



NOTICE TO MARITIME INDUSTRY ORGANISATIONS AND OTHER INTERESTED PARTIES

NOTICE NO 06/2011

NEW GUIDE TO THE ASSESSMENT OF THE DEGREE OF PERMANENT IMPAIRMENT—EDITION 2.1

Purpose

1. To inform stakeholders that the Minister for Tertiary Education, Skills, Jobs and Workplace Relations has approved edition 2.1 of the 'Guide to the Assessment of the Degree of Permanent Impairment' (the Seacare Guide).
2. Edition 2.1 will replace the second edition of the Seacare Guide for assessing claims for permanent impairment and non-economic loss made under sections 39, 40 and 41 of the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) and will come into effect from 1 December 2011.

Background

3. Sections 39 to 42 of the Seafarers Act prescribe that lump sum compensation is payable for permanent impairment and non-economic loss resulting from a work related injury.
4. The amount of compensation payable under the Seafarers Act is determined by the degree of permanent impairment and non-economic loss suffered by an employee as a result of a work related injury.
5. Section 42 of the Seafarers Act provides for the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority) to prepare and issue an approved Seacare Guide. The Seacare Guide sets out the criteria by which the degree of permanent impairment and non-economic loss suffered by an employee is assessed for determining compensation under the Seafarers Act.
6. Subsection 42(2) of the Seafarers Act provides that the Seacare Authority may vary or revoke the Seacare Guide, and subsection 42(3) provides that the preparation, variation or revocation has no force or effect unless and until approved by the Minister.

Review of edition 2 of the Seacare Guide

7. In the Full Federal Court decision *Broadhurst v Comcare* [2010] it was found that Table 9.17 of the Comcare Guide used to assess the degree of permanent impairment of the lumbar spine, was inapplicable to the extent that it did not provide for a 10 per cent impairment value. As the Seacare Guide is based on the Comcare Guide, this decision also had an impact on the second edition of the Seacare Guide.
8. As a result of the Broadhurst decision, it was found that 13 tables within the Seacare Guide do not provide for a 10 per cent impairment value.

9. Consequently, the Authority has amended the Seacare Guide to provide 10 per cent impairment value for all affected tables. Edition 2.1 also accommodates the decisions of the High Court of Australia in the matters of *Canute v Comcare (2006)* and *Fellowes v Military Rehabilitation and Compensation Commission (2009)*.
10. For more information on the Canute and Fellowes High Court decisions, please refer to the following Comcare jurisdictional policy advices, available on the Comcare website:
 - 2007/5 Canute Decision—implications for consequential injuries; and
 - 2010/02 Fellowes Decision—implications for determining permanent impairment.
11. In addition to the above amendments, medical transcription and interpretation, grammatical and formatting errors identified within the Seacare Guide have also been corrected. A schedule of amendments made in the creation of edition 2.1 is attached below.

Permanent Impairment claims following the commencement of Edition 2.1 of the Seacare Guide

12. Generally, edition 2.1 of the Seacare Guide will apply to permanent impairment claims received by an employer on and from 1 December 2011. That is, for claims received by an employer on and from 1 December 2011, the amount of compensation payable under sections 39, 40 or 41 of the Seafarers Act is to be assessed by reference to edition 2.1 of the Seacare Guide.
13. The commencement of edition 2.1 of the Seacare Guide will also impact interim payments of compensation under s40 of the Seafarers Act. As a result, it will be necessary for employers to refer to either edition 2 or edition 2.1 of the Seacare Guide to determine a claim for permanent impairment depending on when a written request is received by an employer under section 40 of the Seafarers Act. For further information in this regard, please refer to the Seacare Guide or contact the Seacare Management Section.

When a claim is received

14. Claims should be treated as having been received by an employer for the purposes of this transitional period, where:
 - the request is in writing (delivered by post, email, fax, hand, etc);
 - it contains the claimant's name, their claim number (optional), details of the injury; and
 - requests compensation for permanent impairment pursuant to sections 39, 40 or 41.
15. The request will be valid whether or not it is made on an approved form which, nevertheless, should be provided as soon as possible thereafter together with any relevant medical evidence.
16. If there are any issues regarding when a permanent impairment claim is received during this transitional period, please contact the Seacare Management Section.

Edition 2.1 of the Seacare Guide

17. Copies of edition 2 and edition 2.1 of the Seacare Guide are available on the Seacare website at www.seacare.gov.au.
18. Any enquiries relating to this notice may be directed to the Seacare Management Section.

Seacare Management Section
30 November 2011