

# Policy Background Paper

## Updates to Permanent Medical Impairment Policies



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## 1. INTRODUCTION

Each year approximately 1,750 injured workers require a Permanent Medical Impairment (PMI) assessment due to a workplace injury. The Permanent Impairment (PI) rating and PMI assessment processes and policies are integral to assessing the impact of a worker's injuries.

In March 2023, the WCB initiated consultation on the PMI processes by bringing together small groups of workers, employers, and members of the medical community to obtain their feedback on the issues and questions we should consider as we review our PMI policies.

This paper initiates the second stage of the consultation process where we welcome feedback on both the content of this paper and the attached draft policy changes (Appendix D). The policy changes involve:

- Updating subsection 3.3 of the Policy Manual to reflect the change to the most current edition or version of the American Medical Association Guidelines to the Evaluation of Permanent Impairment;
- Condensing and simplifying four policies in subsection 3.3 into one new policy to add greater clarity and ease of use;
- Rescinding Policy 3.3.1R1, 3.3.2R4, 3.3.3R2 and 3.3.4R2, and
- Updating several other policies to ensure standardized language across the Policy Manual.

The WCB Board of Directors will consider the feedback received during Stage 2 and determine whether further revisions are required before finalizing the policy changes.

## 2. BACKGROUND

### 2.1 What is a Permanent Medical Impairment?

Sections 34 to 36 of the *Workers' Compensation Act* of Nova Scotia outline the eligibility requirements for a Permanent Impairment Benefit (PIB) for a compensable injury (Appendix A). There is no definition of Permanent Impairment or Impairment in the Act. Impairment, Permanent Impairment, Permanent Medical Impairment and Pain-related Impairment are defined in Policy 3.3.4R1:

*“impairment” means the loss of, loss of use of, or derangement of any body part, system or function;*

*“permanent impairment” means impairment associated with a permanent medical impairment and/or a pain-related impairment.*

*“permanent medical impairment” means any impairment that has become static or stabilized and that is unlikely to improve despite further medical treatment. A permanent medical impairment also accounts for the usual pain that accompanies the type of injury and resulting impairment.*

*“pain-related impairment” means impairment associated with chronic pain.*

Currently, five policies within **Subsection 3.3** of the *WCB Nova Scotia Policy Manual* govern the calculation of the PIB, which is calculated based on a PI rating determined through a PMI assessment completed by a WCB Medical Advisor. For injuries prior to January 1, 2000, PI ratings are assessed using the *WCB Guidelines for Assessment of Permanent Medical Impairment*. Injuries arising on

or after January 1, 2000 are assessed using the American Medical Association's *Guidelines to the Evaluation of Permanent Impairment – 4th Edition* (commonly known as the AMA Guides – 4th Edition), with the exception of chronic pain PI ratings which utilize the AMA Guides – 5th Edition.

The [Policy Manual](#) has full Policy details.

### 2.2 Issues Under Consideration

The following policy issues were highlighted during the first stage of the consultation:

1. *Policy 3.3.2R4* requires a WCB Medical Advisor to carry out PMI assessments. This limits the number of individuals who can perform PMI assessments and has contributed to a backlog of assessments impacting the timeliness of workers receiving their PMI rating. A small pilot project was undertaken in December 2020 to understand how physiotherapists may be used to conduct assessments.
2. Training or certification programs on the AMA Guides – 4th Edition are limited given the 4th Edition is now 30 years old. The requirement to use an outdated version of the AMA Guides to assess PMIs means the WCB is required to train and certify Medical Advisors to apply the newest version of the AMA Guides, but the Medical Advisors then must re-learn and apply the AMA Guides – 4th Edition.

## 3. ISSUES RAISED – STAGE 1 CONSULTATION

### 3.1 Virtual Consultation Sessions

The WCB held seven virtual feedback sessions: two meetings were held with employer representatives and two with injured worker/labour representatives, and meetings were held with WCB physiotherapy consultants, WCB Medical Advisors, and with the Executive Director of the Nova Scotia College of Physiotherapy. Participants were provided with an Issues Identification Paper prior to the meetings. One worker and one employer participant provided additional written submissions following the sessions. See Appendix C for a list of attendees.

### 3.2 Feedback Received

The following is an overview of the feedback received during the first phase of the consultation with brief commentary by the WCB.

**Participants needed more information about how physiotherapists (PTs) or other health care providers would participate in the PMI process before being able to provide feedback on a proposed policy change.**

#### *Feedback*

Generally, most participants could see the potential for some benefit if PTs were utilized in some portion of the PMI process, but all participants had questions and concerns about the proposed policy change:

- Would PTs have the appropriate level of skill and competence to participate in PMI assessments?
- There was not enough data and information available about the PMI assessment pilot from 2020 that was undertaken to test the use of PTs in the process.
- Potential issues with conflicts of interest if a treating PT participates in a PMI assessment for a worker.
- PTs may need additional training and understanding of the AMA Guides to participate in PMI assessments.
- Concerns about other health issues that may be missed if a PT participates in a PMI assessment rather than having a Medical Advisor evaluate the whole person.
- Other process improvements could increase the efficiency of the PMI processes without making this change.

#### *WCB Comment*

The WCB has considered this feedback and understands that a) the lack of detail about how these process changes would be implemented and b) the small size and lack of detail about the outcomes from the pilot initiative hindered consultation participants' ability to comment on these potential policy changes. Given the feedback, the WCB will not make this policy change at this time. We will continue to analyze/evaluate opportunities to enhance and streamline the process, with future consultation on this issue when sufficient information/understanding is gained.

**Concerns with permanent impairment rating variability between the AMA Guides – 4th, 5th, and 6th editions.**

#### *Feedback*

Worker participants expressed concerns that more current versions of the AMA Guides may result in lower permanent impairment ratings for workers, and they provided research showing variability between the 4th, 5th, and 6th editions of the AMA Guides.

#### *WCB Comment*

While the research provided shows variability between the 4th, 5th, and 6th editions of the AMA Guides, the variation between the AMA Guides – 4th Edition and the AMA Guides – 6th Edition is less significant. Given WCB only adopted the AMA Guides – 5th Edition to assess the impact of chronic pain (pain-related impairments) the impact of moving from the AMA Guides – 4th Edition to the AMA Guides – 6th Edition will be minimized. While the AMA Guides – 6th Edition will be new to the WCB, this version has been in use for 16 years, since 2007, providing an extended period for evaluation of any issues with the 6th Edition.

The assessment of chronic pain for the purposes of pain-related impairment (PRI) will continue to utilize the 5th Edition of the AMA Guides, given the modified approach to the assessment of chronic pain and the explicit reference to the AMA 5th Edition in the *Chronic Pain Regulations*.

### **Concerns with the use of percentages in the calculation of permanent impairment ratings for mental or behavioural (psychiatric) disorders**

#### *Feedback*

A participant identified that the AMA Guides states that users should avoid applying percentages to permanent impairment ratings for mental or behavioural (psychiatric) disorders, but WCB Policy 3.3.4R2 utilizes percentages to calculate a permanent impairment for these disorders.

#### *WCB Comment*

While the AMA Guides may recommend users avoid applying percentages to these types of disorders, the use of percentages is necessary to allow the WCB to calculate a permanent impairment rating in order to provide compensation to workers diagnosed with these disorders.

### **Concerns about the steps required when combining multiple PMIs**

Workers identified that there are sometimes errors in the calculation of a combined PMI rating, when a worker has an existing PMI and experiences an additional injury. There are instances where a worker experiences a new injury, but when all previous ratings are combined, the worker does not receive a change in their newly combined PMI rating, and therefore no additional compensation.

#### *WCB Comment*

The process for combining multiple PMI's is outlined in existing policy and follows the process outlined in the AMA Guides. The WCB recognizes that participants have identified specific situations where past PMI awards were not properly combined in accordance with this process. While we believe these are infrequent occurrences, the Board will reinforce the process and ensure that future situations that involve previous PMIs, that were not properly combined at the time, are not retroactively combined with a new PMI.

### **Concerns about the effective date of PMI re-assessments**

#### *Feedback*

Worker participants indicated the effective date for a PMI reassessment that has changed should not be effective the date of the assessment with a Medical Advisor, but rather should be the first date in a worker's medical history that demonstrates there has been a change in the worker's permanent impairment.

#### *WCB Comment*

The WCB recognizes that several issues and appeals exist on the overall issue of PMI effective dates and currently there is no overarching policy that directs the determination of effective dates. The effective date for PMI adjustments following a review is outlined in the policy and is not being changed as part of this consultation. PMI effective dates are linked to the broader issue of effective dates for injuries generally and the Board will consider how PMI effective dates for reviews are determined as part of a broader consultation on injury effective dates.

## 4. PROPOSED POLICY APPROACH

### **4.1 Allowing other health care providers to participate in the PMI assessment process.**

As indicated above, based on the feedback from the first stage of the consultation, the WCB will not make any policy changes regarding this approach at this time.

### **4.2 Updating WCB policy to use of the most current version of the American Medical Association Guidelines to the Evaluation of Permanent Impairment**

The WCB Policy Manual will be updated to standardize the term used to describe the American Medical Association Guidelines to the Evaluation of Permanent Impairment. Through this, *Subsection 3.3 Permanent Impairment Benefit* of the WCB Policy Manual will be condensed and simplified to improve ease of use and improve clarity, reducing the number of policies from five to two.

From the effective date of these policy changes, all injuries (except for the assessment of chronic pain for the purposes of pain-related impairment) will be assessed under the most current version or edition of the Association American Medical Guidelines

to the Evaluation of Permanent Impairment. The effective date of a new edition or version of the American Medical Association Guidelines to the Evaluation of Permanent Impairment will be the effective date of the new version or edition as it is determined by the American Medical Association.

It is proposed that all reviews of a previous PI rating will be determined using the most current version or edition of the American Medical Association Guidelines to the Evaluation of Permanent Impairment. Where a worker's permanent impairment has been evaluated under the pre-January 1, 2000 *WCB Guidelines for Assessment of Permanent Medical Impairment*, the PI rating will only change if the review results in a higher PI rating.

Additional consequential amendments to four policies are outlined in Appendix D. These changes are required to standardize references to the most current edition or version of the American Medical Association Guidelines to the Evaluation of Permanent Impairment.

## 5. PROVIDING YOUR COMMENTS

We are interested to hear your comments on these proposed draft policies and the information presented in this paper. Your comments will assist the WCB in ensuring all issues are considered as this policy is finalized.

The consultation period concludes **October 31, 2023**. This paper is also available at [www.wcb.ns.ca](http://www.wcb.ns.ca). Please provide your written feedback by **October 31, 2023** to:

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## APPENDIX A: WORKERS' COMPENSATION ACT OF NOVA SCOTIA, SECTIONS 34-36

### PERMANENT IMPAIRMENT BENEFIT

- 34 (1) Where a permanent impairment results from an injury, the Board shall pay the worker a permanent impairment benefit.
- (2) The existence and degree of a worker's permanent impairment shall be
- (a) determined by the Board; and
  - (b) expressed as a percentage of total impairment.
- (3) The Board
- (a) shall establish a permanent impairment rating schedule to be applied in calculating the award for a permanent impairment resulting from an injury; and
  - (b) may prescribe the rating schedule referred to in clause (a) as a regulation.
- (4) Subject to subsection (5), the Board shall determine the amount of a worker's permanent impairment benefit by multiplying
- (a) thirty per cent of eighty-five per cent of the worker's net average earnings calculated in accordance with Sections 37 to 46; by
  - (b) the percentage of permanent impairment suffered by the worker, calculated in accordance with the rating schedule established pursuant to subsection (3).
- (5) Subject to Section 71, the permanent impairment benefit established by subsection (4) is payable for the lifetime of the worker.

(6) This Section does not apply in respect of a worker who dies as a result of an injury before a determination of the degree of permanent impairment is made.

### Compensation for coal miners

- 35 (1) Any coal miner who
- (a) has worked at the face of a mine or in similar conditions twenty years or more; and
  - (b) suffers from a permanent impairment that is a loss of lung function, shall be compensated according to the permanent impairment as calculated pursuant to Section 34.
- (2) Notwithstanding clause 71(1)(a), the Board may only adjust its determination of the amount of compensation payable as a permanent impairment benefit to a coal miner who qualifies for compensation pursuant to subsection (1) if there is, in the Board's opinion, an increase in the coal miner's loss of lung function that was not taken into account at the most recent determination of the coal miner's permanent impairment rating.

### Presumption where 100% impairment

- 36 Where
- (a) any worker has a permanent impairment rated at one hundred per cent on the permanent impairment rating schedule established pursuant to Section 34; and
  - (b) the worker dies, the worker's death is presumed to be the result of the injury, unless there is evidence sufficient to rebut the presumption.



## **APPENDIX B: CONSULTATION PARTICIPANTS – STAGE 1**

### **Sessions held in March and April 2023**

#### **Employers**

- Office of the Employer Advisor
- J.D. Irving
- Construction Association of NS
- Health Association of NS
- Shannex
- Sobeys/Lawtons
- Canadian Federation of Independent Business

#### **Workers and Labour**

- Pictou County Injured Workers Association
- Office of the Worker Counsellor
- Canadian Union of Public Employees (CUPE)
- Nova Scotia Nurses Union (NSNU)
- Nova Scotia Government and General Employees Union (NSGEU)

#### **WCB Medical Advisors**

#### **WCB Physiotherapy Consultants**

#### **Nova Scotia College of Physiotherapists**

## APPENDIX C: DRAFT PERMANENT IMPAIRMENT POLICY CHANGES

Policy Number: XXXX

Topic: Permanent Medical Impairment Process  
Section: Short-Term and Long-Term Benefits  
Subsection: Permanent Impairment Benefit (PIB)  
Effective: XXX  
Issued: XXXX  
Approved by Board of Directors: XXX

### Preamble

Under the Workers' Compensation Act (the "Act") a worker who has a permanent impairment as the result of a compensable injury is entitled to the payment of a permanent impairment benefit based on the degree of that permanent impairment. In order to calculate the amount of the permanent impairment benefit the worker is entitled to receive, the Board is required by the Act to establish a permanent impairment rating schedule and to use that schedule to determine the existence and degree of the worker's permanent impairment.

### Definitions

For the purpose of this Policy, the following definitions shall apply:

**"American Medical Association Guidelines to the Evaluation of Permanent Impairment"** means the most current edition or version of the American Medical Association Guidelines to the Evaluation of Permanent Impairment released by the American Medical Association.

**"compensable injury"** means a personal injury by accident arising out of and in the course of employment;

**"disability"** means the decreased capacity or loss of ability of an individual to meet personal, social or occupational demands;

**"impairment"** means the loss of, loss of use of, or derangement of any body part, system or function;

**"pain-related impairment"** means impairment associated with chronic pain.

**"permanent impairment"** means impairment associated with a permanent medical impairment and/or a pain-related impairment.

**"permanent medical impairment"** means any impairment that has become static or stabilized and that is unlikely to improve despite further medical treatment. A permanent medical impairment also accounts for the usual pain that accompanies the type of injury and resulting impairment.

**"PIB"** means a Permanent Impairment Benefit

**"Usual pain"** means all pain except for chronic pain as defined by the *Act, Chronic Pain Regulations* and Policy 3.3.5R1.

### Policy Statement

1. When it has been determined by the Board that a worker has a permanent impairment as the result of a work-related injury, the worker will be entitled to a PIB.
2. The existence and degree of a permanent impairment will be assessed by the Board. In general, the assessment will not be performed until the worker's condition has stabilized and no further major medical interventions are planned (i.e., the worker has reached maximum medical recovery). The appropriate time for the permanent impairment assessment will be determined by the Case Manager in consultation with a Board Medical Advisor.

3. A worker's permanent medical impairment rating will be determined by a Board Medical Advisor, taking into consideration the following factors:
  - (a) a review of all pertinent information contained in the worker's WCB claim file(s);
  - (b) the results of a physical examination of the worker conducted by a Board Medical Advisor or, where the Board considers it appropriate, by an external medical specialist appropriate to the type of impairment; and
  - (c) the criteria set out in the **American Medical Association Guidelines to the Evaluation of Permanent Impairment**, and other board policies, as applicable.

If an impairment description does not match the **American Medical Association Guidelines to the Evaluation of Permanent Impairment**, the Board Medical Advisor will make a judgement rating following discussion with other Board Medical Advisors if necessary. A judgement rating may be determined by the Medical Advisor at any time if the scheduled rating is inappropriate to the worker's condition.

4. A worker's entitlement to be assessed with respect to any permanent medical impairment as the result of a compensable injury will be determined by the Board in accordance with the provisions of the Act, the Regulations made pursuant to the Act and other Board policies. The American Medical Association Guidelines to the Evaluation of Permanent Impairment will be used to determine the *degree* of the worker's permanent medical impairment once *entitlement* to the assessment has been established.
5. Subject to the limitations set out in this Policy and in other Board policies, the Board shall use the American Medical Association Guidelines to the Evaluation of Permanent Impairment to determine the existence and degree of a worker's permanent medical impairment. The permanent medical impairment rating determined in accordance with the American Medical Association Guidelines to the Evaluation of Permanent Impairment will be used to calculate the amount of the permanent impairment benefit payable to the worker as a result of a compensable injury.
6. The effective date of a new or updated edition or version of the American Medical Association Guidelines to the Evaluation of Permanent Impairment shall be the effective date deemed by the American Medical Association.
7. Permanent impairment ratings are expressed as a percentage of total body impairment with one hundred per cent (100%) being the maximum possible rating.
8. Where multiple injuries result in more than one impairment, the impairments are evaluated on the basis of the whole person, rather than by adding the individual values. This is done with the use of the Combined Values Chart contained in the American Medical Association Guidelines to the Evaluation of Permanent Impairment.
9. When there is a permanent medical impairment of a dominant upper limb or hand, up to twenty per cent (20%) of the assessed rating may be added, as it is recognized that a greater impairment exists in such cases.
10. The American Medical Association Guidelines to the Evaluation of Permanent Impairment are used to assess impairment, not disability. The existence and degree of permanent medical impairment are determined by medical means and are based solely on a demonstrable loss of bodily function.
11. Notwithstanding paragraph 3, in cases of chronic pain, the Board shall determine the existence and degree of a worker's pain-related impairment as outlined in *Policy 3.3.5R1 – Eligibility Criteria and Compensation Related to Chronic Pain*.
12. The Board will use the method outlined in the American Medical Association Guidelines to the Evaluation of Permanent Impairment, in conjunction with the following rating scale to assess the existence and level of a worker's permanent medical impairment due to a compensable mental or behavioural (psychiatric) disorder.

	<b>Classification</b>	<b>Impairment Rating</b>
<b>Class 1</b>	No Impairment	None
<b>Class 2</b>	Mild Impairment: impairment levels compatible with most useful functioning	10–20%
<b>Class 3</b>	Moderate Impairment: impairment levels compatible with some, but not all, useful functioning	25–50%
<b>Class 4</b>	Marked Impairment: impairment levels significantly impede useful functioning	55–75%
<b>Class 5</b>	Extreme Impairment: impairment levels preclude useful functioning	>75%

13. Permanent impairment ratings established under section 35 of the Act (automatic assumption) are to be determined in accordance with the criteria and ratings specified under policies 1.2.1AR1 and 1.2.1R1.

14. A PIB will be calculated by taking the percentage of the permanent impairment as determined by the Board multiplied by 30% of 85% of the worker’s net average earnings before the injury occurred.

15. A PIB is payable for the life of the worker.

16. The permanent impairment benefit calculated based on the permanent impairment rating is not intended to compensate the worker for any loss of earnings as the result of a compensable injury. Therefore, the ability or inability of the worker to engage in gainful employment, the loss of employment or the loss of earnings as a result of a compensable injury are not considerations in the determination of the level of permanent impairment.

17. A PIB may be reviewed and adjusted only after 16 months have passed since the last determination of the worker’s permanent impairment rating.

18. A review of the PIB will only be undertaken if there was a change in the worker’s compensable condition that was not taken into account during the last assessment of the worker’s permanent medical impairment rating by the Board.

19. If an adjustment is warranted, the effective date of the adjustment will be the date of the most recent determination of the worker’s permanent medical impairment rating.

20. The Board shall use the American Medical Association Guidelines to the Evaluation of Permanent Impairment for reviews of all permanent impairments, except for pain-related impairments assessed under *Policy 3.3.5R1 – Eligibility Criteria and Compensation Related to Chronic Pain*.

If a worker’s permanent impairment was previously evaluated under the pre-Jan 1, 2000 *WCB Guidelines for Assessment of Permanent Medical Impairment*, the Board shall only adjust the permanent impairment rating, after a review, if the review results in a higher permanent impairment rating.

**Application**

This Policy is effective XXXX. This Policy replaces XXXX that was effective XXXX.

**References**

Workers’ Compensation Act (Chapter 10, Acts of 1994-95), Sections 34.

## Consequential Amendments

	Policy	Proposed Policy Change ( <del>strikethroughs</del> are deletions and additions are <b><u>bold and underlined</u></b> )	Comment
1.	<b>Guidelines for Automatic Assumption – Injuries on or after January 1, 2000 – 1.2.1AR1</b>	5.2. Pulmonary Function Testing will be used to determine the existence and degree of a worker’s permanent impairment rating, <b><u>using the current edition or version of the American Medical Association Guidelines to the Evaluation of Permanent Impairment</u></b> <del>American Medical Association’s “Guidelines to the Evaluation of Permanent Impairment – Fourth Edition” (the “AMA Guidelines”).</del>	Change language to remove reference to 4th Edition.
2.	<b>Occupational Hearing Loss – Injuries on or after January 1, 2000– 1.2.5AR2</b>	4. The existence and degree of a worker’s permanent medical impairment rating for NIHL will be determined <b><u>using the current edition or version of the American Medical Association Guidelines to the Evaluation of Permanent Impairment</u></b> <del>American Medical Association’s “Guides to the Evaluation of Permanent Impairment—Fourth Edition” (the “AMA Guides”):</del>  7. To determine an impairment rating for tinnitus, the WCB shall use <b><u>the current edition or version of the American Medical Association Guidelines to the Evaluation of Permanent Impairment</u></b> <del>AMA Guides</del>	Change language to remove reference to 4th Edition.
3.	<b>Criteria for psychiatric conditions: occupational stress – Policy 1.3.5R1</b>	1. To determine the existence and degree of a worker’s permanent impairment due to compensable mental or behavioral (psychiatric) disorders, the Board relies on <b><u>the current edition or version of the American Medical Association Guidelines to the Evaluation of Permanent Impairment</u></b> <del>– Fourth Edition” (the “AMA Guidelines”).</del>	Change language to remove reference to 4th Edition.
4.	<b>Eligibility criteria and compensation related to chronic pain – Policy 3.3.5R1</b>	Appendix A – PRI Assessment Tool <b>Step #6</b>  (2) If PMI assigned under the <b><u>American Medical Association Guidelines to the Evaluation of Permanent Impairment</u></b> <del>AMA 4th Guides...</del>	Change language to remove reference to 4th Edition.