

EXPLANATORY STATEMENT

Seafarers Rehabilitation and Compensation Act 1992

Issued by the Seafarers Safety, Rehabilitation and Compensation Authority

Notice of Legislative Instrument

Approved Guide: Guide to the Assessment of the Degree of Permanent Impairment

The purpose of the instrument to which this Explanatory Statement relates is to bring into operation the second edition of the Guide setting out the criteria by which the degree of permanent impairment and non-economic loss suffered by an injured employee shall be assessed for the purposes of the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act).

Section 39 of the Seafarers Act provides that where an injury to an employee results in a permanent impairment, the employer is liable to pay compensation to the employee in respect of that injury and the degree of permanent impairment shall be a percentage determined under the provisions of the approved Guide.

Section 42 provides that the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority) may prepare a written document, to be called the “Guide to the Assessment of the Degree of Permanent Impairment”. In accordance with subsection 42(1) of the Seafarers Act, the instrument sets out the second edition of the Guide, commencing on 1 March 2006.

The instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

In preparing the Guide, the Seacare Authority has, as required under subsection 42(6) of the Seafarers Act, had regard to medical opinion concerning the nature and effect (including possible effect) of the injury and the extent (if any) to which impairment resulting from the injury, or non-economic loss resulting from the injury or impairment, may reasonably be capable of being reduced or removed.

The first edition of the Guide was issued in 1993. It was based on the 2nd edition of the American Medical Association’s *Guides to the Evaluation of Permanent Impairment*, and the first edition of Comcare’s *Guide to the Assessment of the Degree of Permanent Impairment* (the Comcare Guide). The content of the first edition of the Seacare Guide has fallen behind developments in medical assessment of permanent impairment and has, by implication of

judicial criticism of the first edition of the Comcare Guide, also been subject to criticism.

The second edition is based on the current edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, namely the 5th edition.

The second edition of the Guide is substantially more comprehensive than the first edition and will provide an accurate, clear and objective method for measuring all impairments likely to result from work related conditions. It provides calibrated impairment ratings across the various organ systems, more extensive and comprehensive tables with specific measurements of impairment, and detailed instructions on how ratings may be applied or combined. New impairment tables have also been added for specific conditions and in many tables the maximum levels of impairment have been increased.

While non-economic loss ratings remain the same, there is more information on symptoms to assist in providing a more consistent and equitable way of rating non-economic loss.

Permanent impairment ratings determined under the first edition will be preserved unless that assessment would not have been made but for a false statement or misrepresentation.

The first edition chapter on psychiatric disorders has been preserved in the second edition. Seacare, through Comcare, will continue to closely monitor developments in psychiatric impairment rating scales and the operation of the new edition generally.

On 1 September 2005, Comcare prepared the second edition of the Comcare Guide under subsection 28(1) of the *Safety, Rehabilitation and Compensation Act 1988*. In developing the second edition of the Comcare Guide, Comcare undertook extensive consultation with relevant stakeholders including medical and legal practitioners, and employee representatives. As the Seacare Authority includes employer and employee representatives (the Seacare stakeholders), no further consultation was undertaken.