

Incapacity for work

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Introduction to incapacity for work

Section 4(9) of the SRC Act states that incapacity for work includes an incapacity to engage in any work, or an incapacity to engage in work at the same level at which the employee was engaged prior to their injury. Where the incapacity is 'as a result' of their compensable condition, they may be entitled to incapacity payments so long as there is satisfactory evidence the compensable condition caused the incapacity (either directly or by contribution), and not some other cause.

In instances where it is likely the employee has accessed Centrelink benefits for periods they are claiming incapacity benefits, confirmation and a clearance from Centrelink must be obtained prior to incapacity payments being made. This is to ensure the employee receives their fair and accurate entitlements and does not end up with an overpayment that they will need to repay.

Important: The Income Support team is responsible for calculating and determining an employee's incapacity payments. You should forward all incapacity related diary and document notifications, and relevant correspondence to the Incapacity Management team (IMT) in tray in Pracsys. Any changes, questions or issues with an employee's incapacity payments should be raised with the [Income Support](#) team.

Important: You are responsible for ensuring that time off work is appropriately extended in the treatment plan (via ACTP function) if liability has been accepted for incapacity payments. Payments will not be processed if the treatment plan is not extended.

If you notice inconsistencies with an injured worker's payslips, record of earning (ROE), superannuation etc, you should ask for more information. If you discover something that does not look right, feel right or when you receive information either from the employee or another source (employer, rehabilitation provider etc.) that is relevant and has the potential to impact the management of a claim, please refer to the ["Just Ask"](#) process.

What are incapacity payments?

Incapacity payments compensate employees who are incapacitated for work and have sustained a loss of earnings as a result of their compensable condition. An employee can claim incapacity payments when they are:

- totally unable to work (total incapacity)
- partially unable to work (partial incapacity) - e.g. unable to work the same hours, duties, shifts, or overtime
- redeployed to a lower paying position as a result of their injury
- on an approved rehabilitation program
- on a graduated return to work (GRTW), or
- away from work because they are undertaking medical treatment.

Incapacity payments are not payable if the employee:

- is in prison (having been convicted of an offence)
- has reached pension age (unless they are a former employee)
- suffered an injury within two years before pension age and has already received incapacity payments for 104 weeks
- received a redemption payment (unless their level of incapacity has increased)
- has an ability to earn which has exceeded their entitlement, or
- has had their compensation suspended under section 36, 37, 50 or 57 of the SRC Act.

Note: The pension age will increase progressively to age 67 on 1 July 2023. Information on increases to the pension age can be found on the [Services Australia](#) website.

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Claiming incapacity payments

If an employee wishes to claim compensation for incapacity payments, they need to make a claim for that entitlement.

Strict compliance with a form approved by Comcare is not required and substantial compliance is sufficient. Substantial compliance means that a claim lodged in written format through another form of correspondence may be accepted provided there is sufficient detail and information to be able to determine the employee's entitlement to incapacity under the SRC Act.

You need to be satisfied there is correspondence that can be identified as a 'claim' (for example: an approved form, medical certificate or other form of correspondence).

Note: A medical certificate must be provided by a legally qualified medical practitioner (LQMP) for a claim for incapacity. Discretion and sound judgement should be exercised when actioning medical certificates that cover an extended period. Comcare requires periodic medical review and generally does not extend liability for periods greater than 12 months. At the end of an accepted periods, a new medical certificate is required. Regular contact with an employee will ensure they are aware of when a new medical certificate is required. It is recognised that on occasion it may be appropriate for a payment to be made for a short, specified time frame to minimise distress and disruption to our employees, for example whilst they obtain a new medical certificate. If a payment is approved without medical evidence on file, the comment section on the Incapacity Treatment Plan page in Pracsys, must be completed to document why this has occurred and steps taken to gain appropriate medical evidence.

Employees might be paid by their employer or directly by Comcare and there are different requirements for evidence needed in processing these types of payments.

The table below provides examples how an employee can claim for incapacity payments:

Type of employee	Forms	Other correspondence
Employees who continue to be employed Commonwealth	Claim for time off work - online form Online claim paper form - paper form	Medical certificate from a LQMP. Note: There may be cases where an employee submits only a medical certificate. However, if the certificate does not contain sufficient information to be able to determine the employee's entitlement to incapacity, they may be asked to provide further information.

<p>Ex-employees who have separated from Commonwealth employment</p>	<p>Record of earnings (ROE) for those employees in paid employment or self-employed.</p> <p>Earning are gross (including tax)</p> <p>Note: This form can also be completed by ex-employees working in approved unpaid employment (ignoring the actual earnings column).</p> <p>Example: Voluntary work as part of a Work Trial Agreement under a section 37 rehabilitation program.</p>	<p>Pay slips Fortnightly timesheets Email/signed letter/spreadsheet from the supervisor/employer detailing the days and hours the employee worked</p> <p>Any other correspondence not covered above that provides details of the gross wages and hours for any employment (including in self or voluntary employment) being undertaken Medical certificate (same note as above).</p>
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Incapacity payments on date of injury

An employee who injures themselves at work and is unfit for the remainder of the day is entitled to claim compensation for time off work that day. The claim for compensation must be supported by medical evidence from a legally qualified medical practitioner (LQMP).

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Minimum earnings

The application of minimum earnings is only relevant when an employee is receiving incapacity payments under section 19(3) (a) of the SRC Act (they did not work any hours in that week). This applies even in cases where an employee has a deemed AE but has not worked any hours that week, i.e. 75 per cent of NWE minus the AE amount.

The minimum earnings amount is a statutory amount which is updated annually on 1 July. When an employee's incapacity payments fall below the minimum earnings amount, they are entitled to whichever of the following is the lesser amount:

- 90 per cent of their NWE, or
- the statutory minimum earnings rate (section 19(7)).

Note: Minimum earnings do not apply if the employee is in receipt of superannuation payments because the employee would be paid under section 20, section 21 or section 21A of the SRC Act and not under section 19(3)(a).

Dependants

If minimum earnings apply to an employee, they may also be entitled to an additional amount for 'prescribed persons' wholly or mainly dependent on them. The definition of 'prescribed persons' is provided in section 19(12) of the SRC Act.

The additional amount payable is a statutory amount updated annually on 1 July. The additional amount includes a set rate for prescribed persons and the first prescribed child. For every child after the first, another rate (roughly half of the rate for a prescribed person) applies (section 19(9)).

For the purposes of section 19, the additional amount payable is a statutory amount updated annually on 1 July, as per the following guidelines:

Where an employee has:	Statutory rate to apply:
One dependent child under the age of 16.	Section 19(9) - prescribed child.
Two or more dependent children under the age of 16.	Section 19(9) - applies to each child (prescribed child).
One dependent child aged 16 or over.	Section 19(8) - prescribed person.
Two or more dependent children aged 16 or over.	Section 19(8) - applies to 1 child (prescribed person). Section 19(9) - applies to remainder of those children (prescribed children).

Where an employee has:	Statutory rate to apply:
Two or more dependent children, some under the age of 16 and some over the age of 16.	Section 19(8) - applies to one of the children over aged 16 (prescribed person) Section 19(9) - applies to the remainder of those children

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Maximum amount payable (AWOTEFA)

The Australian Bureau of Statistics (ABS) sets the Average Weekly Ordinary Time Earnings of Full-time Adults (AWOTEFA) rate twice a year, in February and August. The current 150 per cent AWOTEFA rate is contained in Pracsys and updated biannually.

After 45 weeks, an employee's NWE is calculated under section 19(3) of the SRC Act. This means the relevant percentage is applied and any AE amount is deducted. Following this calculation, if the employee's incapacity payments exceed 150 per cent of the AWOTEFA amount, the employee's payments will be reduced to 150 per cent of the AWOTEFA amount (section 19(5)).

The maximum amount of incapacity payments anyone who is compensated under the SRC Act can receive after 45 weeks of incapacity is 150 per cent of the AWOTEFA rate. Pracsys automatically applies this AWOTEFA rate where an employee's payments would be higher than the AWOTEFA amount. If a period of incapacity that has already been paid overlaps an updated AWOTEFA rate, the Income Support team will need to re-determine that period of incapacity.

Example 1: An employee with an NWE of \$4,000, whose NWH is 40 hours per week, reaches 45 weeks incapacity.

If the employee is totally incapacitated for work they would be entitled to 75 per cent NWE, which would be \$3,000. If this is greater than the current rate of 150 per cent AWOTEFA (currently \$2,605.65 as at 19 August 2021), the 'maximum earnings' provision applies.

In this case, as the employee's incapacity payments calculated under section 19(3) would result in an entitlement greater than the 'maximum earnings' provision, the employee's weekly incapacity entitlement would be reduced to \$2,605.65 per week.

Example 2: If the same employee (with an NWE of \$4,000) was to undertake some paid employment during the week, this will change the calculation.

Using an example of this employee working five hours per week, and earning \$500, this would mean that the incapacity calculation would normally be undertaken under section 19(3)(b) of the SRC Act, which provides the employee would be entitled to 80 per cent NWE minus the amount they are able to earn.

As such, the calculation for this claim would be 80 per cent NWE – AE under the provisions of section 19(3)(b), (or \$3,200 - \$500), which would otherwise result in an entitlement of \$2,700, which is greater than 150 per cent of AWOTEFA, meaning the 'maximum earnings' provision applies.

Therefore, in this example the employee would be entitled to 150 per cent of AWOTEFA, which would be \$2,605.65. It should however be noted that the employee in this example would actually be in receipt of a combined income (salary plus compensation) of \$3,105.65 per week.

Example 3: Again, using the same employee but this time they are working 25 hours and earning \$2,500 per week.

The calculation would normally be undertaken under section 19(3)(d), being 90 per cent NWE – AE, or \$3,600 - \$2,500, which would result in an entitlement of \$1,100.

As this amount is less than 150 per cent of AWOTEFA the 'maximum earnings' provision does not apply, and so the employee would be paid a weekly entitlement of \$1,100 under the provision of section 19(3)(d). It should be noted that even though the compensation entitlement in this scenario is \$1,100 per week, the employee would actually be in receipt of a combined income of \$3,600.

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Incapacity legislation

The following sections of the SRC Act are relevant to incapacity payments

SRC Act reference	Explanation
4(9)	Definition of 'incapacity for work.'
7(6)	Incapacity taken to have resulted from a disease.
8	Normal weekly earnings (NWE) and Normal Weekly Hours (NWH).
9	Relevant period for calculating NWE and NWH.
13	Indexation of incapacity and other benefits.
14	Entitlement to compensation for incapacity.
19	Calculation of incapacity payments.
19(3)	Calculation of incapacity payments post 45 weeks.
19(4)	Deeming AE provisions.
19(5)	Maximum amount payable (AWOTEFA) provision.
19(6)-(14)	Minimum earnings provisions.
20	Calculation of incapacity where an employee is receiving a superannuation pension (retired on or after 1 December 1988).
21	Calculation of incapacity where an employee received a lump sum (retired on or after 1 December 1988).
21A	Calculation of incapacity where an employee received a superannuation lump sum and pension (retired on or after 24 December 1992).
22	Reduction in compensation for employee maintained in hospital.
23(1)	Cessation of incapacity payments at age pension age.
23(1A)	An employee with a date of injury that is within two years prior to the pension age may be entitled to 104 weeks of incapacity payments.

SRC Act reference	Explanation
23(2)	Cessation of incapacity payments in respect of imprisonment.
30	Redemption of entitlement to incapacity compensation.
31	Resumption of incapacity compensation after redemption.
33	Reduction of compensation where certain other payments are received.
116	Employees on compensation leave.
120	Notice of departure from Australia.
123	Transitional – definitions.
124(6)-(7)	Transitional – application of Act to pre-existing injuries.
131-137	Calculation of incapacity compensation – 'former employees'

Incapacity payments on two or more claims

An employee may be partially or totally incapacitated for work as a result of conditions arising from two (or more) separate claims. As employees can only receive incapacity benefits once per claimed period you will need to decide which claim the incapacity payments should be paid on.

What claim should incapacity be paid on?

When considering which claim to pay incapacity on, you should consider:

- what condition has caused the employee to be incapacitated, and

- if the employee is incapacitated as a result of more than one condition, which claim provides the highest NWE after factoring in any adjustment percentage.

The following table provides a guide only on how to determine the claim on which to pay incapacity, depending on the circumstances. In all cases incapacity payments should be determined on a case-by-case basis.

Claim 1	Claim 2	Pre 45 weeks incapacity paid on...	Post 45 weeks incapacity paid on...
Fit for work	Partially / totally incapacitated	Claim 2	Claim 2
Fit for graduated return to work (GRTW) or reduced hours if not for claim 2	Totally incapacitated	Claim 2	Claim that provides the highest NWE after factoring in any adjustment percentage
Totally incapacitated	Totally incapacitated	Claim that provides the highest NWE after factoring in any adjustment percentage	

Examples

Example 1: An employee is partially incapacitated for work in relation to their first claim for a back injury for which they are working a GRTW working 20 hours per week. The same employee has a separate claim for a knee injury, which following surgery develops into Deep Vein Thrombosis and becomes totally incapacitated for work. It is not possible to separate the employee's incapacity as a result of the second claim from the incapacity resulting from the back injury.

In this regard, the employee's incapacity payments should be made against the second claim as they are fully incapacitated as a result of the second condition.

Example 2: An employee with a claim for shoulder sprain has been incapacitated for more than 45 weeks. As a result of this injury, they have been certified fit to work 5 half days per week and are therefore entitled to 85 per cent of their NWE.

While still incapacitated and with the same NWE the employee develops a new work-related condition, thoracic sprain, for which liability is accepted. As a result of the employee's thoracic sprain, they are certified fit to work five half days per week. The employee remains fit to work five half days per week in relation to their first claim.

As the employee is only entitled to receive 85 per cent of their NWE on their first claim, based on the number of hours they have been medically certified fit to work, their incapacity payments are paid on the second claim as the employee is entitled to receive 100 per cent of their NWE on this claim. This is because they have not surpassed 45 weeks and are therefore not subject to an adjustment percentage.

Example 3: An employee has a claim for a psychological condition which has resulted in them being certified permanently unfit for work with their employer (agency 1). The employee has surpassed 45 weeks of incapacity.

A new position is found for the employee who commences work at a new Commonwealth agency (agency 2). In the new position the employee is working the normal weekly hours they were working prior to the date of injury at the first agency but earning less money.

As the employee is working the same normal weekly hours, they were working at date of injury they are entitled to 100 per cent of their NWE minus actual earnings (gross) from the second agency.

The employee later sustains an injury to their neck at the second agency which renders them totally unfit for work with that agency. The employee is therefore entitled to the higher of the following:

- 75 per cent of agency 1 NWE - AE (which may be \$nil), or
- 100 per cent of agency 2 NWE - AE (until they pass 45 weeks of incapacity)

If the employee is incapacitated for more than 45 weeks as a result of their neck injury they will be entitled to the higher of the following:

- 75 per cent of agency 1 NWE - AE (which may be \$nil), or
- 75 per cent of agency 2 NWE – AE

Example 4: The same employee in example 3 is later certified fit for reduced hours with the second agency. During periods of partial incapacity, the employee is entitled to the higher of the following:

- (Appropriate percentage of their original NWE) - (actual earnings (gross) from their new position), or

- (appropriate percentage of their new NWE) - (actual earnings (gross) from their new position).

Incapacity payments when attending medical treatment

When an employee takes time off work to attend medical treatment for their compensable condition, they are entitled to claim incapacity payments for the period they are absent from work.

When can incapacity be paid?

When looking at what amount of time is reasonable to pay incapacity for, you should consider:

- the amount of time it would take to travel to the appointment
- the duration of the appointment (including delays at the surgery)
- the amount of time it would take to travel back to the employee's place of work/home (perhaps access the websites like 'whereis' or 'travelmate' to calculate the journey), and
- whether it is reasonable for the employee to travel from home to the appointment before attending work for that day.

Note: All information accessed as part of making the determination (i.e. information from websites on calculating journeys) should be attached to the claim file as evidence.

Examples of what is reasonable

Example 1: The employee had a medical appointment at 9.30am but would normally begin work at 8.30am. It would be considered reasonable that the employee claimed for time off work from 8.30am to attend the treatment before attending work.

Example 2: The employee left work at 12.00pm to attend a physiotherapy appointment 5 mins away from her place of work and returned at 2.00pm. It would be considered reasonable for the employee to claim 1 hour for time off work.

Examples of what is not reasonable

Example 1: The employee has claimed incapacity payments for a full day due to attending a physiotherapy appointment. They would need to provide medical evidence from a legally qualified medical practitioner (LQMP), showing that they were unfit to work that day due to their compensable condition.

Example 2: The employee finishes work at 12.00pm to attend a massage appointment and claims incapacity payments for the remainder of the day. It is not considered reasonable that the employee requires five hours to attend a massage appointment. Medical evidence would need to be provided from a LQMP that showed why the employee was not fit to return to work.

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