

IMPAIRMENT INSIDER

ISSUE 8
JUNE 2021

Introduction

Welcome to the eighth edition of the Impairment Insider and my first since commencing in the role of Manager of Impairment Assessment Services in May 2020. Since our last edition, we announced Trish Bowe's retirement after establishing and running the Impairment Assessment Services Team for five years. We thank Trish for all her hard work and wish her the best in her well-earned retirement.

As an introduction to myself, I have a background in Occupational Therapy and have been working in Workers Compensation schemes both here and in Western Australia for the past 13 years, including Vocational Rehabilitation and Injury Management Advice. I have completed training in AMA5, WorkCover WA Guidelines for the Evaluation of Permanent Impairment and the South Australian Impairment Assessment Guidelines (IAGs).

We also welcome another new team member, Karmilla Chenia. Karmilla joins us with a background as a personal injury lawyer in Queensland and significant experience with AMA5 and reviewing impairment assessments.

In this issue, we provide information about assessments during the pandemic, the compliance review process, carpal tunnel assessments and some recent legal decisions.

We look forward to working with you all. I would like to thank those who completed our recent survey regarding assessor training and communication. The overwhelming majority of more than 40 respondents are in support of further assessor discussion forums. As such, we are planning to hold our next forum in the near future. It will be good to meet some of you in person.

Kate Smith

Manager

Impairment Assessment Services



Impairment assessment and the Coronavirus (COVID-19)

COVID-19 and its rapidly changing impacts have challenged us and is likely to continue to do so for some time. While in 2020 referrals for impairment assessment were impacted for a short period, they have returned to pre-COVID levels and assessors are reminded that they will continue subject to them:

- being available and willing to carry out whole person impairment assessments;
- observing the necessary infection control requirements and risk mitigation strategies; and
- using appropriate personal protective equipment during physical examinations.

While ReturnToWorkSA and our claims agents will take every precaution in referring workers for assessment, assessors should continue to ensure workers are appropriately screened before commencing any physical assessment as part of your practice's standard risk management process.

For an overall view of how the Scheme is managing with COVID-19 with regard to injured workers and employers, see the news room on [rtwsa.com](https://www.rtwsa.com).



Compliance Review Process

ReturnToWorkSA reviews all WPI assessment reports, in the registered scheme, to ensure their compliance with the IAGs in accordance with the Return to Work Act 2014 (“the Act”). As part of the compliance review process, we may seek clarification from assessors for issues such as overt calculation errors, incorrect methodology and unclear reasoning. In most cases the opportunity to provide further clarification, amendments and correction of typing or calculation errors has resulted in high rates of reports being assessed as compliant. Assessment reports that are compliant with the Guidelines provide for outcomes that are accurate, comprehensive, fair and consistent.

Here are some tips to remember when providing an assessment report:

- explain your reasoning and process – a clear explanation of the examination findings and detailed reasoning informs how the rating was reached
- address the materials provided as part of the referral and how they relate to your assessment
- address inconsistencies between findings reported in recent medical reports compared to your own findings - provide your clinical opinion as to the reasons for the discrepancies having considered whether MMI has been achieved
- double check your calculations – everyone makes errors occasionally
- consider consistency – would another assessor, given the same circumstances, arrive at the same or similar assessment?
- provide factual information based on your own history taking and clinical examination.

As you would be aware, worker’s lump sum entitlements cannot be determined until the WPI assessment report has been finalised. Therefore, if you are contacted by ReturnToWorkSA for clarification following submission of a report, your prompt attention would be appreciated.

In the event that the compliance issues cannot be resolved and the report remains, in the opinion of the reviewer, not in accordance with the Guidelines, the assessor is advised of that decision and that no further action is required.



Adjustment for the effects of treatment



Assessors are reminded that paragraph 1.41 on page 9 of the IAGs allows for the WPI assessment to be increased by up to 3% WPI “*where the effective long-term treatment of a work injury results in apparent substantial reduction or total elimination of the workers whole person impairment, but the worker is likely to revert to the original degree of impairment if treatment is withdrawn...*”.

This does not apply to the use of analgesics and anti-inflammatory medications. However, it may be relevant, in both physical and psychiatric impairment assessments, when other medications are routinely used and their use is considered to be ‘permanent’ (i.e. necessary for the foreseeable future).



Using Radiology – electronic X-Rays



In Insider Issues 5 and 6, we talked about the use of digital x-rays and provided some information from the Royal Australian and New Zealand College of Radiologists. These are increasingly becoming the most common way for radiology to be viewed. Where relevant radiology is provided digitally, you will need the appropriate software to view the digital x-rays.

The relevant radiology company can also provide support in viewing or reading and interpreting the radiology report (e.g. in measuring cartilage intervals on X-rays or if there are any issues such as appropriate magnification).

For more information, you can view previous issues of the Impairment Insider Newsletter at www.rtwsa.com on the impairment assessment news and resources page.



Assessor survey



Thanks so much to everyone who has completed the Impairment Assessor survey that we sent out on April 23rd. We're seeking information about your use of technology and the way you like to receive information and communications to assist with our planning. We've had great response but would love to hear from as many of you as possible.

So far we are getting a clear message that you are keen to continue assessor forums but that you'd like an option for them to be streamed or recorded, so we will take that on board. You also seem keen to continue to receive this newsletter! If you haven't responded yet and would like the link sent out to you again, please email wpi@rtwsa.com.



Did you know you can access previous editions of this newsletter?



Have a question about how to manage a particular assessment? Try looking through some previous editions of the Impairment Assessor Insider in case we have clarified it earlier. The **impairment assessor news and resources page** on our website contains all previous editions published since the Return to Work scheme came into effect, as well as notices, templates and other resources. If you have an idea for an article or resource you would like to see on that page, please let us know at wpi@rtwsa.com.



Assessment CTS post-surgical decompression

Page 495 of AMA5 provides the method for assessment of carpal tunnel syndrome (CTS) post-surgical decompression, and when the injured worker continues to complain of pain, paraesthesia, and/or ongoing limitations in activities of daily living. Three possible scenarios are provided with the criteria in Scenario 2 amended by 2.11 on page 17 of the IAGs.

Scenario 1 directs:

“Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual CTS is rated according to the sensory and/or motor deficits as described earlier” (i.e. using the usual peripheral nerve assessment method)”

A recent matter at the South Australian Employment Tribunal has reinforced the need for updated nerve conduction studies (NCS) prior to assessment of post-surgical CTS using the method given in scenario 1 (see legal decision summary update below).

There has been some confusion about the method to use where the condition does not meet any of the three scenarios in AMA 5, e.g. where clinical findings are present, but either post-surgical NCS studies have not been undertaken or post-surgical NCS are reported to be normal. In this instance, we refer Section 16.5d – ‘Entrapment/Compression Neuropathy’ which deals with the assessment of Carpal Tunnel Syndrome both before and after surgery. On page 493 of AMA5, under the heading of ‘Impairment Rating of Entrapment/Compression Neuropathies’, it is stated:

“Only individuals with an objectively verifiable diagnosis should qualify for a permanent impairment rating. The diagnosis is made not only on believable symptoms but, more important, on the presence of positive clinical findings and loss of function. The Diagnosis should be documented by electromyography as well as sensory and motor nerve conduction studies.”

As such, if there are no nerve conduction studies, or negative nerve conduction studies, the condition does not qualify for an impairment rating.

If you have been requested to provide an assessment for CTS, whether pre or post-surgery, but the documents provided with the request letter do not include relevant NCS, the criteria for assessment using the usual peripheral nerve method cannot be met. The assessor should contact the requestor to advise accordingly.



Invoicing – where to send

Invoices for impairment assessment reports are managed and paid for by the requestor. Any invoices received by ReturnToWorkSA’s Impairment Assessment Team are redirected to the requestor. To avoid any delays in processing your invoice please forward your invoices directly to the requestor by emailing it separately (in word, PDF or image file format) using the following addresses:

Gallagher Bassett: invoices@gb.rtwsa.com

EML: accounts@eml.rtwsa.com

EnABLE: EnABLE@rtwsa.com

Legal decision update

Burda- Assessing Carpal Tunnel Syndrome in accordance with the AMA guides and IAGs.

The recent decision of *Burda v Thomas Foods International Consolidated Pty Ltd* [2020] SAET 160 (21 August 2020), has reinforced the requirement for updated nerve conduction studies (NCS) to be held prior to assessment of post-surgical Carpal Tunnel Syndrome (CTS) using the method given in Scenario 1 of AMA 5.

By way of background, the worker's application to the Tribunal centred on a determination to be made, as a preliminary matter, whether the WPI report was compliant with the requirements of the RTW Act and/or AMA 5 and/or the IAGs. The issue in contention centred on a WPI assessment for CTS using Scenario 1 of AMA 5, where there were no post-surgical NCS held, therefore it was considered that the assessor had erred in this approach and the report was considered not in accord with the IAGs.

It was submitted that the requirements for post-surgical NCS is based on the criteria of rating sensory and/or motor deficits which require positive clinical findings of median nerve dysfunction and electrical conduction delay(s). As the assessor did not have post-surgical NCS at the time of the assessment, the first scenario was unable to be applied when assessing the WPI for the CTS.

The worker's representative made four primary submissions, but of relevance was the submission that, if NCS were required for an assessment of WPI following CTS surgery, then pre-surgery NCS would suffice.

His Honour, Deputy President Cole considered section 22(7)(b) of the RTW Act which directs "An assessment of the degree of impairment resulting from an injury 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"...The Applicant's submission that pre-surgery nerve conduction studies will meet the requirement in scenario one, would make a nonsense of the requirement that median nerve dysfunction and electrical conduction delay(s) following surgery be identified." His Honour

further opined "It would make no sense at all for clinical findings post-surgery to be matched with pre-surgery nerve conduction studies for the requirement of the first scenario at p 495 [AMA 5] to be met".

As release surgery would be expected to improve median nerve function in most cases, his Honour Deputy President Cole held "Whilst it is the case that scenario one on p 495 of AMA5 does not expressly articulate the need for post-surgery nerve conduction studies, the requirement is implicit in the requirement for median nerve electrical conduction delay(s) to be identified. Nerve conduction studies or similar testing will show median nerve electrical conduction delay(s)".

His Honour ultimately considered the assessor had not complied with the RTW Act and AMA 5 referred the Section 22 WPI assessment to an independent medical advisor with the relevant documentation, which included the post-surgery NCS.



Dallimore – Assessing in conformity with the AMA Guides and IAGs

The Full Court of the Supreme Court decision, *Dallimore v Return to Work Corporation of South Australia*, provides direction on the use of the American Medical Association Guides to the Evaluation of Permanent Impairment (5 ed.) ("the AMA Guides") and the Impairment Assessment Guidelines ("IAGs").

By way of relevant background, the worker's appeal in this matter was confined to the assessment for pulmonary hypertension. The claims agent determined that the rating for the whole person impairment ("WPI") for the pulmonary hypertension should be 0%. This was on the basis that the AMA Guides provide that a permanent impairment due to pulmonary hypertension cannot be rated under the AMA Guides where the PAP (pulmonary artery pressure) reading

is less than 40 mm Hg. In light of the evidence from the PAP assessment with an echocardiogram, which disclosed a PAP of 25 mm Hg, the worker did not meet the necessary criteria for any rating of permanent impairment due to pulmonary hypertension.

Following the hearing before the Full Court of the Supreme Court, it was held per Stanley J (Peek J and David AJ agreeing) that the terms of Chapter 4.4 of the AMA Guides make it clear that the definitive assessment of pulmonary hypertension is made by PAP assessment with echocardiogram or right heart catheterisation. Permanent impairment due to pulmonary hypertension cannot be rated under the AMA Guides where the PAP reading is less than 40 mm Hg.

The decision of the Full Court of the Supreme Court was made on the basis of the application of the following relevant principles, which came out of various decisions that the Full Court referenced:

- *Section 22 of the Return to Work Act 2014 (“the RTW Act”) 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.*
- *An assessment under section 22 of the RTW Act must be made in accordance with the IAGs, which are published by the Minister for the purposes of the assessment of permanent impairment (being whole person impairment).*
- *The IAGs may adopt or incorporate the provisions of other publications, with or without modification or addition. The IAGs adopt and apply with certain modifications the AMA Guides.*
- *The IAGs adopt the AMA Guides for the case of impairments for which the IAGs do not make distinct provision.*
- *The purpose of the IAGs and AMA Guides (together referred to as “the Guides”) is to provide a standardised objective approach to evaluating medical impairments.*
- *To the extent that the RTW Act requires determinations of impairments to be made in accordance with the Guides, the Guides have the force of law. It is of paramount importance to be faithful the Guides’ plain words.*
- *The Guides should not be interpreted as if it were a statute.*
- *The use of the Guides is designed to promote precision, certainty and consistency. Their purpose is to make as objective as possible the process of estimating impairment by reference to sufficient medical and non-medical information to justify the estimate.*
- *This means that the methodologies, processes and criteria set out in the Guides for the relevant condition, body part or system must apply and adhere to any minimum or maximum values set out in the Guides for that condition, body part or system. Where Guides contain a table that is applicable to that condition, body part or system, an assessment based on that table would not be in accordance with the Guides unless the categories, descriptions, criteria, ranges, adjustments and other elements of the table that are relevant to the condition, body part or system are adhered to and complied with.*
- *Whilst there are some provisions in the Guides, including some tables, that provide alternative methodologies or set out ranges, and require the exercise of professional judgment in selecting the most appropriate methodology or in determining where in the range the relevant condition or body part falls, the Guides do not permit the exercise of professional judgment at large, unconstrained by the specific requirements of each methodology or table that it sets out. Once a particular methodology or table is selected, its requirements, including any limitations, must be applied in a manner set out by the Guides even if the outcome may appear sub-optimal. The point of the Guides is to arrive at an assessment that is the product of applying the Guides in accordance with their requirements.*
- *The Guides make clear that the protocols and methodologies it sets are irrespective of who conducts the assessment.*
- *The use of the Guides was an attempt by the legislature to introduce some degree of objectivity into the assessment of impairment for compensation purposes. It represents a significant application of one of the fundamental principles of justice that like cases should*

be treated alike. Nothing can discredit a compensation system more quickly than the idiosyncratic application of criteria to the determination of an injured person's impairment and hence their entitlement to compensation at a particular level.

- *As the law stands, the Guides must be applied regardless of any personal view of the assessor. While the interpretation of medical matters referred to in the Guides and the exercise of clinical judgement must be left to the assessor who is applying them, it is not within that assessor's remit to ignore an express direction contained in the Guides as to how a particular objective fact is to be treated in making an assessment.*



Complex Regional Pain Syndrome (CRPS) – Table error

Please note an error in the Impairment Assessment Guidelines in the CRPS tables in the upper and lower extremity chapters. Under section 3, 'Hypoaesthesia' should be 'Hyperaesthesia', consistent with AMA5. This will be corrected in the Guidelines as soon as an opportunity arises.



Country visits and languages

Did you know that the **accredited impairment assessor listing** includes the country areas that you visit and languages you speak? More information in the listing helps the injured worker to select the best assessor for them. If you would like to include any more information in these sections or more information about your areas of specialisation, please email wpi@rtwsa.com.



Which Court Rules apply?

The impairment assessment report template contains the statement required about the Court Rules which must be adhered to in the provision of an impairment assessment. This is Rule 62 of the South Australian Employment Tribunal's Court Rules. We sometimes see other rules mentioned in the reports we receive, but it is important for assessors to note that Rule 62 is the most relevant and it should be referenced in the report. It is a requirement of the Accreditation Scheme that the approved report templates are used. Both the Scheme and the templates can be found on our **website**.



Update your details

In order to keep our public listings current, if you change your address, practice arrangements or alter what referrals you will accept, please email us at wpi@rtwsa.com. As we also publish information in regard to areas of special clinical interest, languages spoken and consultation in rural and remote areas, please let us know of any amendments or inclusions.

In addition to the above it is also a requirement of you accreditation to maintain adequate insurance coverage. If you have renewed this recently please ensure you provide us with a copy of your certificate of public liability and professional indemnity insurance.



Questions, concerns or content suggestions

If you have any queries, concerns or content suggestions please call **13 18 55** and ask for Impairment Assessment Services or email us at wpi@rtwsa.com.



www.rtwsa.com
13 18 55



Government of
South Australia