

Normal weekly earnings

Claim management

✓ Claim reviews

✓ Medical treatment and other support

✓ Rehabilitation and return to work

✓ Incapacity calculation and payment

✓ Reimbursement and other payments

✓ Overpayments and recoveries

✓ Work related death

✓ New or changed conditions

✓ Permanent impairment

✓ Miscellaneous

Jump to:

Normal weekly earnings and the relevant period

Allowances

Increasing Normal Weekly Earnings

Decreasing Normal Weekly Earnings

Summary of Normal Weekly Earnings legislation

Normal weekly earnings and the relevant period

Incapacity payments are determined using an employee's normal weekly earnings (NWE). NWE is the amount which is intended to be a fair representation of what an employee would have earned in a week if they had not been injured. NWE is calculated based on the employee's salary at the date of injury and may include overtime and allowances for the relevant period.

The employer at the date of injury provides information to Comcare regarding the employee's gross earnings during the relevant period, as well as information on any overtime and allowances. It is Comcare's responsibility to review the information and determine the NWE figure.

Important: The Income Support team is responsible for calculating and determining an employee's NWE. Claims managers should forward all NWE 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 NWE should be raised with the [Income Support team](#).

Normal weekly hours (NWH)

NWH refers to the average number of hours (including hours of overtime) that an employee worked in each week during the relevant period. Once determined, the NWH of an employee does not change for the life of their claim.

Based on the definition contained in section 4 of the SRC Act, NWH must be based on an employee's pre injury weekly hours. It is not possible in any circumstance to adjust an employee's pre injury NWH to reflect post injury circumstances.

There is no provision under the SRC Act to vary NWH after the date of injury (*Comcare v Heffernan 2011, Federal Court of Australia Full Court (FCAFC) 131*).

Relevant Period

To calculate an employee's NWE an average of their normal wages over a period of time is used. This period of time is called the 'relevant period'. The SRC Act states that the relevant period is the two week period immediately before the date of injury (section 9). If this period is not a fair representation of what the employee would normally earn, the relevant period can be extended, shortened, or a different period used. The reasons for changing the relevant period should always be provided in the NWE determination.

In cases where there is a disagreement between the employee and employer regarding the NWE or relevant period (i.e. the NWE amount or what dates to use for the relevant period etc), the Income Support team should request the specific dates of the relevant period from the employer, as well as the reason(s) for any disagreement and enter the information into Pracsys. Additionally, a summary of the information considered when arriving at the NWE figure, such as the pay records referred to, should also be stored and documented on Pracsys. The specific relevant period dates on the claim file and the information relied upon to determine the NWE may later form part of a reconsideration or Administrative Appeals Tribunal matter and this information must be recorded on the claim file.

Extending the relevant period

Generally, using the two-week period prior to the date of injury will be appropriate where an employee works standard hours and their gross earnings do not fluctuate. However, if the employee works different shifts each week, has varying overtime or allowances, then an extended period will generally be required. In these situations, an average of the employee's gross earnings over another extended period which results in a fair representation, may be appropriate. This could be six weeks, 12 weeks or 12 months, depending on the complexity of the employee's gross earnings.

Example 1: When an employee works regular overtime each fortnight, it would be reasonable to extend the relevant period to gain an average of the amount of overtime worked over an extended period. Twelve weeks, or six pays, may be a fair representation.

Example 2: An employee works casual hours on an as needed basis. Their hours vary significantly from week to week. It may be necessary to extend the relevant period to six months to gain a fair and reasonable representation of their average weekly

wage.

Shortening the relevant period

Part of the relevant period can be disregarded where, during that period, the employee's gross earnings varied because of:

- an operation of a law
- the making, alteration or operation of an award or industrial agreement
- absence from employment (reduced or nil earnings).

Example: The relevant period is the two-week period immediately prior to the date of injury; however, the employee received a pay rise one week prior to the date of injury. Week one of the two-week period can be disregarded and therefore only week two would make up the relevant period.

Using a different relevant period

When the two weeks prior to the date of injury is not a fair representation of the employee's gross earnings, it will be reasonable in some cases to use another time period. This period can be any length that would provide a fair representation of the employee's earnings and should be before the employee's injury and before the usual two-week relevant period.

Example 1: The employee may be on a temporary graduated return to work on lesser hours, earnings and duties for a non-compensable injury in the months prior to a compensable injury occurring. In this case, it would be appropriate to use a window of time prior to the graduated return to work by using a time where the employee was last working their 'normal' hours and gross earnings.

Where the relevant period is impracticable because of its shortness, the weekly earnings of an employee of the Commonwealth who performs comparable work can be used. This information can be obtained from the employer.

Example 2: If the employee commenced employment with the Commonwealth two days prior to being injured you might consider using a comparable employee's gross earnings to calculate the NWE.

Overtime

An employee's NWE can include a component for overtime where an employee was required to work overtime on a regular basis prior to their date of injury (section 8(2) of the SRC Act).

Regular and required overtime

Before overtime can be included in an employee's NWE it must be established that the overtime is regular and required. Neither of these terms are defined in the SRC Act.

When determining if an employee was required to work overtime you need to establish if there was an agreement between the employee and employer that the overtime be performed. This agreement can be formal, i.e. a written contract or terms of employment, or it can be informal, i.e. a verbal request and agreement. Once the employee has the agreement of their employer to work a certain period of overtime, it is sufficient to determine it was 'required'.

When determining whether an employee worked overtime on a regular basis you must be satisfied the requirement to work overtime was recurring. In this case it would generally be necessary to extend the relevant period beyond two weeks to a period that fairly represents what the employee would have been earning.

Example 1: During the 12 week period immediately prior to the date of injury an employee worked 60 hours of overtime. The hours of overtime varied from week to week but there was always a requirement for overtime to be worked and there was a verbal agreement between the employee and employer that the employee would undertake the overtime. In this instance you would calculate a weekly average (60 hours ÷ 12 weeks = 5 hours per week).

Refer to *Peisley and Telstra Corporation Limited (2005)* and *Comcare Australia v Pires (2005)* for case law regarding overtime.

Seasonal overtime

A seasonal overtime component will be included as long as the seasonal period lasts.

Example: An employee working in a finance area is required to work overtime each year for three weeks leading up to the end of the financial year. This overtime is seasonal and would therefore be included in the NWE only for the applicable period.

Allowances

An employee's NWE can include a component for allowances the employee was receiving prior to their date of injury (section 8(1) of the SRC Act). Where the employee is receiving allowances, the relevant period used to calculate their initial NWE may need to be extended.

Allowances to be included in NWE are for:

- conditions encountered during employment
- special skills/qualifications, and
- special duties.

Note: Allowances for monies spent, or likely to be spent, are not included in NWE, as they are not classified as 'earnings'.

Included and excluded allowances

The following table details the types of allowances that should be included in the employee's NWE, and the allowances that should be excluded. This list is not exhaustive.

Included	Excluded
Higher duties allowance (HDA)	Annual leave bonus
First aid allowance	Travelling allowance (TA)
Leading hand allowance	Meal allowance
Proficiency allowances	Tropical clothing allowance
Senior officer allowance (overtime component)	Senior officer allowance (work related expenses component)
Site allowance	Laundry allowance

Included	Excluded
Height allowance (danger money)	NewStart allowance under the <i>Social Security Act 1991</i> .
X-ray allowance	Training allowance under the <i>Disability Services Act 1986</i> .
	District, or accommodation allowance
	Remote locality leave fare allowance

Allowances paid for working outside Australia

Allowances paid for working outside Australia (other than allowances for expenses incurred or likely to be incurred) are included in NWE for the assigned deployment period. The following dot points detail how allowances would be treated in circumstances where the deployment is either shortened or extended due to the compensable injury:

- where an employee returns to Australia in the middle of their deployment, due to their compensable condition, then their allowances paid for working outside Australia continue until such time as the intended deployment period expires.
- where an employee's deployment overseas is extended due to their compensable condition (for example, because they are undergoing medical treatment), then their allowances paid for working outside Australia continue until such time as they return to Australia.

Where an employee returns to Australia at the completion of their deployment and is later incapacitated due to their compensable condition, then allowances paid for working outside Australia would not be included in the NWE calculation.

Reviewing allowances

The allowances included in an employee's NWE should be regularly reviewed to ensure they are still entitled to receive them. This can involve reviewing information on the employee's claim file or contacting the employer to see if there has been

any change in an employee's work circumstances. If an employee is no longer entitled to an allowance then their NWE should be assessed to determine whether it needs to be decreased.

Example: Higher Duties Allowance (HDA) is paid when an employee is performing work duties at a level above their substantive position. Once the period of higher duties would have ordinarily expired, the allowance is likely to be no longer payable e.g. the normal occupant of the position returns from leave. However, if the higher position remains vacant and requires ongoing filling, it is likely that the HDA allowance could continue to be included in the employee's NWE.

[Return to top of page](#) | [Return to top of section](#)

Increasing Normal Weekly Earnings

An employee's normal weekly earnings (NWE) may increase after the date of injury as a result of changing circumstances as outlined below. You should contact the [Income Support team](#) when a potential change to an employee's NWE is identified.

Increment

An employee's NWE may increase after the date of their injury as a result of an increment (section 8(6) of the SRC Act). An increment may occur due to:

- an increase in age - increments may apply for certain classifications of employees on each birthday until age 21 (after that an employee is eligible for adult wages)
- the completion of a period of service, or
- an employee automatically moving to the next increment level (except where the employer states the employee would not have received the increment because they did not satisfy good conduct/efficiency prerequisites or where the incremental advancement is dependent upon the employee being performance assessed and their injury precludes them from being assessed for the purposes of a performance based salary progression).

Increases to NWE as a result of an increment only apply to employees who remain employed by the Commonwealth - that is, current employees.

As a result of the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001*, ex-employees cannot receive an increase in NWE as a result of an increment on or after 1 October 2001.

Promotion

Where an employee continues to be employed by the Commonwealth, their NWE may increase after the date of their injury as a result of a promotion. There must be an actual promotion in order to increase the NWE under section 8(7) of the SRC Act. Assertions that an employee would have been promoted 'but for their injury' are not sufficient grounds for an increase in NWE.

Where an employee obtains a position at another Commonwealth agency on the same classification but at a higher pay level, the NWE should be changed to the higher level in the same manner as if it was a 'promotion'.

If an employee is promoted to a position that has a specific range of allowances attached to it, these should be assessed for inclusion in the NWE. An assessment should also be done under section 8(10)(a) of the SRC Act to see if any allowances associated with the old position no longer apply.

Note: A part time employee obtaining a full time position at the same classification and pay level is not considered to be a promotion.

Changes to enterprise/collective agreements

Enterprise/collective agreements set out the terms and conditions of employment between an employee, or a group of employees, and their employer. The terms and conditions of an enterprise/collective agreement will vary between agencies.

Section 8(9A) of the SRC Act provides that NWE should increase or reduce in respect of employees included in a class of employees, as a result of:

- the operation of a law of the Commonwealth, State or Territory, or
- the making, alteration or operation of an award, order, determination or industrial agreement (or other act or thing), under such a law.

Example: Following the introduction of a new enterprise agreement in a Commonwealth agency, shift penalties for a specific class of employees is no longer payable, however, their base rate of pay has been increased. An employee with a

compensation claim is in this class of employees. A new determination of the employee's NWE, effective from the date of the new enterprise agreement, should be undertaken.

Indexation

NWE can increase as a result of indexation (section 8(9E) and 8(9F) of the SRC Act). Indexation is the automatic adjustment of wages based on the Wage Price Index (WPI) to compensate for inflation. The WPI is published by the Australian Bureau of Statistics and recommends a percentage increase based on an average of wages paid by Australian businesses.

Current employees

There are limited circumstances where a current employee's NWE would be indexed and only in cases where the employee had no variations to their NWE in the period of 1 July to 30 June immediately preceding the 1 July indexation date. An example of this would be an employee who has been unfit for work for an entire 12-month period and due to their absence, the employee is not entitled to an increase under the employer's Enterprise/Collective Agreement.

Changes to an employee's gross earnings will be provided by their employer and Comcare should first confirm with an employer whether an increase to the employee's earnings is likely to apply before considering indexation.

Indexation is not applied to NWEs for current employees who have not had a pay increase in 12 months because they are waiting on approval of a new certified agreement. This is because their NWE cannot exceed the amount they would receive if they were not incapacitated for work.

Former and ex-employees

Changes to the SRC Act on 1 October 2001 provide for indexation of NWE in line with the WPI for ex-employees and former employees under 65 years of age, who have ceased employment in a 12-month period preceding the 1 July indexation date (section 8(9B), 8(9C) and 8(9D) of the SRC Act). The first indexation applied on 1 July 2002.

A bulk-update of NWE's for ex-employees and former employees is arranged each year with effect 1 July.

The NWE for former employees aged 65 and over is not indexed (section 134, 135 and 136 of the SRC Act).

Indexation for part time employees with outside employment

At date of injury, some part time Commonwealth employees may have also been engaged in employment outside the Commonwealth. This outside employment is taken into account when calculating the employee's initial NWE.

In situations where an employee with outside employment has separated from their Commonwealth employment, annual indexation under the SRC Act applies to the employee's entire NWE figure. Once an employee's part time Commonwealth employment and other outside employment is combined to form an employee's NWE, that combined figure will only be subject to relevant Commonwealth increases or decreases. Any increases or decreases resulting from the employee's outside employment will not impact their NWE.

Example: An employee is working part time in the Commonwealth and also part time at a cafe on the weekends. The employee is injured in their Commonwealth employment and claims workers' compensation. The employee's NWE figure is a combination of their Commonwealth and other employment. At a later date the employee separates from their Commonwealth employment, but continues to work at the cafe on the weekend. As an ex-employee, the employee's NWE is increased through annual indexation under the SRC Act. However, any increases or decreases to the employee's café earnings cannot be used to adjust the employee's NWE.

[Return to top of page](#) | [Return to top of section](#)

Decreasing Normal Weekly Earnings

An employee's NWE may decrease after the date of their injury if the NWE no longer accurately reflects what they would have been earning if they had not been injured and incapacitated for work.

Current employees

A current employee's NWE may decrease as a result of:

- a demotion
- moving positions to a job with a lower salary
- being suspended with no pay due to a code of conduct investigation

- decreasing their hours of work for reasons unrelated to their compensable condition (e.g. changing to part time hours or a reduction of classification level due to a code of conduct breach), or
- their previously received allowance or overtime being reduced or no longer being available (e.g. such as an allowance not payable while on annual, maternity or other personal leave).

Where the NWE of a current employee exceeds the amount of gross earnings they would have received if they had not been injured, section 8(10)(a) of the SRC Act would apply to reduce the employee's NWE.

Example 1: An employee is a substantive APS5 officer at the date of their injury. Two years after their date of injury they are demoted to the APS4 level. Their NWE should be re-calculated to that of an APS4 officer from the date of demotion.

Example 2: An APS6 officer whose NWE includes a component for overtime moves to a new section within their department. The new position does not attract overtime; therefore the overtime component of their NWE must be removed.

Example 3: An employee had a Higher Duties Allowance (HDA) included in the calculation of their NWE. Six months after the date of injury, the employee is no longer undertaking higher duties because the HDA position's regular occupant has resumed in that position. The HDA component of the NWE must be removed.

Example 4: An APS4 officer who works in the field and is paid a site allowance is promoted to an APS5 position based in the office. Site allowance does not apply to the office-based position and therefore must be removed from the NWE. (In this case the new NWE will be that of the APS5 position and so the overall total may actually increase rather than decrease).

Example 5: A full time employee decreases their work hours for personal reasons. Their NWE should be re-calculated to be reflective of their gross earnings in part time employment from the date their hours are decreased.

Separating employees

When a current employee separates from Commonwealth employment and needs to be set up on Xpay, the Income Support team will review the employee's NWE and undertake a comparison calculation in terms of section 8(10) (b)(i) and (ii) of the SRC Act.

Comcare must determine what the separating employee would be earning had they continued to be employed in the same employment they were engaged in at:

- the date of their injury, and
- the date their employment ceased.

The greater of these two figures will represent the 'cap' that the NWE must not exceed.

If the NWE recorded in Pracsys exceeds the 'cap' amount, the NWE must be reduced by the amount of the excess so that the employee is paid at no more than the capped rate. If the NWE does not exceed the cap amount, no action is required and the employee will remain on their current NWE.

Former and ex-employees

Following the application of indexation to a former or ex-employee's NWE, a comparison calculation will be carried out by the Income Support team in terms of subsection 8(10)(b)(i) and (ii) of the SRC Act (see above for the comparison that should be undertaken).

If the newly indexed NWE recorded in Pracsys exceeds the 'cap' amount, the NWE must be reduced by the amount of that excess so that the employee is paid at no more than the capped rate. If the newly indexed NWE does not exceed the 'cap' amount, no action is required, and the employee will be entitled to the newly indexed amount.

This comparison calculation should be done:

- at the time of the indexation of NWE each July
- upon a change in gross earnings in the Enterprise/Collective Agreement of an employee's agency.

If you believe there has been a change in an employee's NWE you should immediately notify the Income Support team who will then undertake the comparison calculation.

[Return to top of page](#) | [Return to top of section](#)

Summary of NWE legislation

The calculation of NWE is governed by section 8 and section 9 of the SRC Act. The various elements of those sections are summarised in the table below.

SRC Act reference	Explanation
8(1)	Determines how the NWE for ordinary hours of employment is to be calculated. In brief, s8(1) provides a formula which is, in effect: (hours worked per week x rate paid per hour) + allowances also paid with both rate and hours averaged from a 'relevant period' defined by s9.
8(2)	Supplements the NWE calculated at subsection 8(1) by taking account of overtime the employee was 'required to work' on a 'regular basis' during the same 'relevant period' as referred to in subsection 8(1).
9	Defines the term 'relevant period' used in subsections 8(1) and 8(2). In short, subsection 9(1) provides that the 'relevant period' is to be the latest 2 week period before the injury. Subsections 9(2), 9(3) & 9(4) make special provision where the employee's pay rate changed or was reduced during this period, or contained an interval without income etc.
8(3)	Makes provision for the NWE of part-time Commonwealth employees. In summary, the NWE of a part-time employee is to incorporate all other income received, not just the gross earnings from the Commonwealth. Note: There is no provision under the SRC Act to allow for other income to be included in the NWE of a full-time employee.
8(4)	Provides that where it is impractical to calculate an NWE because of the short duration of employment during the relevant period, the delegate may set the NWE by reference to the gross earnings of another employee doing similar work.

SRC Act reference	Explanation
8(5)	Is similar to subsection 8(4) in that it provides for an alternative method of determining NWE where that derived from the usual subsection 9(1) 'relevant period' does not provide a fair representation (e.g. Where the employee has an irregularly variable income). In this case a new relevant period may be chosen 'as Comcare considers reasonable' i.e. at the delegates discretion.
8(6)	Allows for updates to the NWE after injury, i.e. By indexation of pay rates or through regular pay increments that would have occurred automatically had the employee not been injured.
8(7)	Allows for an update to the NWE after injury where an employee continues to be employed by the Commonwealth and obtains a promotion.
8(8)	Provides that where an unpaid employee (volunteer) or part-time employee has no other earnings, the delegate must calculate the NWE to incorporate an amount 'that the employee would have been able to earn at the date of injury'.
8(9)-8(9A)	Provides that NWE for current employees be increased or reduced due to the operation of a law, or the making, alteration or operation of an award or industrial agreement.
8(9B)-8(9G)	Specify procedures for the annual update of NWE for ex-employees. The NWE is adjusted by a percentage in line with a specified Wage Cost Index. These current procedures date from an amendment to the SRC Act effective from 1 October 2001.
8(10)	Sets an upper limit on the amount of NWE. In short, it should not exceed the amount which the employee would have earned had they not been incapacitated.