**Workers’ Compensation Schemes in Australia**

**Safe Work Australia** has developed a national template forimpairment assessment based on the NSW Impairment Guides.

Safe Work Australia produces an annual review of the performance of workers’ compensation schemes in Australia and New Zealand, The July 2017 update can be viewed at https://www.safeworkaustralia.gov.au/system/files/documents/1707/comparative-performance-monitoring-report-18th-edition-revised.pdf

SafeWork Australia also produce a comparison of workers’ compensation arrangements in Australia and New Zealand. The 25th edition can be viewed at https://www.safeworkaustralia.gov.au/doc/comparison-workers-compensation-arrangements-australia-and-new-zealand-2017

Permanent Impairment and Threshold for Common Law Claims (where applicable)

#### Definition of permanent impairment

A prerequisite to determining the level of permanent impairment is the understanding that impairment should not be determined until the claimant has reached a point of maximum medical improvement. This is the point at which the impairment has become stable, or is not likely to improve despite medical treatment.

In addition to the principles of assessment contained in the American Medical Association (AMA) Guides, scheme legislation also provides substantial guidance on how to determine whether or not impairment is permanent. Table 3.10 lists the legislative definitions of permanent impairment and also the criteria by which an injury is judged to be permanent.

#### Permanent impairment guidelines

Each of the schemes substitutes or removes sections of their respective editions of the AMA Guide. The necessity for these modifications is primarily due to differences in Australian and US clinical practice, but these are sometimes the result of differences in legislative processes. Table 3.11 illustrates the particular approach taken by the various schemes to substitute or remove assessment criteria from the AMA Guide.

#### Discounting of prior impairments

Most schemes require that where a pre-existing non-compensable impairment exists, the assessing doctor must discount this pre-existing impairment before making a final assessment of impairment. However, if the deductible portion is difficult or costly to determine, schemes may designate a nominal amount for this purpose or in some instances, accept complete liability for the injury. Table 3.12 lists the discounting provisions under each scheme.

#### Permanent impairment payments

In most cases injured workers make a full recovery from their injury, but there are instances where an injury sustained by a worker is permanent. In these situations, an injured worker may be entitled to permanent impairment benefits, which are awarded in addition to income replacement payments. Permanent impairment payments are a lump sum payment for each impairment sustained to cover non-economic loss.

SafeWorkAustralia Comparison of assessments in Australia and NZ 2017

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| **New South Wales** | Assessments are only to be conducted when the medical assessor considers that the degree of permanent impairment of the worker is unlikely to improve further and has attained maximum medical improvement. This is considered to occur when the worker’s condition is well stabilised and is unlikely to change substantially in the next year with or without medical treatment. | No statutory criteria for determining  whether impairment is permanent  This is based on medical opinion in  accordance with the NSW workers  compensation guidelines for the  evaluation of permanent impairment  Threshold   * 15% or greater for primary   psychological injury (for all claims) |
| **Victoria** | s55 — *Workplace Injury Rehabilitation and Compensation Act 2013*:   1. Despite anything to the contrary in the AMA Guides, an assessment under this division of the degree of impairment resulting from an injury must be made — after the injury has stabilised, and 2. subject to s53, based on the worker’s current impairment as at the date of the assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury.   S54(2) — *Workplace Injury Rehabilitation and Compensation Act 2013*:  The AMA Guides apply in respect of an assessment under 3.3d of Chapter 3 of the AMA Guides as if the following were omitted — ‘with the Injury Model, surgery to treat an impairment does not modify the original impairment estimate, which remains the same in spite of any changes in signs or symptoms that may follow the surgery and irrespective of whether the patient has a favourable or unfavourable response to treatment’. | Other than as provided by AMA 4  there is no legislative guidance as to  when an impairment becomes  permanent.  To obtain common law damages,  a worker must first be granted a ‘serious  injury’ certificate, either:   1. During the impairment assessment   process, be assessed as having a  WPI of 30% or more (can combine  physical and mental impairments), or   1. WorkSafe Victoria or the County   Court determines that the worker  has a ‘serious injury’ pursuant to the  narrative test |
| **Queensland** | *Workers’ Compensation and Rehabilitation Act 2003*:  s38 Meaning of permanent impairment — A permanent impairment, from injury, is an impairment that is stable and stationary and not likely to improve with further medical or surgical treatment  s37 Meaning of impairment — An impairment from injury is a loss of, or loss of efficient use of, any part of a worker’s body | *Workers’ Compensation and*  *Rehabilitation Act 2003*:  s179 Assessment of permanent  impairment   * An insurer may decide, or a worker   may ask the insurer, to have the  worker’s injury assessed to decide if  the worker’s injury has resulted in a  degree of permanent impairment.  The insurer must have the degree of  permanent impairment assessed  for a psychiatric or psychological injury  by a medical assessment  tribunal; or   * The degree of permanent impairment   must be assessed in the way  prescribed under a regulation and a  report must be given to the insurer  stating —   1. the matters taken into account,   and the weight given to the matters,  in deciding the degree of permanent  impairment; and   1. any other information prescribed   under a regulation.   * The degree of permanent impairment   must be assessed in accordance with  the [Guidelines for Evaluation of  Permanent Impairmen (](https://www.worksafe.qld.gov.au/medical/resources/guidelines-evaluation-permanent-impairment) the  Queensland Guide) to decide the  degree of permanent impairment  for the injury, and a report complying  with the Queensland Guide must be  given to the insurer.  *Workers’ Compensation and*  *Rehabilitation Regulation 2014*:   * Part 4 Division 3, Entitlement to   compensation for permanent impairment  Threshold - If 30% or more DPI:  up to $314 920 additional lump sum  compensation ( Dec 2016),  DPI (degree of permanent impairment),  (physical and psychiatric threshold  the same) |
| **Western Australia** | No statutory definition  s146A (1) notes that a worker’s degree of impairment is to be evaluated, as a percentage in accordance with the [WorkCover WA Guidelines for the Evaluation of Permanent Impairment](http://www.workcover.wa.gov.au/content/uploads/2014/Documents/Health%20providers/AMS/Fact_Sheet_AMS_-Updates-to-Guides-for-the-Evaluation-of-Permanent-Impairment.pdf) | No statutory criteria for determining  whether impairment is permanent —  this is based on medical opinion in  accordance with the WorkCover Guides  for the Evaluation of Permanent  Impairment. The Guides are based on  AMA 5 and the New South Wales  Guides for the Evaluation of  Permanent Impairment.  Common law: not less than 15% WPI  (limited damages)  and not less than 25% WPI  (unlimited damages) |
| **South Australia** | The ReturnToWorkSA [Impairment Assessment Guidelines](https://www.rtwsa.com/media/documents/Impairment-assessment-guidelines.pdf) provide the following definitions:  Permanent: ‘The meaning given to the word ‘permanent’ in various decisions of the courts includes:   1. for a long and indeterminate time but not necessarily forever 2. more likely than not to persist in the foreseeable future.’   Impairment: ‘A loss, loss of use or derangement of any body part, organ system or organ function (AMA5).’ | No statutory criteria  30% WPI required for access to  common law damages |
| **Tasmania** | The WorkCover [Guidelines for the Assessment of Permanent Impairment](http://www.workcover.tas.gov.au/__data/assets/pdf_file/0006/184920/Guidelines_for_the_Assessment_of_Permanent_Impairment_Version_3.pdf) state:  ‘it must be shown that the problem has been present for a period of time, is static, well stabilised, and is unlikely to change substantially regardless of treatment.’  However where impairment assessment is a prerequisite for access to common law, and where strict time limits apply, a medical assessor may undertake an assessment where the impairment does not meet the definition of ‘permanent’ to verify that the level of impairment will not be less than the statutory threshold. Under amendments which commenced on 1 July 2010, the threshold for access to common law is 20% WIP | No statutory criteria  Threshold requirement of not less  than 20% WPI for access to common  law damages |
| **Northern Territory** | Section 70 of the *Return to Work Act* defines permanent impairment as:  ‘permanent impairment means an impairment or impairments assessed in accordance with the guides approved and published by the Authority, as being an impairment or combination of impairments of not less than 5% of the whole person’.  [Permanent Impairment](http://www.worksafe.nt.gov.au/Bulletins/HealthAndSafetyTopics/Workers%20Compensation/13.01.10.pdf) | The guides approved by the Authority  are the NT Guides for the Evaluation of  Permanent Impairment (based on the  NSW Guides).  Chapter 11 Psychiatric and  Psychological Disorders  specifies use of the Psychiatric  Impairment Rating Scale but ignoring  primary and secondary distinction and  removing1/10 discount for pre-existing  injury. |
| **Australian Capital Territory** | Section 51 *Workers Compensation Act 1951* is based on the concept of loss arising from a compensable injury. ‘Loss’ is defined to mean loss of a thing or permanent loss of use or efficient use of the thing. The definition also includes permanent musculoskeletal impairment and loss, damage, impairment, disfigurement or disease lists in Schedule 1 of the *Workers Compensation Act 1951*. | Part 4.4 *Workers Compensation Act*  *1951* |
| **C’wealth Comcare** | *Safety, Rehabilitation and Compensation Act 1988*  s4 — Permanent means likely to continue indefinitely  s4 — Impairment means 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 | *Safety, Rehabilitation and Compensation*  *Act 1988 — s24(2)*  For the purpose of determining whether  an impairment is permanent, Comcare  shall have regard to:   1. the duration of the impairment 2. the likelihood of improvement in   the employee’s condition   1. whether the employee has   undertaken all reasonable  rehabilitative treatment for the  impairment, and   1. any other relevant matters.   Assessments must be made in  accordance with the Comcare Guide to  the Assessment of the Degree of  Permanent Impairment (2.1) |
|  |  |  |
| **C’wealth DVA** | Permanent means likely to continue indefinitely — s68(1)(b)(ii)  Impairment, in relation to a person, means the loss, the loss of the use, or the damage or malfunction, of any part of the person’s body, of any bodily system or function, or of any part of such a system or function — s5 | Deciding whether an impairment is likely  to continue indefinitely — s73  In deciding whether an impairment  suffered by a person is likely to continue  indefinitely, the Commission must have  regard to:   1. the duration of the impairment, and 2. the likelihood of improvement in the   one or more service injuries or  diseases concerned, and   1. whether the person has undertaken   all reasonable rehabilitative  treatment for the impairment,   1. any other relevant matters. |
| **New Zealand** | *Accident Compensation Act 2001* defines ‘impairment as ‘a loss, a loss of use, or derangement of any body part, organ system or organ function.’ | Requires permanence and stability of  condition being assessed by a medical  practitioner after two years since the date  of injury  It requires a medical practitioner  certifying that the claimant’s condition has  not stabilised, but it is likely that there is  permanent impairment resulting from  the injury |

Permanent impairment guides

|  | Edition of AMA |  | Substituted/removed | |  |
| --- | --- | --- | --- | --- | --- |
| **New South Wales** | 5th Edition |  | | NSW Workers compensation guidelines for the evaluation of permanent impairment - fourth edition (Guidelines), modify several Chapters in AMA5.  Removed: Chapter 18 Pain.  Substituted:   * Psychiatric and Psychological Disorders - Chapter 11, Guidelines, and |  |
| **Victoria** | 4th Edition |  | | * Statutory removal: Chapter 15 Pain. * Statutory Guideline Substitutions: * Chapter 14 Mental and Behavioural Disorders replaced with The Guide to the Evaluation of Psychiatric Impairment for Clinicians. |  |
| **Queensland** | 5th Edition |  | | The [Guidelines for Evaluation of Permanent Impairment](https://www.worksafe.qld.gov.au/medical/resources/guidelines-evaluation-permanent-impairment) (the Queensland Guide) is Queensland’s guide for assessing permanent impairment. It is predominantly based on AMA5. Note that:   * the AMA5 chapter on pain (Chapter 18) is excluded. Conditions associated with chronic pain are assessed on the basis of the underlying diagnosed condition. Where pain is commonly associated with a condition, an allowance is made in the degree of impairment under the Queensland Guide. Complex regional pain syndrome is assessed in accordance with Chapter 17 of the Queensland Guide. |  |
| **Western Australia** | 5th Edition |  | | Removed: Chapter 18 AMA5 regarding assessment of pain is excluded.  Substituted:   * Chapter 14 AMA5 — Mental and behavioural disorder replaced with chapter in WorkCover WA Guides on Psychiatric Impairment Rating Scale (PIRS) * Chapter 18 AMA5 regarding assessment of pain is excluded | *Workers’ Compensation and Injury Management Act 1981*  s146R WorkCover Guides  WorkCover WA may issue directions with respect to the evaluation of degree of impairment:   1. The directions, and any amendment of them, are to be   developed in consultation with an advisory committee  appointed under s100A for the purposes of this section |
| **South Australia** | 5th Edition |  | | Pain (chapter 18, AMA5) and Mental and Behavioural Disorders (chapter 14, AMA5) are omitted as the Act excludes  entitlement for psychiatric impairment (Refer to [Impairment Assessment Guidelines](https://www.rtwsa.com/media/documents/Impairment-assessment-guidelines.pdf)). | The Impairment Assessment Guidelines are published in the  South Australian Government Gazette under [s22](http://www.austlii.edu.au/au/legis/sa/consol_act/rtwa2014207/s22.html)(4) of  the *Return to Work Act* 2014 |
| **Tasmania** | 4th Edition |  | | [WorkCover Tasmania Guidelines for the Assessment of Permanent Impairment](http://www.workcover.tas.gov.au/__data/assets/pdf_file/0006/184920/Guidelines_for_the_Assessment_of_Permanent_Impairment_Version_3.pdf) modify several chapters in AMA4.  Removed: Chapter 15 Pain.  Substituted:   * Chapter 7 of WorkCover Tasmania Guides (Mental and Behavioural Disorders) incorporating the Psychiatric * Impairment Rating Scale (PIRS) is substituted for chapter 14 AMA4 | *Workers Rehabilitation and Compensation Act 1988* — [s72(1)(a)](http://www.thelaw.tas.gov.au/tocview/content.w3p;cond=;doc_id=4%2B%2B1988%2BGS72%40EN%2B20151223090000;histon=;inforequest=;prompt=;rec=;term=) |
| **Northern Territory** | 4th Edition |  | | N/A | *Return to Work Act* — s70 |
| **Australian Capital Territory** | 5th Edition |  | | WorkCover Guides for the Evaluation of Permanent  Impairment (3rd Ed) modify several Chapters in AMA5  removed: Chapter 18 Pain. Vision. Chapter 14 Mental and Behavioural Disorders.  Substituted:   * Chapter 11 — Psychiatric and Psychological Disorders.(NSW Guides) | Reg 5(1)(b) of the Workers’ Compensation  Regulation 2002 allows the Minister to approve medical guidelines |

**State and Territories Information re workers’ compensation**

**Australian Capitol Territory**

Access Canberra https://www.accesscanberra.act.gov.au/app/answers/detail/a\_id/2989/~/workers-compensation

[**http://www.legislation.act.gov.au/a/1951-2/current/pdf/1951-2.pdf**](http://www.legislation.act.gov.au/a/1951-2/current/pdf/1951-2.pdf)effective 13 December 2017

**Commonwealth of Australia**

All Commonwealth employees, ACT Government employees and certain licensed corporations (such as Telstra, Optus and Australia Post) are covered by a compensation scheme that provides wages and medical expenses for people who are injured as a result of their work.

Safety, Rehabilitation and Compensation Act 1988 No. 75, 1988

**Compilation date:**   28 March 2018

**https://www.legislation.gov.au/Details/C2018C00095**

Guide to the Assessment of the Degree of Permanent Impairment Edition 2.1

https://www.comcare.gov.au/\_\_data/assets/pdf\_file/0015/100905/Guide\_to\_the\_assessment\_of\_the\_degree\_of\_permanent\_impairment\_the\_Guide\_Edition\_2.1\_of\_the\_Guide\_PDF,\_1.84\_MB.pdf

**New South Wales**

The State Insurance Regulatory Authority (SIRA) is the government organisation responsible for regulating the NSW workers compensation system.

SIRA assumed the insurance regulatory functions of WorkCover on 1 September 2015.

NSW WorkCover Guide October 2017

<https://www.sira.nsw.gov.au/__data/assets/pdf_file/0004/267214/Workers-compensation-benefits-guide.pdf>

Workers Compensation Act 1987, as of 8 January 2018

https://www.legislation.nsw.gov.au/#/view/act/1987/70

**Northern Territory**

The workers' compensation scheme is administered by NT WorkSafe and legislated through the:

* [Return to Work Act](https://legislation.nt.gov.au/en/Legislation/RETURN-TO-WORK-ACT)
* [Return to Work Regulations](https://legislation.nt.gov.au/Legislation/RETURN-TO-WORK-REGULATIONS).

The legislation establishes that the Northern Territory has a no fault workers' rehabilitation and compensation scheme. If a worker suffers an injury or disease in the course of employment they may be eligible for entitlements such as:

* payment of medical and other reasonable expenses
* weekly payments of income maintenance while away work
* rehabilitation services
* assistance to return to work.

Additionally, if a work accident results in the death of a worker, the family of the worker may be entitled to a lump sum payment and / or income maintenance.

Impairment is determined using the Psychiatric Impairment Rating Scale however primary and secondary impairments are both assessed and count and the discount of 1/10 for pre-existing impairment does not apply.

Return to Work Act as in force at 1 November 2016

**https://legislation.nt.gov.au/Legislation/RETURN-TO-WORK-ACT**

**Queensland**

# WorkCover Queensland: https://www.worksafe.qld.gov.au/

# Workers’ Compensation and Rehabilitation Act 2003

Reprint current from 1 January 2018

https://www.legislation.qld.gov.au/view/html/inforce/2018-01-01/act-2003-027

**South Australia**

SafeWork SA administers a number of Acts and Regulations in public safety, work health and safety, and worker relations, and is accountable to the Minister for Industrial Relations.

South Australia's [work health and safety laws](https://www.safework.sa.gov.au/show_page.jsp?id=112257) align with New South Wales, Queensland, Tasmania, the Australian Capital Territory, the Northern Territory and the Commonwealth who have adopted the same national [model laws](https://www.safeworkaustralia.gov.au/model-laws).

[Codes of Practice](https://www.safework.sa.gov.au/show_page.jsp?id=5892) provide practical guidance on how to comply with legal obligations.

### **The relevant legislation is the Return to Work Act 2014, in particular PART 8--Independent medical advice**

http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/sa/consol\_act/rtwa2014207/

**Tasmania**

WorkCover Tasmania administer the Tasmanian scheme.http://www.workcover.tas.gov.au/workcover\_tasmania

Tasmanian WorkCiver Guides (2001) include an old version of the PIRS without the Conversion Table. View at

<http://www.workcover.tas.gov.au/__data/assets/pdf_file/0008/162755/wrctasguidel.pdf>

A list of accredited medical examiners can be seen at :

tp://www.workcover.tas.gov.au/\_\_data/assets/pdf\_file/0003/191262/AMPs-WPI-Assessment-as-at-23-January-2018.docx.pdf

The relevant legislation is:

<https://www.legislation.tas.gov.au/view/html/inforce/current/act-1988-004> 1 January 2018

**Victoria**

WorkSafe runs the workers’ compensation scheme in Victoria and can be seen at <https://www.worksafe.vic.gov.au/>

The Workplace Injury Rehabilitation and Compensation Act 2013 (WIRC Act) commenced on 1 July 2014

.The WIRC Act recasts the Accident Compensation Act 1985 and the Accident Compensation (WorkCover Insurance) Act 1993 (AC & ACWI Acts) into a single Act that is simpler and easier to use. It can be viewed at: <https://www.worksafe.vic.gov.au/laws/wirc-act>

**Western Australia**

WorkCover WA is the government agency responsible for overseeing and regulating the workers' compensation and injury management scheme in WA. [**https://www.workcover.wa.gov.au/**](https://www.workcover.wa.gov.au/)

# Workers' Compensation and Injury Management Act 1981

### [**http://www7.austlii.edu.au/cgi-bin/viewdb/au/legis/wa/consol\_act/wcaima1981445/**](http://www7.austlii.edu.au/cgi-bin/viewdb/au/legis/wa/consol_act/wcaima1981445/)

WA WorkCover Guides for the Evaluation of Permanent Impairment 11/2014

https://www.workcover.wa.gov.au/content/uploads/2014/Documents/Health%20providers/AMS/Publication\_AMS\_WorkCoverWA-Guides-for-the-Evaluation-of-Permanent-Impairment.pdf

**Income Protection and Total and permanent Disability**

Many superannuation funds provide coverage for a disability insurance benefit, often referred to as a Total Permanent Disability (TPD) benefit. This insurance cover, if provided in a person’s superannuation plan, is a benefit additional to the contributions made by that person/employer to the superannuation fund. A TPD benefit may be significant and may help ease the financial burden faced during the difficult times that follow a disability.

Generally it does not matter how the injury or illness came about; just that the person is suffering from a total and permanent disability or illness. Many people on workers’ compensation, motor vehicle injury compensation or the CentreLink Disability Support Pension can claim as well as people who suffer an unexpected illness that prevents them from working.