

27 February 2026

Manager Policy and Legislative Services
WorkCover WA
2 Bedbrook Place
SHENTON PARK WA 6008

By Email: consultation@workcover.wa.gov.au

Dear Sir/Madam

TECHNICAL REVIEW OF WORKCOVER WA PERMANENT IMPAIRMENT GUIDELINES

I refer to the *Workers Compensation and Injury Management Act 2023* (the Act) – Technical review of WorkCover WA Permanent Impairment Guidelines Consultation Paper dated January 2026. This consultation was considered by the Law Society of Western Australia's Personal Injuries and Workers Compensation Committee.

The Law Society's submission has been informed by feedback received from members in relation to the specific matters set out below.

Maximum medical improvement (MMI), special assessments and permanent impairment compensation

Section 1.66 special assessment

The Law Society welcomes the amendment to *section 1.66 special assessment for the purpose of common law*. The proposed amendments will reduce the current injustice experienced by those workers who have lodged their claims outside the 18-month period.

Special assessment in permanent impairment

As you may be aware, the Australian Taxation Office has issued Class Ruling CR 2025/88 which has confirmed the private ruling that the income compensation part of a settlement is taxable.

Prior to 1 July 2024, the parties would allocate the monies for any second schedule, where the condition had not stabilised, into the allocation for weekly payments. In that way the parties took into account the likely second schedule amount and workers were not left without being compensated for their permanent impairment. Given that tax was not payable prior to the amendments, this would have no adverse impact on the worker or employer.

Where a worker is in receipt of income compensation, most matters resolve prior to the worker reaching permanent impairment stabilisation. Therefore, the only option for the parties is to place any allocation towards a permanent impairment under the income compensation component, exposing the worker unfairly to income tax.

A recent case example is a matter in which both APIA doctors engaged by the insurer and worker estimated that the worker will have a 13.33% impairment of her back once stabilised. The worker worked part time, and her weekly compensation rate was \$395 per week. The matter resolved for \$60,000 being made up of a year of wages (\$20,000), plus the PI (\$26,442.05), travel (\$1,000) and future medicals of \$12,500. Despite both doctors agreeing on what the PI will be upon stabilisation, the parties had no option but to allocate \$26,442.05 into the income compensation amount which will be subject to income tax, an unfair outcome for this worker.

There have also been circumstances where a worker is too unwell for other health reasons to attain maximum medical improvement (MMI). For example, a worker who, because of a heart attack, could not obtain clearance from their treating cardiologist to undergo surgery on a compensable lumbar spine injury. In those circumstances, an APIA should be able to give a special assessment. This would enable a fair settlement to be entered into that includes a permanent impairment compensation component, without having to wait months or perhaps even years for the surgery to be undertaken.

Section 79 of the Act

The Law Society submits that consideration be given to allow a special evaluation for the purpose of the special increase for medical and health expenses general limit.

A worker who requires a special increase is likely to have significant injuries and has already undergone significant surgeries and exhausted the allocation for medical and health expenses. The worker will likely require further surgery. However, the worker will not have reached MMI (given the need for further treatment) and as such will not be able to apply for the second (special) extension.

Allowing a special evaluation in this circumstance will alleviate the injustice of the current system.

The Law Society supports a change to the guidelines that would allow a special assessment to be conducted 18 months post injury despite MMI not being reached, so that a worker can settle their claim for permanent impairment compensation, similarly to the position that applies for access to common law.

Thank you for the opportunity to provide a submission to this consultation. If you have any questions, please contact Ms. Susie Moir, Director Advocacy and Professional Development on smoir@lawsocietywa.asn.au or telephone 9324 8646.

Yours sincerely



Judy McLean
President