



## Am I entitled to a lump sum payment for my workers compensation injury?

If you've suffered an [injury at work](#) which has been accepted as "compensable" by the relevant workers compensation insurer, you may have an entitlement to lump sum workers' compensation for permanent impairment.

"Compensable" simply means that the injury falls within the terms of the Return to Work Act (SA) 2014, and has been accepted as a [workers' compensation injury](#).

## There are two different types of lump sum

## payments which you might be entitled to.

The first type of lump sum payment is to compensate an injured worker for “non-economic loss”. This is also sometimes referred to as compensation for “pain and suffering” or for “loss of enjoyment of life”.

Basically, this type of workers’ compensation is intended to compensate the injured worker for the “human” or non-financial consequences of their injury. For example, the fact that the injured worker might not be able to play football anymore, or pick up their children, or do gardening.

This entitlement is established by Section 58 of the Return to Work Act 2014 (“the Act”), and so might be referred to as “Section 58 compensation”.

The second type of lump sum payment is to compensate an injured worker for “future economic loss”. That is, to compensate the injured worker for the fact that their ability to earn income may be affected or diminished because of the compensable injury. This entitlement is established by Section 56 of the Act, and so might be referred to as “Section 56 compensation”. There are certain criteria that must be met in order to qualify for both Section 58 and section 56 compensation. In addition, a further criteria applies in relation to Section 56 compensation.

## CRITERIA APPLICABLE TO BOTH SECTION 58 AND SECTION 56 COMPENSATION.

### 1. Physical injuries only

Firstly, lump sum compensation can only be paid for physical injuries. People who suffer from purely psychological or psychiatric injuries are not entitled to lump sum compensation. However, in some cases, if a psychological or psychiatric injury produces physical effects, it is possible that lump sum compensation can be paid for those physical effects. This is a complicated area of the law, so legal advice should be sought in relation to any such claim.

### 2. Maximum medical improvement

Next, in order to claim lump sum compensation, you must have reached “maximum medical improvement”. This simply means that your condition is stable, and will not get any better with further treatment.

There is no hard and fast rule as to when “maximum medical improvement” is reached. Depending upon your circumstances, maximum medical improvement might be reached after 6 months or, more usually, after around 12 months, or even longer.

If you have had, or need to have surgery, it is unlikely that you will reach “maximum medical improvement” until at least six months after surgery or probably longer.

Sometimes a work injury might affect a number of different body parts. For example, a back injury

might cause symptoms in the leg/s as well as the back. Also, a work injury might lead to “secondary injuries”. For example, medication taken for pain might cause dental problems or digestive problems. In such cases, “maximum medical improvement” must have been reached in relation to every body part or condition for which you are seeking lump sum compensation.

### **3. Permanent impairment**

The next criteria is that you must have sustained a permanent impairment.

This means a loss of function of the relevant body part which is permanent.

The question of whether you have sustained a permanent impairment is determined by a doctor who has been trained in the appropriate method and “rules” relating to permanent impairment assessment. An accredited doctor must conduct an assessment, according to strict rules and guidelines, to determine whether or not you have suffered a permanent impairment.

If your workers’ compensation claim relates to more than one body part or condition, it may be necessary for more than one doctor to assess permanent impairment, to ensure that the assessing doctor has the right expertise to make the assessment.

You have the right to choose the doctor (from a set list of accredited doctors) who conducts this assessment. Your lawyer will assist you in choosing the most appropriate doctor.

This is an important right and one which should be exercised carefully. When you tell the workers compensation insurer that you wish to undergo a permanent impairment assessment, they should send you (or your lawyer) a list of accredited doctors to choose from.

### **4. You must reach at least 5% impairment of the whole person**

You will only be entitled to receive lump sum compensation if you have sustained permanent impairment amounting to at least 5% impairment of the whole person (called “whole person impairment”).

If you have a permanent impairment which is less than 5% whole person impairment, you will not be entitled to receive lump sum compensation.

If the assessing doctor concludes that you have a permanent impairment of 5% whole person impairment or greater, a mathematical formula applies to determine the amount of compensation you are entitled to receive.

In relation to Section 58 compensation for non-economic loss, the mathematical formula which determines how much workers’ compensation is paid, is based solely on the percentage of permanent impairment and the year in which the injury was suffered, So, every worker who suffered an injury in 2021 and who has a 10% permanent impairment will receive the same amount of money, regardless of their age or whether they worked part time or full time before being injured.

### **5. One assessment only**

An injured worker is only entitled to have one assessment of permanent impairment conducted in relation to each work injury.

This is intended to avoid “doctor shopping”. It also means that it is important that you select the right

doctor to conduct the assessment. You should NOT allow your employer or the claims agent to tell you who should conduct the assessment. It is entirely your decision. You may wish to seek legal advice before selecting the doctor who conducts the assessment. As outlined above, only a doctor who is accredited can conduct the assessment and the claims agent or self-insured employer should send you a list of accredited doctors to choose from. Any doctor who has examined or treated you previously cannot conduct the assessment.

This criteria also means that you should only proceed with your claim for lump sum compensation for permanent impairment when all body parts or conditions arising from your work injury have reached "maximum medical improvement".

Because of the 5% "threshold" it is extremely important to include all possible body parts or conditions in the assessment.

## ADDITIONAL CRITERIA APPLICABLE TO SECTION 56 COMPENSATION ONLY.

In addition to the criteria detailed above, that apply to both types of lump sum claims, in relation to Section 56 compensation for future economic loss, you will only be entitled to receive this lump sum if your assessment of permanent impairment is 29% or lower.

If your assessment of permanent impairment is 30% or greater you will not be entitled to receive Section 56 compensation. However, in that case, you will qualify as a "seriously injured worker" which means that you will be entitled to continue to receive weekly payments of income maintenance until retirement age (or, alternatively, if you were injured due to the negligence of your employer, to make a "common law" claim.

## How Can Andersons Help?

The entitlements available to injured workers under the Act are not generous, particularly since the legislation was amended in 2014.

Accordingly, Andersons believes that every injured worker should claim and receive every penny of workers' compensation that they are entitled to.

Furthermore, If you have suffered a work injury that has led to a permanent impairment, in addition to any [workers compensation entitlements](#), you might also be entitled to make a claim under your superannuation policy. Andersons can assist you to explore whether you can make a claim under your superannuation policy.

If you have any questions about your entitlement to lump sum compensation for permanent impairment as a result of your workplace injury, please contact today's blog writer, [Margaret Kaukas, Special Counsel](#), or other members of the Andersons **Personal Injury Claims team**, alternatively call the office on 8238 6666.