



# Weekly Payment Guidelines

## FIRST AND SECOND ENTITLEMENT PERIODS

### Is the Claimant "an Earner"?

Is the Claimant at least 15 years of age? YES/ NO

(Sch 2, Clause 2)

Categories	Questions	YES/ NO
<b>Employed and Self-Employed</b> Sch 2, Clause 2(a)	Was the Claimant employed or self-employed at any time during the 8 weeks immediately preceding the MVA?	
	Was the Claimant employed or self-employed for a period, or periods, equal to at least 13 weeks in 12 months immediately before the MVA?	
	Was the Claimant employed or self-employed for a period, or periods, equal to at least 26 weeks in the 24 months immediately before the MVA?	
<b>New Arrangements</b> Sch 2, Clause 2(b)	Had the Claimant entered into an arrangement before the accident with an employer, or other person, to undertake employment at a particular time and place?	
	Had the Claimant entered into an arrangement to commence business as a self-employed person at a particular time and place?	
<b>Workers Compensation</b> Sch 2, Clause 2(c)	Was the Claimant receiving a weekly or other payment under with <i>Motor Accident Injuries Act 2017</i> or the <i>Workers Compensation Act 1987</i> immediately before the motor accident?	

If the answer is **YES** to any of the above questions, the Claimant is "an Earner".

## Calculation of Pre-Accident Weekly Earnings (PAWE)

Categories	Questions	Calculation of PAWE
<b>Recent Continuous Employment</b> Sch 2, Clause 4(2)(a)	Was the Earner earning continuously on the day of the accident for a period less than 12 months?  <b>Note</b> – “an earner earns continuously if he or she obtains earnings from permanent employment from a source that, on the day of the motor accident, was likely to continue for a period of at least 6 months to provide earnings to an earner on the same, or a similar, basis on which the earnings were being provided as at that day” – clause 4(4)	Divide taxable income by the number of weeks between the date continuous earnings commenced and the MVA.
<b>Distant Temporary Employment</b> Sch 2, Clause 4(2)(a1)	Was the Earner employed or self-employed for a period, or periods, equal to at least 26 weeks in the first year or the two-year period before the accident?	Divide taxable income by 52 weeks.
<b>Recent Improved Income</b> Sch 2, Clause 4(2)(b)	Did the Earner, as a result of their own action, achieve a significant change in their earnings, or expected earnings, during the 12 months immediately before the accident? Eg: promotion, new job, moving from PT to FT	Divide taxable income for the period AFTER the change by the number weeks between the date of the change and the MVA.
<b>New Arrangements</b> Sch 2, Clause 4(2)(c)	Had the Earner entered into an arrangement to commence business as a self-employed person at a particular time and place?	The Claimant's likely weekly taxable income.
<b>Last Resort Test</b> Sch 2, Clause 4(1)	Did the Earner earn an income in the 12-month period before the accident?	Divide the taxable income received in the 12-month period before the MVA by 52 weeks (even if the Earner worked less than 52 weeks in the 12-month period).

## Calculation of Post-Accident Capacity

What is the Earner's capacity to work in their pre-accident role, based on their fitness for that role?

Sch 1, Clause 8(1)(a)

**Note re EP3** – In EP3 the test is re the Claimant's capacity to work in any employment reasonably available to the Claimant.

## Calculation of Weekly Payments

Subtract the Claimant's post-accident capacity from the Claimant's PAWE and apply the following step-downs:

- First 13 weeks (EP1) – 95%
- Week 14 to 78 (EP2) – total loss – 80%
- Week 14 to 78 (EP3) – partial loss – 85%

## THIRD ENTITLEMENT PERIOD

### Assessment of Pre-Accident Capacity

What is the (net) weekly amount the Claimant had the capacity to earn before the accident in any employment reasonably available to the Claimant in view of their training, skills and experience?

Sch 3, Clause 7(1)

If the Claimant's pre-accident earning capacity cannot be determined, apply 80% of the AWE.

Sch 3, Clause 7(2)

**Note re Earner:** In EP3, any injured person can claim Weekly Benefits, even if they are not an earner.

**Note re PAWE:** In EP3, Weekly Benefits are no longer calculated by reference to PAWE.

### Assessment of Post-Accident Capacity

What is the Earner's capacity to work in any employment reasonably available to them, based on their fitness for that role?

Sch 1, Clause 8(1)(b)

**Note re EP1 & 3** – In EP3 the test is re the capacity to work in the Claimant's pre-accident role.

### Calculation of Weekly Payments

Subtract the Claimant's post-accident capacity from the Claimant's pre-accident capacity and apply the following step-downs:

- After 78 weeks (EP3) – total loss – 80%
- After 78 weeks (EP3) – partial loss – 85%

### Tax in the Third Entitlement Period

Weekly Benefits in the Third Entitlement Period, under s 3.8 of MAIA are calculated on a net amount per week.

Unlike the First and Second Entitlement Periods (ss 3.6 and 3.7 of MAIA), no PAYG Tax is remitted to the ATO in the Third Entitlement Period.

See *Allianz v Jenkins* [2020] NSWSC 412

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