

SAPS Injury Management Practice Note

Seriously Injured Workers

Objectives, Targets & Performance Indicators

Objective	Target	Performance Indicator
SAPS agencies have an implemented procedure regarding seriously injured workers	All SAPS agencies	Implemented policy/ procedure

Purpose

To ensure SAPS Agencies have an implemented procedure in accordance with Division 4 – Section 21 of the Return to Work Act 2014 (RTW Act) regarding seriously injured workers which is an unprecedented feature in the RTW Act.

Context

The RTW Act makes special provision in a number of places for seriously injured workers	Division 4 – Section 21 - Seriously injured workers Section 21(1)
For the purposes of this Act, a seriously injured worker is a worker whose work injury has resulted in permanent impairment and the degree of whole person impairment has been assessed under Division 5 for the purposes of this Act to be 30% or more.	Section 21 (2)
<p>Pending an assessment of permanent impairment, the Corporation may on its own initiative, or must on application made by a worker in accordance with the regulations, make an interim decision to the effect that a worker will be taken to be a seriously injured worker under this Act if-</p> <p>(a) It is satisfied, or it appears, that the worker’s injury has or will result in permanent impairment; and</p> <p>(b) It appears that the degree of whole person impairment is likely to be 30% or more,</p> <p>and the Corporation's decision will have effect under this Act in accordance with its terms.</p>	Section 21 (3) Regulation 13 of the Return to Work Regulations 2015
<p>An interim decision under subsection (3)-</p> <p>(a) must be made in accordance with any requirements or principles prescribed by the regulations; and</p> <p>(b) has effect until an assessment of whole person impairment has been made under Division 5.</p>	Section 21(4)

Unless or until a worker is assessed or determined to be a seriously injured worker as contemplated by this section, the worker will be taken not to be a seriously injured worker for the purposes of this Act.	Section 21(5)
<p>However, if a worker is taken not to be a seriously injured worker and the worker at a later time is characterised as a seriously injured worker under subsection (2) or determined to be a seriously injured worker under subsection (3)—</p> <p>(a) the worker will be taken to have been a seriously injured worker from the date of injury; and</p> <p>(b) the worker is entitled to be paid the amounts that would have constituted the worker’s entitlements under this Act had the worker been taken to be a seriously injured worker from the date on which an incapacity for work in consequence of the relevant work injury first occurred after taking into account any amount already paid under this Act.</p>	Section 21(6)
An amount paid under subsection (6)(b) will be increased by interest at the prescribed rate	Section 21 (7)
<p>(8) In assessing whether the 30% threshold under this section has been met (that is, whether the degree of whole person impairment resulting from a work injury is at least 30%)—</p> <p>(a) impairment resulting from physical injury is to be assessed separately from impairment resulting from psychiatric injury; and</p> <p>(b) in assessing impairment resulting from physical injury or psychiatric injury, no regard is to be had to impairment that results from consequential mental harm; and</p> <p>(c) in assessing the degree of whole person impairment resulting from physical injury, no regard is to be had to impairment that results from a psychiatric injury or consequential mental harm; and</p> <p>(d) the 30% threshold is not met unless the degree of whole person impairment resulting from physical injury is at least 30% or the degree of whole person impairment resulting from psychiatric injury is at least 30%.</p>	Section 21 (8)
The Corporation is not required to consider more than 1 application by a worker under subsection (3) unless directed to do so by the Tribunal on application made by the worker under this subsection.	Section 21 (9)
Nothing in this section limits or affects the operation of Part 4 Division 6 or Division 7 or Part 5	Section 21 (10)
<p style="text-align: center;">Division 5—Assessment of permanent impairment</p> <p>This section sets out a scheme for assessing the degree of impairment (being whole person impairment) that applies to a work injury that results in permanent impairment.</p>	Section 22(1)

<p>An assessment under this section—</p> <ul style="list-style-type: none"> (a) must be made in accordance with the Impairment Assessment Guidelines; and (b) must be made by a medical practitioner who holds a current accreditation under this section. 	Section 22(2)
<p>The Minister will publish guidelines (the Impairment Assessment Guidelines) for the purposes of the assessment of permanent impairment (being whole person impairment).</p>	Section 22(3)
<p>The guidelines under subsection (3)—</p> <ul style="list-style-type: none"> (a) must be published in the Gazette; and (b) may adopt or incorporate the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time; and (c) must incorporate a methodology that arrives at an assessment of the degree of impairment of the whole person (whole person impairment); and (d) may specify procedures to be followed in connection with an assessment; and (e) may have effect on a day specified by the Minister by notice in the Gazette; and (f) may be amended or substituted by the Minister from time to time. 	Section 22(4)
<p>The Minister must, before publishing or amending the Impairment Assessment Guidelines, consult with professional associations representing the class or classes of medical practitioners who hold accreditations under this section.</p>	Section 22 (5)
<p>An amendment or substitution in relation to the Impairment Assessment Guidelines under subsection (4)(f) will only apply in respect of an injury occurring on or after the date the amendment or substitution takes effect.</p>	Section 22 (6)
<p>An assessment of the degree of impairment resulting from an injury—</p> <ul style="list-style-type: none"> (a) must not be made until there is evidence that the injury has stabilised; and (b) must, subject to subsection (8), be based on the worker's current impairment as at the date of assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury; and (c) must be made by an accredited medical practitioner selected in accordance with the Impairment Assessment Guidelines. 	Section 22 (7)
<p>An assessment must take into account the following principles:</p> <ul style="list-style-type: none"> (a) if a worker presents for assessment in relation to injuries which occurred on different dates, the impairments are to be assessed chronologically by date of injury; (b) impairments from unrelated injuries or causes are to be disregarded in making an assessment; 	Section 22 (8)

<ul style="list-style-type: none"> (c) impairments from the same injury or cause are to be assessed together or combined to determine the degree of impairment of the worker (using any principle set out in the Impairment Assessment Guidelines); (d) impairment resulting from physical injury is to be assessed separately from impairment resulting from psychiatric injury; (e) in assessing impairment resulting from physical injury or psychiatric injury, no regard is to be had to impairment that results from consequential mental harm; (f) in assessing the degree of permanent impairment resulting from physical injury, no regard is to be had to impairment that results from a psychiatric injury or consequential mental harm; (g) any portion of an impairment that is due to a previous injury (whether or not a work injury or whether because of a pre-existing condition) that caused the worker to suffer an impairment before the relevant work injury is to be deducted for the purposes of an assessment, subject to any provision to the contrary made by the Impairment Assessment Guidelines; (h) assessments are to comply with any other requirements specified by the Impairment Assessment Guidelines. 	
<p>A number determined under the Impairment Assessment Guidelines with respect to a value of a person's degree of whole person impairment may be rounded up or down according to any principle set out in the Impairment Assessment Guidelines.</p>	<p>Section 22 (9)</p>
<p>Subject to subsections (11) to (15) (inclusive), only 1 assessment may be made in respect of the degree of permanent impairment of a worker from 1 or more injuries (including consequential injuries) arising from the same trauma (and any injury that may subsequently develop or manifest itself or develop after the assessment of impairment is made will not be assessed).</p>	<p>Section 22 (10)</p>
<p>For the purposes of subsection (10), an assessment (or parts of an assessment) may be undertaken by more than 1 accredited medical practitioners and their assessments combined so as to create 1 assessment under that subsection.</p>	<p>Section 22 (11)</p>
<p>Subsection (10) does not affect the requirement under subsection (8)(d) for impairment resulting from physical injury to be assessed separately from impairment resulting from psychiatric injury.</p>	<p>Section 22 (12)</p>
<p>Subsection (10) operates subject to any assessment made under Part 8 (and the exercise of any adjudicative function by the Tribunal or a court).</p>	<p>Section 22 (13)</p>
<p>An interim decision under section 21 will not be taken to constitute an assessment for the purposes of subsection (10).</p>	<p>Section 22 (14)</p>
<p>Subsection (10) does not apply in any circumstances prescribed by the regulations.</p>	<p>Section 22 (15)</p>

For the purposes of this section, the Minister must establish an accreditation scheme after consultation with the Advisory Committee.	Section 22 (16)
<p>The accreditation scheme—</p> <p>(a) will provide for the accreditation of medical practitioners who are determined, under the scheme, to be suitably qualified to undertake assessments for the purposes of this section; and</p> <p>(b) will work on the basis that the Minister will issue the accreditations; and</p> <p>(c) may provide for the suspension or cancellation of accreditation by the Minister on specified grounds; and</p> <p>(d) may be amended or substituted by the Minister from time to time after consultation with the Advisory Committee.</p>	Section 22 (17)
<p>An accreditation will be issued by the Minister—</p> <p>(a) for a period specified by the Minister; and</p> <p>(b) on conditions determined by the Minister.</p>	Section 22 (18)

SAPS Practice

Under the RTW Act, injured workers are entitled to request a Whole Person Impairment Assessment (WPI) if they believe they have sustained a permanent impairment and their injury has reached maximum medical improvement.

The degree of whole person impairment suffered by a worker determines whether they are entitled to weekly payments after two years of incapacity and ongoing medical and like expenses and will be significant in determining their access to lump sum payments for economic and non-economic loss.

A worker is deemed 'seriously injured' if the extent of their impairment is determined at 30% whole person impairment or more.

The worker's Case Manager can discuss with the worker what is involved in the process.

The worker may choose to request the Impairment Assessor themselves or alternatively may request the Case Manager make the selection and inform the worker of the selection.

Impairment Assessors are medical practitioners that are accredited under the Accreditation Scheme established by the Minister for Industrial Relations. Their role is to assess injured workers and prepare assessment reports in accordance with the Impairment Assessment Guidelines to determine:

- whether the injury has reached maximum medical improvement
- whether the worker's injury has resulted in an impairment
- whether the impairment is permanent
- the degree of whole person impairment resulting from the work injury.

Regardless of whether or not the worker opts to choose their assessor or alternatively, requests the Case Manager selects the Assessor on their behalf, the worker must undertake the selection process in consultation with the Case Manager (requestor). The worker or their representative will have the opportunity to choose an assessor, from a list provided by the Case Manager, which can also be found on the RTWSA website <https://www.rtwsa.com/media/documents/Accredited-Impairment-Assessors-for-the-Return-to-Work-scheme.pdf>.

The worker must take into consideration the following factors:

- the body system to which the injury/assessment relates – the assessor selected must be accredited for the relevant body system(s)
- nature and complexity of the injury
- possible conflicts of interest
- availability of assessors, and whether multiple assessors are required.

If the request has been made for the Case Manager to select the assessor, then this should be done in consultation with the worker, taking into consideration the factors outlined above and then informing the worker of the chosen assessor(s) as soon as is practicable after the selection is made. The perception of impartiality is important in the assessment process. As a result, the Impairment Assessor Accreditation Scheme provides that assessors must “not provide or have provided any form of treatment, advice or assessment in relation to the worker, unless otherwise agreed with the requestor - in some circumstances there may not be an alternative assessor available to undertake the assessment”.

Assessors must not accept a request if:

- the request is not in accordance with the Guidelines
- the assessor has been asked to provide an assessment in respect of a body system for which they are not accredited for under the Return to Work Scheme
- the assessor is unable to see the worker within six (6) weeks of the appointment being requested. Examination of a worker should be performed as soon as possible, generally within three (3) weeks after the request for an appointment is made, unless agreed and documented between the requestor and assessor.
- the assessor determines there is an actual or potential conflict of interest in providing the requested service with respect to the worker. Where such a conflict of interest exists (e.g. relative or friend, financial partner etc.), the assessor should notify the requestor immediately.

The worker or their representative will then be notified in writing as to when the WPI Assessment is scheduled and the worker will be required to present at the scheduled appointment.

The Case Manager will be required to collate a report request to be provided to the Assessor detailing the worker’s relevant history and medical reports and setting out the line of questions for the Assessor. The Case manager will provide the worker with a copy of the report request, to allow the worker an opportunity to review the history provided and request any changes, at least 10 days prior to the scheduled appointment.

In assessing whether the worker meets the 30% threshold, (that is, whether the degree of permanent impairment resulting from an injury is at least 30%)—

- (a) impairment resulting from physical injury is to be assessed separately from impairment resulting from psychiatric injury; and

- (b) in assessing impairment resulting from physical injury or psychiatric injury, no regard is to be had to impairment that results from consequential mental harm; and
- (c) in assessing the degree of permanent impairment resulting from physical injury, no regard is to be had to impairment that results from a psychiatric injury or consequential mental harm; and
- (d) the 30% threshold is not met unless the degree of permanent impairment resulting from physical injury is at least 30% or the degree of permanent impairment resulting from psychiatric injury is at least 30%.