



## **JURISDICTIONAL POLICY ADVICE NO. 2000/02**

### **SAFETY, REHABILITATION AND COMPENSATION ACT 1988 CALCULATION OF INCAPACITY PAYMENTS AFTER THE FIRST 45 WEEKS (ss19(3))**

#### **Background**

1. Determining authorities will be aware from correspondence during 1999 that there have been some inconsistencies in the application of sub-section 19(3) across the jurisdiction. This sub-section contains provisions relating to the calculation of incapacity payments after the first 45 weeks of incapacity.
2. This inconsistency is apparent in the situation where an employee has returned to normal hours of work after 45 weeks or more of incapacity, but requires occasional time off due to incapacity or to undertake medical treatment in relation to their compensable condition. In this situation, some determining authorities have assessed all incapacity payments under paragraph 19(3)(a), with all payments at 75% of Normal Weekly Earnings (NWE) for the period of the absence e.g. 1 day paid as compensation at 75% NWE and the remainder of the week on salary at normal pay rate. This application was based upon the employee being considered to be "not employed" for the period of their absence. Others have based the level of payment on the percentage of Normal Weekly Hours (NWH) worked by the employee during the week in which the absence took place.

#### **Policy Advice**

3. Legal advice received by Comcare indicates that the clear intent of ss19(3) is that the rate of incapacity payments be calculated on the basis of the percentage of normal weekly hours performed by the employee during a week. Weekly determination of incapacity payments should not be based directly on the amount of time taken off, but on the amount of work actually performed during that week.

4. The method of calculation for compensation that is payable under sub-section 19(3) is therefore either:
  - (a) where an employee is not employed for any period during a week – 75% of NWE less any amount the employee is able to earn in suitable employment (para 19(3)(a)); or
  - (b) where an employee is employed during a week – based on the percentage of NWH worked, an incremental percentage of NWE less any amount the employee is able to earn in suitable employment (para 19(3)(b) to (f)).
5. By way of examples:
  - (i) an employee who has returned to work on a full time basis and is then incapacitated for two days in a particular week is treated in exactly the same way as an employee who has returned to work on a gradual basis for a number of hours equivalent to three days a week.
  - (ii) an employee who has returned to work on a gradual basis for a particular number of hours per week but also has a day of incapacity during that week will have their entitlement calculated on the number of hours they actually worked in the week.
  - (iii) an employee who, having returned to work on a full time basis, claims two hours incapacity to obtain medical treatment will also have their entitlement calculated on the number of hours they actually worked in the week.
6. In order for calculations to be made on a week by week basis in these situations it must be decided exactly what period a week should cover e.g. Sunday to Saturday, Thursday to Wednesday. Each Determining Authority may choose to use whichever period best suits their administrative arrangements, as long as it is applied consistently.
7. Calculation of entitlements under ss19(3) should be made using the above principles.
8. Any issues relevant to this policy advice may be discussed with the Policy and Co-ordination Group on 1300 366 979.

Regulatory Services Division  
Comcare  
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