

## **SIGNIFICANT OCCUPATIONAL IMPACT ASSESSMENT GUIDELINES**

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Consultation Draft

## 1. INTRODUCTION

The Significant Occupational Impact Assessment Guidelines (the SOI Assessment Guidelines) are made under section 208 of the *Motor Accident Injuries Act 2019* (MAI Act).

The SOI Assessment Guidelines are to be used by a suitably qualified and experienced independent SOI assessor to evaluate and report on whether an injured person's injury has had a Significant Occupational Impact (SOI) on their ability to undertake employment. A report confirming a SOI can provide a pathway for a person injured in a motor accident to access damages in common law if they were not at-fault in the accident.

## 2. STATUTORY FRAMEWORK

Part 3.2 of the MAI Act requires an insurer to refer a person injured in a motor accident to an authorised IME provider for a SOI assessment if 4 years and six months has passed since a motor accident and the person is receiving income replacement benefits; or because of circumstances prescribed by regulation would have been eligible to receive income replacement benefits; and the person's Whole Person Impairment (WPI) has been assessed at less than 10 per cent. An injured person must give their consent to the insurer before being referred for a SOI assessment. An IME provider must arrange for the SOI assessment to be carried out by one or more suitably qualified and experienced independent SOI assessors who are trained as required and in accordance with the SOI Assessment Guidelines.

Section 208 of the *Motor Accident Injuries Act 2019* (MAI Act) makes provision for the SOI Assessment Guidelines to state procedures and principles to be followed in making a SOI assessment. Section 212 enables the SOI Assessment Guidelines to make provision for a SOI report, including the time within which a report must be given.

Section 205 of the MAI Act sets out the meaning of a *significant occupational impact*. An injured person's injury has a significant occupational impact on the person's ability to undertake employment if the person –

- (a) either
  - a. is prevented from performing the work the person performed before the motor accident; or
  - b. has reduced capacity to perform the work the person performed before the motor accident;and
- (b) either –
  - a. is unable, or has limited ability, to undertake training in another area of work; or
  - b. cannot undertake appropriate alternative employment.

## 3. REQUIREMENTS FOR SOI ASSESSORS

### 3.1 Qualifications and training

A SOI assessor (an assessor) must either be an independent medical examiner, or an independent assessor as defined under the MAI Act.

An independent medical examiner is defined under section 14 of the MAI Act as a doctor who, under an arrangement with an authorised IME provider, conducts medical examinations for Whole Person Impairment (WPI) assessments and SOI assessments. An independent assessor is defined under

section 206 as a person who conducts SOI assessments under an arrangement with an authorised IME provider.

All assessors must meet the following qualification and experience requirements to conduct SOI assessments:

- University qualifications in rehabilitation counselling, psychology, occupational therapy, medicine or other appropriate health or allied health degree; and
- Full registration with Australian Health Practitioner Regulation Agency (AHPRA); or full membership with Australian Society of Rehabilitation Counsellors (ASORC); or full membership with the Rehabilitation Counselling Association of Australasia (RCAA); and
- Minimum of three years documented experience in vocational assessment interviewing, transferable skills analysis, job matching, job seeking and placement, knowledge of functional requirements of occupations, and labour market analysis; and
- Minimum of three years documented experience in vocational capacity and vocational expert opinion. This may include hands-on forensic assessment, published works, presentation of papers, and participation in industry groups.

The MAI Commission authorises entities to be IME providers and the IME provider will be required to assign SOI assessments to an assessor with qualifications, training, and experience relevant to assessing the functional work capacity of an injured person. An assessor must be trained in the use of these guidelines and through a contract with an IME provider, must conduct a SOI assessment in accordance with these guidelines. An assessor will need to have knowledge of the Australian and New Zealand Standard Classification of Occupations (ANZSCO).

If a person has both physical and psychological injuries, the component for functional work capacity of a SOI assessment may need to be carried out by more than one assessor. In these circumstances the IME provider may appoint a lead assessor to be responsible for preparing and providing the overall opinion in the SOI report.

### **3.2 Code of Conduct**

Assessors should act in an ethical, professional, and considerate manner during interviews and in their dealings with an injured person. Effective communication is vital to ensure that an injured person is well-informed and able to maximally co-operate in the process. Assessors should:

- explain and ascertain the injured person understands who the assessor is and their role in the SOI assessment;
- ensure the injured person understands how the SOI assessment will proceed; and
- take reasonable steps to preserve the privacy and modesty of the injured person during any interview.

Complaints about the behaviour of an assessor during an interview, or in other dealings with an injured person, can be made to the IME provider or the MAI Commission.

### **3.3 Quality Assurance**

If it is not clear that an assessor has completed a report in accordance with the SOI Assessment Guidelines, clarification may be sought from the assessor by the authorised IME provider.

An assessor who is identified as frequently providing SOI reports that are not in accord with the SOI Assessment Guidelines may be asked to show cause to the IME provider as to why their contract with the IME provider should not be terminated.

### **3.4 Dispute about SOI assessment**

If an injured person receives a notice under section 214 of the MAI Act that confirms that an injury has not had a significant occupational impact, the injured person may apply to the ACT Civil and Administrative Tribunal (ACAT) for a review of the SOI report.

An assessor should therefore retain full clinical and working notes and copies of other supporting information or documents used in carrying out a SOI assessment. If an injured person applies for a review of a decision from ACAT, this information must be provided by the IME provider to ACAT.

## **4. OBJECTIVE AND PRINCIPLES**

### **4.1 Objective**

The objective of a SOI assessment is for the assessor to form an opinion as to whether an injured person's injury sustained from a motor accident has had a significant occupational impact on the person's ability to undertake employment. The assessor is to consider all the injuries disclosed in medical and other documents provided to the assessor. The use of the word 'injury' in these guidelines is not to be taken to be only a single injury.

### **4.2 Principles**

A SOI assessment is carried out by applying the principles in section 205 of the MAI Act in accordance with the meanings and further requirements below:

#### **4.2.1 Prevented from performing the work the person performed before**

Is if a person cannot do any work in their occupation that they were performing immediately before the motor accident because of their injury sustained from the motor accident. For example, a person who was a licensed plumber before a motor accident is no longer able to do any work as a plumber after an accident because of the injury sustained from the motor accident.

#### **4.2.2 Reduced capacity**

Is a person not being able to work in their occupation before the motor accident for the same number of hours or do all the duties and tasks performed before the accident, because of the injury sustained from the motor accident.

#### **4.2.3 Appropriate alternative employment**

Is employment that the person is reasonably qualified for by way of education, training, and experience, that is compatible with a person's functional work capacity. It may include retraining for alternative employment at the same skill level.

This principle should not be applied to a person with an ANZSCO skill level of 4 or 5 or who was otherwise an unskilled worker at the time of the accident.

Appropriate alternative employment for a person with reduced capacity to do the work they did prior to an accident must be employment for the same number of hours the person did in their job before an accident and without any restrictions on the duties and tasks the person can perform in the alternative job.

#### **4.2.4 Unable, or has limited ability to, undertake training in another area of work**

This principle should only be applied to a person with an ANZSCO skill level of 4 or 5 or who was otherwise an unskilled worker at the time of the accident.

“Another area of work” is any area of work identified as being compatible with a person’s overall functional work capacity that can be performed for the same number of hours the person did in their job before the accident. The work and training are to be available in either the person’s current residential location or their residential location at the time of the accident. That is, if the injured person relocated after the accident from a metropolitan to a rural area, then the assessor is to consider work and training opportunities which would have been available to the person if they remained in the metropolitan area.

A person may be unable, or have limited ability, to undertake training in another area of work if they lack necessary education and skills to undertake the training, such as low level of education attainment, computer skills, English literacy, or speaking skills. They may also have limited ability to undertake training due to psychological, cognitive, or physical impairments.

#### **4.3 Applying the principles to the injured person**

A SOI assessment referral to the authorised IME provider and assessor should clearly state the injury or injuries to be considered for the purposes of the assessment.

Assessors are required to use their clinical judgment when making decisions about the functional work capacity impacts of an injury sustained from a motor accident and those impacts that are a result of post-accident injuries and conditions. An injury sustained by a person injured in a motor accident is a physical injury or a primary or secondary psychological injury resulting from the motor accident.

In applying the principles in section 205 to an injured person, the assessor must consider the following factors:

- the physical and cognitive functioning required for work previously performed, or the alternative or other area of work (for example, lifting, carrying, reading, sitting, standing, walking, dexterity, memory, concentration, or judgement);
- the environment for work previously performed, or alternative or other area of work (such as noise, hazards, or exposure to trauma); and
- the person’s education, training, and experience relevant to the work.

An assessor should not consider any psychosocial factors unless the injured person has:

- a primary psychological injury from the motor accident. An example of a primary psychological injury would be post-traumatic stress disorder as a result of witnessing the motor accident; or
- a secondary psychological injury that results from a physical injury resulting from the motor accident. An example of a secondary psychological injury from a physical injury would be depression and anxiety as a result of ongoing pain from a physical injury.

To be considered, a primary or secondary psychological injury must have been diagnosed by a psychiatrist or clinical psychologist and the injured person must have received mental health treatment for that injury.

## **5. ASSESSMENT PROCEDURE**

### **5.1 Arrangement of a SOI assessment**

For the purposes of section 213 of the MAI Act (SOI report -injury has a significant occupational impact) a SOI assessment must be arranged by an authorised IME provider following a referral by a relevant insurer under section 209 of the MAI Act.

The *Significant Occupational Assessment Referral Guidelines* may set out the procedures to be followed by insurers in arranging a SOI assessment under section 209 of the MAI Act.

### **5.2 Provision of Information**

Section 211 of the MAI Act contains requirements for the provision of information for a SOI assessment. The referring insurer must provide an authorised IME provider and the assessor all information in their possession that the assessor reasonably requires for the purposes of the assessment, including a copy of all WPI assessment reports.

An injured person must also give the insurer all information in their possession that is relevant to the SOI assessment, and any other information the assessor reasonably requires for the SOI assessment. The referring insurer should inform the injured person of this requirement. An assessor is to be given the information at least 10 days prior to the assessment interview. The assessor may make courtesy contact with the injured person prior to or post interview.

An assessor may decline under section 211(5) to carry out the assessment if the injured person or the insurer fails to give information reasonably required by the assessor.

### **5.3 Assessment Components and Report**

Schedule 1 to these guidelines provides a flowchart of key steps and decision-making points in the SOI assessment process. A sample SOI assessment report matrix is contained in Schedule 2 for further guidance.

The SOI report should be supported by evidence sourced from all available information including the results of any evaluation or tests, the assessor's own history taking, analysis, and clinical examination.

The SOI assessment should include the following components and these components should be included in the SOI report

#### **5.3.1 Introduction**

##### Injured Person's Particulars

Name, date of birth, date of the motor accident, place of residence, current phone number and email address, occupation, and employer at the date of the motor accident, current occupation and employer, date last worked, and date of referral for the assessment.

##### Method of Assessment

An assessment must include at least one interview with the assessor and the injured person. An interview should be used to:

- review any relevant information provided by the insurer and by the injured person to the assessor;
- enable the assessor to observe the injured person's functional status; and
- undertake any physical examination of the injured person.

An injured person may also be asked to complete cognitive, psychological, or other tests/questionnaires at an interview.

The assessment report should outline the date/s and duration of the interview/s, the purpose of the interview/s, and any specific resources used in the process of assessment such as databases used, or tests administered. Any limitations on the assessment should also be noted.

#### Information reviewed

This section should list all information received from the insurer as part of the referral or from the injured person and/or any other record/document reviewed as part of the assessment. It should include: the name of the record/document, the date it was written/created, and the author/creator.

### **5.3.2 Background**

#### History of the injury/treatment

The report should clearly set out the nature of the injuries sustained from a motor accident that are being assessed.

This section should include, in reverse chronological order, an objective summary of all medical records, certificates and reports reviewed by the assessor, and with all opinions clearly referenced. Information from documentation relating to past, current, and potential/future treatment should be referenced.

#### Functional work capacity

This section should detail all evaluations undertaken by the assessor, and also other assessors or health practitioners, of the person's functional work capacity. The section should set out the method/s and tests adopted to evaluate the person's functional work capacity, the date of the evaluation/s, and the findings from the evaluation/s.

The assessor should then formulate an overall statement of the person's functional work capacity for the purposes of the SOI assessment. The overall statement is to include the impact of any pre-existing injury or condition at the time of the motor accident and any injury or condition that resulted from the motor accident but must exclude the impact of any post-accident injury or condition that did not result from an injury from the motor accident.

The section should identify any post-accident injury or illness, and comment on how this injury or illness would, if considered, impact on the person's functional work capacity.

#### Education and Training

This section should detail the injured person's education and training in reverse chronological order. This section should be as specific as possible and include details such as:

- formal/informal/on the job training;
- dates of commencement and completion of study/training and institution;
- mode of study/training (face to face, online, part-time, full-time); and
- level of attainment or qualifications.

This section should also list any registrations, professional memberships, licences, industry cards and their currency.

#### Experience

This section should include all forms of employment including paid, unpaid, casual voluntary, and work experience from secondary school onwards. This should be provided in reverse chronological order including:

- job title;
- ANZSCO classification level;
- duties and tasks;
- dates of employment;
- hours worked;
- employer's or business name; and
- work location.

It should also note any changes in job title that may occur during tenure with one employer and note any specialist or project positions held.

### **5.3.3 Findings**

#### Work performed before the motor accident

This section of the report should set out the person's:

- occupation immediately before the motor accident (pre-accident work);
- the ANZSCO classification level of the work;
- the usual hours worked by the person;
- a description of the duties and tasks that were performed by the person; and
- details of the work environment.

The report should then state whether the assessor considers the person has full capacity, reduced capacity, or no capacity to perform those duties and tasks or previous hours of work, having regard to the person's functional work capacity (see paragraph 5.3.2). A person may have full or reduced capacity to perform their pre-accident work notwithstanding that they may not be working or working in a different occupation after the accident.

The report should set out the functional limitations of the person that reduce (including to nil) the person's capacity to perform their pre-accident work, and the impact of these limitations on the hours a person can work or the duties or tasks they can perform.

Further findings below are only required if the person has reduced or no capacity to perform their pre-accident work and therefore satisfies the criteria in the first limb of the definition of a significant occupational impact.

#### Transferable skill analysis

This section is an analysis of the education, training, and experience of the injured person to identify residual skills the person may transfer to alternative employment. For example, communication and computer skills that are not specific to a given industry. The analysis will also assist in identifying any skill gaps for training in alternative employment or an area of work.

#### Appropriate alternative employment

This section only applies to a person with pre-accident work with an ANZSCO skill level of 1, 2, or 3.

This section is to include analysis of suitable alternative occupations identified by the assessor for the injured person. The proposed occupation title, ANZSCO classification, description and functional demands of the alternative occupation should be given. Analysis showing that the occupation is compatible with the person's education, qualifications, and experience, and is within their functional work capacity should be provided (see paragraph 5.3.2). Labour market analysis should also be included and referenced in this section.



Alternative employment should be employment that is available in the injured person's current residential location or their residential location at the time of the accident, and the person should have reasonable prospects of securing that employment. The employment should be at the same ANZSCO skill level to the person's employment prior to the accident.

Where alternative employment options are considered by the assessor but deemed inappropriate, a short rationale should be provided. If no appropriate alternative employment options are identified by the assessor, then the report should state that the person's injuries have a significant occupational impact.

#### Training in another area of work

This section only applies to a person whose pre-accident occupation was at an ANZSCO skill level of 4 or 5 or who was otherwise an unskilled worker at the time of the accident.

This section should include analysis of areas of work identified by the assessor that the person could be trained in. The proposed occupation title, ANZSCO classification, description, functional demands, and training requirements should be given, together with analysis showing the area of work is compatible with the functional work capacity of the injured person (see paragraph 5.3.2), and the person has the necessary education and skills to complete the required training. Labour market analysis should also be included and referenced in this section.

There should be positions available in the other area of work identified, in the injured person's current residential location or their residential location at the time of the accident. The injured person should have reasonable prospects of securing employment in the area of work identified and subject to completion of any training. The employment may be unskilled or at a lower skill level than the injured person's employment prior to the accident.

If the assessor considers the person has limited ability to be trained in a suitable area of work, or no suitable area of work can be identified, or that work is not reasonably available to or attainable by the injured person, the report should set out the assessor's reasons for forming this view then state that the person's injuries have a significant occupational impact.

#### **5.3.4 Outcome of Assessment**

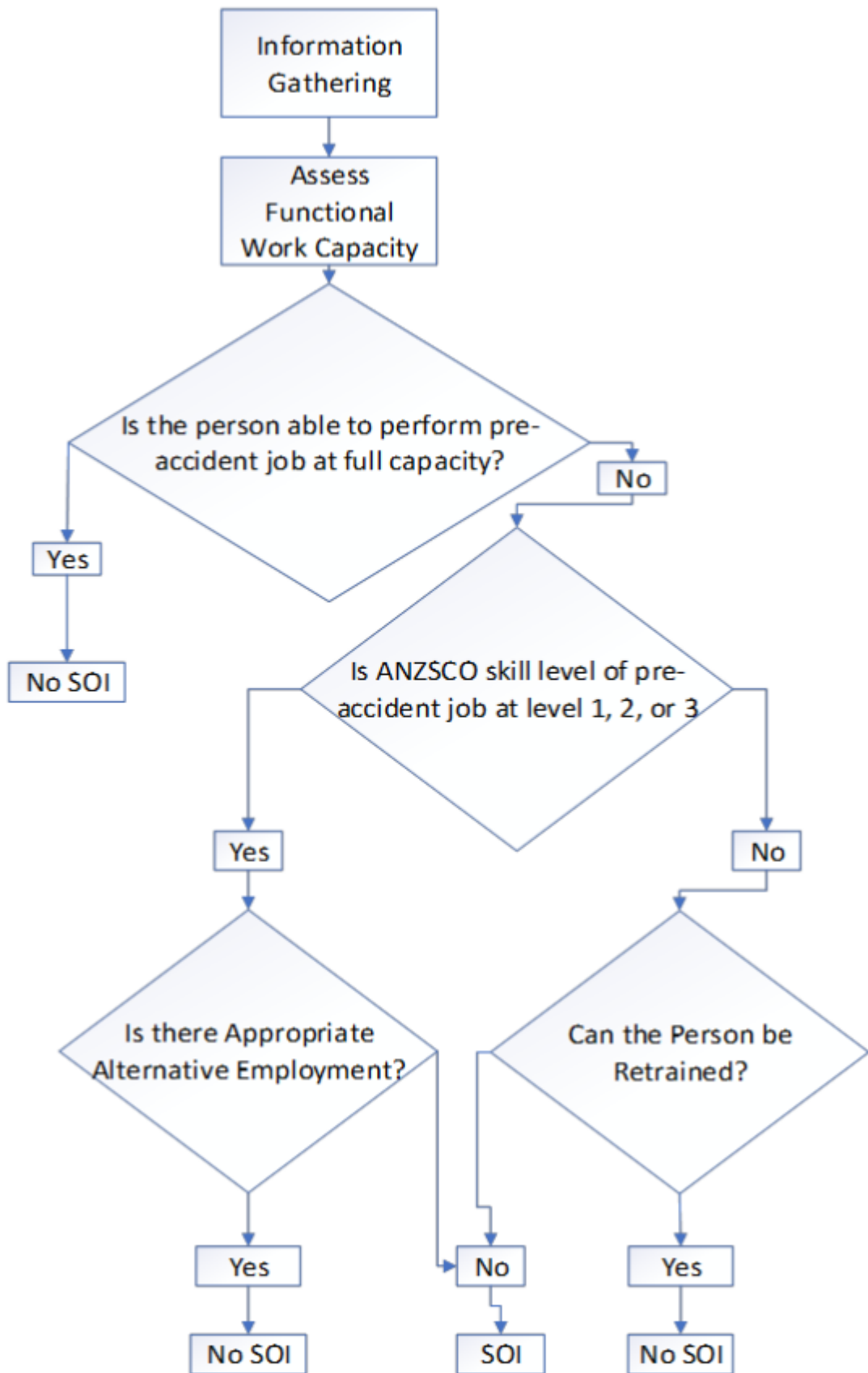
This section should state whether the assessor has determined whether the injured person's injury has a significant occupational impact on the person's ability to undertake employment. If an injury has a significant occupational impact this section should state the criteria in the definition of a significant occupational impact in section 205 of the MAI Act satisfied by the person and summarise the reasons the person meets the criteria. If an injury does not have a significant occupational impact, then a summary of reasons for this decision should be given.

#### **5.3.5 Assessor Details**

Details of the assessor's name, qualifications, and professional registration should be given. The report should be signed and dated by the assessor. An Appendix containing the SOI assessor's credentials and statement of expertise in vocational assessment is required. The assessor must give a signed report to the IME provider within 15 working days of the last interview with the injured person.

The IME provider must then give the report to the relevant insurer for the motor accident within 10 working days of the assessor, or if applicable the lead assessor, having given the report to the IME provider.

# SCHEDULE 1 SOI ASSESSMENT PROCESS FLOWCHART



## SCHEDULE 2      SAMPLE SOI ASSESSMENT REPORT MATRIX

KEY COMPONENTS	DETAILS
<b>Paragraph 5.3.1 Introduction</b>	
<b>Referrer details</b> Contact name Reference number	Claim reference number or referral reference number
<b>Injured Person details</b>	Name, date of birth, date of motor accident, current place of residence, phone number & email address, occupation & employer at date of motor accident, current occupation & employer, date last worked, date of SOI assessment referral
<b>Purpose of SOI assessment</b>	As per SOI assessment referral and <u>must include</u> : <i>The SOI assessor must determine whether the injured person's injury has had a Significant Occupational Impact (SOI) on their ability to undertake employment</i>
<b>Method of assessment</b>	At least one interview with injured person. Cite interview/s date/duration. Include information gained from interview in relevant sections of report Include tests administered and their purpose Use Footnote for references, information sources relied upon, pertinent comments
<b>Information reviewed</b>	In two subsections – medical reports / other documentation received & reviewed. In reverse chronological order Specify date written, type of document (report, certificate, test results), author, to whom addressed
<b>Paragraph 5.3.2 Background</b>	
<b>History of the injury</b>	Nature of motor accident injury/injuries being assessed Objective summary of medical information/opinion (in reverse chronological order & source referenced); past, current, potential/future treatment/opinion (source referenced)
<b>Functional work capacity</b>	Objective summary of all reviewed evaluations of functional work capacity relevant to employment: tests, date of assessment, findings, and impact of pre-existing injury/conditions at time of accident Exclude any post-injury/condition <i>not</i> resulting from motor accident <i>Exclude any psychosocial factors unless a primary psychological injury or a secondary psychological injury from a physical injury resulting from the motor accident</i> Formulate overall statement of functional work capacity for SOI assessment, with comment on impact of any post-injury/condition
<b>Education and Training</b>	In two subsections – education & training in reverse chronological order with details of dates of commencement/completion, institution name, level of attainment and qualifications Include secondary education; formal/informal/on-the-job training; part/full time study, online, in person; registrations, licences, industry tickets & currency, professional memberships
<b>Employment</b>	All work in reverse chronological order from secondary school Include employment dates, employer name & location, job title, ANZSCO code & skill level, duties/tasks, hours worked, any changes in job title/role with same employer Note any differences between résumé & data provided

<b>Paragraph 5.3.3 Findings</b>	
<b>Pre-accident employment</b>	Occupation, ANZSCO code & skill level, duties, usual hours, work environment. Quantify functional limitations to perform pre-accident work, duties, or hours <i>State if injured person has full, reduced, or no capacity to perform this pre-accident work, having regard for functional work capacity</i>
<b><i>If reduced or no capacity for pre-accident occupation, also include the below findings</i></b>	
<b>Transferable skills analysis</b>	Identify residual skills from education, training, experience, work history Include key generic skills, attributes, and knowledge necessary for workforce participation. All must be within the range of post-accident functional capacity
<b>Labour Market Analysis</b>  <ul style="list-style-type: none"> <li>▪ Location of residence</li> <li>▪ Regional overview</li> <li>▪ Demographic overview</li> <li>▪ Occupational overview</li> <li>▪ Vacancy data overview</li> </ul>	<ul style="list-style-type: none"> <li>▪ Brief overview of injured person’s labour market area. If person moved post-accident, also consider their pre-accident location</li> <li>▪ Insight into local setting (city, suburban, rural, remote), note key industries. A map is helpful</li> <li>▪ Local region participation rate, unemployment rate, working age population</li> <li>▪ Top occupations by employment in labour market region</li> <li>▪ Data for each occupation from several sources</li> </ul>
<b>Alternative employment</b>  <ul style="list-style-type: none"> <li>▪ Occupation title</li> <li>▪ Growth prospects</li> <li>▪ Size of occupation</li> <li>▪ Type of employment</li> <li>▪ Internet vacancy data</li> <li>▪ Physical work demands</li> <li>▪ Tasks</li> <li>▪ Work potential</li> <li>▪ Suitability for the occupation</li> </ul>	<p>Applies only to persons with pre-accident work within ANZSCO skill levels 1, 2, or 3:</p> <ul style="list-style-type: none"> <li>▪ ANZSCO code &amp; skill level, describe each occupation, alternative titles, main employing industries</li> <li>▪ Growth expectation in next five years, is it a top-ranking occupation in region</li> <li>▪ Use broad terms such as large, small, moderate (with data)</li> <li>▪ Show data applicable to injured person, such as low full-time (44%), high female (61%) employment</li> <li>▪ Broad terms such as high, moderate, low (with data)</li> <li>▪ DOT or O*Net may be used as a guide if no Australian sources available</li> <li>▪ Use only Australian sources for task descriptions</li> <li>▪ Show that occupation is reasonably available to the person. Include vacancy data for occupation, may use excerpts from closely matching vacancies</li> <li>▪ Provide rationale for the occupation match based on injured person’s education, training, experience, and considering functional capacity. Include discussions with industry sources, potential employers</li> </ul> <p><i>If no appropriate alternative employment options are identified, state that the person’s injuries have a significant occupational impact</i></p>
<b>Training in another area of work</b>	<p>Applies only to persons with pre-accident work within ANZSCO skill levels 4 or 5:</p> <p>Identify work that injured person could be trained in. Include title, ANZSCO code &amp; skill level, description, functional demands, show that both occupation and training are within functional work capacity Detail course name, delivery mode, study requirements, duration, cost, and feasibility as pathway to work Provide labour market analysis, suitability for occupation and work potential following training</p> <p><i>If no appropriate alternative employment options with training are identified state that the person’s injuries have a significant occupational impact</i></p>

<b>Paragraph 5.3.4 Outcome of assessments</b>	
<b>Outcome of assessment</b>	State your determination as to whether the injured person’s injuries have had a significant occupational impact (SOI) on their ability to undertake employment. If the so, then, state the criteria in section 205 of the MAI Act which is satisfied and the reasons they meet the criteria. If you determine they do not have a SOI, then provide reason for your decision.
<b>Paragraph 5.3.5 SOI assessor details</b>	
<b>SOI assessor details</b>	Signature and date Name, qualifications, professional registration Include an Appendix stating your credentials and expertise in employability assessment

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