



Blueprint for Settlement Agreements

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Blueprint for Settlement Agreements

This blueprint has been developed to provide administrative and procedural information to assist insurers and self-insurers to settle a worker's claim under the *Workers Compensation and Injury Management Act 2023* (the Act). Other parties involved in settlement of a claim may include the employer, legal representatives or authorised agents.

The blueprint sets out:

- key requirements-
 - preparing to make a settlement agreement
 - executing a settlement agreement
 - lodging the settlement agreement for registration
 - registration of the settlement agreement
- transitional arrangements
- WorkCover WA expectations (including evaluation and monitoring)
- frequently asked questions.

Key Points

The Act establishes a settlement process where the registration of a settlement agreement is the only pathway to settle a statutory workers compensation claim. The Act precludes the use of common law agreements (deeds) to settle statutory workers compensation claims.

The settlement of a workers compensation claim by a settlement agreement between the injured worker and the employer will:

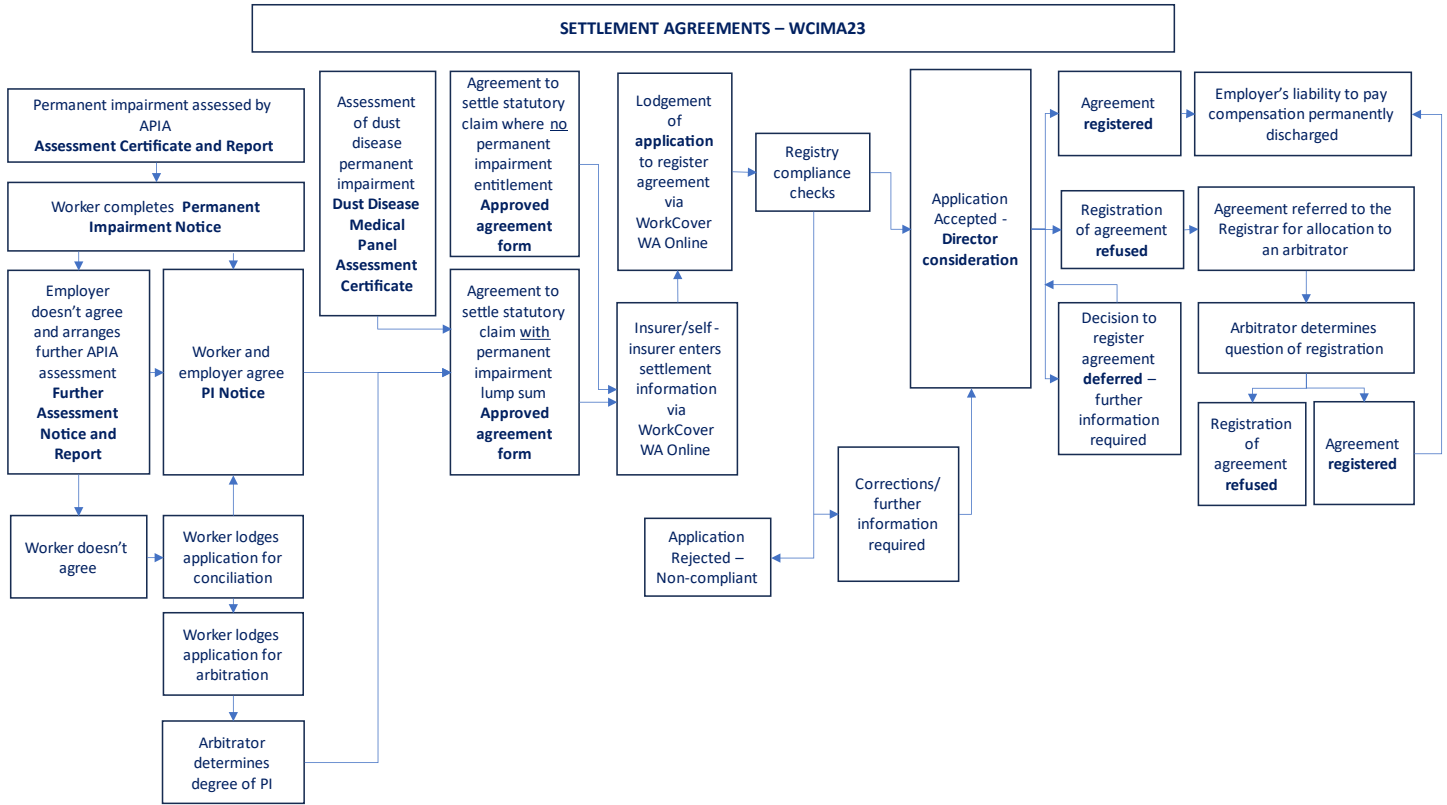
- commute to a lump sum the liability of the employer to pay compensation to the worker in respect of the injury; and
- permanently discharge the liability of the employer for the injury.

A settlement agreement must be in the approved form and has no effect unless registered by the WorkCover WA Director (the Director). The registration of a settlement agreement requires an explicit acknowledgement the injured worker is aware of the consequences of registering the settlement agreement. This acknowledgement forms part of the approved form of a settlement agreement.

The Director is required to scrutinise the settlement agreement for genuineness and, where permanent impairment compensation is included, is to be satisfied it includes the correct amount payable for permanent impairment compensation. The Director will refuse to register a settlement agreement if of the opinion the agreement was obtained by fraud, undue influence or other improper means.

The Act provides for minimal barriers to settlement of statutory workers compensation claims and there is no legislative requirement for liability to be accepted or determined nor any timeframe prescribed before a settlement can be registered.

Settlement agreements process flowchart



1. Preparing to make a settlement agreement

1.1 Timing of a settlement agreement

Section 149 of the Act provides for an injured worker and the worker's employer to enter into an agreement in writing (a settlement agreement) that operates to:

- a. commute to a lump sum the liability of the employer to pay compensation to the worker in respect of the injury; and
- b. permanently discharges that liability of the employer.

A settlement agreement can include lump sum compensation for income compensation payments, medical and health expenses, workplace rehabilitation expenses, miscellaneous expenses and/or permanent impairment compensation or dust disease compensation.

If a worker is entitled to permanent impairment compensation or dust disease compensation:

- a. a settlement agreement must include provisions for commuting the liability for that compensation; and
- b. the application for registration of the settlement agreement must be accompanied by the information and documents necessary to establish the worker's degree of permanent impairment resulting from the injuries concerned.

Although the Act doesn't specify a timeframe for settlement, if the worker has sustained a permanent impairment, it is unlikely that settlement will occur until around 12 months after the injury or post-surgery (if relevant). This is because the worker cannot be assessed as to the degree of permanent impairment they have sustained until they have reached maximum medical improvement (MMI).

1.2 Assessing permanent impairment

An assessment of a worker's degree of permanent impairment is required for the purposes of determining lump sum compensation for permanent impairment.

The Act requires that impairment assessments be undertaken by an Approved Permanent Impairment Assessor (APIA), titled approved medical specialist under the 1981 Act, in accordance with the *WorkCover WA Guidelines for the Evaluation of Permanent Impairment* (the WorkCover WA Guidelines 2024).

The WorkCover WA Guidelines 2024 operate on the general principle that an assessment of permanent impairment for the purposes of a lump sum settlement can only be done when a worker's condition has stabilised (reached MMI).

Where the injury is a dust disease an assessment must be undertaken by the Dust Disease Medical Panel.

An APIA is required to complete a report and certificate on the assessment of degree of permanent impairment in the approved form titled *Permanent Impairment Assessment – Report and Certificate* (the Report - attachment 1).

The Report sets out the APIA's diagnosis, prognosis and assessment of the worker's condition as well as a table showing how the degree of permanent impairment was calculated and confirmation the worker has reached MMI.

Incomplete permanent impairment certificates or reports, incorrect assessments, assessments not done in accordance with the WorkCover WA Guidelines 2024 or assessments done before the worker has reached MMI cannot be used to determine the worker's permanent impairment compensation in a settlement agreement.

It is the responsibility of the lodging party (usually the insurer or self-insurer or their legal representative) to ensure that permanent impairment assessments provided by an APIA are compliant and calculations of permanent impairment lump sum compensation are correct, prior to lodgement.

1.3 Agreeing the worker's degree of permanent impairment

If a settlement agreement (*Settlement Agreement form* – attachment 2) includes provisions for commuting the liability for permanent impairment compensation, the application for registration must be accompanied by:

- a. if the worker and employer agree under section 105 of the Act with the assessed degree of impairment as assessed by an APIA and written in the Report
 - i. a copy of the *Permanent Impairment Notice form* (attachment 3) which indicates the agreement between the worker and the employer; and
 - ii. a copy of each Report prepared by an APIA under section 192(1) of the Act on which the agreed degree of permanent impairment is based

or

- b. if the worker and employer did not agree under section 105 of the Act with the assessed degree of permanent impairment – copy of any determination made by an arbitrator under section 106(2) of the Act regarding the worker's degree of permanent impairment.

If a settlement agreement includes provisions for commuting the liability for dust disease impairment compensation, the application for registration must be accompanied by a copy of the determination made by the Dust Disease Medical Panel under sections 123 and 127 of the Act.

1.3.1 Approved Permanent Impairment Notice

The approved *Permanent Impairment Notice* form must be completed by the worker and employer and must identify the relevant item in the permanent impairment table, the assessed permanent impairment by the APIA, or if applicable, the agreed permanent impairment (which is a degree in the range between the original APIA assessment and further APIA assessment, if any).

1.4 Ensuring calculations of the permanent impairment lump sum are correct

It is important to ensure calculations of the permanent impairment compensation are correct, based on the permanent impairment assessment by the APIA. Any error in the compensation amount included in the settlement agreement may prevent the application for registration of the settlement agreement from being lodged or may result in the Director having to seek agreement of the parties to rectify the error or the Director may refuse to register the settlement agreement.

1.5 Arbitrator's determination of the worker's degree of permanent impairment

If the employer and worker cannot agree as to the worker's degree of permanent impairment, under section 105 of the Act, the worker may apply for an arbitrator to determine the worker's degree of permanent impairment.

Section 106 of the Act provides for an arbitrator to determine the worker's degree of permanent impairment and for the arbitrator to determine a degree of impairment that is outside the range of the original assessment and any further assessment made.

1.6 Ensuring details of compensation payable are correct

It is important to ensure details of all the types of compensation paid before settlement and payable under the settlement agreement are correct. Settlement agreements that contain errors may prevent the application for registration from being lodged or may result in the Director rejecting the application.

2. Executing a settlement agreement

A settlement agreement is made when an employer and worker complete a settlement agreement in the form approved by WorkCover WA. A settlement agreement has no effect unless and until it is registered by the Director.

2.1 Filling in the approved settlement agreement form

It is expected the insurer, self-insurer or representative of a party to the agreement will complete the approved *Settlement Agreement form*, prior to it being executed by or on behalf of the parties.

All relevant sections in the form must be completed as indicated in the form. The content, order, format and clauses contained in the approved form must otherwise not be altered.

2.2 Signing the settlement agreement

The agreement must be signed by or on behalf of both parties prior to it being lodged.

Electronic and digital signatures are permitted as long as the settlement agreement is executed by both parties in accordance with the laws of the State pertaining to the execution of legally binding documents.

The lodging party will be required to confirm the settlement agreement has been executed properly by both parties when lodging the application for registration.

2.3 Worker's acknowledgement

The worker's acknowledgement that they understand the consequences of the settlement agreement forms a mandatory part of the approved form and must be completed.

Settlement agreements which do not contain the worker's acknowledgement will not be accepted for registration.

3. Lodging the settlement agreement for registration

3.1 Application for registration of the settlement agreement

3.1.1 Approved form for application for registration of a settlement agreement

The electronic document system (EDS) which is part of WorkCover WA Online must be used to apply for registration of a settlement agreement. The lodging party will be required to provide the information relevant to the settlement agreement via the EDS and should ensure the details entered match the details contained in the settlement agreement.

If any errors or omissions are identified by the EDS, the lodging party will receive an error or information message so that these issues can be addressed before lodging the application.

3.1.2 Documents and information that must accompany the application for registration

The lodging party is required to upload the following documents to accompany the settlement agreement:

- A properly completed, correct and legible Settlement Agreement signed by both parties
- If permanent impairment compensation is payable
 - A properly completed and correct Permanent Impairment Notice – which indicates the agreement as to the degree of permanent impairment, and
 - a copy of the Permanent Impairment Assessment – Report(s) and Certificate(s) or
 - a copy of the Determination of an Arbitrator regarding the worker's degree of permanent impairment.
- If dust disease permanent impairment compensation is payable - a copy of the Dust Disease Medical Panel Determination & Whole Person Impairment Assessment.

3.2 Lodging the settlement agreement with the Director

3.2.1 Using WorkCover WA Online

In order to use the EDS to lodge an application to register a settlement agreement the lodging party must be a registered user of WorkCover WA Online. Access to the EDS is via the WorkCover WA website and the user must have a current association with an insurer, self-insurer or representative.

3.2.2 Lodgement as soon as practicable

The lodging party must commence making the application to register a settlement agreement in the EDS as soon as practicable after the agreement is made. This would usually be within a few days.

3.3 Uploading settlement documents and completing lodgement requirements

3.3.1 Format of documents

The preferred format for completed documents is PDF, uploaded as a single file per document (e.g. scanned Settlement Agreement.pdf, Permanent Impairment Notice.pdf, etc).

Other formats accepted are JPEG or TIFF and all files must be less than 50Mb.

3.3.1 Mandatory fields

The EDS contains several mandatory fields in order to ensure as much as possible that the application for registration is properly completed. To ensure no figures have been inadvertently left out, all compensation amount fields are mandatory. Therefore, if no compensation is applicable for a particular field, a figure of zero (\$0) must be entered.

3.3.2 In-system compliance checks

Mandatory fields (where applicable) and compliance checks have been built into the EDS to enable:

- auto-calculation of the total lump sum
- auto-calculation of permanent impairment compensation based on item(s) or dust disease compensation (if applicable)
- warning if the general maximum applicable amount may have been exceeded
- warning if the agreement does not provide for commuting the liability for permanent impairment compensation or dust disease compensation where it has been indicated in the application that the worker is entitled to that compensation
- warning if the agreement provides for compensation in respect of medical and health expenses, miscellaneous expenses compensation or workplace rehabilitation expenses compensation where it has been indicated in the application that the worker is a participant in the Catastrophic Injuries Support Scheme (CISS), as these services will be provided under the CISS
- warning if it has been indicated in the application that the agreement provides for the liability of the employer to pay damages for an injury suffered by the worker to be commuted or otherwise discharged.

3.4 Director's scrutiny of the settlement agreement and information lodged

Section 154 of the Act provides for the Director to scrutinise the settlement agreement for genuineness, to be satisfied it includes the correct amount payable for a permanent impairment compensation and that all other prescribed criteria are met.

The Conciliation Service Registry will undertake various compliance checks on behalf of the Director including for:

3.4.1 Completeness and accuracy of all information on the settlement agreement and supporting documents, including lump sum compensation amounts and degree of permanent impairment.

3.4.2 Ensuring there are no indications that the agreement was obtained by fraud, undue influence or other improper means.

- 3.4.3 Inclusion of payments for common law damages.
- 3.4.4 Existence of previous settlements for a similar injury.
- 3.4.5 Whether maximum limits have been or will be exceeded

4. Registration of the settlement agreement

4.1 Notification of registration of the settlement agreement

- 4.1.1 The Director will notify the parties that the settlement agreement has been registered. Notification will occur via the EDS for non EDS exempt parties, and by email (where possible) or mail for EDS exempt parties (i.e. the worker) to the address provided in the application.

4.2 Notification that the settlement agreement was refused registration and referral to the Registrar

- 4.2.1 If the Director refuses to register the settlement agreement, a notice setting out the reasons why settlement was refused will be given to the parties. The Director will refer the settlement agreement to the Registrar for allocation to an arbitrator.
- 4.2.2 The Registrar or arbitrator may conduct a settlement hearing and will make a decision about registration of the settlement agreement.

5. Transitional arrangements

The Director may make transitional directions regarding settlement agreements.

Form 15C - Memorandum of Agreement (MOA)

Compliant MOAs received by the Director before 1 July 2024 and not yet registered before 1 July 2024 will be processed and registered in accordance with the 1981 Act and section 587 of the Act.

Unless the Director provides specific approval, agreements made but not lodged with the Director before close of business on Friday 28 June 2024, cannot be lodged after that time. The Director will not give approval for lodgement of late MOAs unless satisfied there are exceptional circumstances which prevented the MOA from being lodged on time and/or that prevent a settlement agreement from being made in accordance with the requirements of the Act.

Common Law Deeds

Compliant common law Settlement Deeds (lodged pursuant to section 92(f) of the 1981 Act) received by the Director before close of business on Friday 28 June 2024 but not yet processed will be processed after 1 July 2024 in accordance with the 1981 Act.

6. WorkCover WA expectations

WorkCover WA expects insurers and self-insurers to:

- adopt the new settlement agreement approved form for all agreements lodged from 1 July 2024
- ensure agreements do not contain any blank, extraneous, deleted, strikethrough or irrelevant content
- seek approval for registration of all settlement agreements on behalf of the parties in a timely manner
- respond promptly to requests for further information or corrections
- continue to lodge common law agreements (section 433 of the Act and section 92(f) of the 1981 Act) via WorkCover WA Online (EDS).

Evaluation and monitoring

WorkCover WA will monitor the following metrics (for each insurer and self-insurer) related to settlements.

Settlement usage:

- number and proportion of all claims finalised by settlement (combined statutory and common law)
- number and proportion of all claims finalised by statutory settlement
- number and proportion of all claims finalised by common law deed
- number and proportion of settled claims by liability status at settlement
- number and value of settlement agreements on claims without an admission of liability
- average claim duration prior to settlement
- average cost of claims finalised by statutory settlement
- average cost of claims finalised by common law deed.

Registration process:

- number and proportion of registration applications accepted and rejected
- number and proportion of registration applications requiring rectification of any error in the settlement agreement or supporting information and documents
- average duration of registration assessment by Conciliation Service
- outcome of Arbitrator decisions regarding registration of settlement agreements.

7. Questions and Answers

Q. Can a workers compensation settlement include provisions for damages?

A. No. Settlement of a workers compensation claim cannot include an amount for damages or for the potential liability of the employer for damages that arises outside the workers compensation scheme.

Attachment 1

Workers Compensation and Injury Management Act 2023

**PERMANENT IMPAIRMENT ASSESSMENT —
REPORT AND CERTIFICATE**

Worker

Name:
Address:
Date of birth:
Phone number:
Email address:

Employer

Name:
Address:
ABN:
Contact person:
Phone number:
Email address:

Claim

Insurer:
Insurer claim number:
Date claim made:

Injury

Date of injury:
Description of injury:

Purpose of assessment

Permanent impairment compensation:
(*See impairment rating and calculation for permanent impairment (PI) compensation)

Common law:

Special increase in the medical and health expenses general limit:

Maximum medical improvement & special assessment

Has worker reached maximum medical improvement? Yes No

Is this a special assessment authorised by the WorkCover WA Permanent Impairment Guidelines? Yes No

Examination

Date:

Location:

Reports and documents provided:
(List of documents and information provided)

Narrative history
(As provided by the worker on history of injury, occupational history, past medical history)

Physical examination:

Diagnostic studies:

Diagnosis and impairments:

The proportion of permanent impairment due to any previous injury that was not asymptomatic:

Impairment rating and calculation for permanent impairment compensation

(Detail the relevant references used in assessing the percentage of permanent impairment consistent with the WorkCover WA Permanent Impairment Guidelines)

Item #	Chapter #	Table/Figure #	PI Rating (%)	Assessed degree of PI (%)*

* WorkCover WA Permanent Impairment Guidelines conversion applied

Calculation of the worker's degree of permanent impairment

(Show how degree of permanent impairment was calculated, detail any combination of body part or systems)

Statement as to the reasons for arriving at the calculation of the worker's degree of permanent impairment

CERTIFICATE OF DEGREE OF PERMANENT IMPAIRMENT

Having assessed the above worker in accordance with the *Workers Compensation and Injury Management Act 2023* and the *WorkCover WA Guidelines for the Evaluation of Permanent Impairment*, I certify:

Permanent impairment compensation

The degree of permanent impairment detailed above for each item in the permanent impairment table is:

Item	Description	% permanent impairment of item

Note: Only complete if purpose of assessment is for permanent impairment compensation. If there is more than one impairment to a body part or system specify the percentage permanent impairment for each item.

Common law or special increase in medical and health expenses compensation

The degree of permanent whole of person impairment detailed above is: _____ %

Signed: _____ **Date:** _____

Approved permanent
impairment assessor: _____
WorkCover WA APIA
registration number: _____
Address: _____
Phone number: _____
Email address: _____

Attachment 2

Workers Compensation and Injury Management Act 2023

SETTLEMENT AGREEMENT

This agreement is between:

Employer

Name:
Address:
ABN:

and

Worker

Name:
Address:
Date of birth:

Agreement

Total lump sum: \$
Agreement date:

By this agreement the employer agrees to pay, and the worker agrees to accept, the total lump sum set out above to permanently finalise the worker's entitlement to compensation for the injury as set out in this agreement. This agreement permanently discharges the liability of the employer to pay compensation to the worker.

This settlement agreement is made in accordance with the *Workers Compensation and Injury Management Act 2023* and has no effect unless and until it is registered by the WorkCover WA Director (the Director).

Agreement Particulars

Injury

Date of injury:
Circumstances of injury:
Description of injury:

Claim

Insurer claim number:
Date claim made:
Date claim given to insurer:
Liability status: Accepted Not Accepted No Decision

Prior Amounts Paid

Prior to the date of this agreement the worker has received:

Income compensation:* \$ _____
 Medical and health expenses compensation:* \$ _____
 Workplace rehabilitation expenses compensation: \$ _____
 Miscellaneous expenses compensation: \$ _____

* Including provisional payments

Permanent Impairment Compensation

Permanent impairment compensation: Yes No

Applicable General Maximum Amount (GMA): \$ _____

Item #	Item Maximum of GMA		Assessed, Agreed or Determined Degree of Permanent Impairment#	Item Lump Sum
	%	\$		
Permanent impairment lump sum:				\$ _____

As indicated in APIA report or agreed % within range of APIA original and further assessment.

Dust Disease Impairment Compensation

Dust disease impairment compensation: Yes No

30% of the Applicable General Maximum Amount (GMA): \$ _____

Other Amounts

Future income compensation: \$ _____

Future medical and health expenses compensation: \$ _____

Future workplace rehabilitation expenses compensation: \$ _____

Future miscellaneous expenses compensation: \$ _____

Settlement Total Lump Sum

Total lump sum: \$ _____

Worker statement

By signing this agreement, I acknowledge:

- I have had the opportunity to seek legal advice about this settlement agreement.
- I am not aware of any expenses due but unpaid.
- I am aware of and understand the consequences of entering into this agreement and specifically:
 - I will have no further entitlement to compensation for the injury when this agreement is registered by the Director; and
 - I will not be able to claim or receive common law damages for the injury unless my claim is for dust disease impairment compensation only; and
 - this agreement permanently discharges the liability of the employer to pay compensation to me.

Worker signature: _____

Name: _____

Date: _____

Employer statement

By signing this agreement, the employer acknowledges liability for payment of any unpaid compensation and expenses it was obligated under this Act to pay prior to the date of entry into this settlement agreement.

Employer (or representative)
signature: _____

Name: _____

Date: _____

Note

An application to register this settlement agreement must be submitted to the Director as soon as practicable after the signed agreement has been received by the insurer. Unless otherwise approved the application for registration must be made through the WorkCover WA electronic document system (WorkCover WA Online).

A settlement agreement will not be registered by the Director if it is not in the approved form, is not accompanied by required supporting information or the application does not comply with the requirements of the regulations related to settlement agreements.

A settlement agreement may be signed electronically or digitally.

The Director will notify all parties when the settlement agreement has been registered.

The employer or insurer must pay the settlement amount within 14 days of the registration date or if another law applies to prevent payment (for example where Department of Health, Centrelink or Medicare charges apply to the settlement) within 7 days after payment is permitted.

Attachment 3

Workers Compensation and Injury Management Act 2023

PERMANENT IMPAIRMENT NOTICE

This notice is given by:

Worker

Name:

Address:

Date of Birth:

The notice is given to:

Employer

Name:

Address:

ABN:

Date of Notice:

Assessment Details

Injury assessed

Date of injury:

Description of injury:

Insurer claim number:

Approved Permanent Impairment Assessor (APIA)

Name:

APIA number:

Date of report:

Assessed Degree of Permanent Impairment

The assessed degree of permanent impairment for each item in the permanent impairment table resulting from the injury is:

Item	Description	% permanent impairment of item

[Insert from APIA's report under heading 'certificate of degree of permanent impairment'. If there is more than one impairment to a body part or system specify the percentage permanent impairment for each item e.g. 10% of item 39 – Impairment of the back (thoracic spine or lumbar spine or both)]

Agreement

Worker notice

The worker named in this notice has been assessed by the APIA specified above.

The APIA's report is given with this notice and includes the certificate of the degree of permanent impairment and details on how the degree of permanent impairment was calculated.

The employer named in this notice is requested to indicate whether or not the employer agrees with the assessed degree of permanent impairment specified above.

Worker (or representative) signature:

Name:

Date:

Employer response

The employer named in this notice agrees/ does not agree *[delete as applicable]* with the assessed degree of permanent impairment specified above.

Employer (or representative) signature:

Name:

Date:

Worker and employer take notice

An employer must do the following within 28 days after being given this notice and a copy of the APIA report by the worker:

1. If the employer *agrees* with the assessed degree of permanent impairment specified in the notice, indicate in the notice that the employer agrees, sign the notice and give it back to the worker.
2. If the employer *does not agree* with the assessed degree of permanent impairment specified in the notice, indicate in the notice that the employer *does not agree*, sign the notice and give it back to the worker.

3. If the employer *does not agree* with the assessed degree of permanent impairment specified in the notice, the employer must request a further assessment of the worker's degree of permanent impairment by an APIA with the cost of that assessment to be paid by the employer.

If an employer does not comply with points 1, 2 and 3 above within the 28-day period, the employer is taken to agree with the assessed degree of permanent impairment as specified in this notice.

If 3 applies see requirements in *Permanent Impairment Notice - Further Assessment*.

If agreement is reached, this notice may be signed electronically or digitally and must accompany an application to register a settlement agreement together with the APIA report.