

Accident Compensation Act

Further changes to the *Accident Compensation Act 1985* explained

October 2010

The *Accident Compensation Act 1985* (the Act) was amended in March 2010 to implement a range of Government reforms that arose from the Hanks Review of Victoria's workers' compensation laws.

The *Transport Accident and Accident Compensation Amendment Act 2010* makes further changes to the Act to complete the implementation of the Hanks reforms. A summary of the key changes is set out in the table below.

Key Changes

Summary	Who do the changes affect	Date of effect
Greater accuracy and certainty in the calculation of pre-injury average weekly earnings (PIAWE) for the purposes of determining a worker's weekly payments	Workers and employers	1 November 2010
When an injured worker has returned to work, clarifying how overtime, shift allowances or any piece rate amounts or commissions are to be taken into account when determining the worker's current weekly earnings	Workers and employers	1 November 2010
Restructuring and streamlining the definitions of 'worker' and 'employer', and the provisions that determine whether a person will be deemed to be an employer or worker	Workers and employers	1 July 2011
Simplifying the provisions that determine when a contractor will be deemed to be a worker	Employers and contractors	1 July 2011
Impairment benefit claims for very seriously injured workers (those having a whole person impairment over 71%) will be calculated at the date when the claim is determined rather than the date of the injury	Workers	10 December 2009
Introducing a power to better manage common law legal costs	Lawyers	20 October 2010

Pre-Injury Average Weekly Earnings (PIAWE)

If you have a work-related injury or illness, you may be entitled to weekly payments if you lose income or require time off work.

The changes provide injured workers and their employers with greater accuracy and certainty in the determination of weekly payments. They also better reflect modern salary arrangements.

These changes include:

- Clarification that the following non-pecuniary (or non-cash) benefits and salary packaging arrangements are to be taken into account when calculating PIAWE:
 - residential accommodation
 - use of a motor vehicle
 - private health insurance

- education fees (eg school, university and TAFE fees)

If a worker has requested their employer to direct any part of their salary to another party (commonly known as "salary sacrifice"), these payments are also included in PIAWE.

If an injured worker's non-pecuniary benefits or salary sacrifice arrangements continue uninterrupted, the monetary value of these benefits will be deducted from their PIAWE.

- Clarification that piece rates and payments of commissions are included in the calculation of PIAWE.
- Where a worker has been granted a promotion which has not commenced at the time of injury, the income associated with the promotion is taken into account in the calculation of PIAWE.
- Streamlining the language and the structure of the PIAWE provisions to make them easier to understand.

The *Calculating Pre-Injury Weekly Earnings* form has also been developed by WorkSafe to assist employers to accurately calculate a worker's PIAWE, and will be available on the WorkSafe website, worksafe.vic.gov.au

When do these changes come into effect?

These changes are expected to come into effect on 1 November 2010. Only claims received on or after this date will be affected.

Current Weekly Earnings

When an injured worker returns to work in a reduced capacity, they are still entitled to weekly payments; however, any income from the hours they work is deducted from their weekly payment. This amount is known as 'current weekly earnings'.

Changes to current weekly earnings clarify that any amounts of overtime, shift allowances, piece rates or commissions that a worker receives are to be taken into account when determining a worker's current weekly earnings.

When do these changes come into effect?

These changes are expected to come into effect for all compensation periods from 1 November 2010.

Worker and Employer provisions

Changes to the Act simplify and streamline the provisions that set out who is a worker and who is an employer. These include the definitions of 'worker' and 'employer', as well as the provisions that deem employment in certain types of work arrangements, such as work experience, religious work, cooperative society arrangements, share farming and Crown employment. However, these amendments are not intended to significantly change existing coverage for workers.

Contractors

Changes to the Act simplify the provisions that determine when a contractor will be a worker, and when a principal will be an employer.

These changes will make it easier for contracting businesses to determine their status as an employer or a worker under the scheme.

There is also a clarification that only the principal must pay the premium in situations where a small incorporated business mainly works for that principal, giving rise to deemed employment.

When do these changes come into effect?

These changes come into effect on 1 July 2011 and will impact employers covered by a WorkSafe Injury Insurance policy as of that date, as well as workers.

Detailed information about these changes, in particular how the changes to the contractor provisions may impact premium, will be made available closer to the commencement date.

Other changes

- Impairment benefit claims for very seriously injured workers (those having a whole person impairment over 71%) will be calculated at the date when the claim is determined rather than the date of the injury. This aligns with the approach taken to assessing damages under common law, and will benefit workers where the claim may take several years to finalise.
- To ensure the financial sustainability of the WorkSafe scheme, a power that will enable better management of common law legal costs has been introduced.
- Self-insurers are approved by WorkSafe to manage their own workers' compensation claims. Some sections of the Act which govern self-insurers were also amended. In general, these amendments clarify the intended application of certain provisions or address anomalies. A new section has been added to provide WorkSafe with a discretion to transfer, in limited circumstances, a self-insurer's approval to a new holding company that has acquired the self-insurer.

When do these changes come into effect?

Most of these changes will come into effect on 20 October 2010.

Further information

For more details on how the changes may impact your individual circumstances, please contact WorkSafe's Advisory Service on **(03) 9641 1444** or freecall **1800 136 089**. You can also contact your WorkSafe Agent.

For more details about changes to the *Accident Compensation Act 1985* that occurred in March 2010, please visit worksafe.vic.gov.au

You can also download a copy of *Changes to the Accident Compensation Act 1985 explained*

Note: While every effort has been made to ensure the accuracy of the information in this document, it does not consider your individual circumstances and is provided for general information only. It should not be viewed as a definitive guide to the law. WorkSafe cannot be held responsible and extends no warranties as to the suitability of the information for any particular purpose or actions taken by third parties as a result of this information.