



Jurisdictional Policy Advice No. 2007/ 10

Safety, Rehabilitation and Compensation Act 1988

Amendments to section 8 of the Act that provide for the Normal Weekly Earnings of a current employee to be increased by a prescribed index

Background

1. The *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act* received Royal Assent on 12 April 2007.
2. This Act amends the provisions of the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act). The amendments will, among other things:
 - ensure the Normal Weekly Earnings (NWE) of all employees can be updated in the current remuneration environment by reference to a prescribed index where the NWE cannot otherwise be updated under existing provisions of section 8.

Legislative Amendments

3. The following is extracted from the second reading speech that relates to this amendment:

The amendments will (also) improve the administration and provision of benefits under the scheme. The bill also provides a further reference scale for adjusting employee entitlements under the scheme. Where an employee's normal weekly earnings cannot be updated by reference to the rates contained in those instruments currently referred to in the SRC Act, benefits will be updated by reference to an Australian Bureau of Statistics index, which will be prescribed in the regulations.

4. New subsections 8(9E), (9F) and (9G) have been inserted into the SRC Act after subsection 8(9D) as follows:
 - (9E) The normal weekly earnings of an employee before an injury, as calculated under the preceding subsections, must, with effect from 1 July in each year, be further increased by the amount under subsection (9F) if, in the 12 months immediately preceding that 1 July:
 - (a) there was no increase in those earnings under subsection (6), (7) or (9); and
 - (b) there was no reduction in those earnings under subsection (9).
 - (9F) If the normal weekly earnings of an employee before an injury must be increased because of subsection (9E), the amount by which they are increased is the percentage of increase (if any) in

the index prescribed by the regulations for the purposes of this subsection over the period of 12 months ending on the 31 December immediately before the relevant 1 July.

(9G) For the purposes of subsection (9F) the regulations may specify the manner of calculating the further increase mentioned in that subsection by reference to the movement of the index that is prescribed for the purposes of that subsection.

Interpretation

Definitions

5. For the purposes of this advice:

normal weekly earnings means the earnings calculated for the purposes of incapacity determinations in accordance with the provisions of section 8.

relevant percentage means the same percentage of increase or reduction in the minimum amount per week payable in respect of employees included in a class of employees of which the employee was a member at the date of the injury.

indexation date for employees who continue to be employed, means 1 July each year following royal assent.

6. Subsection 8(9B) provides for the *normal weekly earnings* of employees who cease to be employed by the Commonwealth of a licensee to be increased by indexation as specified by regulation.

7. Subsections 8(6), 8(7) and 8(9A) of the SRC Act provides the manner in which *normal weekly earnings* are calculated for the purpose of determining incapacity payments to injured employees, who continue in employment, as follows:

- increase to minimum amount due to **salary advancement** (eg age based or attainment of service or due to increment) - sub-section 8(6)
- **promotion** of the employee - subsection 8(7)
- **award increases** or due to the operation of a law of the Commonwealth, State or Territory- subsection 8(9A)

(note: subsection 8(6) also applies to employees who have ceased to be employed by the Commonwealth or a licensee)

8. The new subsection 8(9E) provides for an additional mechanism for *normal weekly earnings* of employees who continue to be employed by the Commonwealth or a licensee to be increased when there has been no adjustment in those *normal weekly earnings* under any of the provisions of section 8 (particularly those set out in paragraph 7 above) in the twelve months preceding *indexation day*.

9. The most usual circumstance captured by the new subsection 8(9E) will be where an employee is on an Australian Workplace Agreement (AWA). Other circumstances would be employees who were included in a class of employees that no longer exists, or in a class in which they cannot attain an advancement point or meet a translation requirement due to their incapacity.

10. However, subsection 8(10) has the effect of limiting the application of increases to *normal weekly earnings* for employees who continue to be employed by the Commonwealth or licensee to the amount they would have received if not incapacitated for work. In practical terms, this means that an incapacitated employee who continues to be employed, could not receive an increase in normal weekly earnings by the operation of this index if he/she belonged to a class of employees which had not had an increase in the previous 12 months, eg due to a delay in providing for such an increase under an enterprise bargaining arrangement.

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11. These changes, by way of amendments to the SRC Act, require determining authorities to incorporate suitable processes and procedures to ensure that:
- employees who have not had an increase in *normal weekly earnings* in the 12 months prior to indexation day are identified;
 - the employees have their *normal weekly earnings* reviewed as at 1 July 2007; and thence annually as at 1 July each year; and
 - incapacity claims from these employees for periods of incapacity commencing on and from 1 July 2007, where the NWE figure cannot be otherwise updated under the previously existing provisions of section 8, and are not limited by the provisions of sub-section 8(10), take the amendments into account.
12. This will require the determining authority to:
- establish that no increase (or decrease) has occurred in *normal weekly earnings* in the twelve months prior to *indexation day*
 - establish whether the indexed amount should be limited by the provisions of 8(10) and adjust accordingly
 - apply the indexation rate prescribed by regulation to periods of incapacity calculated for the period from *indexation day*
13. The indexation rate for 1 July 2007 is 3.3%
14. Future indexation rates will be notified by Comcare in conjunction with that for subsection 8(9B) in February or March each year when the relevant statistic becomes available from the Australian Bureau of Statistics.
15. Any queries in relation to this policy advice may be discussed with SRC Policy, phone 1300 366 979 or email SRC.Policy@comcare.gov.au

Steve Kibble

General Manager, Research and Policy Branch

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