

Frequently Asked Questions (FAQs) for workers and employers

The following compilation of questions has been created based on actual situations experienced by case managers and technical advisors within the NSW Workers Compensation Scheme.

The list of questions reflects the kind of queries that both employers and workers are most likely to ask in relation to the calculation of pre-injury average weekly earnings (PIAWE).

The scope of these FAQ's is restricted to PIAWE and does not include questions related to case management.

What is the relevant period?

The relevant period is the length of time, measured in weeks, which is used to average a worker's earnings to determine PIAWE.

The scheme agent will need to determine the date from which a relevant period commences, and then determine which of the weeks, and associated earnings, from within this duration will be included in the calculation of PIAWE.

The commencement date of the relevant period will be influenced by a number of factors. For detailed information on how relevant periods are determined please go to the PIAWE - Relevant period fact sheet.

How many weeks of payroll information are required to calculate pre-injury average weekly earnings (PIAWE)?

The relevant period can be up to a period of 78 weeks prior to the date of injury. An employer may be asked to provide up to 78 weeks of payroll information.

What type of information should be provided to the scheme agent to determine PIAWE?

Evidence of earnings for the relevant period and the amount and type of leave is necessary in all cases, but other information will vary depending on individual employment circumstances.

If the worker is employed by more than one employer at the time of the injury then earnings and leave from all jobs will be required.

It is also important to complete a "Calculating pre-injury average weekly earnings" form. For further detailed information on what type of information you need to provide please see the PIAWE fact sheets available on the icare website.

Are shift allowances included in pre-injury average weekly earnings (PIAWE)?

If a payment is determined to be in relation to a shift allowance then the weekly amount of these payments is included in the PIAWE calculation, if these allowances were received during the relevant period. The shift allowance component of PIAWE is payable to the worker for the first 52 weeks of weekly payments, provided that had it not been for the injury, the worker would have continued to perform work that attracted a shift allowance.

Allowance payments forming part of a workers' ordinary earnings (base rate of pay) that are determined to be monetary allowances or separately identifiable amounts are excluded from PIAWE.

Is overtime included in pre-injury average weekly earnings (PIAWE)?

If a worker would have continued to perform overtime, if it weren't for the injury, then the worker's overtime payments for up to 52 weeks prior to the date of injury will be included in the worker's PIAWE.

Overtime is payable in the first 52 entitlement weeks of weekly payments, after the date of injury.

Why is the overtime & shift allowance components of PIAWE removed after 52 entitlement weeks?

Section 44C(1)(b) of the *Workers Compensation Act 1987* only allows for overtime and shift allowance payments to be paid in the first 52 entitlement weeks of weekly payments.

Are bonus payments included in pre-injury average weekly earnings (PIAWE)?

No, bonus payments are not included in the calculation of PIAWE. Section 44G(1)(a) of the *Workers Compensation Act 1987* instructs scheme agents to exclude bonus payments from the worker's PIAWE.

Are commissions included in pre-injury average weekly earnings (PIAWE)?

Yes, commissions are included in the calculation of PIAWE. Commissions are calculated based on what the worker earned during the relevant period and are averaged to determine a weekly sum.

If a worker is only paid a piece rate and does not earn an hourly rate, how is pre-injury average weekly earnings (PIAWE) determined?

All piece rates are considered during the relevant period. The amounts are averaged over the relevant period and a weekly sum is determined to calculate the PIAWE.

If a worker pays extra tax each week because they have a HECS debt, how will this effect pre-injury average weekly earnings (PIAWE)?

PIAWE is based on gross earnings (before tax earnings), therefore a HECS debt does not affect the worker's PIAWE.

If the employer pays the worker directly, they will deduct the extra tax on the worker's behalf. However, if the scheme agent pays the worker directly the worker will need to advise their case manager to discuss arrangements to deduct the additional tax on their behalf.

If a worker is currently working through an apprenticeship, how will this effect pre-injury average weekly earnings (PIAWE)?

If the worker is working through an apprenticeship their PIAWE will be calculated based on what they would be paid as an apprentice at the rate that was current at the time of their injury. The worker's PIAWE will be increased in line with the worker's normal apprenticeship salary increases, as required by the terms of the worker's employment contract or award.

For example, should a contract or award instruct that the apprentice is to receive an increase in their wage at each anniversary of their apprenticeship for 3 years, then following the injury should weekly payments continue to be paid, the PIAWE will be recalculated based on this increase at each anniversary of their apprenticeship as if the injury had not occurred, until they reach the stage that the highest rate is payable.

If a worker is currently working through a traineeship how will this effect pre-injury average weekly earnings (PIAWE)?

If the worker is working through a traineeship, their PIAWE will be calculated based on what the worker would be paid at the time of the injury. The worker's PIAWE will be increased in line with their normal traineeship salary increases as required by the worker's employment contract or award.

For example should a contract or award instruct that the trainee is to receive an increase in their wage at each stage in their scheduled training, then following the injury should weekly payments continue to be paid, the PIAWE will be recalculated based on this increase at each stage as if the injury had not occurred until they reach the stage that the highest rate is payable.

If a worker is self-employed, what information is required to calculate pre-injury average weekly earnings (PIAWE)?

If the worker is self-employed they need to first qualify as a "deemed worker" under Schedule 1 of the Workplace Injury Management and Workers Compensation Act 1998 to claim compensation.

If they qualify as a deemed worker then it is useful to provide payroll information, copies of tax returns, PAYG activity statements and bank statements. It is worthwhile if the scheme agent has permission to speak to the worker's accountant to speed up the process in obtaining the necessary information to establish PIAWE.

If a worker is a working director, what information is required to calculate pre-injury average weekly earnings (PIAWE)?

Any payroll information, copies of tax returns, PAYG activity statements and bank statements are good sources of evidence. It is worthwhile if the scheme agent has permission to speak with the worker's accountant to speed up the process in obtaining this information to establish PIAWE.

If a worker has no capacity to work, will they be compensated for any profit / loss of his/her company?

The worker's PIAWE is based on wages earned. Scheme agents cannot consider profit and loss of a business, or revenue of a business to calculate PIAWE.

If a worker was due to commence a new role after the date of injury, which would have entitled them to a pay increase. Will the worker be compensated for this?

If the worker has written confirmation prior to the date of injury that a new role was to commence at a date after the worker's injury, then the PIAWE will be calculated according to the new salary.

A verbal confirmation is not acceptable. Written advice from the worker's employer confirming the appointment to the new role will be required as evidence.

If a worker has "salary sacrifice" arrangements in place with their employer, is this considered when calculating PIAWE?

Yes, in some circumstances, salary sacrifice can be considered as a non-pecuniary benefit and included in the calculation of PIAWE.

In order to ensure that the salary sacrificed amount, as requested by the worker, is assessed correctly, the employer must provide information including details of the arrangement to the scheme agent.

If a worker has worked public holidays and had days in lieu, does this effect pre-injury average weekly earnings (PIAWE)?

If, during the relevant period a worker was paid penalty rates for working on public holidays, those rates will be factored into the calculation of PIAWE.

In calculating PIAWE, a worker is paid on the basis of ordinary hours worked. A Fair Work Instrument will identify the ordinary hours for a given type of employment.

Why is an employment contract / award details required?

To ensure an accurate calculation of PIAWE, scheme agents need to refer to the best evidence available. The employment contract / award provides specific information about a worker's employment conditions, including salary and allowances – critical information for the determination of PIAWE. Each workers situation must be assessed on a case by case basis.

How does maternity leave / parental leave / carer's leave / study leave affect the calculation of PIAWE?

The calculation of PIAWE takes into consideration periods of annual leave, other paid leave and unpaid leave.

Any weeks containing unpaid leave will be excluded when calculating ordinary earnings. Weeks containing unpaid leave and other paid leave (except annual leave) are excluded when calculating overtime and shift allowance payments.

Please also see the icare "PIAWE - Ordinary Earnings", "PIAWE - Leave" and "PIAWE - Overtime and Shift Allowance" fact sheets for further information on the exclusion/inclusion of unpaid/paid leave.

How does purchased leave affect the calculation of PIAWE?

Annual leave is included in the relevant period when calculating PIAWE. Purchased leave arrangements should not affect the calculation of PIAWE.

If a worker has more than one job at the time they were injured, how is PIAWE calculated?

Earnings for each job should be provided to the scheme agent, regardless of where the injury occurred.

Depending on the specific circumstances, PIAWE can be calculated based on the earnings from one or all of the jobs.

How do I provide the value of the non-cash components of my salary package (fringe benefits)?

The scheme agent will need to gather appropriate information to determine the value of any non-pecuniary benefit (NPB) that a worker has received during the relevant period. This is regardless of whether or not the worker continues to receive the NPB after the date of their injury.

The scheme agent will ask for the value of the NPB. The value is to be determined by considering the value 'that would be the value as a fringe benefit for the purposes of the Fringe Benefits Tax Assessment Act 1986...'.¹

The Fringe Benefits Tax Assessment Act 1986 is used as the guide for the value, irrespective of whether the NPB is subject to Fringe Benefits Tax (FBT), or is exempt.

If you are a worker, then you should approach your employer as they should be able to provide these details to your case manager.

If you are an employer, then you will need to provide the details of any non-cash components of a worker's salary package (fringe benefits). You need to provide detail of the non-cash components of a worker's salary even if it is not considered a fringe benefit or you are exempt from fringe benefits tax.

If the non-cash components do not attract fringe benefits tax or you are exempt from fringe benefits tax you are still required to provide the value that would be used to calculate it as a fringe benefit.

If the NPB is certain residential accommodation that is not subject to FBT, your case manager will need to determine its value based upon '...the amount that would reasonably be payable for that accommodation, or equivalent accommodation in the same area, in respect of that week if it were let on commercial terms'. In this case your case manager will do the research to establish the 'reasonably payable' value; however they will need to ask information about the type of accommodation to ensure they can establish equivalent accommodation value.

What happens if a non cash benefit (e.g. a car) is taken away once an injury occurs?

The monetary value of the car is factored into the PIAWE and remains part of the PIAWE even if a worker no longer has use of the car.

If a worker continues to have the use of the car after the injury, then the associated value would be the 'deductible value' "D" when weekly payments are being calculated. If the car is taken away after the injury, the value will still be included in PIAWE, however there will be no 'deductible value' for the car when calculating weekly payments.

How does salary sacrifice for superannuation affect PIAWE calculation?

PIAWE is calculated based on gross earnings (before tax); therefore PIAWE is calculated before any voluntary superannuation deductions have occurred. Any salary sacrifice for superannuation should not affect the PIAWE calculation.

Is compulsory employer superannuation included in PIAWE?

Compulsory employer contributions to superannuation are not included in the PIAWE calculation.

If a worker was undergoing a university course at the time of the injury and the employer was paying for the course, is the worker still entitled to these course fees? If so, who now pays for it?

If the university course fees form part of a worker's total gross salary package or are part of a salary sacrifice arrangement, they would be considered a non-pecuniary benefit. This forms part of PIAWE and remains part of PIAWE whether a worker continues in the course or not.

If a worker continues study after the injury, the study fees would be deducted from the PIAWE, providing the employer continues to pay the educational institution on behalf of the worker. If the worker commences paying the institution directly, the fees would not be deducted from the PIAWE.

What if a worker disagrees with their PIAWE calculation?

A worker can request a review of their PIAWE calculation at any time, as the determination of PIAWE is a work capacity decision.

Scheme agents will provide written confirmation of the PIAWE determined for a worker. This work capacity decision will include the process for them to request a review of the PIAWE decision if they disagree with the outcome.

Only a worker can request a review of a work capacity decision. If an employer has questions about the PIAWE decision they should discuss these with the scheme agent.

How long does it take to determine PIAWE?

PIAWE will be determined within 7 days of notification of an injury to the scheme agent (unless the claim is reasonably excused). If a scheme agent has not received the required information to calculate PIAWE, the minimum award for the occupation may be used so that an initial wage payment can be made within 7 days.

If the scheme agent receives further information, the PIAWE may need to be recalculated using the additional information provided. If this is the case, the scheme agent will make another work capacity decision communicating the new PIAWE.

Ensuring that accurate information is provided to the scheme agent as early as possible will enable PIAWE to be determined correctly and efficiently.

How long does a worker or employer have to provide the information to the scheme agent to assist them to calculate PIAWE?

Scheme agents must make a payment of compensation to a worker within 7 days of notification of an injury (unless there is a reasonable excuse not to do so). Therefore they need to make a decision about PIAWE within 7 days. Any delays may result in an incorrect PIAWE being calculated.

It is therefore important to provide accurate and detailed information to the scheme agent as soon as possible to enable PIAWE to be determined correctly and efficiently.

Will volunteer work be considered when calculating PIAWE?

No, unpaid volunteer work is not considered when calculating PIAWE.

Are earnings for part time and casual jobs considered, or are earnings considered only for full time jobs?

Scheme agents require earnings information for all jobs, regardless of whether they are casual, part time or full time.

For workers who are paid “cash in the hand”, how is PIAWE calculated?

Scheme agents will require written evidence of earnings. To calculate PIAWE, acceptable sources of evidence include pay slips from the employer, tax returns lodged with the Australian Tax Office (ATO), a copy of the worker's employment contract that stipulates their earnings.

If you have any further questions concerning PIAWE, please refer to PIAWE fact sheets or contact your scheme agent for further assistance.