IMPAIRMENT INSIDER

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Return to WorkSA

Welcome to the third edition of the Impairment Insider.

In this issue we provide updates on some of the decisions coming out of the Tribunal, some guidance around issues assessors have raised recently and revisit a couple of topics from the PIA newsletter issued during the former scheme.

Thanks very much to those who attended the first of our Impairment Assessor Discussion Forums in December for an interesting and robust discussion about assessing pre-existing conditions. We hope you found it as beneficial as we did. We are looking forward to the next forum where we will discuss medication related impairments and update you on what we have learned from recent legal decisions. Information about the session and how to register can be found in this issue.

If you have any ideas for future forums or topics you would like to discuss with your fellow assessors, we'd love to hear from you.

Trish Bowe
Manager
Impairment Assessment Services

Recent important notice about Martin decision

We recently sent out a notice to assessors regarding the effect of the Martin decision of the South Australian Employment Tribunal (SAET) on the assessment of injuries and subsequent surgeries. If you missed this notification, you can read about it on our Impairment assessor news and resources page.

If you are concerned that you didn't receive the email, please contact wpi@rtwsa.com to check your contact details with Kirstie.

IMPAIRMENT INSIDER

SAET decision—the importance of rationale

A recent decision of the SAET addressed the issue of rationale in an impairment assessment report. In the case of Abraham v ReturnToWorkSA, the worker requested a second impairment assessment for his psychiatric condition to determine whether he was to be considered a seriously injured worker. DPJ Gilchrist concluded that a further opinion was justified because the assessor of the original WPI report had not provided adequate explanation for each of the ratings in the report.

While RTWSA may find a report in accord with the Guidelines, it does not necessarily follow that the court will find it conclusive as evidence. While the Impairment Assessment team will provide feedback regarding compliance, it is up to the assessor to ensure that the report provides adequate rationale to meet evidentiary requirements.

This is relevant to both psychiatric and physical impairment assessments.

In the case of psychiatric assessments however, it would certainly minimise the potential for disputes and assist the reader if assessors clearly aligned their findings of current (and pre-existing) impairment with the GEPIC criteria to demonstrate the chosen class for each of the required criteria. In addition, further explanation on why the assessor does not consider the class below and above to be appropriate could be included for each criterion to further support the assessment given.

Lead Assessor reports

A Lead Assessor report must be a stand-alone document. As per 1.8 of the Guidelines, the Lead Assessor provides a report that summarises the other assessments and calculates the final percentage of whole person impairment (% WPI) resulting from the combined impairments of the individual permanent impairment assessments (after they have been found in accord with the Guidelines). The role of the lead assessor is to summarise the findings contained in the sub-reports, clearly indicating which assessor those findings or comments are attributed to, and to include those findings in the final WPI rating. This is important because when a report reviewer or court is considering these reports, they may not have the sub-reports to refer to for explanation and the final report must provide the rationale for the entire rating. This is the single report upon which a determination of entitlements will be made.

If you have any concerns regarding this, please contact the requester or the Impairment Assessment team.

To disregard or not disregard in the spine

In the third edition of the 'Permanent Impairment News' issued in February 2010, assessors were advised when assessing the spine that no deduction was to be made where there was a pre-existing impairment to the same part of the spine if the impairment was at a different anatomical location.

The example provided in this article was:

- Non-compensable lumbar spine injury at L5-S1 treated with a spine fusion (DRE IV 20%WPI)
- Subsequent work related compensable injury to L4-L5, with nerve root irritation (DRE II 5% WPI)
- As each impairment is at a different anatomical level, no deduction is to be made.

RTWSA has revised its position and this advice now supersedes the advice provided in February 2010:

The new legislation and Guidelines came into effect on 1 July 2015:

Section 22(8)(b) of the Return to Work Act 2014 ("the RTW Act") states:

An assessment must take into account the following principles:

(b) impairments from unrelated injuries or causes are to be disregarded in making an assessment…

Paragraph 1.23 of the Impairment Assessment Guidelines ("the IAGs") states:

If the unrelated or previous injury is to the same part of the body as the work injury and is not related to the work injury, the requestor will ask the assessor to disregard the unrelated or previous injury, which means that the current permanent impairment attributable to both injuries is assessed but the degree of impairment attributable to the unrelated or previous injury is deducted.

This is reinforced by section 22(8)(g) of the RTW Act which states:

(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…

(Note: there are no contrary provisions in the IAGs)

The revised position is consistent with the provisions of the RTW Act and the IAGs and aligns with how other deductions are made in respect of other body parts.

There has been a recent SAET decision of Denton V RTWSA [2016] SAET 57, which did not support the argument that a body part, in this case the knee, has divisible parts. Deputy President Judge Farrell stated:

"The argument that Mrs Denton's knee can be divided into damaged parts for which separate assessments of permanent disability can be given cannot succeed. It is inconsistent with the intention of the legislation and the authorities.

The various components of the knee joint cannot be subject to divisible assessment."

For the purpose of assessment, the IAGs/AMA5 divide the spine into three component parts: cervical, thoracic and lumbar. Each is treated as a body part which is not considered to be further divisible based on the reasoning of the Denton decision.

Using the example above, but now applying the revised position, a deduction would be made for the pre-existing non-compensable injury as the lumbar spine cannot be divided. The impairment would therefore be 0%WPI as the impairment from the pre-existing injury (20%WPI) is greater than the impairment from the work related injury (5%WPI) and there cannot be a negative impairment rating.

Until such time as there is case law which directs that this approach is incorrect, this is ReturnToWorkSA's position, and the approach to assessment you will be requested to take.

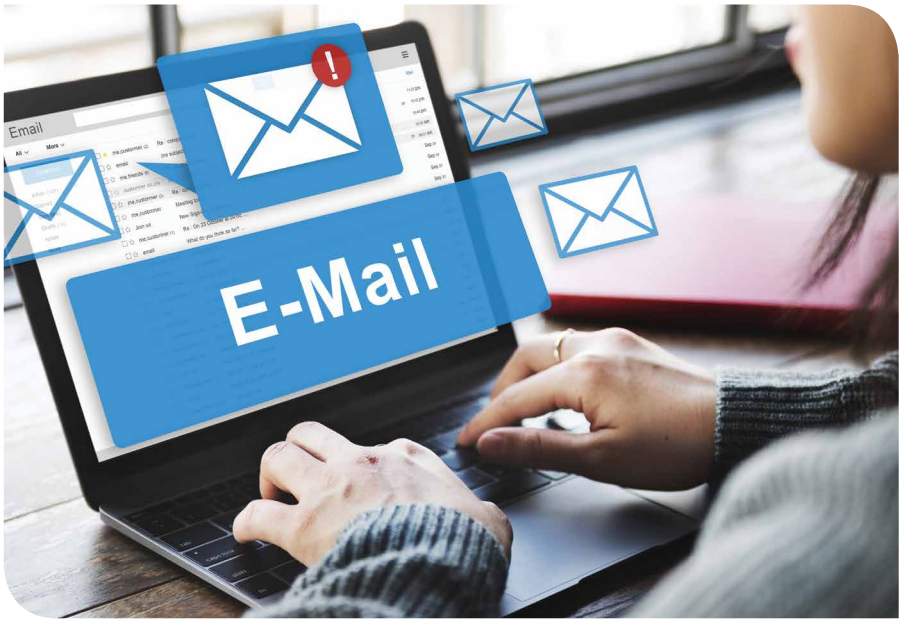
IMPAIRMENT INSIDER

'Table of Maims' assessments

We are starting to see more of these assessments being requested. The reason behind the need for these requests is to ascertain if the worker meets the criteria to be considered a seriously injured worker. No further lump sum is payable in these cases. As you would appreciate, Table of Maims assessments do not equate to WPI%, and therefore assessors will be asked to carefully review medical information from around the time of the Table of Maims assessment to attempt to identify objective evidence that can be used to provide a WPI% rating using the methodology in the current Guidelines.

Here are some questions you might ask yourself if you have been asked to provide a WPI assessment using medical information from a pre-April 2009 Table of Maims assessment:

- Has there been any prior surgery? If so, there may be a DRE (Spine) or DBE (Upper or Lower extremity) assessment that could apply.
- For spine assessments, is there evidence of asymmetric ROM, muscle guarding or non-verifiable radiculopathy that can be used to rate as DRE Cat II?
- Have ROM measurements been recorded around that time? If the required planes have been included, you should be able to provide a rating.
- Are there any suitable x-rays available to you for rating arthritis?



Assessors should still identify any impairment to be disregarded, combined or not combined as in any other case. If surgery has occurred subsequent to the Table of Maims assessment, the assessment should be based on the pre-surgery information if sufficient information is provided.

If you have not been given enough evidence to provide a WPI% rating, please describe this in the report and provide an assessment of the level of impairment as currently presented.

A number of reports are seen with 0% in the pre-existing column of the summary table. This implies that the assessor has undertaken an assessment of a pre-existing condition and determined the impairment rating as 0% whole person impairment. Please only assign a 0% where you have made an assessment and found that there is no impairment. If there is insufficient information to use to provide an impairment rating, it is more appropriate for you to comment 'not rateable' in the summary table and/or explain within the body of the report.

Do you want your requests emailed?

It was suggested by assessors at the last discussion forum that it would be easier to list the documents received/reviewed if they could be copied and pasted from an electronic copy of the request letter.

We are happy to include your clinic's email address in our published list for your requests to be sent to. Please email Kirstie at wpi@rtwsa.com with the details.

Skin—selecting a class

The classes in Table 8.2 in the Skin Chapter (p178, AMA5) are largely differentiated by the limitations on activities of daily living and/or adherence. When selecting a class in this table you are to consider the impact of the skin disorder on the ability to perform activities of daily living (as per the footnote).

The limitations on the ADLs must be attributable to the skin condition alone, not any other impairment (work or non-work injury related) that the injured worker may have.

Where there are other assessed impairments, the impact of activities of daily living is already accounted for, as explained on page 4 of AMA5 – *"The whole person impairment percentages listed in the Guides estimate the impact of the impairment on the individual's overall ability to perform activities of daily living, excluding work, as listed in Table 1-2."* – and additionally, for the Spine in the Impairment Assessment Guidelines (4.24-4.27).

It would be expected that the report will contain explanation as to what limitations on the activities of daily living listed in Table 1-2 are specifically caused by the skin condition and how that relates to the class selected in table 8.2.

Condition not in the request letter—is it at MMI?

When you find a new injury or condition that you believe is a result of, or attributable to the injury that you have been asked to assess, you need to consider whether it is at Maximum Medical Improvement. If it hasn't been properly diagnosed before, has the worker had the opportunity for appropriate treatment? Take, as an example, a digestive or urinary condition. Has the worker had the opportunity to see the appropriate specialist for this condition to properly investigate and recommend treatment? If not, it is likely that the best course of action is to state that all conditions are not at MMI and to cease the assessment. With only one assessment available, it is critical that the worker is able to have all their compensable conditions assessed, and causation should be established prior to the assessment to prevent avoidable disputation.

Update your contact details

If you change your address, practice arrangements or alter what referrals you wish to accept, please email us wpi@rtwsa.com so we can update our records and assessor listing. Don't forget to provide your certificate of public liability insurance for any new location.

IMPAIRMENT INSIDER

Do you assess epicondylitis?

The Impairment Assessment Guidelines talk about assessing epicondylitis of the elbow in 2.20 but does not discuss the appropriate method to assess when both lateral and medial epicondylitis is present.

Medial epicondylitis affects the origin of the wrist flexors at the elbow and lateral epicondylitis affects the wrist extensors at the elbow. Each is at a different anatomical musculotendinous location.

Each condition can occur independently of the other or both conditions can be present.

The functional impact of medial epicondylitis (wrist flexion) is different to lateral epicondylitis (wrist extension). If medial and lateral epicondylitis are present then the functional impact is likely to be greater than if only one or the other is present.

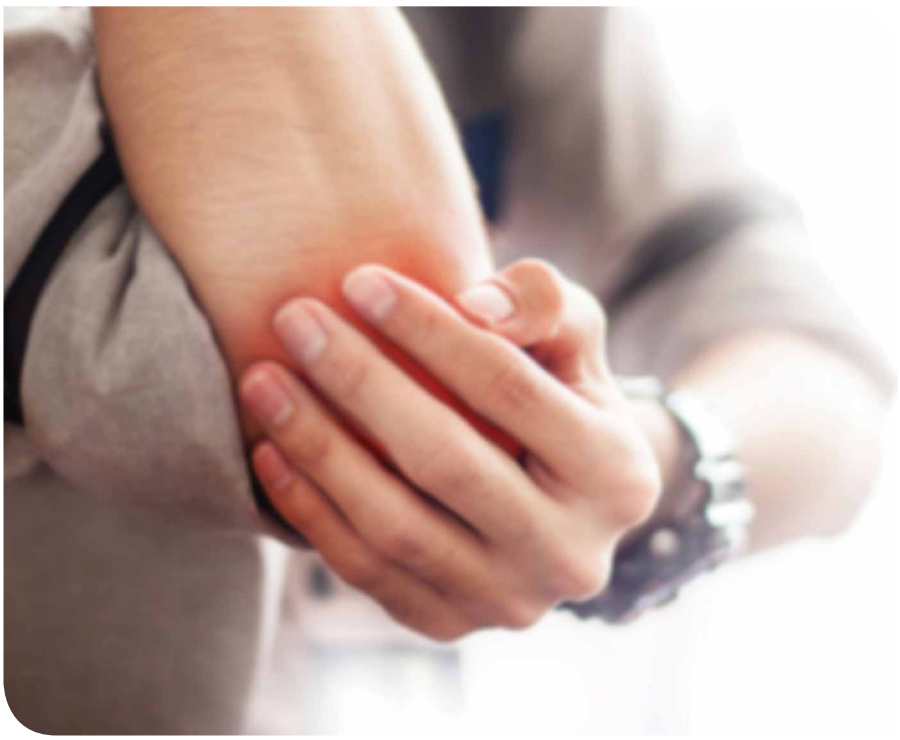
It is therefore considered reasonable that if a worker suffers from both lateral and medial epicondylitis, meeting the requirements of 2.20 (p19, Guidelines), where there has been no surgery, an assessment of 2%UEI (1%WPI) for each condition may be fairly applied by the assessor.

As per 2.20, if there is an associated loss of ROM, the assessments are not combined but the assessment giving the highest rating is used.

If surgery has occurred, the method prescribed on page 507 of AMA5 is applied.

How do you assess urinary and reproductive systems as a result of a spinal cord injury?

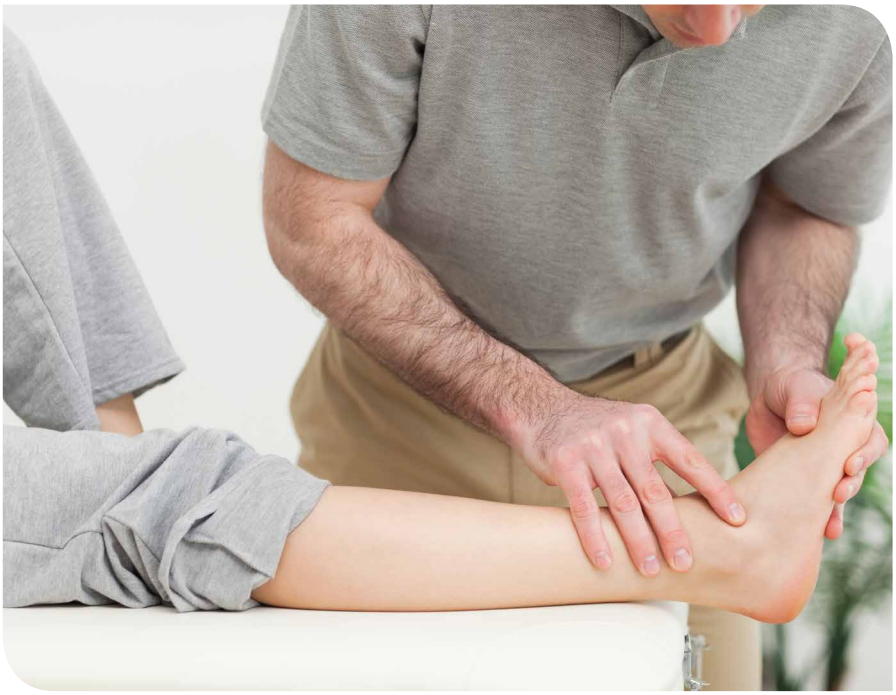
Urinary and reproductive systems are assessed using Chapter 7 of the Impairment Assessment Guidelines and Chapter 7 of AMA5, only if the primary disease or trauma arises in the urinary and reproductive system as per 7.3 (p57, Guidelines). In the case of a person who has spinal cord, cauda equina or bilateral nerve root dysfunction, which results in bladder and/or sexual dysfunction, he or she is assessed according to Chapter 4 of the Guidelines and Chapter 15 of AMA5 (Spine) – see Section 15.7 and Table 15.6.



Worker representative report requests

Where an impairment assessment report, or an independent medical report asking for an indicative impairment assessment, is requested by the worker's representative, this does not constitute an impairment assessment report for billing under the Medical Fee Schedule. As described in the schedule, payment will only be made following submission of the report which is prepared in accordance with, and conforms with, the requirements of the relevant guidelines. To charge for an impairment assessment report, the report must be requested by the claims agent or self-insured employer, following consultation with the worker on the content of the request, as required by the Impairment Assessment Guidelines.

The exception may be where the worker's representative has requested a report relating to the injured worker's claim under Transitional Regulation 5, where the assessment will be undertaken under the WorkCover Guidelines or where it relates to a disputed matter under the prior legislation. If you are unsure how to bill for a report, please contact the relevant Claims Agent for that claim.



Providing ankle assessments reminder

Paragraph 3.21 of the IAGS (and figure 17-5, p535 of AMA5) directs that when measuring dorsiflexion of the ankle, the tests are carried out initially with the knee in extension and then repeated with the knee flexed to 45°. The average of the two angles represents the dorsiflexion measurement to be rated using Table 17-11 (p537, AMA5). This process also applies for measuring plantar flexion of the ankle.

In addition, the measurements for plantar flexion, dorsiflexion, hindfoot inversion and eversion are all added and then that total is combined with any valgus/varus deformity.

Invitation

Assessor Discussion Forum

Date: Thursday 4 May 2017

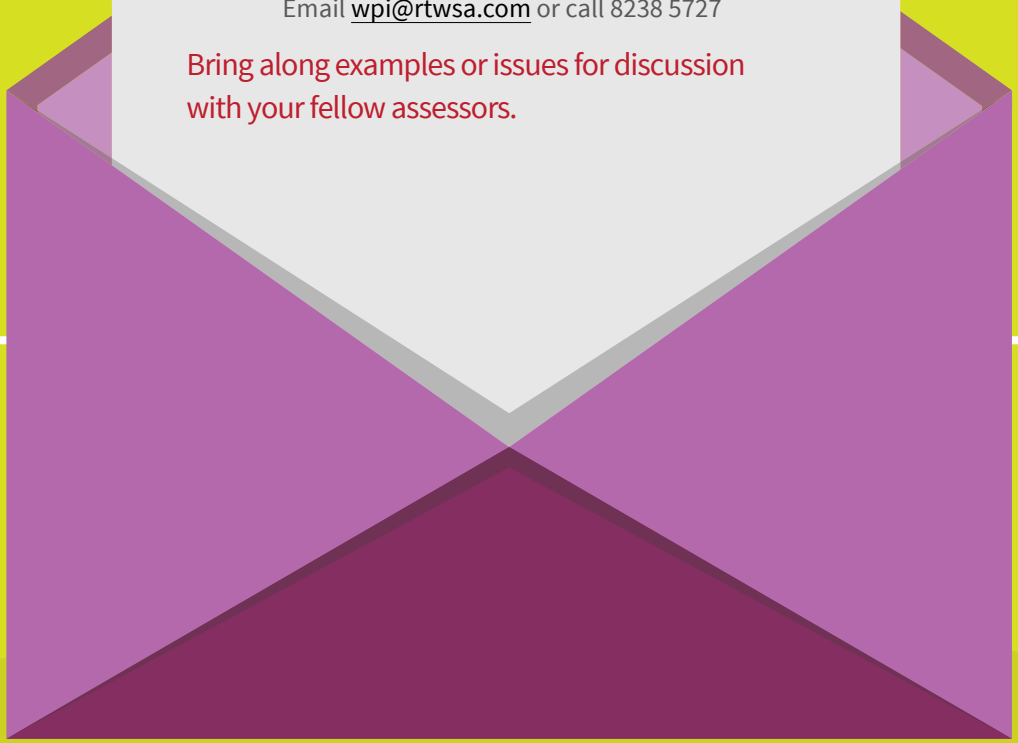
Place: ReturnToWorkSA
Ground floor
400 King William Street
Adelaide

Time: 5:30pm to 7:00pm

Topic: Medication related impairments and case law updates

RSVP: By 28 April 2017
Email wpi@rtwsa.com or call 8238 5727

Bring along examples or issues for discussion with your fellow assessors.



Improved summary table for report template

Those of you who attended the last forum may recall a suggestion made to improve the summary table in the report request.

The summary table now more clearly shows what the totals at the bottom relate to. We will also be providing information to the claims agents to ensure they are aware of the new table.

Summary table

Body part or system	Impairment Assessment Guidelines Chapter, page, table/figure	AMA5 Chapter, page, table/ figure	% WPI All assessed impairments	% WPI Pre-existing impairments	% WPI Work injury impairment
1.					
2.					
3.					
(add extra rows if necessary) **Totals (from Combined Values Chart AMA5)**			**%WPI** **Total all assessed impairments**		**%WPI** **Total work injury**

We really appreciate suggestions for ongoing improvements to letters and templates and encourage you to let us know if you have an idea. Using the report template is essential to ensure clarity and consistency for readers who need to be able to easily recognise what figures are used when determining the appropriate entitlement.

The new template is available on the Impairment assessor news and resources page or can be requested by emailing Kirstie at wpi@rtwsa.com.

If you have any questions about any of these articles, please contact the team at wpi@rtwsa.com.