



APPLYING THE ADJUSTMENT PERCENTAGE FOR INCAPACITY CALCULATIONS POST 45 WEEKS

PURPOSE

To provide scheme guidance about applying the relevant adjustment percentage for incapacity calculations under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) where an employee has exceeded 45 weeks of incapacity payments.

BACKGROUND

Section 19 of the SRC Act provides the legislative framework for the payment of compensation where an employee is incapacitated for work.

The first 45 weeks of incapacity compensation is based on an employee's normal weekly earnings (NWE) less the employee's earnings, or potential earnings, for that week (AE)¹. The AE is the greater amount in that week the employee:

- > is able to earn, or
- > actually earned.

After an employee has received the first 45 weeks of incapacity payments, the rate of incapacity compensation is reduced by an 'adjustment percentage'. The provisions for post 45 weeks incapacity payments are contained in section 19(3) of the SRC Act.

To avoid inconsistencies in the application of the adjustment percentage, particularly in circumstances where an employee has returned to normal work hours but requires occasional time off, this guidance outlines how the adjustment percentage should be applied for incapacity calculations.

GUIDANCE

The intention of the adjustment percentage is for incapacity payments to be calculated on the basis of the percentage of the normal weekly hours (NWH) an employee is employed (works) during a week.

A reference to NWH in the definition of the adjustment percentage must be considered in the context of the employee's pre-injury hours of work and not on any hours of work the employee may currently be undertaking in a new/different role².

The term 'employed' in the definition refers to the amount of active work undertaken and not to the employment status (or potential employment status) of the employee³. For example, where an employee has a 'deemed' ability to earn (AE), only the hours the employee is actually employed (works) during a week can be taken into account when applying the adjustment percentage.

¹ Section 19(2) of the SRC Act provides the relevant considerations for calculating incapacity in the first 45 weeks.

² *Comcare v Heffernan* (2011) FCAFC 131.

³ *Gill and Comcare* (2009) AATA 381.

Table 1: The relevant adjustment percentage based on hours worked

% of NWH worked	Incapacity formula (including adjustment percentage)	SRC Act reference
0%	75% NWE - AE	19(3)(a)
> 0% to ≤ 25%	80% NWE - AE	19(3)(b)
> 25% to ≤ 50%	85% NWE - AE	19(3)(c)
> 50% to ≤ 75%	90% NWE - AE	19(3)(d)
> 75% to < 100%	95% NWE - AE	19(3)(e)
100%	100% NWE - AE	19(3)(f)

Based on Table 1, the method of calculating incapacity compensation is based on the following principles:

- > where an employee is not employed for any period during a week – 75% of NWE less any AE [section 19(3)(a)]; or
- > where an employee is employed (works) during a week – an incremental percentage of NWE (i.e. the adjustment percentage) based on the percentage of NWH worked, less any AE [sections 19(3)(b) to (f)].

Example A – Incapacitated for part of a week

An employee (NWH = 40 hours) has returned to work on a gradual basis for 3 days per week (24 hours) but is incapacitated for one of those days (8 hours) due to an exacerbation of their condition. The adjustment percentage as part of their incapacity compensation calculation will be based on the number of hours they actually worked during that week (16 hours or 40% of NWH). As a result, the section 19(3)(c) adjustment percentage will apply and the employee is entitled to 85% of their NWE less the amount they actually earned.

Example B – Working full-time but at a lower position

An employee is back at work full-time (NWH = 42 hours) but has taken on lighter duties in a lower position due to their compensable condition. As the employee is unable to perform at the same level and is receiving reduced earnings, they claim incapacity for the week. The employee is working 100% of their NWH, therefore the section 19(3)(f) adjustment percentage applies and the employee is entitled to 100% of their NWE less the amount they earned in that week.

Example C – Working full-time and obtains medical treatment

An employee (NWH = 45 hours) has returned to work on a full-time basis. Due to availability issues, the only time they can see their GP is during work hours. The employee takes two hours off work to attend the medical treatment and claims incapacity for the period. Based on the hours worked (43 hours or 95% of NWH), the section 19(3)(e) adjustment percentage applies and the employee is entitled to 95% of their NWE less the amount they actually earned.

What is a week for incapacity compensation?

Incapacity calculations are to be made on a week by week basis. It must be decided exactly what period a week should cover e.g. Sunday to Saturday; Thursday to Wednesday. A decision-maker may choose to use whichever period best suits their administrative arrangements/pay cycles, as long as it is applied consistently.

FURTHER INFORMATION

For further information on calculating incapacity see the [scheme guidance](#) on:

- > Calculating Normal Weekly Earnings
- > Adjusting Normal Weekly Earnings
- > Calculating incapacity compensation when in receipt of superannuation

Scheme e-guidance is also available on the incapacity provisions through [Comcare's Learning Management System \(LMS\)](#) on the Comcare website.

For more information, please contact Comcare's Scheme Policy and Design team on 1300 366 979 or email: scheme.policy@comcare.gov.au.