

EXPLANATORY STATEMENT

Safety, Rehabilitation and Compensation (Defence-related Claims) – Guide to the Assessment of the Degree of Permanent Impairment 2023

EMPOWERING PROVISIONS

Section 28 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) DRCA 1988* (the **DRCA**).

PURPOSE

The purpose of the *Safety, Rehabilitation and Compensation (Defence-related Claims) – Guide to the Assessment of the Degree of Permanent Impairment 2023* (the **Instrument**), is to provide a new Minister-approved Guide to the Assessment of the Degree of Permanent Impairment (the **Guide**). The Instrument sets out the criteria by which the degree of permanent impairment (**PI**) and non-economic loss (**NEL**) suffered by an injured employee shall be assessed for the purposes of the payment of compensation under the DRCA. Employee is as defined in section 5 of the DRCA and is not limited to current employees of the Defence Force.

Section 28 of the DRCA provides that the *Military Rehabilitation and Compensation Commission* (the **MRCC**) may prepare a written document, to be called *the Guide to the Assessment of the Degree of Permanent Impairment*, and may, from time to time, vary or revoke the approved Guide.

In accordance with section 28 of the DRCA, the MRCC has prepared the Instrument. The Guide in Schedule 1 to the Instrument is approved by the Minister for Veterans' Affairs. The Instrument will come into effect immediately after the commencement of the *Safety, Rehabilitation and Compensation DRCA 1988 – Guide to the Assessment of the Degree of Permanent Impairment Edition 3.0* (the **New Comcare Guide**) which will have the effect of repealing the *Safety, Rehabilitation and Compensation Act 1988-Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1* (the **Current PI Guide**). The Current PI Guide, made under the *Safety, Rehabilitation and Compensation Act 1988* (the **SRCA**) includes provisions applying to the assessment of permanent impairment under the DRCA (see below).

The DRCA provides in subsection 28(3A) that once the Guide is prepared by the MRCC and approved by the Minister, it is a legislative instrument made by the Minister. This attracts the requirements of the *Legislation Act 2003* in relation to registration, tabling, disallowance and sunseting of the Instrument, and has the effect also of nominating the Minister as the rule-maker of the Instrument for the purposes of the DRCA.

Currently, the methodology for assessing the degree of PI and NEL for defence-related claims under the DRCA is provided by Part 2 of the Current PI Guide which was made by Comcare and used under the DRCA.

The Current PI Guide consists of two parts:

- Part 1 is utilised by Comcare and their licensees for the assessment of claims under the SRCA; and
- Part 2 is utilised by DVA, on behalf of the MRCC, for the assessment of claims for serving and ex-serving Australian Defence Force members under the DRCA.

At the time the DRCA was enacted, specific provisions were included in the legislation to allow for the Current PI Guide to be used to assess PI and NEL claims under the DRCA, until the time came when a separate Instrument is prepared under section 28 of the DRCA.

The Current PI Guide is due to expire (sunset) on 1 April 2023. Prior to this, Comcare will replace the Current PI Guide with a New Comcare Guide for the purposes of the SRCA, remaking Part 1 only, and will not be remaking Part 2 of the Current PI Guide.

To allow for the ongoing assessment of claims for PI and NEL under the DRCA, the MRCC is therefore required to prepare a standalone Instrument under the DRCA before the Current PI Guide is repealed.

In preparing the Instrument, the MRCC has, as required under subsection 28(6) of the DRCA, had regard to medical opinion concerning the nature and effect (including possible effect) of the injury and the extent (if any) to which impairment resulting from the injury, or NEL resulting from the injury or impairment, may reasonably be capable of being reduced or removed.

Schedule 1 to the Instrument sets out the Guide which is organised by body system chapters designed to cover a broad range of systemic injuries and diseases which can effect a body part or bodily system. Each of the chapters is then organised into impairment tables for each sub-system of the body part or system. The impairment tables provide values of whole person impairment, expressed as a percentage, against specific criteria and are used to determine the amount of compensation payable under sections 24 and 25 of the DRCA. The Guide also contains tables for assessing non-economic loss by assessing the pain, suffering and loss of amenities suffered by the employee. These tables are sorted into the sub-tables for pain, suffering, mobility, social relationships, recreation and leisure activities and other losses and used to determine the amount of compensation payable under section 27 of the DRCA.

For an employee to be eligible for compensation, the impairment must be permanent (likely to continue indefinitely) and the degree of impairment must constitute at least 10 percent (except for hearing loss, loss of the use of fingers or toes or sense of smell or taste).

Where PI compensation is payable under section 24, a further lump sum amount is payable under section 27 of the DRCA for NEL. The NEL compensation provides for the impact of the injury on the employee's life and is divided into two parts, a Part A and Part B amount.

Sections 24 and 27 of the DRCA also specify the maximum amount of compensation payable for PI and NEL. The maximum amount of PI and NEL compensation payable is indexed annually on 1 July by the Consumer Price Index. From 1 July 2022 the maximum amount of compensation payable for:

- Permanent impairment is \$204,880.70, and
- Non-economic loss (Part A) is \$38,415.15 and (Part B) is \$38,415.15.

PI and NEL compensation under DRCA is provided in the form of a tax-free lump sum, and is paid in addition to any ongoing entitlement to compensation for incapacity, medical treatment, rehabilitation, household or attendant care services and aids, modifications and appliances.

STRUCTURE AND DESIGN

A new Introduction is provided in the Guide. As this Instrument now provides a standalone Guide for the assessment of defence-related claims under DRCA, the introductory material provides necessary information for those that will be using and applying this Guide. This introductory material is substantially the same as what is currently provided in the Current PI Guide, or where changes have been made in this Guide, such as introducing 'survival of claims', the MRCC have aligned where possible and/or relevant in the context of defence-related claims.

Changes to the form and content have been made to comply with modern drafting practices and principles as recommended by the Office of Parliamentary Counsel for the making of Commonwealth legislative Instruments.

Gender neutral language has also been introduced in the Guide, where possible or appropriate.

Paragraph numbering is introduced in the Introduction and Principles of assessment sections of the Guide for readability and to assist with referencing. The Guide retains the references to Divisions 1 and 2, Impairment Tables and Figures from Part 2 of the Current PI Guide without any substantive changes. The Guide retains the method for calculating the total entitlement to compensation for PI and NEL from the Current PI Guide under a new Division 3 to ensure greater clarity around the method of assessment and calculation of final scores and the amount of compensation payable.

In summary, the Guide in substance reproduces Part 2 of the Current PI Guide along with some new introductory material. The only changes proposed to the Current PI Guide are necessary minor structural changes and clarifications and corrections of known errors. A summary of these changes is provided in **Attachment A**.

The approach taken in preparing the Guide ensures that no substantive changes are made that would affect compensation outcomes for veterans. This approach also ensures that no additional pressure or training will be required for those who use and apply the Guide to determine veterans' compensation claims that could potentially impact or delay the claims processing times for veterans. Finally, this approach is designed to minimise any risk that this Guide will not be in effect immediately after the time the Current PI Guide is repealed.

CONSULTATION

DVA undertook consultation, on behalf of the MRCC, between 6 February 2023 and 20 February 2023 in which a draft of the Instrument and an overview of the Guide was made available on the DVA website and stakeholders were notified via a DVA News Article on the DVA website. Ex-service organisations and other stakeholders were also notified via the National Consultation Framework and via the Department of Defence.

DVA received 3 submissions during the consultation period, in which feedback was generally positive. Where appropriate, stakeholder feedback was taken into consideration when finalising the Instrument (the Guide) and the Explanatory Statement. Stakeholders generally noted no substantive changes had been made in the draft Guide that would affect compensation outcomes for veterans. Stakeholders noted new introductory material that is substantially the same as that provided in Part 1 of the Current PI Guide.

Finally, stakeholders noted that further changes to this Guide could be made to harmonise the veterans' legislative frameworks. The Australian Government is focussed on improving and

adapting to the needs of all veterans and their families and will explore future options for the harmonisation of veterans' compensation. In light of this, the simple re-make of Part 2 of the Current PI Guide in its current form ensures that it can commence on or before 1 April 2023, without affecting outcomes for veterans, and noting that the assessment framework for PI and NEL may be considered in the future as part of the broader simplification and harmonisation of veterans' legislation.

External consultation has been undertaken with Comcare (and other Government agencies where appropriate) to ensure that the commencement of this Guide aligned with the making and commencement of the New Comcare Guide, which had the effect of repealing the Current PI Guide. Additionally, Comcare utilises a similar framework and methodology to assess claims for PI and NEL and therefore consultation also ensured consistency where possible, such as with the style and layout, and when appropriate, such as with gender neutral language in preparing the Guide.

In these circumstances it is considered that the requirements of section 17 of the Legislation Act 2003 have been met.

DETAILS/OPERATION

The Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

MERITS REVIEW

Decisions under sections 24, 25 and 27 based on this Guide are reviewable as provided under the DRCA and are reviewable by the Administrative Appeals Tribunal (refer to Part VI of the DRCA).

RETROSPECTIVITY

There is no retrospective operation.

FURTHER EXPLANATION OF PROVISIONS

Details of the Instrument are set out in **Attachment C**.

Attachment A**Schedule of Amendments in the Guide compared to Part 2 of the Current PI Guide¹**

Content	Page
Schedule 1 Summary: <ul style="list-style-type: none"> › An expanded table of contents including subheadings under ‘Introduction’ and ‘Principles of assessment’ are added to assist the user. › Hyperlinks are added throughout to assist the user. › Numbered paragraphs are added to assist referencing. › Subsections and legislative notes are added for greater clarity. › References to subsection titles and paragraph numbers are added to assist the user. › Typographical and transcription errors are corrected. › Gender neutral language is adopted, where possible. › Some text is moved from the ‘Glossary’ to the new Introduction to avoid duplication. 	7
Introduction	7
1 General <ul style="list-style-type: none"> › The <i>Safety, Rehabilitation and Compensation (Defence-Related Claims) Act 1988</i> (the DRCA) provides for payment of lump sum compensation for permanent impairment and non-economic loss resulting from injuries suffered by members of the Defence Force while engaged in defence service before 1 July 2004. 	7
2 Structure of this Guide <ul style="list-style-type: none"> › Improved structure with 3 separate divisions: <ul style="list-style-type: none"> • Division 1 is used to assess the degree of permanent impairment of an employee resulting from an injury, • Division 2 is used to assess the degree of non-economic loss suffered by an employee, • Division 3 is used to calculate the total entitlement to compensation for permanent impairment and non-economic loss. 	7
3 Application of this Guide <ul style="list-style-type: none"> › Simplified application provisions where all claims, requests for re-assessments and requests for review received after commencement date are assessable under the <i>Guide to the Assessment of the Degree of Permanent Impairment 2023</i>. › To avoid duplication, this section includes information held in subsection 11 of the Current PI Guide, with minor changes for the DRCA context. 	7
4 Whole person impairment <ul style="list-style-type: none"> › Clarified the whole person impairment methodology and possibility of 0% rating. › To avoid duplication, some text is moved from the ‘Glossary’ to this section. 	8

¹ *Safety, Rehabilitation and Compensation Act 1988—Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1[F2012C00537]*

5 Entitlements under the DRCA	9
› Clarified threshold for fingers, toes, taste and smell.	
› Clarified threshold for hearing loss.	
› Clarified the relevant provisions of the DRCA.	
6 Non-economic Loss	9
› Clarified the relevant provisions of the DRCA.	
› Clarified the relevant division of the Guide to assess non-economic loss.	
7 Compensation payable	10
› Clarified the relevant provisions of the DRCA.	
› Clarified indexation of compensation rates.	
8 Interim and final assessments	10
› Clarified the relevant provisions of the DRCA.	
9 Increase in degree of whole person impairment	10
› Clarified the relevant provisions of the DRCA.	
10 Survival of claims	11
› New content added to assist the user.	
Principles of Assessment	12
Summary:	12
› No changes have been made to Principles of Assessment that would alter outcomes on assessments.	
› Numbered paragraphs to assist referencing.	
› Subsections and legislative notes are added for greater clarity.	
› Terms used in the Guide and defined in the DRCA are provided accompanied by the relevant section of the DRCA, where applicable.	
› Typographical and transcription errors corrected.	
› Gender neutral language adopted, where possible.	
› Minor stylised changes and configuration to certain paragraphs have been made to assist the user, with no change to assessment methodologies.	
11 Impairment and non-economic loss	12
› Sub-headings added to assist the user.	
› Minor revision of content to clarify the DRCA definitions of impairment and non-economic loss.	
12 Employability and incapacity	12
› No substantive changes.	
13 Permanent impairment	12
› Minor revision of title to include the word ‘permanent’.	
› Minor revision of content to clarify the DRCA definition of permanent.	
14 Impairment tables	13
› Minor revision of title to remove the word ‘the’.	
15 Gradations of impairment	13
› Clarified the location of tables in Division 1 of this Guide.	
› References to ‘percent’ are substituted with %.	

<p>16 Combined impairments</p> <ul style="list-style-type: none"> › Sub-headings are added to assist the user. › Clarified the location of tables as Division 1 of this Guide. › Minor revision of content, specifically omitting the reference to ‘adding scores together’ to clarify the methodology of assessing multiple injuries in respect to Court decisions. 	13
<p>17 Double assessment</p> <ul style="list-style-type: none"> › Clarified the location of content relating to combined impairments of this Guide. › Minor revision to location of the Table 14.1 Combined Values Chart in this Guide. 	14
<p>18 Fingers and toes</p> <ul style="list-style-type: none"> › No substantive changes. 	14
<p>19 Exceptions to Division 1</p> <ul style="list-style-type: none"> › Minor revision of title to remove ‘of this Guide’. › Replaced ‘Part 2’ with ‘Division 1’. › Replaced reference to the American Medical Association’s Guide to the Evaluation of Permanent Impairment to ‘AMA5’. 	14
<p>20 Interim assessments</p> <ul style="list-style-type: none"> › Relevant section of the DRCA added to assist the user. 	14
<p>21 Likelihood of reduction in degree of impairment</p> <ul style="list-style-type: none"> › No substantive changes. 	14
<p>22 Aggravation</p> <ul style="list-style-type: none"> › No substantive changes. 	15
<p>Reference</p> <p>Summary:</p> <ul style="list-style-type: none"> › Minor revision of location of references from Part 2 of the Current PI Guide. › Substituted the word ‘references’ to ‘reference’ in title to reflect the single reference. 	15
<p>23 Reference</p> <ul style="list-style-type: none"> › Reference to Kamburoff, Petia L and Woitowitz, HJ & RH, (1972) is removed as the complete reference cannot be confirmed in the available literature. 	15
<p>Glossary</p> <ul style="list-style-type: none"> › Any expression used in this Guide and defined in the DRCA is listed (with the relevant section) to assist the user. 	16
<p>23 Definitions</p> <ul style="list-style-type: none"> › The term ‘disease’ has been added to take its ordinary meaning when referred to in the tables of Division 1 of this Guide. › The abbreviation ‘i.e.’ replaced by ‘that is’ in the ‘activities of daily living’ definition. › ‘Loss of amenities’ is clarified to be ‘in relation to an employee’. › Pain and suffering is defined separately to assist the user. › Added terms: AMA2, AMA5, AMA Guides, commencement day, DRCA, %NEL, re-assessment, WPI, %WPI. › Whole person impairment is clarified as defined in Section 4 (Introduction) and Section 11 to 22 (Principles of Assessment). 	16

24 Relationship with the DRCA	16
<ul style="list-style-type: none"> › A contrary intention reference is added to cover the added definition of ‘disease’ in the Glossary of this Guide. 	
Division 1	18
Summary:	
<ul style="list-style-type: none"> › No substantive changes have been made to the impairment tables in Division 1 of this Guide that would alter outcomes on assessments. › Minor stylistic adjustments have been made. › Corrections to a known error have been made to Table 4.1. › Corrections to ‘notes’ following two tables have been made (Table 12.2 and 12.4) › References to percentage whole person impairment are replaced with %WPI. This term is defined in the Glossary of this Guide. › References to whole person impairment are replaced with WPI. This term is defined in the Glossary of this Guide. › Chapter numbers are added to assist the user. 	
Chapter 1 Cardio-vascular system	18
<ul style="list-style-type: none"> › No substantive changes. 	
Chapter 2 Respiratory system	21
<ul style="list-style-type: none"> › No substantive changes. › Reference to Kamburoff, Petia L and Woitowitz, HJ & RH, (1972) on Figure 2.2 is removed as the complete reference cannot be confirmed in the available literature. The figure itself is retained. 	
Chapter 3 Endocrine system	24
<ul style="list-style-type: none"> › Minor change to table title to add ‘Endocrine system’. 	
Chapter 4 Skin disorders	25
<ul style="list-style-type: none"> › Table 4.1 (Functional Loss): The word ‘major’ in the description for 60% whole person impairment is substituted with the word ‘minor’ in reference to the appropriate degree of interference with activities of daily living. 	
Chapter 5 Psychiatric conditions	27
<ul style="list-style-type: none"> › No substantive changes. 	
Chapter 6 Visual system	29
<ul style="list-style-type: none"> › No substantive changes. 	
Chapter 7 Ear, nose and throat disorders	30
<ul style="list-style-type: none"> › No substantive changes. 	
Chapter 8 Digestive system	31
<ul style="list-style-type: none"> › No substantive changes. 	
Chapter 9 Musculo-skeletal system	35
<ul style="list-style-type: none"> › No substantive changes. 	
Chapter 10 Urinary System	40
<ul style="list-style-type: none"> › No substantive changes. 	
Chapter 11 Reproductive system	42
<ul style="list-style-type: none"> › No substantive changes. 	

<p>Chapter 12 Neurological function</p> <ul style="list-style-type: none"> › Minor stylistic adjustments made so format aligns with other chapters. › ‘Note’ under Table 12.2 is corrected of a typographical error where the reference to the hearing loss table should be Table 7.1. › ‘Note’ under Table 12.4 is corrected of a typographical error where the reference to the psychiatric conditions table should be Table 5.1. 	44
<p>Chapter 13 Miscellaneous</p> <ul style="list-style-type: none"> › No substantive changes. 	50
<p>Chapter 14 Combined values</p> <ul style="list-style-type: none"> › Appendix 1 is renamed to Chapter 14 as it is contained within the document, rather than at the end, and therefore is not a true Appendix. › No changes have been made to Table 14.1 combined values chart that would alter outcomes on assessments. 	52
<p>Division 2</p> <p>Summary:</p> <ul style="list-style-type: none"> › Stylistic adjustments are made to the layout of this Division. › Improvements to formatting are made, to assist the user. › Clearly labelled worksheets are added, to assist the user. › No changes have been made to Division 2 that would alter outcomes on assessments. 	56
<p>Non-economic loss</p> <ul style="list-style-type: none"> › Stylistic adjustments are made to the layout of this division. › Improvements to formatting are made, to assist the user. › Clearly labelled worksheets (B1 to B5) are added, to assist the user. 	56
<p>Division 3</p> <p>Summary:</p> <ul style="list-style-type: none"> › Stylistic adjustments are made to the layout of this division. › Improvements to formatting are made, to assist the user. › Clearly labelled worksheet (C1) is added, to assist the user. › No changes have been made to Division 3 that would alter outcomes on assessments. 	63
<p>Total entitlement to compensation for permanent impairment and non-economic loss</p> <ul style="list-style-type: none"> › This Division replaces ‘Table 6: Final calculation’ in Division 2 of Part 2 in the Current PI Guide with ‘Worksheet C1’, to assist the user with a distinct section for dealing with assessing and calculating the total entitlement. While providing structure and a clear method for calculating the total entitlement, there have been no changes made that would alter outcomes on assessments. › A link to the DVA website for current payment rates is added, to assist the user. 	63

Attachment B**Statement of Compatibility with Human Rights**

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

Safety, Rehabilitation and Compensation (Defence-related Claims) – Guide to the Assessment of the Degree of Permanent Impairment 2023

The 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*.

The Instrument engages and promotes the right to social security under article 9 of the *International Covenant on Economic Social and Cultural Rights (ICESCR)*.

Right to social security

The right to social security is contained in article 9 of the ICESCR. The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The Instrument promotes the right to social security by allowing and providing guidance for the calculation of compensation payments to veterans and members of the Australian Defence Force (current and former) under the *Safety Rehabilitation and Compensation (Defence-related Claims) Act 1988 (DRCA)* with injuries causing permanent impairment. Where an injury to an employee results in a permanent impairment, the Commonwealth is liable to pay compensation to the employee in respect of the injury based on the degree of permanent impairment and non-economic loss they suffer. In addition, if the injury subsequently results in increased impairment the employee may request a re-assessment for additional compensation. As of 1 July 2022, the lump sum compensation provided under section 24 (including any re-assessment of the impairment) is a maximum amount of \$204,880.70 (indexed on 1 July each year).

Conclusion

The attached Instrument is compatible with human rights because it promotes the right to social security.

Matthew James Keogh
Minister for Veterans' Affairs

Rule-Maker

Attachment C**Details of the *Safety, Rehabilitation and Compensation (Defence-related Claims) – Guide to the Assessment of the Degree of Permanent Impairment 2023*****Section 1 – Name**

This section provides that the name of the Instrument is the *Safety, Rehabilitation and Compensation (Defence-related Claims) – Guide to the Assessment of the Degree of Permanent Impairment 2023* (the **Instrument**).

Section 2 – Commencement

This section sets out the date on which the Instrument commences operation.

The Instrument will commence immediately after the commencement of the *Safety, Rehabilitation and Compensation Act 1988—Guide to the Assessment of the Degree of Permanent Impairment Edition 3.0*. This is a legislative instrument that is made under section 28 of the *Safety, Rehabilitation and Compensation Act 1988* (the **SRCA**). The commencement will allow the Instrument to commence in time to take over the work done by the Current PI Guide.

Section 3 – Authority

This section sets out the legislative authority for the Instrument.

Subsection 3(1) provides that the legislative authority for the Instrument is section 28 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (the **DRCA**).

Pursuant to subsection 28(3) of the DRCA, a Guide prepared under subsection 28(1) must be approved by the Minister. Subsection 3(2) of the Instrument provides that the Guide as set out in Schedule 1 to this Instrument is approved by the Minister.

Section 4 – Guide – Schedule 1

This section provides that Schedule 1 to the Instrument sets out the *Guide to the Assessment of the Degree of Permanent Impairment 2023* (the **Guide**).

Schedule 1 – Guide to the Assessment of the Degree of Permanent Impairment 2023**Introduction****General**

Paragraphs 1 and 2 provide a general overview of the Guide. The purpose of the Guide is to set out the amount of compensation payable for PI and NEL from injuries suffered by employees is to be assessed by reference to the degree of PI and the degree of NEL as determined in the Guide.

Structure of the Guide

The Guide is divided into 3 divisions. These are:

- Division 1 is used to assess the degree of permanent impairment of an employee resulting from an injury.
- Division 2 is used to assess the degree of non-economic loss suffered by an employee.
- Division 3 is used to calculate the total entitlement to compensation for PI and NEL, based on the assessment in Division 1 and Division 2.

In addition to these divisions, the Guide contains the List of Tables and Figures, Principles of assessment and Glossary containing information relevant to the interpretation and application of the above divisions.

Application of this Guide

Paragraphs 7, 8 and 9 provides that this Guide applies to:

- the assessment or re-assessment of the degree of PI resulting from an injury or the degree of NEL suffered by an employee as a result of an injury or impairment relating to a claim for compensation under section 24, subsection 25(4) or (5) or section 27 of the DRCA if the claim is received by the relevant authority on or after the day this instrument commences;
- re-assessment of claims received before commencement day.
- the reconsideration of determination that relates to the above assessment or reassessment of the claims as per section 62 of the DRCA; and
- reviews by the Administrative Appeals Tribunal of decisions made under subsection 38(4) or section 62 of the DRCA that relates to the above assessment or reassessment.

The claim for assessment must be received by the relevant authority on or after the commencement day of this Guide. In relation to the request for re-assessment, the request must be received on or after the commencement day for the Guide to apply. Commencement day is defined in section 2 of this Guide.

Subject to the operation of paragraphs 7, 8 and 9 as discussed above, any relevant earlier Guide in force before the commencement day of this Guide including the *Safety, Rehabilitation and Compensation Act 1988—Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1* [F2012C00537], will continue to be in force for the purposes of:

- determining a claim made before the commencement day of the Instrument; and
- an interim determination and assessment under subsection 25(1) of the DRCA.

Paragraph 11 provides that ‘relevant earlier Guide’ is defined to be the repealed Guide, the *Safety, Rehabilitation and Compensation Act 1988—Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1* [F2012C00537], and any previous edition of that Guide that applied in relation to a claim that is made immediately before the commencement day.

Whole person impairment

Paragraph 12 describes the previous approach in relation to the payment of lump sum compensation. Paragraph 12 provides that prior to 1988, the range of condition compensated

under the *Compensation (Commonwealth Government Employees) Act 1971* where an employee suffered the loss of, or loss of efficient use of, a part of the body or faculty were specified in the table of maims. However, the range of conditions specified was exclusive and did not reflect the broad range of work-related conditions.

Paragraph 13 provides that In line with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, the methodology now used in the Guide is referred to as the whole person impairment (**WPI**). WPI expresses degree of impairment of a person, resulting from an injury as a percentage.

Paragraph 14 to 16 set out the justification of using the WPI methodology. The WPI methodology is used in this Guide for the purposes of section 28 of the DRCA and is therefore the methodology by which the degree of PI of an employee resulting from an injury is expressed as a percentage. The degree of PI of that employee resulting from that particular injury may be assessed as:

- 0% if there is no increase in the employee's WPI when assessed in accordance with this Guide; or
- less than the threshold for compensation under section 24 of the DRCA even if there is an increase in the employee's WPI when assessed in accordance with this Guide.

Entitlements under the DRCA

This section explains the operation of specified provisions of section 24 of the DRCA and the application of the WPI under this Guide as they relate to the payment of compensation based on the degree of PI, impairment 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, and degree of hearing loss.

Paragraph 17 provides that in accordance with subsection 24(7) of the DRCA, where the degree of PI of the employee (other than a hearing loss) is determined under subsection 24(5) to be less than 10%, an amount of compensation is not payable to the employee.

Paragraph 18 provides that in accordance with subsection 24(8) of the DRCA, subsection 24(7) does not apply in relation to impairment 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. The threshold for compensation under section 24 of the DRCA for an injury resulting in a PI constituted by such a loss is 1% to 5% WPI under this Guide depending on the nature of the impairment.

Paragraph 19 provides that for injuries suffered by employees after 1 October 2001, subsection 24(7A) of the DRCA has the effect that if the injury results in a PI that is hearing loss, the 10% threshold does not apply. In these circumstances: the WPI that is a hearing loss is calculated through the following:

- (a) subsection 24(7A) of the DRCA provides that compensation is not payable under section 24 if the relevant authority determines the binaural hearing loss suffered by the employee to be less than 5%; and
- (b) Table 7.1 (Hearing) of this Guide is applied and which provides that the percentage of binaural hearing loss is converted to a WPI rating by dividing the percentage of the hearing loss by 2; and
- (c) Consequently, the threshold compensation under section 24 of the DRCA for an injury resulting in permanent impairment that is a hearing loss is 2.5% WPI under this Guide.

Non-economic loss

In line with subsection 27(1) of the DRCA, where an injury to an employee results in PI and compensation is payable in respect of the injury, the employee may also be eligible to receive additional compensation for NEL.

The assessment for NEL is set out in Division 2 of the Guide.

Compensation Payable

The maximum level of payment is \$80,000 as provided in subsection 24(9) of the DRCA. Note however that this amount is indexed annually on 1 July in accordance with the Consumer Price Index under section 13 of the DRCA. The amount of compensation payable is calculated at the rate applicable at the time of the assessment.

Division 3 of the Guide sets out the calculation of total entitlements to compensation for PI and NEL.

Interim and final assessments

This section provides for interim assessments to be made by the relevant authority in accordance to subsection 25(1) of the DRCA.

Paragraph 23 provides for the circumstance where an interim determination must be made by the relevant authority. The relevant authority, on written request of the employee, may make an interim determination of the degree of PI and assess an amount of compensation payable to the employee, where:

- a determination has been made that an employee has suffered a PI as a result of an injury; and
- the degree of that impairment is equal to or more than 10%; and
- a final determination of the degree of PI has not been made.

When a final determination is made and there is a difference in the amount of compensation between the final determination and the interim assessment, an amount equal to the difference is payable to the employee under subsection 25(3).

Increase in degree of whole person impairment

Paragraph 25 provides that the employee may request another assessment for compensation for PI and NEL where a final assessment of the degree of PI has been made by the relevant authority and the level of WPI subsequently increased by 10% or more in respect of the same injury. This is in accordance to subsection 25(4) of the DRCA. Additional compensation is payable for the increased level of WPI only.

Paragraph 26 provides that for injuries suffered by employees after 1 October 2001, and the injury results in a PI that is hearing loss, the employee affected by the injury may be entitled to a further amount of compensation if there is a subsequent increase in the binaural hearing loss of 5% or more. In these circumstances, Table 7.1 (Hearing) of the Guide, the percentage of binaural hearing loss is converted to a WPI rating by dividing the percentage of binaural hearing loss by 2

and consequently, the threshold for additional compensation under section 25 of the DRCA for an injury resulting in a PI that is a hearing loss is 2.5% WPI under this Guide.

Survival of Claims

Paragraph 27 sets out that if an employee who suffers an injury resulting in PI dies before or after a claim for PI compensation has been made, the employee's personal representative may make such a claim or continue with the claim that has already been made.

Paragraph 28 provides that subject to subsection 55(3) and 111(1) of the DRCA, where an amount of compensation is determined by the relevant authority to be payable under section 24 of the DRCA, that amount of compensation is payable to the deceased employee's estate. However, no compensation would be payable to the deceased employee's estate for any NEL.

Principles of assessment

Impairment and non-economic loss

Impairment

Paragraph 29 provides that 'impairment' is defined in accordance to subsection 4(1) of the DRCA. 'Impairment' is defined as the "loss, the loss of the use, or the damage or malfunction, of any part of the body or of any bodily system or function or part of such system or function."

Paragraph 30 explains that impairment relates to the health status of an individual and includes anatomical loss, anatomical abnormality, physiological abnormality and psychological abnormality.

Paragraph 31 further explains that in this Guide, loss of function is used as a basis of assessment of impairment, and that the degree of impairment is assessed by reference to the impact of the loss of function by reference to the functional capacities of a normal healthy person.

Paragraph 32 provides that impairment is measured against its effect on personal efficiency in the activities of daily living in comparison with a normal healthy person. There is a note indicating that activities of daily living are defined in the Glossary of the Guide.

Non-economic loss

Paragraph 33 emphasises that 'Non-economic loss' is as defined under subsection 4(1) of the DRCA. 'Non-economic loss' is defined in the DRCA as the "loss or damage of a non-economic kind suffered by the employee (including pain and suffering, a loss of expectation of life or a loss of the amenities or enjoyment of life) as a result of that injury or impairment and of which the employee is aware."

Paragraph 34 explains that NEL is a subjective concept and it includes loss of expectation of life and any other real inconveniences caused by the impairment.

Paragraph 35 further explains that activities of daily living are used to assess impairments, but are not used to assess NEL. Lifestyle effects are used to assess NEL. Lifestyle effects are a measure of an individual's mobility and enjoyment of, and participation in, recreation, leisure activities and social relationships.

Paragraph 36 emphasises that for NEL, the employee must be aware of the losses suffered. While two employees may have equal ratings of impairment, they may receive different ratings for NEL because of their differing lifestyles and the effects their injuries have on their lifestyle.

Employability and incapacity

Paragraph 37 emphasises that employability and incapacity are not considered in the assessment of impairment and NEL. Incapacity is contributed by factors other than the degree of impairment and is compensated by additional weekly payments.

Permanent impairment

Paragraph 38 reflects subsection 24(1) of the DRCA. In accordance with subsection 24(1) of the DRCA compensation is only payable for permanent impairment. Subsection 4(1) of the DRCA defines ‘permanent’ to be ‘likely to continue indefinitely’.

When determining whether an impairment under the DRCA is permanent, the assessor must have regard to all of the matters specified in subsection 24(2) of the DRCA. They are the following:

- the duration of the impairment;
- the likelihood of improvement in the employee’s condition;
- whether the employee has undertaken all reasonable rehabilitative treatment for the impairment;
- any other relevant matters.

The Guide explains that an impairment will generally be regarded as permanent when the recovery process has been completed, that is when the full and final effects of convalescence, the natural healing process and active medical treatment have been achieved.

Impairment tables

Impairment tables are used in Division 1 of the Guide to provide for the evaluation of WPI. The tables assist with the assessment of the nature and extent of the effect of an injury or disease on a person’s functional capacity and activities of daily living.

Paragraph 41 notes that the impairment tables in Division 1 of the Guide are drawn from the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (Chicago: American Medical Association) (various editions) (the *AMA Guides*).

Paragraph 42 provides that WPI is a medical appraisal of the nature and extent of the effect of an injury or disease on a person’s functional capacity and activities of daily living.

Paragraph 43 explains that Division 1 of the Guide is structured by assembling detailed descriptions of impairment according to body system and expressing the extent of each impairment as a percentage value of the functional capacity of a normal healthy person.

Gradations of impairment

This section is designed to provide the user with useful information in determining the impairment values.

Paragraph 44 describes that each table in Division 1 of the Guide contains impairment values at gradations of 5% or multiples of 5%. The relevant authority has the discretion to determine the impairment value that reflects the degree of impairment where it is not clear which of 2 impairment values is more appropriate.

Paragraph 45 notes that whilst the assessor has the discretion to determine the impairment value where it is not clear which of 2 impairment values is more appropriate, there is no discretion to choose an impairment value not specified in Division 1 of the Guide. For example, where 10% and 20% are specified values there is no discretion to determine impairment as 15%.

Paragraph 46 provides that where a table in Division 1 provides for impairment values within a range, consideration will need to be given to 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.

Paragraph 47 further provides that the assessor may seek further information to determine where to place an individual within the range. However, the assessor must provide written reasons why the assessor considers the selected point within the range as clinically justifiable.

Combined impairments

Paragraph 48 provides for situations where there are multiple losses of function resulting from a single injury. When more than one table in Division 1 of the Guide applies to a single injury, the assessor can allocate separate scores to each functional impairment and then combine those scores using the combined values chart set out in Table 14.1

Paragraph 49 provides for situations where there are multiple injuries which results in impairment to the same bodily system or function. When this occurs, paragraph 49 provides that the pre-existing impairment must be disregarded when assessing the degree of impairment of the second injury. The second injury must be assessed by reference to the functional capacities of a normal healthy person.

Double assessment

This section prevents double assessment of claims for a single loss of function.

Double assessment for single loss of function must be guarded against to prevent unfair assessment of the amount of compensation payable to an employee. The method of calculating multiple impairments arising from the same injury is by using the combined values chart as set out in Table 14.1.

Fingers and toes

Paragraph 53 provides that impairment relating to the loss or injury to a finger or toe includes also partial loss of efficient use of a digit.

Exceptions to Division 1

Paragraph 54 provides that the relevant authority may direct that an assessment is made in accordance with the American Medical Association, 2001, *Guides to the Evaluation of*

Permanent Impairment, 5th edition, Chicago: American Medical Association (the **AMA5**) in the event that an impairment is of a kind that cannot be assessed in accordance with the provisions of Division 1.

Interim assessments

Paragraph 55 provides further clarification on interim assessments and payment of compensation under subsection 25(1) of the DRCA.

Paragraph 56 explains that assessment for an interim payment will apply mainly in cases where the employee is undergoing active treatment where the final outcome of the treatment is unknown but a minimum PI can be measured.

Paragraph 57 notes that care should be taken that further treatment will not reduce the impairment to lower than 10%.

Paragraph 58 provides that interim payment will not apply where the impairment has stabilised, or where the only change in impairment would be due to progressive degeneration.

Likelihood of reduction in degree of impairment

There is a possibility for impairment or NEL being reduced or removed.

Paragraph 59 provides that the relevant authority must have regard to medical opinion concerning the nature and effect of the injury and the extent to which impairment resulting from the injury or NEL resulting from the injury or impairment, may reasonably be capable of being reduced or removed.

Paragraph 60 provides that regard must be had to an employee's unreasonable failure or refusal to act in accordance with medical advice or to submit to medical treatment.

Aggravation

This section provides the user with clarification as to when aggravation can be used in assessing permanent impairment.

Paragraph 61 provides that a PI in respect of an aggravation should not be made unless the effect of an aggravation are considered permanent. Where an impairment is entirely attributable to a pre-existing or underlying condition, the assessment for PI should be nil.

Paragraph 62 provides that where it is possible to isolate the compensable effects of an injury upon a pre-existing or underlying condition, the assessment of the degree of impairment should only reflect the impairment due to those compensable effects.

Reference

Paragraph 63 provide the full reference to the American Medical Association, 2001, *Guides to the Evaluation of Permanent Impairment*, 5th edition, Chicago: American Medical Association. In the Guide it is abbreviated to be AMA5.

Glossary

This section provides for definition and terms used in the Guide.

The expressions used in the Guide has the same meaning as in the DRCA, unless the contrary intention appears.

There are a number of expressions used in the Guide which are defined in the DRCA. These include:

- aggravation (subsection 4(1));
- ailment (subsection 4(1));
- claim (subsection 4(1));
- employee (section 5);
- impairment (subsection 4(1));
- injury (subsections 4(3) and (8) and sections 5A, 123A and 124);
- MRCC (short for Military Repatriation and Compensation Commission) (subsection 4(1));
- non-economic loss (subsection 4(1));
- permanent (subsection 4(1));
- relevant authority (subsection 4(1));
- SRCA (short for *Safety, Rehabilitation and Compensation Act 1988*) (subsection 4(1)).

Terms that are defined and used in the Guide include:

- Activities of daily living which means the activities a person needs to perform to function in a non-specific environment. The measure of activities of daily living is a measure of primary biological and psychosocial function.
- AMA2 means the American Medical Association, 1984, *Guides to the Evaluation of Permanent Impairment*, 2nd edition, Chicago: American Medical Association, and any errata published prior to the commencement day.
- AMA5 means American Medical Association, 2001, *Guides to the Evaluation of Permanent Impairment*, 5th edition, Chicago: American Medical Association, and any errata published prior to the commencement day.
- AMA Guides means American Medical Association, *Guides to the Evaluation of Permanent Impairment* (Chicago: American Medical Association) (various editions).
- Commencement day as stated in the Introduction section of the Guide in ‘Application of this Guide’.
- Disease has its ordinary meaning.
- DRCA means the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.
- Loss of amenities means effects on the employee’s mobility, social relationships and recreation and leisure activities.
- %NEL means percentage of non-economic loss.
- Pain means physical pain.
- Re-assessment means re-assessment of the degree of permanent impairment for the purposes of subsection 25(4) or (5) of the DRCA.

- Suffering means mental distress resulting from the impairment or injury. Examples include grief, anguish, fear, frustration, humiliation, embarrassment, etc.
- Whole person impairment as explained in the Introduction and Principles of assessment sections of the Guide.
- WPI means whole person impairment.
- %WPI means percentage of whole person impairment.

Division 1 – Impairment

Chapter 1 – Cardio-vascular system

Chapter 1 of Division 1 is dedicated to the assessment of the degree of permanent impairment of the cardio-vascular system. It includes 3 tables. These are:

- Table 1.1 Assessments of symptomatic activity levels;
- Table 1.2 Peripheral vascular disease; and
- Table 1.3 Varicose veins, deep venous thrombosis, oedema, ulceration.

Chapter 2 – Respiratory system

Chapter 2 of Division 1 is dedicated to the assessment of the degree of PI of the respiratory system. It includes the following:

- Table 2.1 Ventilatory function;
- Figure 2.1 Prediction nomogram—males; and
- Figure 2.2 Prediction nomogram—females.

Chapter 3 – Endocrine system

Chapter 3 of Division 1 is for the assessment of the degree of PI of the endocrine system. It contains Table 3.1 Endocrine system which provides a description of the level of impairment against the %WPI.

Chapter 4 – Skin disorders

Chapter 4 of Division 1 is for the assessment of the degree of PI of skin disorders. It is the evaluation of the actual functional loss resulting from the skin disorder and not the cutaneous involvement. It contains two tables. These are:

- Table 4.1 Functional loss; and
- Table 4.2 Facial disfigurement.

Each table provides a description of the level of impairment against the %WPI.

Chapter 5 – Psychiatric conditions

Chapter 5 of Division 1 is dedicated to the assessment of the degree of PI due to psychiatric conditions. Psychiatric conditions include psychoses, neuroses, personality disorders and other diagnosable conditions. The assessment is made on optimum medication at a stage where the condition is reasonably stable. It contains Table 5.1 Psychiatric conditions to determine the relevant %WPI.

Chapter 6 – Visual system

Chapter 6 of Division 1 is for the assessment of the degree of PI due to disorders of the visual system. An assessment of 0 to 5% is indicated as appropriate to disorders such as strabismus, conjunctivitis, impaired colour vision, night blindness and glaucoma (without visual loss). These conditions are usually binocular and cause minimal impairment. Table 6.1 Disorders of visual acuity is included in this chapter to ascertain the %WPI.

Chapter 7- Ear, nose and throat disorders

Chapter 7 of Division 1 is for the assessment of the degree of PI due to ear, nose and throat disorders. It has two tables to assist with the assessment of the WPI value. These are:

- Table 7.1 Hearing; and
- Table 7.2 Miscellaneous ear, nose and throat disorders.

Chapter 8 – Digestive system

Chapter 8 of Division 1 is for the assessment of the degree of PI of the digestive system. It contains the following tables:

- Table 8.1 Disorders of the oesophagus, stomach, duodenum, small intestine, pancreas, colon, rectum and anus;
- Table 8.2 Disorders of the liver and biliary tract; and
- Table 8.3 Fistulae and Herniae.

Chapter 9 – Musculo-skeletal system

Chapter 9 of Division 1 is dedicated to the assessment of the degree of PI arising from specific joint lesions or amputations. Where the joints function normally but the use of a limb is restricted for other reasons, Table 9.4 should be used.

The tables can be used to assess the impairment of overall limb function. It includes 6 tables to assist with the assessment. These are:

- Table 9.1 Upper extremity;
- Table 9.2 Lower extremity;
- Table 9.3 Amputations and/or total loss of function;
- Table 9.4 Limb function—upper limb;
- Table 9.5 Limb function—lower limb; and
- Table 9.6 Spine.

Chapter 10 – Urinary system

Chapter 10 of Division 1 is for the assessment of the degree of PI of the urinary system. It contains the following tables:

- Table 10.1 Upper urinary tract; and
- Table 10.2 Lower urinary tract.

Chapter 11 – Reproductive system

Chapter 11 of Division 1 is for the assessment of the degree of PI of the reproductive system. It contains 3 tables and these are:

- Table 11.1 Male;
- Table 11.2 Female; and
- Table 11.3 Mammary glands.

Chapter 12 – Neurological function

Chapter 12 of Division 1 is for the assessment of the degree of PI of the neurological function. It contains the following tables:

- Table 12.1 Cranial nerves;
- Table 12.2 Comprehension;
- Table 12.3 Expression;
- Table 12.4 Memory; and
- Table 12.5 Reasoning.

Chapter 13 – Miscellaneous

Chapter 13 of Division 1 covers the assessment of the degree of PI for other miscellaneous conditions. It has 2 tables and these are:

- Table 13.1 Intermittent conditions; and
- Table 13.2 Malignancies.

Chapter 14 – Combined values chart

Chapter 14 of Division 1 includes Table 14.1 Combined value chart. This chart is used where an employee suffers multiple impairments from the same injury.

Division 2 – Non-economic loss

Introduction

The formula to calculate the total payable to an individual is: $\$Total = A + B$
where:

A = the percentage assessment of total PI, multiplied by the first half of the maximum; and

B = a reasonable percentage of the second half of the maximum, having regard to the NEL suffered.

The tables in this Division provides for and are used for the calculation of NEL (reasonable percentage for B).

B1 – Pain and Suffering

B1 is for the calculation of reasonable percentage of pain and suffering. A score of 5 is assessed for each of the following:

- Pain (using Table B1.1—Pain);
- Suffering (using Table B1.2—Suffering).

B2 – Loss of amenities

Loss of amenities is also known as the loss of enjoyment of life.

B2 is for the calculation of reasonable percentage of loss of amenities. A score of 5 is assessed for each of the following:

- mobility (using Table B2.1—Mobility). ‘Mobility’ concerns the employee’s ability to move around in his or her environment;
- social relationships (using Table B2.2—Social relationships). ‘Social relationships’ concerns the employee’s capacity to engage in usual social and personal relationships; and
- recreation and leisure activities (using Table B2.3—Recreation and leisure activities). ‘Recreation and leisure activities’ concerns the employee’s ability to maintain customary recreational and leisure pursuits.

B3 – Other loss

B3 is for the calculation of reasonable percentage of loss not covered by any other tables in this Division. The factors to be considered include:

- dependence upon external life-saving or supporting machine;
- dependence upon specialised diet;
- detrimental effects of climatic features; and
- move to specially modified premises.

A table containing a score out of 3 is included in this section to assess the reasonable percentage.

B4- Loss of expectation of life

B4 is used to calculate the reasonable percentage of loss of expectation of life. A table containing a score out of 3 is included in this section to assess the reasonable percentage.

B5 – Calculation of non-economic loss

B5 provides a table for the calculation of the percentage of NEL suffered by the employee for the purposes of section 27.

To calculate NEL, the first step is to add the value from Table B1 to B4 and multiply it by the relevant factor. Once the total score is calculated, the total score is to be converted into a percentage.

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

Division 3 provides a worksheet to calculate the total entitlement to compensation for PI and NEL. To calculate the total entitlement the following steps and formulas are specified:

Step 1 - Obtain the current indexed maximum amount for PI under subsection 24(9) of the DRCA and complete the following calculation:

$\%WPI \times \text{maximum amounts for PI as prescribed in subsection 24(9)}$

Step 2 - Obtain the current indexed maximum amount for NEL under subsection 27(2) “A” of the DRCA and complete the following calculation

$\%WPI \times \text{maximum “A” amount for NEL as prescribed in subsection 27(2)}$

Step 3 - Obtain the current indexed maximum amount for NEL under subsection 27(2) “B” of the DRCA, and complete the following calculation:

$\%NEL \text{ from B6} \times \text{maximum “B” amount for NEL as prescribed in subsection 27(2)}$

Step 4 - Add the amount calculated in 1 to 3 to obtain the total entitlement.