# IMPAIRMENT INSIDER

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2017

Return to WorkSA

## Introduction

Welcome to the fourth edition of the Impairment Insider. In this issue we cover a variety of topics, such as lower extremity, scarring, noise induced hearing loss assessment, the meaning of MMI and changes to the SAET Rules.

Thanks very much to those who attended our Impairment Assessor Discussion Forum in May. We hope you found the discussion around medication related impairments as interesting as we did. We have summarised some of the discussion in this issue. If you would like an attendance certificate for that session, or a copy of the presentation, please get in touch with Kirstie.

The next forum will be one for accredited Psychiatrists, to share some issues and approaches to using the GEPIC tool for assessing psychiatric impairment.

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

## Lower extremity ratings for the ankle, hindfoot and toes

We have seen a few assessments recently where the assessor has been requested to assess the ankle/foot and has done their assessments at Lower Extremity Impairment (LEI)% rather than Foot impairment (FI)%. For foot/ankle assessments, the impairment is first assessed at (FI)% level, then converted to lower extremity values by the conversion factor of 0.7 as instructed in AMA5 section 17.2(a) page 527. For significant losses of range of motion there may be a material difference in the lower extremity impairment if this instruction is not followed.

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## Recent discussion forum

On May 4th we held an assessor forum to discuss medication-related impairments and also some recent case law.

We are seeing a number of assessments which include ratings for impairments resulting from medication usage. Usually compensability is already established before an impairment assessment is undertaken, however some assessments are being requested before compensability of the requested conditions being determined, which may be due to the number of transitional claims still being assessed.

To date we have seen a range of approaches from assessors when asked to provide assessments for 'medication related impairments'.

Some assessors accept the possibility of a causal relationship between medication use and the impairments and provide an assessment, but often limited medical information is available, no investigations have been undertaken and no medical treatment has been pursued. Other assessors have indicated that:

- the presenting condition/s may have other underlying causes
- the condition/s have not been appropriately investigated and/or treated, or the condition may be improving
- the medication is no longer being taken, or taken in amounts and frequency unlikely to cause the impairment
- in their opinion the conditon has not reached MMI.

For an impairment assessment to be given, objective evidence is required that the condition exists and that the condition is caused by the work injury. To satisfy the SAET, evidence is likely to be required regarding the condition/s being reported, the extent of medication usage (dose, duration, monitoring levels), the results of investigations and the results of treatment.

For a full copy of the presentation, including notes about assessing some of the more common impairments, such as upper and lower digestive and mastication, please email Kirstie at **wpi@rtwsa.com**.

## Most specific method to be used

The Impairment Assessment Guidelines and AMA5 may specify more than one equally valid, applicable method that assessors can use to establish the degree of an injured person's permanent impairment (IAG 1.38). In that case, assessors should use the method(s) that results in the highest degree of permanent impairment. It is important that assessors are not just applying 'applicable' when selecting the method, but are properly considering whether they are equally specific (3.3, 3.4 IAG). Unless a solid rationale can be provided for not using the most valid method, then it must be used. Only where the methods are equally valid and specific, can the one with the highest rating be applied.

It should be noted that in the lower extremity, there may be multiple equally appropriate and specific methods. Only once you have identified the most appropriate and specific methods can the evaluation giving the highest impairment rating be selected (refer IAG 3.6).

## Rating scarring

It is important to remember that when rating scarring, the skin is regarded as a single organ and all non-facial scarring is measured by one overall impairment rather than individual scars rated separately and combined (IAG 13.4). The correct approach is to provide an assessment for any scarring over the whole body (excluding the face), and then to deduct the non-work related or pre-existing scarring from the total WPI%. The requestor will only ask for an assessment of the scar relevant to the current work injury – in most cases they will not be aware of pre-existing scars, so it is up to the assesor to identify any other evident scarring and describe same in the report. The assessment is then given of all non-facial scarring with a deduction for the pre-existing component. Remember – scarring may be present but rated as 0%WPI (IAG 13.9).

## New impairment identified on examination

With a legislative requirement of 'one and only one' assessment, what do you do if you identify a condition or impairment on examination that has not been included in the request letter? If that impairment is diagnosed by you, then chances are the worker has not had the benefit of proper investigation and treatment in relation to that condition, so it is unlikely to be at MMI. As the legislation only allows for only one assessment per claim (section 22(10) of RTW Act), no assessments for any of the requested impairments, or the newly identified impairment, should be provided. This then enables the worker to return for a further assessment in the future when all conditions are at MMI.

However, if the assessment relates to multiple claims, does that mean that nothing can be rated in this assessment? Not necessarily – the requestor will know which impairments relate to which claims, so please check with them to find out if any of the impairments can be provided in this assessment and which should be left for a later time.

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## The meaning of MMI

The meaning of 'maximum medical improvement' was the subject of a recent SAET decision in the matter of Kaye v ReturnToWorkSA [2017] SAET 49. While there were a number of other issues considered in this case, only the meaning of MMI is relevant to this article.

The worker challenged the decision of the claims agent that he had no entitlement for a right ankle injury. The worker contended that the right ankle injury was not at MMI, contrary to the opinion of the impairment assessor, or in the alternative that the assessment of 4% WPI was wrong.

The assessor had indicated in his original report that:

*"Mr Kaye's right ankle injury has reached maximum medical improvement, but there is a risk of deterioration in the medium term".*

Although the assessor subsequently revised his opinion regarding MMI on the basis of the workers inappropriate duties placing him at increased risk of aggravation, the judge was concerned that the statement in the assessor's original report was a contradictory statement to his mind and that the assessor had misdirected himself as to what MMI means. He went on to say that *"A worker who is at significant risk of deterioration in the medium term has not, to my mind, reached maximum medical improvement."*

The Impairment Assessment Guidelines define MMI at 1.13 as follows:

*"…… MMI is when the worker's condition has been medically stable for the previous three months and is unlikely to change in the foreseeable future, with or without further medical treatment."*

AMA5 defines MMI as follows:

*"Maximal medical improvement refers to a date from which further recovery or deterioration is not anticipated, although over time there may be some expected change."*

While the SAET decision provides no guidance regarding what constitutes 'medium term' it is clear that medium term was considered at odds with the concept of stability and inconsistent with the definition in the Guidelines that refers to 'foreseeable future'.

Without any definitive definition of what constitutes short term, medium or long term it is recommended that assessors carefully consider how MMI is described when there is the possibility of further change. It may be advisable to include an actual timeframe e.g. 12-18 months or 3-5 years, for example.

In preparing for the next review of the Impairment Assessment Guidelines, we intend to seek some clarification from assessors regarding their opinion, from a medical perspective, as to the meaning of these time frames. Please let us know your thoughts.

## Your assessor declaration form

If you haven't already, you should soon receive an Impairment Assessor Declaration form for you to complete and return to maintain your accreditation for the Return to Work scheme. This helps us ensure, on the Minister's behalf, that all of our assessors continue to meet the requirements of the scheme and that we have all of your up to date details. Please send your form back as quickly as possible and contact us if you have any issues. If you don't receive your form in the next week or so, please get in touch with us.

# Change to the South Australian Employment Tribunal (SAET) Rules 2017

The SAET has issued a set of Rules which came into effect on 1 July 2017. These Rules replace the Rules published in 2015 which have now been revoked.

There has been a change in the Rule that relates to the content of expert reports which has relevance to the preparation of reports for the assessment of Whole Person Impairment.

Rule 62 of the SAET Rules 2017 below now requires:

**62. Content of expert reports**

(1) If a party proposes to rely on expert evidence in any matter, the party must seek a written report from the expert, which must:

(a) set out the expert's qualifications to make the report;

(b) set out the facts and factual assumptions on which the report is based;

(c) distinguish between objectively verifiable facts and matters of opinion that cannot be (or have not been) objectively verified;

(e) set out the reasoning of the expert leading from the facts and the assumptions to the expert's opinion on the questions asked;

(f) set out the expert's opinion on the questions asked;

**(g) be provided on the understanding and acknowledgement that the expert's primary duty is to be truthful and accurate to the Tribunal rather than to serve the interests of a party or parties;**

**(h) make reference to this rule; and**

**(i) comply with any requirements imposed by any Practice Directions.**

You will note that the new Rule has the additional requirements highlighted above (g), (h) and (i).

To assist you in complying with SAET Rule 62, 2017 we will include Rule 62 in the Report Template for your consideration and we will add the following wording into the report template to comply with the requirement to make reference to this rule.

*"I advise that I have prepared this report in accordance with the South Australian Employment Rule 62 'Content of expert reports' which came into effect on 1 July 2017."*

Please ensure that you visit the **Assessor news and resources page** and download the revised template. Reports that do not contain this statement will be returned to you (allowing 2 weeks for you to update your template) for amendment.

# Assessor Discussion Forum

**Date:** Thursday 30 November 2017

**Place:** ReturnToWorkSA
Ground floor
400 King William Street
Adelaide

**Time:** 6:00 to 7:30pm

**Topic:** Psychiatric Impairment Assessment

**RSVP:** By 20 November 2017
Email **wpi@rtwsa.com** or call 8238 5727

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

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## IME requests with impairment questions

You may have been asked to provide an IME report that includes information related to the assessment of permanent impairment by a worker's legal representative or by one of our Claims Agents. This is usually because the worker is not yet considered to have reached MMI but has lodged an application under Section 21(3) of the RTW Act to be taken to be a Seriously Injured worker on an interim basis.

Assessment undertaken for this service will form part of an independent medical examination and are not WPI assessments. They are therefore charged in accordance with the IME fee schedule and not the WPI fee schedule. Whilst it is appreciated that the work involved to provide impairment information can be similar to the work involved with a full WPI assessment, it is not envisaged that the assessor will provide all the calculations and methodology references as would normally be required when providing a WPI assessment.

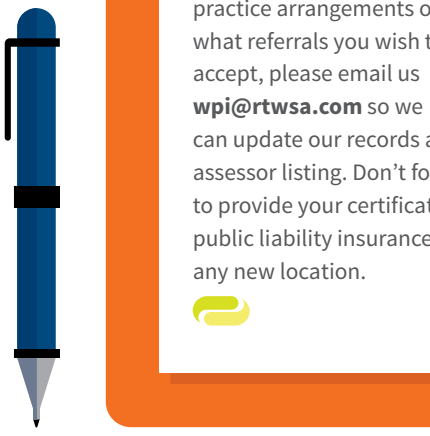
## CTP Regulator - upcoming ISV Conference

MOTOR ACCIDENT INJURY ASSESSMENT SCHEME

The MAIAS Medical Conference is coming up on Thursday 9 November at the Hilton Hotel. MAIAS will present feedback and statistical information to all approved ISV medical assessors following completion of the first Quality Assurance project, conducted earlier this year. The conference has two separate features, with the morning session dedicated to ISV assessors only, while the PM session aims to inform the entire industry and present the data as a platform for education and support. MAIAS has engaged local and interstate industry experts to provide medically relevant feedback. Invitations have been sent to assessors who undertake that work. If you have any enquiries, please email MAIAS Manager Ben Houghton on **ben.houghton@sa.gov.au** or alternatively phone 08 8226 4228.

## Report delivery timeframes

The timeframe for the provision of the Impairment Assessment report after the examination is often important due to Tribunal hearings or case conferences, but even where this is not the case, there is always someone on the other end eagerly awaiting a decision about their claim. The service standard for this is **within ten (10) working days** of the assessment being completed, unless a different timeframe has been agreed and documented with the requestor (1.50, Impairment Assessment Guidelines). If there is a special reason that a report will be delayed, please advise the requestor so that they are aware of it and can manage expectations. Your quick response to requests for clarifications would also be greatly appreciated.



## 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.

# Noise induced hearing loss

Section 188(2) of the RTW Act states: -

"Subject to this section, where a claim is made under this Act in respect of noise induced hearing loss by a worker (not being a person who has retired from employment on account of age or ill-health), the whole of the loss will be taken to have occurred immediately before notice of the injury was given and, subject to any proof to the contrary, to have arisen out of employment in which the worker was last exposed to noise capable of causing noise induced hearing loss."

A recent matter in the SAET has provided some clarity around this section of the Act and the reference to "proof to the contrary".

In the matter of Mitchell [SAET 28 2017] the worker had undergone audiometric testing prior to commencing his employment with the subject employer which evidenced 13.2%BHI. Subsequent audiometry evidenced hearing loss at 15.3%BHI but based on the evidence of the pre-employment audiometry, the worker was determined to have no entitlement to lump sum compensation as the level of hearing loss sustained at the subject employer was less than the 5%WPI threshold. This was the subject of a dispute at the SAET.

The Full Bench of the SAET found that the presence of a pre-employment audiometry showing some level of noise induced hearing loss does not

affect the statutory presumption that the whole of the loss is deemed to have occurred immediately before the notice of injury was given, unless the last noisy employer can show it was not responsible for any of the worker's noise induced hearing loss. Therefore if there has been demonstrated progression in the level of NIHL at the last noisy employer, then the whole of the loss will be deemed to have occurred with them.

Requestors will continue to provide you with pre-employment audiograms for your consideration. This evidence will be used to ascertain if there has been any progression in the level of occupational noise induced hearing loss at the subject employer. You will need to calculate the level of occupational NIHL evidenced in both the pre-employment audiogram and the current audiogram in accordance with the method required under the IAGs and convert it to WPI%. The WPI% calculated from the pre-employment audiogram is then recorded in the summary table as pre-existing impairment:

| Body system/part | IAGs | AMA5 | %WPI all assessed impairments | %WPI pre-existing impairment | %WPI work injury impairment |
|---|---|---|---|---|---|
| NIHL & tinnitus | | | Total adjusted occ NIHL as assessed by you & converted to WPI% | Pre-employment audiogram adjusted occ NIHL converted to WPI% | WPI% difference between the two |

CONTINUED

### Which audiogram to use when provided with serial audiograms

Section 188(3) of the RTW Act states:

*"If a claim is made under this Act in respect of noise induced hearing loss by a person who has retired from employment on account of age or ill health, the whole of the loss will be taken to have occurred immediately before the person retired and, subject to any proof to the contrary, to have arisen out of employment in which the person was last exposed to noise capable of causing noise induced hearing loss.."*

As it is generally accepted that noise induced hearing loss does not progress after leaving the noisy workplace, it is appropriate for assessors to use the audiogram undertaken closest to the date of retirement in calculating impairment. Accordingly, when serial audiometry is provided, assessors are requested to utilise the audiogram closest to the retirement date rather than their own, unless there is good reason not to. Reasoning should be provided in the report as to the choice of audiogram used in the calculation of impairment. Assessors are reminded that standards apply to audiology assessments and the requestor needs to be confident that audiograms provided by requestors have been performed according to the required standards.

## 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.


Return to WorkSA

*(Please replace with your own letterhead)*

Date

Requestor's name
Company
Address
City / Suburb

**Whole person impairment assessment report – physical injuries**

**Name of injured worker**
**Date of birth** day month year
**Claim number**
**Date of injury**

Dear

My qualifications to make this report are:

Further to your letter of xx month xxxx, I saw worker's name on xx month xxxx at location for a whole person impairment assessment and report.

The worker attended unaccompanied/with (name of support person) *(please select appropriate)*.

An interpreter was not present at the consultation/An official interpreter (name and NAATI number) was present and assisted throughout the consultation.

I explained my role as an accredited assessor of whole person impairment, and also that my report from this assessment would be sent to Return To Work SA.

You have requested an assessment of whole person impairment for the following work injury(ies) (chronologically):

- 
- 
- 

You have requested that I assess and combine the following impairments *(please select the appropriate)*

Return To Work SA Impairment Assessment report template – effective 23 March 2017

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## Are you using the latest template?

Don't forget that there is a revised report template with a new summary table and reference to SAET rules on the **resources page** – please make sure you are using the correct version.

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

www.rtwsa.com
13 18 55

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