

## IMPAIRMENT ASSESSMENT TRAINING



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### *AMA 4 Guides Impairment Assessment Training E-Newsletter*

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Readers will perhaps already be aware of the new Joint Medical Examination process for TAC cases. This is explained in an article in this newsletter.

In many ways, the introduction of such a process is a vote of confidence in the Impairment training provided by AMA Victoria. The training has focussed on a transition from the traditional conflict-driven partisan approach to medico-legal assessments to truly independent, objective, reproducible assessments. Joint examinations will only work if there is confidence from both the plaintiff lawyers and the TAC that the assessments received are even-handed and reliable. The fact that such a process is to be introduced implies that there is confidence in the quality and objectivity of Impairment assessments, and I believe examiners and all of the experts who have contributed to the training process can consider this a feather in their caps.

Readers will also note that legal interpretations and legislation continue to evolve, indicating the need to keep up to date. The newsletters are one mechanism, but the stream 2 program is also an excellent means of keeping in touch in an area which seems to be in constant motion. I would encourage all Impairment assessors to attend relevant stream 2 sessions at least every 2-3 years; not only is this educational, but the records of attendees are of assistance to insurers and plaintiff lawyers in their quest to engage assessors whose skills and knowledge are current.

**Associate Professor Richard Stark**  
**Chair, AMA4 Guides Impairment Assessment Training Program**

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#### AMA 4 NEWS

#### DEFINITION OF MULTILEVEL SPINE SEGMENT STRUCTURAL COMPROMISE

On the 6 September 2013 The Court of Appeal handed down its decision in respect of the matter Victorian WorkCover Authority v Elsdon. The Court affirmed that injuries consisting of fractures in more than one vertebra constitute Multilevel Spine Segment Structural Compromise for the

purpose of the application of the Injury Model DRE IV Structural Inclusions (2).

The decision determined that the nature of the fractures is not a relevant consideration in satisfying the definition of Multilevel Spine Segment Structural Compromise. It found that "Fractures" and "Multilevel Spine Segment Structural Compromise" are not used in a technical context within the Guides and do not require specialist technical or medical interpretation in determining its meaning. This means that minor healed undisplaced fractures (including the transverse process) at multiple vertebral levels can also satisfy the definition of Multilevel Spine Segment Structural Compromise.

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## **JOINT MEDICAL EXAMINATIONS (JME) - THE NEW FRONTIER**

The Transport Accident Amendment Bill 2013 was introduced into Parliament in October 2013 and was passed and received Royal Assent in November 2013.

One of the provisions was an amendment to Section 60 of the TAA, with the insertion of Section 60(2F):

*"(2F) For the purposes of subsection (2)(a), the Commission is not liable to pay as compensation the reasonable costs of medical services that are the provision of a document obtained for medico-legal purposes, or related to medico-legal purposes unless the document—*

- (a) is requested jointly by the Commission and the person who is injured; and*
- (b) is provided jointly to the Commission and the person who is injured; and*
- (c) is provided by a registered health practitioner within the meaning of the Health Practitioner Regulation National Law."*

The definition of "medico legal purposes" includes AMA assessments for impairment benefit purposes.

The provision came into effect on 1 July 2014. The TAC's stated reasoning behind the amendment was to reduce the number of medico legal examinations an injured person is required to attend in order to access their entitlements.

The JME world is a completely new process. It provides a unique opportunity for the injured person to be assessed at a faster pace, and an earlier provision of benefit delivery. It is vital that the distinction is drawn between the traditional Independent Medical Examination (IME) and the new JME process.

There were unforeseen consequences of the amendments, which may have resulted in counterproductive delays and perhaps satellite litigation. Consequently, representatives from the TAC, The Law Institute of Victoria (LIV) and the Australian Lawyers Alliance (ALA) have been engaged in an extensive period of consultation in order to create a practical means of implementation of the JME provisions.

Whilst this consultation process is continuing, there was a level of urgency to have some procedures established by the commencement date of 1 July 2014. A failure to have this could have seen the entire TAC assessment

process break down with a cessation of the assessment of entitlements and delivery of benefits. This was of particular concern for the plaintiff lawyers, as the vast majority of examinations are booked well into the future.

A transitional process has been agreed upon. The initial transitional period is running from 1 July until 31 December 2014. It has now been extended from 1 January 2015 to 31 March 2015. During that time, further negotiations are occurring to finalise the JME process into the future.

The transitional period is enabling the conversion of (generally) plaintiff lawyer scheduled appointments booked prior to 1 July 2014 into JMEs.

The parties have settled the nature and content of a "request for conversion" form. For appointments already booked, the plaintiff practitioner emails the details of the appointments to the TAC, on a specific JME email address. Time frames have been agreed. Should the TAC fail to respond within 28 days, the appointment is deemed to be a JME.

TAC may seek clarification reason for why the type of assessment is required.

Generally, TAC is to agree to the conversion of appointments.

The plaintiff practitioner is required to provide a copy of letter of instructions to the TAC. The TAC may seek additional information from the examining doctor and therefore, the doctor may receive a further letter of instruction from the TAC.

The doctor will be advised by TAC of the conversion of the appointment to a JME. This should occur no later than 28 days prior to the appointment date.

The TAC require the doctor to send the invoice to the TAC, regardless of the initiating party. The doctor is required to put the specific "JME" item number on the invoice.

The report is to be provided to both parties.

The TAC is legislatively required to pay the "reasonable" fees of the medical report. TAC has agreed that the status quo will remain for the payment of fees, during the transitional phase. The TAC state they are consulting with the medical profession regarding the scheduling of fees into the future.

The TAC, LIV and ALA representatives are working expeditiously to address teething problems. It is hoped that the pool of doctors willing to perform JMEs will be as large as possible. This will maintain the integrity of the system and reduce the period of time an injured person is required to wait until receiving their entitlements.

The TAC, LIV and ALA representatives are continuing to discuss the permanent process for JMEs. It is an entirely new process and a method of assessing entitlements which is distinctive and has not been undertaken before.

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**APP FOR IMPAIRMENT COMBINED VALUES CALCULATOR**

As you know, multiple impairments should be combined using the calculator rather than the combined values table.

The calculator has been available from the IAT website as an Excel spreadsheet.

Many assessors have indicated that a smart phone app would be welcome. One has now been developed by Rod Meaney, a computer systems architect.

To download it to your phone, open your browser and go to: <http://multi-tools.appspot.com/app/impairment/>

The app may display, or you may see a list of options; if the latter, click on "impairment calculator" from the list of options.

You should then see the app displayed.

To save it: (Different devices may have slightly different menus or wordings, so please interpret the following with common sense)

You can then hit the "send to" icon and "add to home screen" (for an iPhone or the equivalent for other smart phones).

The app will then be available from an icon on your desktop / home screen pages.

To calculate an impairment, simply tap on the calculation zone to bring up a keyboard, then type in the figures to be combined as 2 digit numbers (eg 5% = 05) without hitting return or enter.

Thus to combine 40 & 5 & 8 & 15, type 40050815

You should see displayed 55% (55.43%) which is the rounded result and the result to 2 decimal places.

Hit clear twice to start a new calculation.

*Disclaimer: AMAVic has not formally audited the performance of the app and so cannot provide any guarantee regarding its function.*

*As with any calculation, you should check that the data inserted is accurate. If the result is surprising or counter-intuitive, check the calculation by another method. If you scroll down in the app, the working at each stage of the calculation is displayed: this should help you with cross-checking.*

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## MODULES IN DETAIL

### 2015 Module Program

Dates for the 2015 modules will be available on the [IAT website](#) in the coming weeks.

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*Ministerially approved course for the Victorian WorkCover Authority (VWA) and Transport Accident Commission (TAC) under Section 91(1)(b) of the Accident Compensation Act 1985 and Section 46A(2)(b) of the Transport Accident Act 1986 and for the purposes of Part VBA of the Wrongs Act 1958 (personal injury).*

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