the introduction to require, among other criteria, ‘objectively’ (as opposed to ‘radiographically’) demonstrated joint instability or arthritis before Table 9.14 (Upper extremity function) can be used; amends Sections 9.9 (Wrists), 9.10 (Elbows) and 9.11 (Shoulders) in relation to the methodology for assessments where an arthroplasty procedure has been undertaken; amends Section 9.13.3 to provide for a new methodology to assess 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; and amends Section 9.14 (Upper extremity function) to reflect the requirement for ‘objectively’ (as opposed to

‘radiologically’) demonstrated joint instability or arthritis or arthroplasty before Table 9.14 (Upper extremity function) can be used.

- Part III (The spine) – Edition 3.0 amends Table 9.15 (Cervical spine – diagnosis-related estimates), Table 9.16 (Thoracic spine – diagnosis-related estimates) and Table 9.17 (Lumbar spine – diagnosis-related estimates) to clarify and expand when they apply and to reflect the requirement for ‘objectively’ (as opposed to ‘radiologically’) demonstrated/verified radiculopathy, and in the case of Table 9.16 and Table 9.17, to better align those tables with the AMA5 tables on which they are based.
- Edition 3.0 includes several global amendments to: improve clarity, internal referencing, internal consistency, consistency with the text of the SRC Act and consistency with source material; update and correct references to entities and source material; correct typographical errors; remove redundant terms; adopt gender-neutral language where possible; clarify whether one, some or all criterion in a table are required for a particular WPI rating; simplify tables to improve online presentation; and add hyperlinks to improve online navigation.

Further details about the Instrument and Edition 3.0 are set out in Attachment A.

## **DOCUMENTS INCORPORATED BY REFERENCE**

Edition 3.0 incorporates parts of the AMA5 by requiring an assessment under or by reference to that document (for cardiomyopathy, congenital heart disease, valvular heart disease, pericardial heart disease, migraine, tension headache, sensory losses in the thumb and fingers, and arthroplasty of the hip, knee, wrist, elbow and shoulder). In addition, Edition 3.0 provides that an assessment is to be made under the AMA5 if an impairment is of a kind that cannot be assessed in accordance with the provisions of Edition 3.0.

The AMA5 is used in various Australian and overseas jurisdictions for the assessment of permanent impairment. The manner in which the AMA5 is incorporated in Edition 3.0 is made clear in the Glossary, which provides that references to the AMA5 are references to that document and any errata published ‘*prior to the commencement date*’. For the avoidance of doubt, the AMA5 is not incorporated in Edition 3.0 as in force from time to time.

The AMA5 may be purchased from the American Medical Association for a fee.<sup>3</sup> To ensure the AMA5 may be freely accessed and used by members of the public for purposes connected with claims under the SRC Act, Comcare will arrange for hard copies of the AMA5 to be available in each of its offices throughout Australia. Members of the public can request access to a copy by emailing [scheme.policy\\_helpdesk@comcare.gov.au](mailto:scheme.policy_helpdesk@comcare.gov.au) to arrange a time for access.

Edition 2.1, which incorporated the AMA5 by reference, will sunset on 1 April 2023. As noted above, the purpose of this Instrument is to repeal and substantially remake Edition 2.1. Without this Instrument in place, the entitlements of injured workers to compensation for permanent impairment and non-economic loss cannot be assessed from that date.

While Chapter 6 (The visual system) of Edition 3.0 is based on the fourth edition of the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* (1995) (**AMA4**), the AMA4 is not incorporated by reference and assessments are not required to be made under that document.

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<sup>3</sup> See <https://www.amaguidesdigital.com/>.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, which appears at [Attachment B](#).

## CONSULTATION

### Bodies/groups/individuals consulted

In preparing the Guide for approval, Comcare consulted with employee representatives (including the Australian Council of Trade Unions, the Community and Public Sector Union and law firms), employer representatives (including the Safety, Rehabilitation and Compensation Licensee Association and law firms), licensees, the Administrative Appeals Tribunal, the Australian Medical Association, specialist medical colleges, medical boards and medical professionals.

### Method and purpose of consultation

Stakeholder feedback informed the development of the Guide. The Comcare website provided news banners, a draft of the Guide and a document entitled ‘Making a submission – Stakeholder consultation paper’ with an attached summary of changes made from Edition 2.1. Targeted direct electronic communication (email) was also sent to Comcare stakeholders.

### Issues raised in consultation and outcomes

In 2021, Comcare proposed to adopt the Safe Work Australia Guidelines for the Evaluation of Permanent Impairment (Edition 1) (**National Guide**), where possible. Comcare worked with expert medical consultants and significant changes were made to the National Guide template to meet the legislative requirements of the SRC Act. Nineteen submissions were received in response to the proposed approach. While some stakeholders supported a national approach, concerns were raised about the proposed changes to the psychiatric and lower and upper limb function assessment methods. Other feedback concerned that, as the legislative framework of the SRC Act did not permit the National Guide to be adopted without modification, the modified National Guide would result in confusion.

In response to concerns regarding the current legislative framework, Comcare decided to substantially remake Edition 2.1, with some changes to improve its operation and to correct known errors.

Where appropriate, feedback received during the consultation process in relation to Edition 3.0, which is substantially the same as Edition 2.1, has been incorporated into this Instrument.

In preparing the criteria for the Guide, Comcare had regard to medical opinion concerning the nature and effect (including possible effect) of injuries and the extent (if any) to which impairment resulting from those injuries, or non-economic loss resulting from those injuries or impairment, may reasonably be capable of being reduced or removed (subsection 28(6) of the SRC Act).

The Office of Best Practice Regulation was consulted regarding this Instrument and indicated that a Regulation Impact Statement was not required [OBPR22-02101].

## COMMENCEMENT

This Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

This Instrument, including Edition 3.0 of the approved Guide appearing at Schedule 1 to this Instrument, commences on 1 April 2023.

Authority: section 28 of the  
*Safety, Rehabilitation and Compensation Act 1988*

## NOTES ON SECTIONS

### Section 1 – Name

1. Section 1 provides that the title of the instrument is the *Safety, Rehabilitation and Compensation Act 1988 – Guide to the Assessment of the Degree of Permanent Impairment Edition 3.0*.

### Section 2 – Commencement

2. Section 2 provides that the instrument commences on 1 April 2023 (**commencement date**).

### Section 3 – Authority

3. Section 3 provides that the instrument is made under section 28 of the *Safety, Rehabilitation and Compensation Act 1988*.

### Section 4 – Definitions

4. The introductory note to section 4 lists a number of expressions used in the instrument that are defined in the SRC Act. Subsection 13(1)(b) of the *Legislation Act 2003* relevantly provides that if enabling legislation confers on a person the power to make a legislative instrument then, unless the contrary intention appears, expressions used in any instrument so made have the same meaning as in the enabling legislation as in force from time to time.
5. Section 4 provides the remaining definitions of terms used in the instrument.

### Section 5 – Approved Guide

6. Section 5 provides that the Guide prepared by Comcare, which is set out in Schedule 1 to the instrument, is approved for the purposes of the SRC Act (**approved Guide**).
7. The note to section 5 provides that where a relevant authority or the Administrative Appeals Tribunal is required to assess or re-assess, or review the assessment or re-assessment of, the degree of permanent impairment of an employee resulting from an injury, or the degree of non-economic loss suffered by an employee, the provisions of the approved Guide are binding on the relevant authority or the Administrative Appeals Tribunal, as the case may be, in the carrying out of that assessment, re-assessment or review, and the assessment, re-assessment or review shall be made under the relevant provisions of the approved Guide (subsection 28(4) of the SRC Act).

### Section 6 – Application of the Approved Guide

8. Section 6 provides for the application of the approved Guide in the following terms:
  - (a) The approved Guide applies to the assessment or re-assessment of the degree of permanent impairment of an employee resulting from an injury, or the degree of non-economic loss suffered by an employee as a result of an injury or impairment, relating to a claim for compensation under sections 24, 25 or 27 of the SRC Act received by the relevant authority on or after the commencement date.
  - (b) The approved Guide applies to the re-assessment of the degree of permanent impairment of an employee resulting from an injury, or the degree of non-economic loss suffered by an employee as a result of an injury or impairment, relating to a claim for compensation under sections 24, 25 or 27 of the SRC Act received by the relevant authority before the

commencement date where the request for re-assessment was received on or after the commencement date.

- (c) For the purposes of paragraph (b), a request for re-assessment does not include the following in relation to a determination made under section 24, 25 or 27 of the SRC Act, whether the determination was made before, on or after the commencement date:
  - (i) a request for reconsideration of that determination under section 62 of the SRC Act;
  - (ii) an application to the Administrative Appeals Tribunal for review of a reviewable decision made in relation to that determination under section 64 of the SRC Act.
- (d) The approved Guide applies to the assessment or re-assessment of the degree of permanent impairment of an employee resulting from an injury relating to a request under section 25 of the SRC Act received by the relevant authority on or after the commencement date.
- (e) The approved Guide applies to all reviews by the Administrative Appeals Tribunal of an assessment or re-assessment to which paragraph (a), (b) or (d) applies.

### **Section 7 – Repeal**

- 9. Section 7 repeals the *Safety, Rehabilitation and Compensation Act 1988 – Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1 (repealed Guide)*.
- 10. Note 1 to section 7 provides that subsection 7(2) of the *Acts Interpretations Act 1901* relevantly provides, in effect, that:
  - (a) the repeal does not: revive anything not in force or existing at the time at which the repeal takes effect; or affect the previous operation of the repealed Guide, or anything duly done under the repealed Guide; or affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Guide; or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability; and
  - (b) any such investigation, legal proceeding or remedy may be instituted, continued or enforced, as if the repealed Guide had not been repealed.
- 11. Note 2 to section 7 provides that the *Acts Interpretations Act 1901* applies to the approved Guide and repealed Guide as if it were an Act by operation of subsection 13(1) of the *Legislation Act 2003*.

### **Schedule 1 – Guide to the Assessment of the Degree of Permanent Impairment Edition 3.0**

For the purposes of the notes that follow, the approved Guide will be referred to as Edition 3.0 and the repealed Guide will be referred to as Edition 2.1.

- 12. Edition 3.0 substantially remakes Part 1 of Edition 2.1, with some differences.
  - (a) Edition 3.0 includes several global amendments to: improve clarity, internal referencing, internal consistency, consistency with the text of the SRC Act and consistency with source material; update and correct references to entities and source material; correct typographical errors; remove redundant terms; adopt gender-neutral language where possible; clarify whether one, some or all criterion in a table are required for a particular WPI rating; simplify tables to improve online presentation; and add hyperlinks to improve online navigation.

(b) The remaining differences are summarised in the following notes.

### ***Introduction to Edition 3.0 of the Guide***

13. Paragraphs 1 to 5 set out the structure of Edition 3.0. The references to divisions that were used in Edition 2.1 are retained to facilitate cross-referencing.
14. Paragraphs 6 to 7 summarise the simplified application provisions for Edition 3.0 and refer the assessor to Edition 2.1 for the criteria, methods and application provisions relevant to the assessment or re-assessment of the degree of permanent impairment or non-economic loss of an employee relating to claims and requests under sections 24, 25 or 27 of the SRC Act that were received by the relevant authority prior to the commencement date.
15. Paragraphs 8 to 12 describe the whole person impairment (**WPI**) methodology used in Edition 3.0. New text in paragraphs 10 and 11 confirms that the WPI methodology used in Edition 3.0 can result in either an assessment of 0% if there is no increase in the employee's WPI when assessed in accordance with Edition 3.0 or less than the threshold for compensation under section 24 of the SRC Act even if there is an increase in the employee's WPI when assessed in accordance with Edition 3.0. Whole person impairment is assessed under Division 1 of Edition 3.0.
16. Paragraphs 13 to 15 summarise the provisions concerning the entitlements to compensation for permanent impairment under the SRC Act. New text in paragraphs 14 and 15 clarifies the entitlement to compensation for permanent impairment that is a hearing loss or constituted by the loss, or the loss of the use, of a finger or toe, or the loss of the sense of taste or smell under the SRC Act.
17. Paragraphs 16 to 17 summarise the provision concerning the entitlement to compensation for non-economic loss under the SRC Act. Non-economic loss is assessed under Division 2 of Edition 3.0.
18. Paragraph 18 provides that the maximum level of payment is prescribed in the SRC Act and indexed annually on 1 July in accordance with the Consumer Price Index, and that compensation is calculated at the rate applicable at the time of the assessment.
19. Paragraphs 19 to 20 summarise the provisions concerning interim and final assessments under the SRC Act. New text confirms that the determination is made by the relevant authority.
20. Paragraphs 21 to 23 summarise the provisions concerning increase in the degree of WPI under the SRC Act. New text confirms that the determination is made by the relevant authority and clarifies that the threshold for additional compensation under section 25 of the SRC Act for an injury resulting in a permanent impairment that is a hearing loss is 2.5% WPI under Edition 3.0.
21. Paragraphs 24 to 25 contain new text that summarise the provisions concerning the survival of claims under the SRC Act.

### ***Principles of Assessment***

22. Paragraphs 26 to 28 describe the principles for assessing impairment and non-economic loss in Edition 3.0.
23. Paragraph 29 distinguishes the concepts of 'employability' and 'incapacity for work' for the purposes of the SRC Act.
24. Paragraphs 30 to 34 describe the principles for assessing permanent impairment in Edition 3.0. Paragraph 32 contains new text confirming that, in addition to the matters specified in

subsection 24(2) of the SRC Act, the assessor should also have regard to the nature and effect of the impairment, and the extent, if any, to which it may reasonably be capable of being reduced or removed (including by surgery, medication or rehabilitative treatment).

Paragraphs 33 and 34 contain new text that provides the methodology for assessing permanent impairment when the employee is deceased and examples to assist assessors. To the extent that the principles of assessment permit an assessor to use their clinical judgment, the assessor should only do so if they are appropriately qualified and provide clinical justification and written reasons for their assessment.

25. Paragraphs 35 to 38 describe the principles, and new text clarifies the methodologies, in Edition 3.0 for assessing the aggravation of a pre-existing condition (including an underlying condition or pre-existing injury). The percentage of permanent impairment suffered by an employee as a result of a particular injury ascertained by applying any particular method may be 0%. To the extent that the principles of assessment permit an assessor to use their clinical judgment, the assessor should only do so if they are appropriately qualified and provide clinical justification and written reasons for their assessment.
26. Paragraphs 39 to 41 describe the principles, and new text clarifies the methodologies, in Edition 3.0 for assessing an injury (other than aggravation) resulting in permanent impairment to a bodily part, system or function where the employee suffers a pre-existing condition affecting the same bodily part, system or function. Paragraphs 39 to 40 apply where there is a pre-existing condition including an underlying condition but excluding a pre-existing injury. Paragraph 41 applies where there is a pre-existing injury. The percentage of permanent impairment suffered by an employee as a result of a particular injury ascertained by applying any particular method may be 0%. To the extent that the principles of assessment permit an assessor to use their clinical judgment, the assessor should only do so if they are appropriately qualified and provide clinical justification and written reasons for their assessment.
27. Paragraphs 42 to 45 describe the principles for applying the impairment tables to assess WPI in Edition 3.0.
28. Paragraphs 46 to 47 describe the principles for assessing malignancies and conditions resulting in major systemic failure in Edition 3.0.
29. Paragraphs 48 to 49 describe the principles for assessing percentages of impairment in Edition 3.0.
30. Paragraph 50 describes the principles for comparing assessments under alternative tables in Edition 3.0.
31. Paragraphs 51 to 52 describe the principles for combining values in Edition 3.0.
32. Paragraphs 53 to 54 describe the principles for calculating the assessment in Edition 3.0.
33. Paragraph 55 describes the principles for ordering additional investigations in Edition 3.0.
34. Paragraphs 56 to 59 describe the exceptions to use of Edition 3.0. New text refers to chronic pain conditions in lieu of complex regional pain syndromes affecting the upper extremities to reflect the changes to Section 9.13.3 (Chronic pain conditions) of the approved Guide. Paragraph 58 contains new text that provides that, in the event that an impairment is of a kind that cannot be assessed in accordance with either the provisions of Edition 3.0 or the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (2001) (**AMA5**) (that is, where an assessment of 0% or more is not possible), the assessor should use their use clinical judgment, comparing measurable permanent impairment resulting from the injury to measurable permanent impairment resulting from similar conditions with similar impairment of body part, system or function. To the extent that the principles of assessment permit an assessor



to use their clinical judgment, the assessor should only do so if they are appropriately qualified and provide clinical justification and written reasons for their assessment.

### ***List of References***

35. Paragraphs 60 to 70 contains an updated list of references.

### ***Glossary***

36. The Glossary contains relevant definitions and includes new definitions for ‘assessor’ and ‘binaural hearing loss’.
37. ‘Assessor’ in relation to an employee is defined to mean: (a) a legally qualified medical practitioner or audiologist, other than the employee, who is registered to practise a health profession with the Australian Health Practitioner Regulation Agency; (b) the relevant authority in relation to the employee; (c) a member within the meaning of section 3 of the *Administrative Appeals Tribunal Act 1975*.
- (a) The new definition is intended to clarify that, in appropriate circumstances, a relevant authority (or delegate) or a member of the Administrative Appeals Tribunal can conduct an assessment under Edition 3.0 in light of available evidence (for example, clinical records, investigations, reported histories). To the extent that the principles of assessment permit an assessor to use their clinical judgment, the assessor should only do so if they are appropriately qualified and provide clinical justification and written reasons for their assessment.
- (b) Example 1: A relevant table in Edition 3.0 provides different criteria for a 5%, 10% and 15% WPI rating (for example, Table 5.1 (Psychiatric conditions)). Doctor A has provided an assessment of 5% WPI and Doctor B has provided an assessment of 15% WPI. If a delegate or member is reasonably satisfied that an assessment of 10% WPI is consistent with the SRC Act, Edition 3.0 and the available evidence, it would be appropriate for the delegate or member to make a determination or decision in line with that assessment.
- (c) Example 2: A relevant table in Edition 3.0 provides for impairment values within a range for the same criteria (for example, Table 9.17 (Lumbar spine – diagnosis-related estimates), which includes the range 10% to 13% WPI for the same criteria). Doctor A has provided an assessment of 10% WPI and Doctor B has provided an assessment of 13% WPI. If, after considering all criteria applicable to the condition, which includes performing activities of daily living and an estimate of the degree to which the medical impairment interferes with these activities, a delegate or member is reasonably satisfied that an assessment of 11% WPI is consistent with the SRC Act, Edition 3.0 and the available evidence, it would be appropriate for the delegate or member to make a determination or decision in line with that assessment. However, as these circumstances require clinical judgment and justification, the delegate or member would need to be appropriately qualified to conduct the assessment. Otherwise, additional information may be required to determine where to place an individual within the range.
38. ‘Binaural hearing loss’ is defined to mean hearing loss affecting both ears. The definition also provides that, for the purposes of Edition 3.0, binaural hearing loss does not include tinnitus. The definition is intended to clarify that hearing loss is assessed under Section 7.1 (Hearing loss) whereas tinnitus in the presence of hearing loss is assessed separately under Table 7.2 (Tinnitus).

***Division 1 – Assessment of the degree of the permanent impairment of an employee resulting from an injury***

39. Chapter 1 (The cardiovascular system) substantially remakes Chapter 1 of Part 1 of Edition 2.1 with the global amendments summarised above. Any other substantive changes made to this Chapter are summarised below:
- (a) Section 1.0 (Introduction) – no other substantive changes.
  - (b) Section 1.1 (Coronary artery disease) – no other substantive changes.
  - (c) Section 1.2 (Hypertension) – no other substantive changes.
  - (d) Section 1.2.1 (Diastolic hypertension) – no other substantive changes.
  - (e) Section 1.2.2 (Systolic hypertension) – no other substantive changes.
  - (f) Section 1.3 (Arrhythmias) – no other substantive changes.
  - (g) Section 1.4 (Peripheral vascular disease of the lower extremities) – no other substantive changes.
  - (h) Section 1.5 (Peripheral vascular disease of the upper extremities) – no other substantive changes.
  - (i) Section 1.6 (Raynaud’s disease) – no other substantive changes.
40. Chapter 2 (The respiratory system) substantially remakes Chapter 2 of Part 1 of Edition 2.1 with the global amendments summarised above. Any other substantive changes made to this Chapter are summarised below:
- (a) Section 2.0 (Introduction) – no other substantive changes.
  - (b) Section 2.1 (Assessing impairment of respiratory function) – no other substantive changes.
  - (c) Section 2.1.1 (Measurements) – no other substantive changes.
  - (d) Section 2.1.2 (Methods of measurement) – no other substantive changes.
  - (e) Section 2.1.3 (Impairment rating) – no other substantive changes.
  - (f) Section 2.2 (Asthma and other hyper-reactive airways diseases) – no other substantive changes.
  - (g) Section 2.3 (Lung cancer and mesothelioma) – no other substantive changes.
  - (h) Section 2.4 (Breathing disorders associated with sleep) – no other substantive changes.
41. Chapter 3 (The endocrine system) substantially remakes Chapter 3 of Part 1 of Edition 2.1 with the global amendments summarised above. Any other substantive changes made to this Chapter are summarised below:
- (a) Section 3.0 (Introduction) – Edition 2.1 provided: *‘The degree of impairment caused by secondary conditions (such as peripheral neuropathy, or peripheral vascular disease) accompanying an endocrine system condition must also be assessed under the relevant tables in other chapters, including tables in Chapter 10—The urinary system.’*

Paragraph 124 of Edition 3.0 has clarified this text and provides: *‘The impairment resulting from an endocrine system condition (such as peripheral neuropathy, or peripheral vascular disease) must also be assessed under the relevant tables in other chapters, including tables in Chapter 10 – The urinary system.’*

- (b) Section 3.1 (Thyroid and parathyroid glands) – Table 3.1 (Thyroid and parathyroid glands) has been amended in response to feedback from the Royal Australasian College of Physicians by adopting the contents of the same table appearing in the *Seafarers Rehabilitation and Compensation Act 1992 – Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1*.
  - (c) Section 3.2 (Adrenal cortex and medulla) – no other substantive changes.
  - (d) Section 3.3 (Pancreas (diabetes mellitus)) – Table 3.3 (Pancreas (diabetes mellitus)) has been amended by replacing references to ‘IDDM’ and ‘NIDDM’ with ‘Type 1’ and ‘Type 2’, respectively. ‘Type 1’ is further defined to mean *‘insulin dependent diabetes mellitus and other forms of diabetes requiring insulin, such as Cystic Fibrosis related diabetes and Type 3c diabetes’*. These amendments were made in response to feedback from the Royal Australasian College of Physicians.
  - (e) Section 3.4 (Gonads and mammary glands) – no other substantive changes.
42. Chapter 4 (Disfigurement and skin disorders) substantially remakes Chapter 4 of Part 1 of Edition 2.1 with the global amendments summarised above. Any other substantive changes made to this Chapter are summarised below:
- (a) Section 4.0 (Introduction):
    - (i) Edition 2.1 provided: *‘Impairments assessed under Chapter 4 include those caused by secondary conditions accompanying an endocrine system condition. A WPI rating from a table in Chapter 3—The endocrine system should be combined with WPI ratings resulting from the secondary conditions assessed under Chapter 4.’* Paragraph 139 of Edition 3.0 has clarified this text and provides: *‘Impairments assessed under Chapter 4 – Disfigurement and skin disorders include those resulting from an endocrine system condition. A WPI rating from a table in Chapter 3 – The endocrine system may be combined with WPI ratings assessed under Chapter 4.’*
    - (ii) Edition 2.1 provided: *‘In cases where two or three of Tables 4.1, 4.2 and 4.3 apply, WPI ratings from each table can be combined using the combined values chart (see Appendix 1).’* Paragraph 141 of Edition 3.0 has clarified this text and provides: *‘In cases where two or three of Table 4.1: Skin disorders, Table 4.2: Facial disfigurement and Table 4.3: Bodily disfigurement apply to the injury resulting in impairment, WPI ratings from each table may be combined using the combined values chart (see Appendix 1).’*
  - (a) Section 4.1 (Skin disorders) – no other substantive changes.
  - (b) Section 4.2 (Facial disfigurement) – no other substantive changes.
  - (c) Section 4.3 (Bodily disfigurement) – no other substantive changes.
43. Chapter 5 (Psychiatric conditions) substantially remakes Chapter 5 of Part 1 of Edition 2.1 with the global amendments summarised above. Any other substantive changes made to this Chapter are summarised below:

- (a) Section 5.0 (Introduction) – no other substantive changes.
  - (b) Section 5.1 (Psychiatric conditions) – no other substantive changes.
44. Chapter 6 (The visual system) substantially remakes Chapter 6 of Part 1 of Edition 2.1 with the global amendments summarised above. Any other substantive changes made to this Chapter are summarised below:
- (a) Section 6.0 (Introduction) – Edition 2.1 provided: *‘Impairments assessed under Chapter 6 include those caused by secondary conditions accompanying an endocrine system condition. An impairment assessed under Chapter 3—The endocrine system should be combined with those resulting from the secondary conditions assessed under Chapter 6.’* Paragraph 152 of Edition 3.0 has clarified this text and provides: *‘Impairments assessed under Chapter 6 - The visual system include those resulting from an endocrine system condition. An impairment assessed under Chapter 3 – The endocrine system may be combined with those assessed under Chapter 6.’*
  - (b) Section 6.0.1 (Steps in determining whole person impairment) – no other substantive changes.
  - (c) Section 6.1 (Central visual acuity) – no other substantive changes.
  - (d) Section 6.1.1 (Determining the loss of central vision in one eye) – no other substantive changes.
  - (e) Section 6.2 (Determining loss of monocular visual fields) – no other substantive changes.
  - (f) Section 6.3 (Abnormal ocular motility and binocular diplopia) – no other substantive changes.
  - (g) Section 6.4 (Other ocular abnormalities) – no other substantive changes.
  - (h) Section 6.5 (Other conditions causing permanent deformities causing up to 10% impairment of the whole person) – no other substantive changes.
  - (i) Section 6.6 (Calculation of visual system impairment for both eyes) – no other substantive changes.
45. Chapter 7 (Ear, nose and throat disorders) substantially remakes Chapter 7 of Part 1 of Edition 2.1 with the global amendments summarised above. Any other substantive changes made to this Chapter are summarised below:
- (a) Section 7.0 (Introduction) – no other substantive changes.
  - (b) Section 7.1 (Hearing loss) – Edition 2.1 provided: *‘Hearing defects are assessed in accordance with the current procedures from Australian Hearing. Once the binaural percentage loss of hearing has been calculated, it is then converted to a WPI rating. The calculation for converting the percentage loss of hearing to a WPI rating is: (Percentage Loss of Hearing) / 2’.* Paragraphs 181 to 183 of Edition 3.0 have clarified this text and provide: *‘Hearing loss is to be assessed in accordance with the current procedures from Australian Hearing Services (Hearing Australia). Once the percentage of binaural hearing loss has been calculated, it is then converted to a WPI rating. The calculation for converting the percentage of binaural hearing loss to a WPI rating is: (Percentage of binaural hearing loss) / 2’.*
  - (c) Section 7.2 (Tinnitus) – no other substantive changes.

- (d) Section 7.3 (Olfaction and taste) – no other substantive changes.
  - (e) Section 7.4 (Speech) – no other substantive changes.
  - (f) Section 7.5 (Air passage defects) – no other substantive changes.
  - (g) Section 7.6 (Nasal passage defects) – no other substantive changes.
  - (h) Section 7.7 (Chewing and swallowing) – no other substantive changes.
46. Chapter 8 (The digestive system) substantially remakes Chapter 8 of Part 1 of Edition 2.1 with the global amendments summarised above. Any other substantive changes made to this Chapter are summarised below:
- (a) Section 8.0 (Introduction) – no other substantive changes.
  - (b) Section 8.0.1 (Calculation of Body Mass Index (BMI)) – no other substantive changes.
  - (c) Section 8.1 (Upper digestive tract – oesophagus, stomach, duodenum, small intestine and pancreas) – no other substantive changes.
  - (d) Section 8.2 (Lower gastrointestinal tract – colon and rectum) – no other substantive changes.
  - (e) Section 8.3 (Lower gastrointestinal tract – anus) – Table 8.3 (Lower gastrointestinal tract – anus) has been amended by adding the word ‘continual’ before the word ‘treatment’ in the first criterion for both the 20% and 30% WPI rating to better align this table with the AMA5 table on which it is based.
  - (f) Section 8.4 (Surgically created stomas) – no other substantive changes.
  - (g) Section 8.5 (Liver – chronic hepatitis and parenchymal liver disease) – no other substantive changes.
  - (h) Section 8.6 (Biliary tract) – no other substantive changes.
  - (i) Section 8.7 (Hernias of the abdominal wall) – no other substantive changes.
47. Chapter 9 (The musculoskeletal system) substantially remakes Chapter 9 of Part 1 of Edition 2.1 with the global amendments summarised above. Any other substantive changes made to this Chapter are summarised below:
- (a) Section (9.0 Introduction) – no other substantive changes.
- Part I (The lower extremities – feet and toes, ankles, knees and hips)*
- (b) Part I (Introduction):
    - (i) Edition 2.1 provided: ‘Where an arthroplasty procedure has been undertaken, refer to the American Medical Association’s Guides to the Evaluation of Permanent Impairment 5th edition 2001. Combine the total WPI rating for abnormal motion with the relevant WPI rating for arthroplasty, obtained from the American Medical Association’s Guide.’ Paragraph 222 of Edition 3.0 has amended this text in response to stakeholder feedback and provides: ‘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.’

- (ii) Edition 2.1 provided: *‘Complex regional pain syndrome in the lower extremities should be assessed using the same methodology as for the upper extremity substituting lower extremity table where appropriate. The diagnostic requirements of Figure 9-E apply.’* Paragraph 230 of Edition 3.0 has amended this text to reflect the changes to Section 9.13.3 (Chronic pain conditions) and provides: *‘A chronic pain condition affecting the lower extremities should be assessed using the same methodology as for the upper extremity in accordance with Section 9.13.3 (Chronic pain conditions).’*
- (iii) Paragraph 232 of Edition 3.0 includes the following new clarifying text: *‘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.’*
- (c) Section 9.1 (Feet and toes) – no other substantive changes.
- (d) Section 9.2 (Ankles) – no other substantive changes.
- (e) Section 9.3 (Knees) – no other substantive changes.
- (f) Section 9.4 (Hips) – no other substantive changes.
- (g) Section 9.5 (Lower extremity amputations) – no other substantive changes.
- (h) Section 9.6 (Spinal nerve root impairments and peripheral nerve injuries affecting the lower extremities) – paragraph 249 of Edition 3.0 includes the following new clarifying text: *‘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.’*
- (i) Section 9.6.1 (Spinal nerve root impairment affecting the lower extremity) – no other substantive changes.
- (j) Section 9.6.2 (Peripheral nerve injuries affecting the lower extremities) – no other substantive changes.
- (k) Section 9.7 (Lower extremity function):
  - (i) Edition 2.1 provided: *‘A secondary dysfunction consequent to disuse is only assessable under Table 9.7 if this dysfunction is permanent (that is, not likely to improve as a result of surgery, medication or other rehabilitative treatment) and there are objective clinical findings that can be validly assessed using other tables in Chapter 9, Part I—The lower extremities.’* Paragraph 257 of Edition 3.0 has amended this text for clarity and in response to stakeholder feedback and provides: *‘A secondary dysfunction (that is, impairment) consequent to disuse is only assessable under Table 9.7: Lower extremity function if this dysfunction is permanent and there are objective clinical findings that can be validly assessed using other tables in Part I – The lower extremities - feet and toes, ankles, knees and hips (see Chapter 9 – The musculoskeletal system). The impairments resulting from an injury assessed in this way are to be combined using the combined values table (see Appendix 1).’*
  - (ii) Paragraph 260 of Edition 3.0 includes the following new clarifying text: *‘However, where a pre-existing injury results in permanent impairment to the*

*same lower extremity function the subsequent injury should be assessed by reference to the functional capacities of a normal healthy person (see Principle of Assessment, paragraph 41 above).'*

*Part II (The upper extremities – hands and fingers, wrists, elbows and shoulders)*

- (l) Part II (Introduction) – the reference to ‘radiographically’ demonstrated joint instability or arthritis in Edition 2.1 is replaced with ‘objectively’ demonstrated joint instability or arthritis in paragraph 270 of Edition 3.0 to clarify and expand the circumstances where Table 9.14 (Upper extremity function) can be used.
- (m) Section 9.8 (Hands and fingers) – no other substantive changes.
- (n) Section 9.8.1 (Abnormal motion of digits) – no other substantive changes.
- (o) Section 9.8.2 (Sensory losses in the thumb and fingers) – no other substantive changes.
- (p) Section 9.9 (Wrists) – Edition 2.1 provided: ‘*Where an arthroplasty procedure has been undertaken, refer to the American Medical Association’s Guides to the Evaluation of Permanent Impairment 5th edition 2001. Combine the total WPI rating for abnormal motion with the relevant WPI rating for arthroplasty, obtained from the American Medical Association’s Guides.*’ Paragraph 295 of Edition 3.0 has amended this text in response to stakeholder feedback and provides: ‘*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).*’
- (q) Section 9.10 (Elbows) – Edition 2.1 provided: ‘*Where an arthroplasty procedure has been undertaken, refer to the American Medical Association’s Guides to the Evaluation of Permanent Impairment 5th edition 2001. Combine the total WPI rating for abnormal motion with the relevant WPI rating for arthroplasty, obtained from the American Medical Association’s Guides.*’ Paragraph 303 of Edition 3.0 has amended this text in response to stakeholder feedback and provides: ‘*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).*’
- (r) Section 9.11 (Shoulders) – Edition 2.1 provided: ‘*Where an arthroplasty procedure has been undertaken, refer to the American Medical Association’s Guides to the Evaluation of Permanent [sic] 5th edition 2001. Combine the total WPI rating for abnormal motion with the relevant WPI rating for arthroplasty, obtained from the American Medical Association’s Guides.*’ Paragraph 311 of Edition 3.0 has amended this text in response to stakeholder feedback and provides: ‘*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).*’
- (s) Section 9.12 (Upper extremity amputations) – no other substantive changes.

- (t) Section 9.13 (Neurological impairments affecting the upper extremities) – no other substantive changes.
- (u) Section 9.13.1 (Cervical nerve root impairment) – no other substantive changes.
- (v) Section 9.13.2 (Specific nerve lesions affecting the upper extremities) – no other substantive changes.
- (w) Section 9.13.3 (Chronic pain conditions):
  - (i) Edition 2.1 provided a methodology for assessing complex regional pain syndromes (CRPS) including reflex sympathetic dystrophy (CRPS I) and causalgia (CRPS II). Objective diagnostic criteria applied before the condition could be assessed. If the condition did not satisfy the diagnostic criteria, it could not be assessed under Section 9.13.3 of Edition 2.1. Edition 3.0 amends Section 9.13.3 to provide a new methodology (described in the following paragraphs) to assess 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.
  - (ii) A chronic pain condition affecting the upper or lower extremities is to be assessed using the methodology in Section 9.13.3 (Chronic pain conditions) of Edition 3.0. If the chronic pain condition affects more than one extremity (whether upper or lower), only one WPI rating obtained under Table 9.13.3 (Chronic pain conditions) may be used to assess the degree of permanent impairment of the employee. A chronic pain condition that does not affect the upper or lower extremities should be assessed in accordance with the applicable chapters in Edition 3.0. If the condition cannot be assessed in accordance with any other chapters in Edition 3.0 (that is, where an assessment of 0% or more is not possible), the degree of permanent impairment of the employee resulting from that injury is 5%.
  - (iii) If the employee suffers an injury that results in chronic pain (other than migraine or tension headache) but is not a chronic pain condition, that injury should not be assessed using the methodology in Section 9.13.3 (Chronic pain conditions) and should be assessed in accordance with the applicable chapters in Edition 3.0. If the employee suffers an injury that results in migraine or tension headache, the assessment of the degree of the permanent impairment of the employee resulting from that injury (to the extent the injury results in migraine or tension headache) is to be made in accordance with Chapter 18 of the AMA5.
  - (iv) If the condition is one that may be assessed in accordance with Section 9.13.3 (Chronic pain conditions), the Section provides steps for conducting the assessment, which includes making an assessment under Table 9.13.3 (Chronic pain conditions). To the extent that the principles of assessment permit an assessor to use their clinical judgment, the assessor should only do so if they are appropriately qualified and provide clinical justification and written reasons for their assessment.
- (x) Section 9.14 (Upper extremity function) – no other substantive changes.

*Part III (The spine)*

- (y) Part III (Introduction) – no other substantive changes.
- (z) Part III (Definitions of clinical findings for diagnosis-related estimates in assessing spinal impairment) – no other substantive changes.



- (aa) Part III (Multi-level fractures involving the spinal canal) – no other substantive changes.
  - (bb) Section 9.15 (Cervical spine – diagnosis-related estimates) – the reference to ‘radiologically demonstrated’ or ‘radiographically verified’ disc herniation in Table 9.15 (Cervical spine – diagnosis-related estimates) in Edition 2.1 is replaced with ‘objectively demonstrated’ and ‘objectively verified’ disc herniation, respectively, to clarify and expand the circumstances where Table 9.15 can be used.
  - (cc) Section 9.16 (Thoracic spine – diagnosis-related estimates):
    - (i) The reference to ‘radiologically verified’ disc herniation in Table 9.16 (Thoracic spine – diagnosis-related estimates) in Edition 2.1 is replaced with ‘objectively verified’ disc herniation to clarify and expand the circumstances where Table 9.16 can be used.
    - (ii) Edition 3.0 clarifies the criteria for a rating of 10% to 18% WPI in Table 9.16 by replacing the words ‘*or verified by electrodiagnostic testing*’ with ‘*(may be verified by electrodiagnostic testing)*’.
    - (iii) Edition 3.0 also amends the criteria for a rating of 23% and 28% WPI in Table 9.16 by replacing the words ‘*at least*’ 2.5mm translation of one vertebra on another with ‘*more than*’ 2.5mm translation of one vertebra on another to better align the table with the AMA5 table on which it is based.
  - (dd) Section 9.17 (Lumbar spine – diagnosis-related estimates) – no other substantive changes.
    - (i) The reference to ‘radiologically demonstrated’ disc herniation in Table 9.17 (Lumbar spine – diagnosis-related estimates) in Edition 2.1 is replaced with ‘objectively demonstrated’ disc herniation to clarify and expand the circumstances where Table 9.17 can be used.
    - (ii) Edition 3.0 clarifies the criteria for a rating of 10% to 13% WPI in Table 9.17 by replacing the words ‘*employees who have had surgery for radiculopathy but are now asymptomatic*’ with ‘*now asymptomatic following surgery for radiculopathy*’.
    - (iii) Edition 3.0 also amends the criteria for a rating of 28% in Table 9.17 by adding the words ‘*Loss of motion segment integrity*’ to better align the table with the AMA5 table on which it is based.
  - (ee) Section 9.18 (Fractures of the pelvis) – no other substantive changes.
48. Chapter 10 (The urinary system) substantially remakes Chapter 10 of Part 1 of Edition 2.1 with the global amendments summarised above. Any other substantive changes made to this Chapter are summarised below:
- (a) Section 10 (Introduction) – no other substantive changes.
  - (b) Section 10.1 (The upper urinary tract) – no other substantive changes.
  - (c) Section 10.2 (Urinary diversion) – no other substantive changes.
  - (d) Section 10.3 (Lower urinary tract) – no other substantive changes.
49. Chapter 11 (The reproductive system) substantially remakes Chapter 11 of Part 1 of Edition 2.1 with the global amendments summarised above. Any other substantive changes made to this Chapter are summarised below:

- (a) Section 11.0 (Introduction) – no other substantive changes.
  - (b) Section 11.1 (Male reproductive system) – no other substantive changes.
  - (c) Section 11.1.1 (Male reproductive organs – penis) – no other substantive changes.
  - (d) Section 11.1.2 (Male reproductive organs – scrotum) – no other substantive changes.
  - (e) Section 11.1.3 (Male reproductive organs – testes, epididymes and spermatic cords) – no other substantive changes.
  - (f) Section 11.1.4 (Male reproductive organs – prostate and seminal vesicles) – no other substantive changes.
  - (g) Section 11.2 (Female reproductive system) – no other substantive changes.
  - (h) Section 11.2.1 (Female reproductive organs – vulva and vagina) – no other substantive changes.
  - (i) Section 11.2.2 (Female reproductive organs – cervix and uterus) – no other substantive changes.
  - (j) Section 11.2.3 (Female reproductive organs – fallopian tubes and ovaries) – no other substantive changes.
50. Chapter 12 (The neurological system) substantially remakes Chapter 12 of Part 1 of Edition 2.1 with the global amendments summarised above. Any other substantive changes made to this Chapter are summarised below:
- (a) Section 12 (Introduction) – no other substantive changes.
  - (b) Section 12.1 (Disturbances of levels of consciousness and awareness) – no other substantive changes.
  - (c) Section 12.1.1 (Permanent disturbances of levels of consciousness and awareness) – no other substantive changes.
  - (d) Section 12.1.2 (Epilepsy, seizures and convulsive disorders) – no other substantive changes.
  - (e) Section 12.1.3 (Sleep and arousal disorders) – no other substantive changes.
  - (f) Section 12.2 (Impairment of memory, learning, abstract reasoning and problem solving ability) – no other substantive changes.
  - (g) Section 12.3 (Communication impairments – dysphasia and aphasia) – no other substantive changes.
  - (h) Section 12.4 (Emotional or behavioural impairments) – no other substantive changes.
  - (i) Section 12.5 (Cranial nerves) – no other substantive changes.
  - (j) Section 12.5.1 (The olfactory nerve (I)) – no other substantive changes.
  - (k) Section 12.5.2 (The optic nerve, the oculomotor and trochlear nerves and the abducens (II, III, IV and VI)) – no other substantive changes.
  - (l) Section 12.5.3 (The trigeminal nerve (V)) – no other substantive changes.

- (m) Section 12.5.4 (The facial nerve (VII)) – no other substantive changes.
  - (n) Section 12.5.5 (The auditory nerve (VIII)) – no other substantive changes.
  - (o) Section 12.5.6 (The glossopharyngeal, vagus, spinal accessory and hypoglossal nerves (IX, X, XI and XII)) – no other substantive changes.
  - (p) Section 12.6 (Neurological impairment of the respiratory system) – no other substantive changes.
  - (q) Section 12.7 (Neurological impairment of the urinary system) – no other substantive changes.
  - (r) Section 12.8 (Neurological impairment of the anorectal system) – no other substantive changes.
  - (s) Section 12.9 (Neurological impairment affecting sexual function) – no other substantive changes.
51. Chapter 13 (The haematopoietic system) substantially remakes Chapter 13 of Part 1 of Edition 2.1 with the global amendments summarised above. Any other substantive changes made to this Chapter are summarised below:
- (a) Section 13 (Introduction) – no other substantive changes.
  - (b) Section 13.1 (Anaemia) – no other substantive changes.
  - (c) Section 13.2 (Leukocyte abnormalities or disease) – no other substantive changes.
  - (d) Section 13.3 (Haemorrhagic disorders and platelet disorders) – no other substantive changes.
  - (e) Section 13.4 (Thrombotic disorders) – the reference to Table 1.6 (Raynaud’s Disease) in Edition 2.1 is replaced with Table 1.5 (Peripheral vascular disease of the upper extremities) consistent with earlier references appearing at paragraphs 75, 88 and 90.

***Division 2 – Assessment of the degree of non-economic loss suffered by an employee as a result of an injury or impairment***

52. Division 2 (Assessment of the degree of non-economic loss suffered by an employee as a result of an injury or impairment) substantially remakes Division 2 of Chapter 1 of Part 1 of Edition 2.1 with the global amendments summarised above. Any other substantive changes made to this Division are summarised below:
- (a) Introduction – paragraph 473 of Edition 3.0 includes the following new clarifying text: *‘In conducting an assessment, the assessor must have regard to the Principles of Assessment and the definitions contained in the Glossary.’*
  - (b) Section B1 (Pain) – no other substantive changes.
  - (c) Section B2 (Suffering) – no other substantive changes.
  - (d) Section B3 (Loss of amenities) – no other substantive changes.
  - (e) Section B4 (Other loss) – no other substantive changes.
  - (f) Section B5 (Loss of expectation of life) – no other substantive changes.

(g) Section B6 (Calculation of non-economic loss) – no other substantive changes.

***Division 3 – Calculation of the total entitlement to compensation for permanent impairment and non-economic loss***

53. Division 3 (Calculation of the total entitlement to compensation for permanent impairment and non-economic loss) substantially remakes Division 3 of Chapter 1 of Part 1 of Edition 2.1 with the global amendments summarised above and clarifies the text in the worksheet used for calculating total entitlement.

***Appendix 1 – Combined values chart***

54. Appendix 1 (Combined values chart) substantially remakes Appendix 1 of Chapter 1 of Part 1 of Edition 2.1.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Safety, Rehabilitation and Compensation Act 1988 – Guide to the Assessment of the Degree of Permanent Impairment Edition 3.0***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The *Safety, Rehabilitation and Compensation Act 1988 (SRC Act)* establishes the workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations. The SRC Act provides for the payment of lump sum compensation for permanent impairment and non-economic loss, subject to the provisions in sections 24 to 28 of that Act.

Pursuant to section 28 of the SRC Act, Comcare may prepare a Guide to the Assessment of the Degree of Permanent Impairment (**Guide**) setting out:

- (a) criteria by reference to which the degree of permanent impairment of an employee resulting from an injury shall be determined;
- (b) criteria by reference to which the degree of non-economic loss suffered by an employee as a result of an injury or impairment shall be determined; and
- (c) methods by which the degree of permanent impairment and the degree of non-economic loss, as determined under those criteria, shall be expressed as a percentage.

The percentage of permanent impairment or non-economic loss suffered by an employee as a result of an injury ascertained under the methods referred to in paragraph (c) above may be 0% (subsection 28(5) of the SRC Act).

A Guide prepared in accordance with section 28 of the SRC Act must be approved by the Minister (subsection 28(3) of the SRC Act). An approved Guide is a legislative instrument made by the Minister on the day on which the Guide is approved by the Minister (subsection 28(3A) of the SRC Act).

The current approved Guide, the *Safety, Rehabilitation and Compensation Act 1988 – Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1 (Edition 2.1)*, will sunset on 1 April 2023 by operation of the *Legislation Act 2003*.

The purpose of this Instrument is to repeal (for clarity only – see sunset date above) and substantially remake Part 1 of Edition 2.1 with some differences, which are summarised below. Edition 2.1 substantially remade Edition 2.0, which had been in operation since 2006, with some changes to reflect judicial interpretation and to correct errata.

This Instrument approves Edition 3.0 of the Guide prepared by Comcare (**Edition 3.0**), which appears at Schedule 1 to the Instrument. The main differences between Edition 2.1 and Edition 3.0 of the approved Guide are summarised as follows:

- Part 2 of Edition 2.1 has not been remade in Edition 3.0 because defence-related claims for permanent impairment and non-economic loss are no longer assessable under the SRC Act

and are instead assessable under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*, which is administered by the Minister for Veterans' Affairs.

- Introduction – Edition 3.0: simplifies the rules concerning application of the approved Guide; clarifies the entitlement to compensation for permanent impairment that is a hearing loss or constituted by the loss, or the loss of the use, of a finger or toe, or the loss of the sense of taste or smell under the SRC Act; confirms that the whole person impairment (**WPI**) methodology used in the approved Guide can result in *either* an assessment of 0% if there is no increase in the employee's WPI when assessed in accordance with the approved Guide *or* less than the threshold for compensation under section 24 of the SRC Act even if there is an increase in the employee's WPI when assessed in accordance with the approved Guide; and clarifies the survival of claims for permanent impairment and non-economic loss compensation under the SRC Act.
- Principles of Assessment – Edition 3.0: clarifies the methodology for assessing permanent impairment when the employee has a pre-existing condition or is deceased; and provides a methodology for an assessor to use their use clinical judgment if an impairment is of a kind that cannot be assessed in accordance with either the provisions of the approved Guide or the fifth edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (2001) (**AMA5**).
- Glossary – Edition 3.0 adds definitions for 'assessor' in relation to an employee and 'binaural hearing loss'.
- Chapter 3 (The endocrine system) – Edition 3.0 clarifies the introduction and amends Table 3.1 (Thyroid and parathyroid glands) and Table 3.3 (Pancreas (diabetes mellitus)) in response to feedback from the Royal Australasian College of Physicians.
- Chapter 4 (Disfigurement and skin disorders) – Edition 3.0 clarifies the introduction in relation to impairments resulting from an endocrine system condition.
- Chapter 6 (The visual system) – Edition 3.0 clarifies the introduction in relation to impairments resulting from an endocrine system condition.
- Chapter 8 (The digestive system) – Edition 3.0 amends Table 8.3 (Lower gastrointestinal tract – anus) to better align this table with the AMA5 table on which it is based.
- Chapter 9 (The musculoskeletal system):
  - Part I (The lower extremities) – Edition 3.0: amends the introduction in relation to the methodology for assessments where a hip or knee arthroplasty procedure has been undertaken and where a chronic pain condition affects the lower extremities; clarifies the threshold for compensation for an injury resulting in a permanent impairment constituted by the loss, or the loss of the use, of a toe; clarifies Section 9.7 (Lower extremity function) by providing that secondary dysfunction (that is, impairment) of the lower extremity consequent to disuse are to be combined; and clarifies Section 9.7 in relation to the methodology for assessments where a pre-existing injury results in permanent impairment to the same lower extremity function.
  - Part II (Upper extremities) – Edition 3.0: amends the introduction to require, among other criteria, 'objectively' (as opposed to 'radiographically') demonstrated joint instability or arthritis before Table 9.14 (Upper extremity function) can be used; amends Sections 9.9 (Wrists), 9.10 (Elbows) and 9.11 (Shoulders) in relation to the methodology for assessments where an arthroplasty procedure has been undertaken; amends Section 9.13.3 to provide for a new methodology to assess 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; and amends Section 9.14 (Upper extremity function) to reflect the requirement for ‘objectively’ (as opposed to ‘radiologically’) demonstrated joint instability or arthritis or arthroplasty before Table 9.14 (Upper extremity function) can be used.

- Part III (The spine) – Edition 3.0 amends Table 9.15 (Cervical spine – diagnosis-related estimates), Table 9.16 (Thoracic spine – diagnosis-related estimates) and Table 9.17 (Lumbar spine – diagnosis-related estimates) to clarify and expand when they apply and to reflect the requirement for ‘objectively’ (as opposed to ‘radiologically’) demonstrated/verified radiculopathy, and in the case of Table 9.16 and Table 9.17, to better align those tables with the corresponding tables in AMA5.
- Edition 3.0 includes several global amendments to: improve clarity, internal referencing, internal consistency, consistency with the text of the SRC Act and consistency with source material; update and correct references to entities and source material; correct typographical errors; remove redundant terms; adopt gender-neutral language where possible; clarify whether one, some or all criterion in a table are required for a particular WPI rating; simplify tables to improve online presentation; and add hyperlinks to improve online navigation.

### **Human rights implications**

This Instrument engages the right to social security as set out in Article 9 of the International Covenant on Economic, Social and Cultural Rights (**ICESCR**).

Article 9 of the ICESCR provides for the right of everyone to social security, including social insurance. General Comment 19 by the Committee on Economic, Social and Cultural Rights sets out the essential elements of the right to social security, including that ‘*States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work*’.<sup>4</sup> Workers’ compensation is analogous to social insurance in that it provides for payment of wages and medical costs to employees for injuries occurring as a result of their employment.

The SRC Act ensures the protection of injured workers including by way of lump sum compensation for permanent impairment and non-economic loss. This Instrument provides the means by which the entitlement of injured workers to such compensation is to be assessed in accordance with the SRC Act. As Edition 2.1 will sunset on 1 April 2023, without this Instrument in place, the entitlements of injured workers to compensation for permanent impairment and non-economic loss cannot be assessed from that date.

### **Conclusion**

This Legislative Instrument is compatible with human rights because it promotes the protection of human rights.

**The Hon Tony Burke MP**

Minister for Employment and Workplace Relations

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<sup>4</sup> Committee on Economic, Social and Cultural Rights, *General Comment 19: The Right to Social Security (art. 9)*, U.N. Doc E/C.12/GC/19 (2008), [17].