

## Pre-injury average weekly earnings fact sheet: Indexation

### Overview

Indexation is a technique used to adjust workers compensation payments so that they keep up with inflation (as provided by section 82A of the *Workers Compensation Act 1987*).

The purpose of this fact sheet is to explain how a claim is indexed depending on the indexation review date.

**NOTE:** This fact sheet does not apply to exempt categories of workers.

### Indexation method for review dates after 21 October 2019

#### When does PIAWE need to be indexed?

A worker's pre-injury average weekly earnings (PIAWE) is indexed on two review dates: 1 April and 1 October each year. The application of indexation should be applied to all periods of compensation paid following the first date of incapacity.

#### What information does the agent require to apply indexation?

To apply indexation, an agent requires:

1. The existing PIAWE amount.
2. The current B/C\* indexation factor.

**NOTE:** \*As the indexation factor is made by an Order approved by SIRA, an agent is to refer to the amount in the Order. The current B/C figure is available in the latest Workers Compensation Benefits Guide on the [SIRA website](#).

#### How is indexation applied?

PIAWE should be multiplied by the B/C indexation factor. If the result of this calculation is less than \$1,000, the amount should be rounded to the nearest whole \$1. If the result is greater than or equal to \$1,000, the result should be rounded to the nearest whole \$10.

If the B/C indexation factor is less than 1, and therefore the result of the calculation would reduce the PIAWE amount, it will be deemed to have not taken effect except for the purposes of calculating the indexation for subsequent review points by offsetting the increase for the current variation from the previous review period reduction.

### Workers not in receipt of weekly payments

If a worker was not in receipt of weekly payments over one or more indexation review dates, and later became entitled to weekly payments, agents are to go back and apply the indexation process for all missed review dates from the date the worker first became entitled to weekly payments for that injury. This would normally be from the date of first incapacity.

## Indexation for review dates prior to 21 October 2019

### When does PIAWE need to be indexed?

A worker's PIAWE is indexed on 1 April and 1 October each year from the time the worker first became eligible to receive weekly payments in respect of the injury. The application of indexation should be applied to all periods of compensation paid following the first date of incapacity. In the matter of *Theoret v Aces Incorporated* [2021] NSWCA 3, it was confirmed that this is to occur even for periods prior to the 1 October 2012 (when indexation was first introduced). The relevant indexation factors to apply both prior to and following October 2012 are available.

### What does the agent require to apply indexation?

1. The existing PIAWE amount.
2. The current B/C indexation factor.
3. The ordinary earnings the worker would be earning, had they not been injured, as at the review date.

### How is indexation applied?

1. Multiply the PIAWE by the current B/C indexation factor.
2. If the result in step one is less than \$1,000, round the amount to the nearest whole \$1. If the result in step one is greater than, or equal to, \$1,000, round the amount to the nearest whole \$10.
3. Compare this rounded figure to the ordinary earnings the worker would be earning as at the review date (had the injury not occurred).
4. If the new rounded, indexed PIAWE is greater than the ordinary earnings figure, the indexation is not to take effect to the extent that it increases PIAWE to more than 100% of ordinary earnings. That is, the effect of indexation will be limited to the amount of 100% of ordinary earnings.
5. If the new rounded indexed PIAWE is less than the ordinary earnings figure, then indexation is to take effect.

**NOTE:** If a worker's updated ordinary earnings are unknown, indexation is to be applied, so that the worker is not disadvantaged.

## **Workers not in receipt of weekly payments**

If a worker was not in receipt of weekly payments over one or more indexation review dates, and later became entitled to weekly payments, agents are to go back and apply the indexation process for all missed review dates from the date the worker first became entitled to weekly payments for that injury. This would normally be from the date of first incapacity.

## **Indexation of PIAWE including shift and overtime amounts during the first 52 weeks of entitlement**

PIAWE cannot be indexed to a rate that is higher than the worker's ordinary earnings had the injury not occurred. When making the comparison, the indexed PIAWE is compared to the ordinary earnings but for the injury, not the ordinary earnings plus shift and overtime amounts.

This means, any indexed PIAWE that includes shift and overtime amounts will almost always be higher than the ordinary earnings had the injury not occurred. For these workers, indexation will rarely be applied during the first 52 entitlement weeks. The individual circumstances of the claim should be considered when making this determination.

**NOTE:** An indexation calculation may be required to determine whether applying indexation to the ordinary earnings, plus shift and overtime is greater than the worker's ordinary earnings, but for the injury.

Once the shift and overtime amounts are removed after 52 weeks of entitlements (for workers with a date of injury before 26 October 2018), it may be necessary to apply the indexation process to the ordinary earnings component of the PIAWE for each of the indexation points before the removal of shift and overtime, to ensure the ordinary earnings component of PIAWE is brought up to date.

However, if the application of indexation to the ordinary earnings component would have exceeded the worker's ordinary earnings as at any retrospective review point, indexation will not apply.