

Further personal injury

Conta

Last review 14 Apr 2014

Next review 14 Apr 2015

Introduction

The documents below are to be used for incapacities which occur from 1 July 2010.

Rules

A client who is incapacitated due to a personal injury and receiving weekly compensation from ACC may sustain a further personal injury, which is also covered by ACC.

For example, a client may be on weekly compensation for a knee injury sustained while playing sport then, also suffer a back injury lifting a heavy object in a separate accident. This second injury is regarded as a further personal injury.

In such cases, ACC needs to decide if and when weekly compensation payments should be transferred, from the prior personal injury claim, to the further personal injury claim. This is because a client can not receive weekly compensation on more than one claim file at a time.

If there is a transfer, the existing weekly earnings calculation on the prior personal injury claim, continues to apply on the further personal injury claim. A recalculation of weekly earnings, based on earnings prior to the date of the further personal injury, is not required.

Exceptions

There are two exceptions when considering whether to transfer costs from the prior personal injury claim, to the further personal injury claim:

- if Earnings Related Compensation (ERC) was being paid on two claim files immediately before 1 July 1992 and these payments were carried over under the transitional provisions, of the ARC Act 1992 and subsequently carried forward under the transitional provision, of the AI Act and the Accident Compensation Act 2001
- if a client is receiving compensation as a dependent, on an accidental death claim and is also receiving weekly compensation for loss of earnings, due to personal injury on another claim.

If and when to transfer costs

In cases of further personal injury, a decision needs to be made about whether, weekly compensation should be paid on the further personal injury claim, and if so, from when.

Use the following two decision tables to determine if and when to transfer costs, from the prior personal injury claim, to the further personal injury claim.

Decision table one - abated weekly compensation

If, at the time the further personal injury occurs...	and...	then...
<ul style="list-style-type: none"> • the client is receiving abated weekly compensation payments • the amount of weekly compensation payable in the week after the further personal injury, is double (or more than double) the amount of abated weekly compensation payable, in the week prior to the further personal injury 	<p>the expected duration of incapacity:</p> <ul style="list-style-type: none"> • for the further personal injury is likely to exceed or be equivalent to that of the prior personal injury <p>or</p> <ul style="list-style-type: none"> • for both the prior personal injury and further personal injury is likely to exceed two years 	<ul style="list-style-type: none"> • weekly compensation payments must transfer to the further personal injury claim, from the date that the further personal injury occurs <p>otherwise</p> <ul style="list-style-type: none"> • consider decision table two below
<p>Note:</p> <p>This doubling effect will be caused by any increase in the level of incapacity, due to the further injury and the corresponding reduction in earnings they were getting, through partial work</p>		

Example:

A client injures their right knee while at work, which causes a permanent inability to perform their work duties. ACC determines that they are eligible to receive a weekly compensation payment of \$400 per week.

The client gradually returns to a new job at near full capacity and is receiving \$100 abated weekly compensation per week when they have a motor vehicle accident and injure their left leg, which results in an amputation. Weekly compensation payable after the further personal injury is \$400, because the client is certified fully unfit for work from the date that the further personal injury occurs.

As weekly compensation payable in the week following the further personal injury (that is, \$400) is more than double the amount payable in the week prior to the further personal injury (that is, \$100), and medical evidence confirms that both the first and second injury are likely to cause incapacity of equivalent duration, weekly compensation is transferred to the further personal injury claim from the date that this further personal injury occurs.

Decision table two

If at the time of the further personal injury...	then...
the client is receiving either: <ul style="list-style-type: none"> • full, unabated, weekly compensation • abated weekly compensation and decision table one (above) does not apply 	weekly compensation continues to be payable on the prior personal injury claim, until the date that the prior personal injury ceases to cause incapacity If, at this date, incapacity continues as a result of the further personal injury, weekly compensation payments transfer to, the further personal injury claim

Transferring weekly compensation

Under AC Act 2001, Schedule 1 Clause 48 a client's entitlement to weekly compensation for the further personal injury is based on the client's weekly earnings from the prior personal injury claim.

This means that the weekly earnings, as calculated on the prior personal injury claim, updated for any applicable indexation, become the weekly earnings for the further personal injury claim.

Similarly, as the client's incapacity for work is continuous between the prior personal injury claim and the further personal injury claim, the incapacity regime of the prior personal injury claim is carried forward to the further personal injury claim. That is, the same first week, short-term and long-term periods that applied on the prior personal injury claim will also apply on the further personal injury claim. In other words the second claim 'picks-up' the incapacity regime of the prior personal injury claim.

Note:

If the further personal injury is a work injury and the employer has made a first week payment then those earnings will need to be considered for abatement.

See: Examples: Transferring weekly compensation

Further personal injury is fatal

If the further personal injury results in death, incapacity on the prior personal injury claim ceases at the date of death.

Weekly compensation ceases to be payable on the prior personal injury claim at the date of death. If the fatal claim is accepted, payment of weekly compensation based on the prior claims weekly earnings is payable to spouses, children and other dependants of the deceased from the date of death.

See: Determine when to transfer weekly compensation to the further personal injury claim

Letter to treatment provider

If a letter to the client's treatment provider is required to establish the date on which the incapacity, due to the initial personal injury, will cease and the date on which the incapacity, due to the further personal injury, will cease, the following questions may be helpful:

- In your opinion, on what date would <client's name> have been fit for work, after their initial personal injury?
- If you are unable to provide this date, is it your view that the incapacity, due to <client's name> initial personal injury, will continue beyond that, due to their further (new) personal injury?
- Is <client's name> further personal injury contributing to their current incapacity?
- Has <client's name> further personal injury delayed recovery from their initial personal injury?

- Is it your view that <client's name> incapacity, due to their initial personal injury, would have stopped, before the incapacity due to their further personal injury stopped? That is, would they have received a clearance, had it not been for their further personal injury?
- In your opinion, on what date should <client's name> incapacity, due to their further personal injury stop?
- For what period will <client's name> be incapacitated, solely, as a result of their further personal injury?
- If you are unable to advise on any of these points, would you please give the reason, or a date when this information will be available.

Notes:

- Wherever possible in these questions, substitute a brief description of the relevant injury for the terms 'initial personal injury', and 'further personal injury'
- Take care not to request information that ACC already has.

Confirming eligibility for new injury

If a person suffers a new injury, that causes incapacity for work within 28 days of ceasing weekly compensation on a prior personal injury claim, confirm whether the client is eligible for weekly compensation for the new injury.

That is, they are an earner in employment at the time the new injury occurred and have earnings immediately prior to the commencement of incapacity for the new injury. See: Determine employment type and eligibility

Where a new incapacity applies, weekly earnings are always recalculated based on earnings prior to the commencement of incapacity for the new injury.

Self employed people and non-PAYE shareholder employees:

If...	then...
<p>The client is a self-employed person or a non-PAYE shareholder employee; and</p> <ul style="list-style-type: none"> • the most recently completed income year, prior to the commencement of incapacity for the new injury, is a later year to that in which the weekly earnings for the prior personal injury were based <p>or</p> <ul style="list-style-type: none"> • the client holds other employment at the time of the new injury 	<ul style="list-style-type: none"> • check IPS2 to confirm the earnings as a self-employed person or a shareholder employee in the most recently completed income year, prior to the commencement of incapacity for the new injury <p>and/or</p> <ul style="list-style-type: none"> • collect earnings details for any other employment type held at the time incapacity commenced for the new injury. See Gather information - self employed and Gather information - shareholder employee • When the details are obtained, perform the relevant short-term and long-term weekly earnings calculation for the new injury. See Calculate weekly compensation <p>Note:</p> <p>Only add the previous ACC earnings into the calculation when the prior calculation has been finalised, ie assessed on the most recent tax year</p>