

Summary

Objective

Clients with ongoing entitlement to weekly compensation under Accident Insurance Act 1998 (AI Act), Schedule 1, Section 428 to 431, continue to be entitled to compensation under Accident Compensation Act 2001 (AC Act), Section 365.

1. Rules
2. Transition of existing weekly compensation claims
3. Transitional claims: Single employment at Date of First Incapacity / Date of Subsequent Incapacity (DOFI/DOSI)
4. Continuing entitlement
5. Transitional claims: Multiple employment at DOFI/DOSI
6. Incapacity for all employment
7. No incapacity for at least one employment
8. Transition of existing claims
9. Incapacity starts or recommences for the 'no-incapacity' employment
10. Subsequent incapacity
11. Payments for permanent incapacity made under former Acts
12. Ceasing payments
13. Deterioration or new personal injury
14. Compare rates weekly
15. Deterioration between 1 July 1992 and 30 June 1999
16. Ongoing proof of incapacity
17. Abatement
18. Total earnings excess for transitional claims
19. Minimum weekly earnings increase
20. Entitlements for injuries prior to 1 April 2002, where claim lodged post 1 April 2002

Owner

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Expert

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Policy

1.0 Rules

- a** For all transitional claims:
- payments will continue to be made under the AI Act 1998 up to and including 31 March 2002
 - from 1 April 2002, payments will be made under the AC Act 2001

the AC Act rules for incapacity and abatement will apply, with some modifications.

2.0 Transition of existing weekly compensation claims

- a** Where a person is entitled immediately before 1 April 2002 to weekly compensation based on a calculation under a former Act, then:
- the base rate of weekly compensation payable is saved
 - abatement adjustments are made under the AC Act 2001 rules, from 1 April 2002
 - the client is eligible for indexation under the AC Act 2001 rules
 - if the person has weekly earnings below the minimum full-time earner rate, they are eligible to have weekly earnings increased to this rate, if they were in full-time employment prior to incapacity.

Excluding cases where compensation is based on relevant earnings or prescribed amounts under the 1972 and 1982 Acts.

3.0 Transitional claims: Single employment at Date of First Incapacity / Date of Subsequent Injury (DOFI/DOSI)

- a** For claims receiving unabated weekly compensation up to 31 March 2002:
- there will be no change to the rate of weekly compensation from 1 April 2002, except where the rate is affected by changes to the minimum
 - when a further medical certificate is entered onto Pathway for a period on or after 1 April 2002, the ongoing assessment will automatically be made under the AC Act 2001.

For example, an employee in non-permanent work has an accident on 10 January 2002, and remains incapacitated from that date. In the 52 weeks prior to 10 January 2002 they earn \$30,000.

NOTE Example

Pre-incapacity earnings
\$30,000 ÷ 52

Weekly earnings
\$576.92

Weekly compensation @ 80%
\$461.54

- b** This rate, calculated under the AI Act 1998, continues to be paid after 1 April 2002 while the client remains incapacitated.

4.0 Continuing entitlement

- a** The client continues to be eligible for weekly compensation until either:
- ACC determines that they are no longer incapacitated, including vocational independence assessment
 - any other normal cessation provisions apply, eg upper age limits.

5.0 Transitional claims: Multiple employment at DOFI/DOSI

- a** The attached table shows a summary of the incapacity regime relating to multiple employment claims under prior and current legislation.

Under the AI Act 1998	Under the AC Act 2001
<p>A complex weekly compensation assessment applied if a client had more than one employment at DOFI/DOSI, but is not incapacitated for all of these employments:</p> <ul style="list-style-type: none"> • the client was only eligible for weekly compensation in respect of the employment(s) for which they were incapacitated • the 'no-incapacity excess' abatement calculation applied for any employment in which the client was not incapacitated. In summary, this meant that if the client earned more in those employments than they earned prior to the commencement of the incapacity, anything above that pre-incapacity amount was earnings liable for abatement 	<p>In respect of clients with more than one employment, the AC Act 2001 replaces the complex incapacity regime summarised above with one more like that in place under the Accident Rehabilitation and Compensation Insurance Act 1992 (ARCI Act 1992). That is, provided a client is considered incapacitated for at least one of their employments:</p> <ul style="list-style-type: none"> • they are eligible to have a weekly earnings assessment for all employment held at DOFI/DOSI, with compensation based on an aggregate weekly earnings amount • any continuing income earnings are treated as earnings liable for abatement



Transitional claims - Multiple employment at DOFI - DOSI.PNG

6.0 Incapacity for all employment

- a** If a client held more than one employment at DOFI/DOSI, is incapacitated for all those employments, and is receiving weekly compensation on this basis at 31 March 2002. There will be no change to their rate of weekly compensation from 1 April 2002 if they continue to have an incapacity for all employment. However, from 1 April 2002, ACC will generally consider the client to be incapacitated if they are unable to engage in one of their employments.

For example, a person was employed in two casual employee jobs when they had an accident on 20 March 1999.

In the 52 weeks prior to their incapacity, they earned the following:

Job A \$15,000.00
Job B \$10,000.00
Total earnings \$25,000.00
Long term rate (divide total by 52) \$480.77
Weekly compensation @ 80% \$384.62

The client continues to receive the same rate following 1 April 2002, subject to abatement. From this date, if the client has an incapacity for just one of those jobs, they are still eligible to have compensation based on earnings from all the jobs held at DOFI/DOSI.

7.0 No incapacity for at least one employment


- a** The following only applies to a transitional client who:
- had more than one employment at DOFI/DOSI
 - immediately prior to 1 April 2002, was not eligible for weekly compensation in respect of all employment because for at least one of those employments they had no incapacity.



8.0 Transition of existing claims

- a** Section 367 of the AC Act 2001 provides for transitional clients who had more than one employment, and 'no incapacity' for one of them, to continue to receive weekly compensation based on the existing calculation of weekly earnings from 1 April 2002:
- weekly compensation is recalculated to include all employment if the client later becomes incapacitated for the other employment, for which they had 'no incapacity'. See Incapacity starts or recommences for the 'no-incapacity' employment
 - alternatively, if the client regains full capacity for all employments, entitlement simply ends, as per normal rules.

During the period that they continue to have 'no incapacity' for at least one employment, the 'No-incapacity excess calculation' continues to apply, to establish whether any of the client's earnings from that employment are liable for abatement.

See AI Act 1998, Transitional Claims

-  Examples – incapacity starts or recommences for the no-incapacity employment - Reference <http://thesauce/team-spaces/chips/compensation/weekly-compensation/reference/transitionals-187/examples--incapacity-starts-or-recommences-for-the-no-incapacity-employment/index.htm>

-  AI Act 1998, Transitional Claims
https://www.westlaw.co.nz/maf/wlnz/app/document?doc-guid=Ibad19b9ce02e11e08eefa443f89988a0&isTocNav=true&tocDs=AUNZ_NZ_LEGCOMM_TOC&startChunk=1&endChunk=1
-  Accident Compensation Act 2001, section 367 - multiple employment
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM104176.html>

9.0 Incapacity starts or recommences for the 'no-incapacity' employment

- a** If the client, after 1 April 2002, continues to have 'no incapacity' for at least one employment held at DOFI/DOSI and becomes incapacitated for one of those 'no incapacity' employments held at DOFI/DOSI then:
- Section 367 provides that a recalculation of weekly earnings is required, so that the client can begin to receive compensation based on weekly earnings from all employment held at DOFI/DOSI
 - the recalculated rate of weekly compensation only applies from the date the client becomes incapacitated for the 'no incapacity' employment.

NOTE Once transitioned, incapacity is no longer considered on a per employment basis, ie the 'no-incapacity' employment cannot revert back to being a 'no-incapacity' employment.

10.0 Subsequent incapacity

- a** If the client ceases to be incapacitated for the employments that they receive weekly compensation for after 1 April 2002, then eligibility for weekly compensation ends.

If there is a subsequent incapacity relating to the same injury, then weekly earnings may be recalculated under the AC rules, if the client is still an earner.


If the incapacity recommences within 28 days of the cessation, the client can continue to receive weekly compensation at the rate previously calculated unless a recalculation would produce a better result.

11.0 Payments for permanent incapacity made under former Acts

- a** Payments for permanent incapacity calculated under Section 60 of the 1982 Act or Section 114 of the 1972 Act are continued beyond 1 April 2002 by AC Act 2001, Section 365.

Special rules apply to permanent incapacity payments continued after 1 April 2002. ACC cannot:

- apply abatement to permanent incapacity payments
- require a vocational independence assessment of clients in respect of permanent incapacity payments continued under Section 365.

-  Accident Compensation Act 2001, section 365
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM104174.html>

12.0 Ceasing payments

- a ACC can only cease permanent incapacity payments if either of the following apply:
- the client reaches the upper age limit
 - the client dies.

13.0 Deterioration or new personal injury:

If the client is...	and either...	then...
in paid employment as well as receiving payments for permanent incapacity	<ul style="list-style-type: none">• they sustain a new personal injury• their injury condition for which they are receiving permanent incapacity payments deteriorates	entitlement to weekly compensation is reassessed


 Deterioration or new personal injury.PNG

- a In this situation, entitlement is the higher of:
- the permanent incapacity payment, under Section 60 of the 1972 Act or 114 of the 1982 Act
 - weekly compensation calculated under AC Act 2001, Schedule 1 Part 2. This calculation includes both earnings from employment and earnings from permanent incapacity payments.

Note:

The Part 2, Schedule 1 provisions for calculating weekly earnings for an employee exclude from the calculation periods during which the client received weekly compensation.

However, where a reassessment applies for a client receiving permanent incapacity payments, the permanent incapacity payments are included as earnings in the Part 2 calculation, as ACC does not consider these payments to be 'weekly compensation'.

 Accident Compensation Act 2001, Schedule 1, Clause 2
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM104546.html>

14.0 Compare rates weekly

- a If the client later receives earnings liable for abatement, it is applied to the reassessed weekly compensation in the normal manner. If, as a result, the weekly compensation payable is less than the payment for permanent incapacity, then the permanent incapacity payment is payable.


In effect, the 'higher of' assessment of the Schedule 1 weekly compensation amount and the permanent incapacity amount is performed on a week by week basis.

15.0 Deterioration between 1 July 1992 and 30 June 1999

- a Different rules applied between 1 July 1992 and 30 June 1999 where a client's condition, for which they were receiving permanent incapacity payments, deteriorated.

16.0 Ongoing proof of incapacity

- a Medical certificates are only required for periods where the client is entitled to receive weekly compensation payments calculated under AC Act 2001, Schedule 1 Part 2. Failure to produce medical certificates will mean the client is only entitled to their permanent incapacity payment.

 AC Act 2001, Schedule 1 Part 2
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM104546.html>

17.0 Abatement


- a Any payment beyond 1 April 2002 is subject to the IRPC Act abatement rules.


For more information on Apply abatement, see:

- earnings liable for abatement
- applying the abatement formula

For more information on specific policies on transitional claims, see:

- no incapacity excess for an individual employment
- total earnings excess.

 Determine employee earnings liable for abatement - Reference
<http://thesauce/team-spaces/chips/compensation/weekly-compensation/reference/abatement-187/determine-employee-earnings-liable-for-abatement/index.htm>

 Transitional claims 1-7-99 to 31-3-02 (AI Act 98)
<https://go.promapp.com/accnz/Process/9c7b43e1-3d64-4750-82c7-08d101e230a1?force=False>

18.0 Total earnings excess for transitional claims

- a** If a client receives earnings during a period of incapacity, the abatement rules of Clause 51 of Schedule 1 of the AC Act 2001 apply to proportionally reduce weekly compensation payments dependent on the level of those earnings.

The only change in the abatement calculation is how the excess reduction is applied under Clause 51(2). This calculation provides that weekly compensation when combined with earnings cannot exceed the client's weekly earnings applicable for that abatement week.

The comparison rate for the excess check in Clause 24 (2) of Schedule 1 of the AI Act 1998 was described as the client's 'earnings immediately before the incapacity commenced'. This was interpreted to mean the client's short-term weekly earnings rate and was applied irrespective of whether the abatement week applied for the short or long-term period.

The AI Act rule applied for:

- all new weekly compensation calculations after 1 July 1999
- 1992 Act weekly compensation calculation where the client was in the short-term period at 1 July 1999.

For all remaining existing 1972, 1982, 1992 Act long term weekly compensation calculations continuing after 1 July 1999, the excess check comparison rate remained as the long-term weekly earnings.

The AC Act 2001 reinstates the ARCI Act approach to the application of the excess check and provides that in the excess comparison rate is the:

- short-term weekly earning rate for abatement assessment in the short-term period.
- long-term weekly earnings rate for abatement assessments in the long-term period.


This new rule applies to all new and existing claims from 1 April 2002 and will be applied automatically by Pathway. Where the new rule is applied, notify the client of the new assessment by sending an ACC641 Weekly compensation advice (140K) and ACC651 Abatement assessment form, (83K) generated by Pathway.

- ACC651 Abatement assessment
- ACC641 Weekly compensation advice
- Accident Compensation Act 2001, Schedule 1, Clause 51
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM105402.html>

19.0 Minimum weekly earnings increase

- a** As at 1 April 2002, a new minimum weekly earnings rule came into force. The minimum rates from 1 April 2002 are as follows:

Age	Minimum full-time earner rate
Under 18	\$230.01
18 years and over	\$308.00

 Minimum weekly earnings increase.PNG

- b** Transitional clients who have weekly earnings assessment under the 1992 and 1998 Act, and who are eligible for 'long term' weekly compensation based on weekly earnings that are less than the new full time minimum rates immediately prior to 1 April 2002, are eligible for an increase in weekly earnings to the new minimum from 1 April 2002, if:
- they were in full time employment immediately prior to the commencement of incapacity
 - they are liable to pay the minimum annual earner premium
 - ACC is satisfied they would have continued in full-time employment.

If self-employed, they are also eligible for an increase if the transition date falls within the short-term period, if they are liable to pay the minimum annual earner premium. This includes:

- clients receiving compensation based on minimum weekly earnings at the transition date
- clients with actual weekly earnings above the AI Act 1998 minimum, but less than the new minimum amounts.

20.0 Entitlements for injuries prior to 1 April 2002, where claim lodged post 1 April 2002

- a** AC Act 2001, Section 360 directs that any claim for cover lodged on or after 1 April 2002 for an injury suffered prior to 1 April 2002 will have entitlements assessed under the AC Act 2001 rules.

The effect of this is that the weekly earning calculations of the AC Act 2001 can be applied to a period prior to 1 April 2002.

This includes entitlement for any period prior to 1 April 2002.

- Accident Compensation Act 2001, section 360
<http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM104164.html>

Summary

Objective

This information applies to claims where cover exists under either the AC Act 1972 or the AC Act 1982, because the deceased died prior to 1 July 1992 and a claim cover was lodged with ACC before 30 September 1992.

It sets out the provisions for:

- eligibility to the 'one-off' entitlements, ie assistance with:
 - funeral expenses
 - lump sum payments to survivors, if they have not been paid prior to 1 April 2002
- eligibility and cessation rules after 1 April 2002 for ongoing entitlements that the client was entitled to prior to this date under the Accident Insurance Act transitional provisions. These may be:
 - grandparented childcare
 - earnings-related compensation for a spouse, child, or other dependant originally determined under the 1972 or 1982 Acts.

Owner

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Expert

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Policy

1.0 Funeral expenses

- a** Section 381 of the AC Act 2001 allows us to consider paying a grant under Schedule 1 Clause 64 to cover the cost of funeral expenses for a fatal injury claim, when the death was covered by the 1972 or 1982 Act.

We can pay these expenses if all the following apply:

- neither we, nor any previous incarnations of ACC, have previously paid such a grant for this claim
- the date of accident and the date of death were both before 1 July 1992
- the claim was accepted for cover as a personal injury caused by accident (PICBA), under the 1972 or 1982 Act.

If these criteria apply, consider and pay the claim using the same procedures and account codes as for the current Act.

The amount payable is the lesser of:

- the cost of the funeral
- \$4,500.

AC Act 1982

http://www.westlaw.co.nz/maf/wlnz/app/document?&src=search&doc-guid=I88b2cb47e02711e08eefa443f89988a0&epos=1&snip-pets=true&fcwh=true&start-Chunk=1&end-Chunk=1&isToc-Nav=true&tocDs=AUNZ_NZ_LEGCOMM_TOC&context=107&extLink=false

AC Act 1972

http://www.westlaw.co.nz/maf/wlnz/app/document?&src=search&doc-guid=I7979db04e02711e08eefa443f89988a0&epos=1&snip-pets=true&fcwh=true&start-Chunk=1&end-Chunk=1&isToc-Nav=true&tocDs=AUNZ_NZ_LEGCOMM_TOC&context=89&extLink=false

2.0 Lump sum payment

a About lump sum payments for accidental death

If the person died before 1 July 1992, Section 382 of the AC Act provides for payment of a lump sum to spouses, children, and other dependants of the deceased under AC Act 1982, Section 82.

b Eligibility criteria

Consider making such a payment if all of the following apply:

- the date of death and the date of accident were before 1 July 1992
- the claim was accepted for cover as personal injury caused by accident (PICBA)
- the claim for cover was lodged before 1 October 1992
- where there were more than 12 months between the date of accident and the date the claim was lodged, a decision on the late lodgement was made under AC Act 1982, Section 98.

Provided the application meets these eligibility criteria, there's no time limit on when the surviving client can apply for this entitlement.

c How to process application

If the date of death was before 1 July 1992, process the application for this entitlement according to:

- Section 82 of the 1982 Act
- 1982 Claims Manual (Volume 2, Part 15, Procedure 10 'Lump Sums').

Section 382

http://www.westlaw.co.nz/maf/wlnz/app/document?doc-guid=I67901ff1e03211e08eefa443f89988a0&tocDs=AUNZ_NZ_LEGCOMM_TOC&isToc-Nav=true&startChunk=1&endChunk=1

AC Act 1982, Section 82

http://www.westlaw.co.nz/maf/wlnz/app/document?&src=search&doc-guid=I88b2cb47e02711e08eefa443f89988a0&epos=1&snip-pets=true&fcwh=true&start-Chunk=1&end-Chunk=1&isToc-Nav=true&tocDs=AUNZ_NZ_LEGCOMM_TOC&context=107&extLink=false

AC Act 1982, Section 98
[http://www.westlaw.co.nz/maf/wlnz/app/document?
&src=search&doc-
guid=188b2cb47e02711e08eefa443f89988a0&epos=
1&snip-
pets=true&fcwh=true&start-
Chunk=1&end-
Chunk=1&isToc-
Nav=true&tocDs=AUNZ_NZ_LEGCOMM_TOC&con-
text=107&extLink=false](http://www.westlaw.co.nz/maf/wlnz/app/document?&src=search&doc-guid=188b2cb47e02711e08eefa443f89988a0&epos=1&snip-pets=true&fcwh=true&start-Chunk=1&end-Chunk=1&isToc-Nav=true&tocDs=AUNZ_NZ_LEGCOMM_TOC&context=107&extLink=false)

3.0 Childcare

- a** The AC Act 2001, Section 387 allows us to continue paying for childcare for a child of the deceased, if all of the following apply:

- the date of death was before 1 July 1992
- immediately before 1 July 1992, they were receiving or were entitled to receive childcare payments under AC Act 1972, Section 121 or AC Act 1982, section 80
- they were entitled to receive this entitlement under Section 149 of the 1992 Act and Section 449 of the 1998 Act, which continued an entitlement from the 1972 or 1982 Act.

We call this a grandparented entitlement. The rate they receive is calculated according to the provisions of the 1972 or 1982 Act, as applicable. When you continue payments, use the account codes the previous payments used.

The review and appeal rights of the 1982 Act apply to a client with a grandparented childcare entitlement.

- b** Client elects preference

Where the client is receiving an entitlement for a grandparented claim, they can request that we switch to reassessing their entitlement under Schedule 1, Clauses 76-78 of the AC Act 2001.

If the client elects to receive the entitlement under the AC Act 2001:

- they can't revoke that decision later. From that point, they will always be reassessed under the 2001 Act, and receive their entitlement under that Act. This rule applies regardless of the Act that was in place at the date of election
- the entitlement, in accordance with Schedule 1, Clauses 76-78, applies from the date of the election.

If a client is currently receiving a grandparented entitlement:

- when we notify them that we will be carrying out a reassessment, they can elect which Act they want us to reassess them under
- when we notify them of the results of the reassessment, they can accept receiving that entitlement, or they can request that we reassess their entitlement under the other relevant Act.

- c** Reassessing child care entitlements

From time to time, we reassess the ongoing entitlement for childcare payments on a fatal injury claim.

- d** Which Act to use for reassessments

By default, determine reassessments under the 1972 or 1982 Act provisions as applicable for the particular claim.

However, where the client has previously decided to receive their entitlement under a later Act instead, assess them under AC Act 2001, Schedule 1, Clauses 76-78.

- e** Frequency of reassessments

We can't reassess a client's entitlement more than once in any 12 month period.

- f** Advise surviving client of options

When you reassess the entitlement, you need to write to the surviving client or their representative, explaining:

- the entitlement under Schedule 1, Clauses 76-78
- they can elect to be assessed either under the Act they're currently receiving their entitlement under (either the 1972 or 1982 Act) or under the 2001 Act
- once they've been notified of the results of the assessment, if they do elect to receive the entitlement under the 2001 Act they can't revoke that decision
- when they do elect to receive the entitlement under Schedule 1, Clauses 76-78, the entitlement applies from the date of their election.

4.0 Earnings-related compensation (ERC) to spouse

- a** Use the information in this document if:

- date of death was before 1 July 1992 and the claim for cover was accepted under the 1972 or 1982 Act
- the surviving spouse is receiving weekly compensation as a dependant spouse under the 1972 or 1982 Act.

- b** About ERC to spouse of deceased

The AC Act 2001, Section 384 allows us to continue paying compensation to a surviving spouse of the deceased for a fatal injury claim.

Under the 1972 and 1982 Acts, this entitlement was called earnings-related compensation (ERC), which is very similar to weekly compensation.

5.0 Payment rate

- a** The entitlement the spouse receives is the rate that was:

- calculated under the 1972 or 1982 Act
- transitioned under Section 145 of the 1972 Act or Section 446 of the 1998 Act

From 1 July 1992, the rate is subject to annual indexation.

6.0 Cessation

- a** There are three reasons we may stop paying ERC to a spouse:

- the spouse remarries or enters a relationship in the nature of marriage
- a financial dependency check determines that they are financially able to support themselves
- they reach the upper age limits.

See the relevant sections for more details.

- b** Remarriage or de facto relationship

If a spouse with entitlement under the 1972 or 1982 Act remarries or enters a de facto relationship, ERC entitlement generally ends two years after the date of remarriage. However, if the de facto relationship began before 1 July 1999, AC Act 2001, Section 384(3) specifies:

•if a spouse entered a de facto relationship before 1 July 1999, it is to be treated as though it commenced on 1 July 1999, and entitlement ceases two years after this date. However, because the AC Act 2001 only comes into force on 1 April 2002, ACC policy is that entitlement will cease 2 years after 1 April 2002

•if a spouse entered a de facto relationship after 1 July 1999, entitlement ceases two years after the date the relationship began.

- c** If two dates apply

It's possible that, if the spouse has entered a relationship in the nature of marriage, one of the other cessation criteria could come to apply before the end of the two-year period. In this case, the cessation date is the earlier of the two.

Example:

A spouse of the deceased moves in with her new de facto partner on 15 July 2002. We determine the cessation date is two years from that time. However, in an annual dependency check completed on 20 November 2002, we determine she is self-supporting.

The cessation date that applies is the earlier of the two – the date of the decision on the dependency check, ie November 2002.

7.0 Monitoring nature of new relationships

- a** You need to ensure the spouse knows that ACC annually monitors whether they've remarried or entered a relationship in the nature of marriage and that, if they do either, this will affect their entitlement.

8.0 If relationship subsequently ends

- a** It's not relevant to our decision whether that relationship subsequently ends, once the spouse has remarried or entered a relationship in the nature of marriage. They don't regain any entitlement if they become single again after cessation.

Entering the relationship determines the cessation date as two years after either:

- the date they remarried
- the date they entered a relationship in the nature of marriage, after 1 July 1999.

However, if the relationship ends before we've made our decision on whether it qualifies, we may not be able to cease their entitlement on the basis of that relationship.

9.0 Confirming legal marriage

- a** If the spouse advises they've legally married, you must obtain a marriage certificate as proof.




10.0 Confirming relationships in the nature of marriage

- a** If there's evidence the spouse has entered a relationship that could be in the nature of marriage, you need to determine whether it qualifies as a relationship in the nature of marriage and, if it does, determine the date we can consider the spouse entered that relationship.

Use the same criteria for determining the nature of a new relationship, as you use for determining whether the spouse qualifies as a spouse of the deceased under the 2001 Act.

See the following policies to determine if the spouse qualifies as a spouse of the deceased:

- Who is a spouse or partner of the deceased?
- What is a de facto relationship?
- Definition of living together and apart.

-  Who is a spouse or partner of the deceased? Policy
-  What is a de facto relationship? Policy
-  Definition of living together or apart Policy

11.0 Ongoing dependency

- a** Use the following rules to determine whether a spouse ceases to be entitled to ERC.

After 1 April 2002 entitlement ends on whichever is the earlier of:

- the date the youngest child of the deceased turns 18, if the spouse still continues to provide care to that child
- the date the spouse ceases to provide care to all children of the deceased who are under the age of 18.

Entitlement can continue beyond these dates if, at that date:

- the spouse is age 45 or over. In this case, entitlement continues until the spouse reaches age 65, New Zealand superannuation qualifying age (NZSQA)
- the spouse is age 45 or under, but continues to be financially dependent. In this case, entitlement continues until they are assessed as no longer financially dependent, or they reach age 65, whichever first applies.

12.0 Ongoing eligibility checks

- a ACC is required to periodically check the eligibility of spouses, using the ACC137 Continuing dependency (transitional only) (121KB) form.

Eligibility is ongoing for the period they continue to provide care for a child of the deceased who is under the age of 18 years. If this does not apply, or circumstances change over time, then the following Notes sets out eligibility.

NOTE What if the spouse was over age 45 when they ceased to care for the youngest child of the deceased, or the child turned 18 over age 45 on 30 June 1997

they are eligible to receive compensation until the earliest of:

- upper age limits apply
- two years after they remarry or enter into a relationship in the nature of marriage

NOTE What if the spouse ceased to provide care for a child of the deceased, aged 18 and under; or the youngest child turns 18; and the spouse is under age 45 at this date

a dependency check is required. If ACC accepts dependency then they are eligible until the earliest of:

- upper age limits apply
- two years after they remarry or enter into a relationship in the nature of marriage

NOTE What if the spouse did not have any children was under age 45 as at 30 June 1997, but was assessed as financially dependent at that date

they are eligible until the earliest of:

- upper age limits apply
- two years after they remarry or enter into a relationship in the nature of marriage

- b However, if at the cessation date above, the spouse is still caring for an other dependant, contact the Customer Services Technical Support for advice on the action to take.

13.0 When to check dependency

- a ACC may have to carry out a dependency check to determine whether the spouse is either:

- financially able to support themselves
- still as financially dependent as they were at the time of death.

You must only perform this full dependency check once, on the date when they stop caring for the children or other dependants, or the youngest child turns 18. The spouse is supposed to advise ACC if this happens. If they do not, this will probably be discovered when the annual entitlement check is carried out.

Provided ACC has confirmed dependency at this date, there is no requirement to check financial dependency on an ongoing basis after this. The regular eligibility check after this is solely done to confirm contact details and whether the person has remarried or begun a relationship in the nature of marriage.

14.0 Checking dependency

- a Use the information the spouse provides on the ACC537 Dependency check (transitional only) (81KB) form to determine if the spouse qualifies as a dependant. They are dependent if both the following apply:

- they do not qualify as self-supporting
- their degree of dependency has either changed less than 5% since it was first assessed or is still more than 25%.

15.0 Determining self-support

- a If the ACC537 Dependency check (transitional only) (81KB) shows the spouse's income for the last 12 months was less than \$13,500, they do not qualify as self-supporting.

However, if they earned more than \$13,500, obtain a detailed financial statement using the ACC254 Statement of financial position (89KB) form to determine whether they can financially support themselves.

Based on the information they provide on this form, the spouse qualifies as self-supporting if their income, including assets, but excluding any payments from ACC, is significantly higher than their monthly expenditure.

16.0 Calculating degree of dependency

- a Use the following method to determine the spouse's degree of dependency as a percentage value.

- Find the deceased's relevant 12-months' earnings at the time of death. Adjust this for the relevant indexation since that date. Call this 'A'
- Calculate the spouse's 12-months' earnings for the relevant period. Call this 'B'
- Use the following formula to calculate the dependency percentage 'C'

$$A \\ A + B \times 100 = C$$

17.0 Examples of self-supporting financial situations

- a A married couple were in their early twenties. Both were earners. They had bought a section of land, and were saving to build a house on it. The husband died in an accident.

Because of their financial commitments, at the time of the accident, we assessed that the wife was totally dependent on the husband's income.

In an annual entitlement check, we find that the spouse is no longer caring for any of their children. We carry out a dependency check and find evidence that the wife was able to pay off the loan for the section, all their hire-purchase contracts and their other commitments. She has continued her employment and is flatting with her sister.

We also discover that the wife has been able to save all of her weekly compensation payments and is using this money to fund frequent trips overseas.

In this situation, the wife qualifies as fully self-supporting and her entitlement ceases.

- b** A couple owned a motor camp as a partnership. The husband died in an accident. We assessed the wife as totally dependent. She took over the care of the deceased's elderly uncle, who was an 'other dependant' of the deceased.

The spouse contacts us to advise that the uncle has died and she is no longer caring for him. We carry out a dependency check and it becomes clear that, before the death, the wife did virtually all the day-to-day running of the business, while the husband pursued leisure activities.

After the death of her husband the wife continued to operate the business. Her income has increased substantially as she's now the sole owner of the business.

Although her commitments are the same, because of the increase in income, there's no continued dependency. Her entitlement ceases.

18.0 Determining upper age limit

- a** The date that the spouse of the deceased loses their entitlement, because of reaching the upper age limit, is the later of the following:

- the date the spouse reaches age 65
- the date the deceased would have reached age 65, if they hadn't died.

19.0 NZ Superannuation not relevant

- a** For this type of entitlement, the spouse can be entitled to receive both ERC from us and NZ Superannuation from Work and Income NZ concurrently, without ever needing to elect to receive only one or the other.

Work and Income NZ is responsible for determining eligibility and calculating and paying NZ Superannuation to the spouse, irrespective of any entitlement the spouse has from us.

20.0 Procedure: Continue or cease ERC to spouse

- a** Complete this procedure each year, when Eos brings up the relevant task.

Remember never contact the spouse on the exact anniversary of the date of death.

1. Send the client an ACC137 Continuing dependency (transitional only) (121KB) form. Enter a task on Eos to follow up its return.

2. Check the completed ACC137 form, to make sure the information is complete and correct.

3. Check the information on the ACC137 form and in the case file, to find out if the spouse:

- is still caring for any children of the deceased under age 18, or any other dependants of the deceased

- has reached the upper age limit. If this is not already on file, work out the date now, and record it on the file

- has remarried or entered a relationship that is, or could be, in the nature of marriage.

If any of the above apply, establish the date it became so.

4. If applicable, determine whether the spouse's relationship is in the nature of marriage, and obtain proof of this.

5. If applicable, determine whether a dependency check is required. If so, send the spouse:

- a covering letter.
- an ACC537 Dependency check (transitional only) (81KB) form.

6. If the completed ACC537 form shows the spouse's earnings are more than \$13,500 for the last 12 months, send them:

- a covering letter.
- an ACC254 Statement of financial position (89KB) form

7. If performing a dependency check, establish whether the spouse qualifies as self-supporting.

8. Decide whether to continue or cease entitlement. See When to continue or cease weekly compensation to a spouse or partner. The only difference is in the letter used to advise the client of the decision, and the need to give one month's notice of cessation.

9. If the entitlement continues, but the spouse is within two years of the upper age limit, send a letter advising of this.

10. File all documents relevant to the decision-making.

21.0 Earnings-related compensation to a child

- a** An other dependant who is eligible immediately before 1 April 2002 for ERC under the 1972 or 1982 Act continues to be eligible after that date.

This compensation is eligible for annual indexation. The other dependant ceases to be entitled to compensation at the earlier of:

- when they receive, over a 12-month period, average earnings per week greater than the minimum weekly earnings rate that applies for a full-time worker who is incapacitated
- the date NZSQA upper age limits apply.

These rules are the same as those for an other dependant who has cover under the AC Act 2001. See When to continue or cease weekly compensation to an other dependant.

22.0 Relevant legislation

- a AC Act 2001, Section 385 sets out these rules, but does this by directing that Section 447 of the Accident Insurance Act 1998 continues to apply. Section 447 directs that the cessation rules set out in Schedule 1 Clause 71 of the Accident Insurance Act 1998 apply.
-

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Summary

Objective

This information applies to claims where cover exists under either:

- the Accident Rehabilitation and Compensation Insurance Act 1992 (ARCI Act)
- the Accident Insurance Act 1998 (AI Act).

It applies when both the following apply:

- the date of death was between 1 July 1992 and 31 March 2002
- a claim has been lodged, cover accepted and ongoing entitlements (weekly compensation and childcare) are already calculated by 31 March 2002.

Owner

3(2)(a)

Expert

3(2)(a)

Policy

1.0 Late lodgement of claims

- a** Under the AC Act, 2001, Section 360, if a fatal injury is suffered before 1 April 2002 and the claim for cover is not lodged before 1 April 2002, then:

- the injury is only covered if the claim meets the criteria for cover under the AC Act 2001, as well as the criteria for cover under the Act that was in force when the injury occurred.

AC Act, 2001, Section 360
http://www.westlaw.co.nz/maf/wlnz/app/document?&src=rl&doc-guid=I67904a14e03211e08eefa443f89988a0&hitguid=I225e6b1fe03011e08eefa443f89988a0&snippets=true&startChunk=1&endChunk=1&isToc-Nav=true&tocDs=AUNZ_NZ_LEGCOMM_TOC&extLink=false#anchor_I225e6b1fe03011e08eefa443f89988a0

2.0 Entitlements

- a** This information sets out the provisions for:

- eligibility for 'one-off' entitlements, ie the funeral grant and survivor's grant, if they have not been paid prior to 1 April 2002
- eligibility and cessation rules after 1 April 2002 for ongoing entitlements the person was entitled to, prior to this date under the AI Act transitional provisions. These are:
 - childcare payable to children of the deceased
 - weekly compensation payable to survivors.

3.0 Funeral grant: Death prior to 1 April 2002

- a** Section 381 of the AC Act 2001 directs that a funeral grant is payable if the following criteria are met:

- the client died as a result of personal injury before 1 April 2002 and a claim for this has been accepted under one of the former Acts
- the Corporation has not already paid a grant for funeral expenses before 1 April 2002.

In addition, ACC requires an application that clearly requests payment of a funeral grant.

Section 381 of the AC Act 2001
http://www.westlaw.co.nz/maf/wlnz/app/document?&src=rl&doc-guid=I67902062e03211e08eefa443f89988a0&hitguid=I225e6bf6e03011e08eefa443f89988a0&snippets=true&startChunk=1&endChunk=1&isToc-Nav=true&tocDs=AUNZ_NZ_LEGCOMM_TOC&extLink=false#anchor_I225e6bf6e03011e08eefa443f89988a0

4.0 Maximum payable

- a** When the above criteria applies, the funeral grant is payable under AC Act 2001, Schedule 1, Clause 64. This means ACC pays the lesser of:

- the actual costs of the funeral
- \$4,500.

When the date of death is prior to 1 April 2002, this is the maximum amount payable, ie even where the funeral grant amount has otherwise been increased by indexation. This increased amount does not apply if the date of death was before 1 April 2002.

The funeral grant is payable to the deceased client's estate. See Funeral grants for more information, including how to establish actual costs of a funeral and make the payment. \$4,500 is always the maximum amount payable.

AC Act 2001, Schedule 1, Clause 64
http://www.westlaw.co.nz/maf/wlnz/app/document?doc-guid=I679d8e68e03211e08eefa443f89988a0&tocDs=AUNZ_NZ_LEGCOMM_TOC&isToc-Nav=true&startChunk=1&endChunk=1

5.0 Overseas factors

- a** As long as the above criteria are met, the funeral grant is also payable in the following situations:

- the deceased was an overseas visitor to New Zealand and the injury occurred in New Zealand
- the death occurred overseas, after 1 July 1992, and the deceased qualified as a person who is ordinarily resident in New Zealand.

6.0 Defining spouse, child and other dependant

a Who is a spouse of the deceased?

- Under the ARCI Act 1992, the definition of spouse excluded same-sex relationships.
- Under the AI Act 1998, a spouse can include the surviving partner of a same-sex relationship.

b Who is a child of the deceased?

Under the ARCI Act 1992, a child of the deceased did not include children of same-sex relationships.

Under the AI Act 1998, a child of the deceased could include children of same-sex relationships, for the purpose of determining eligibility to a survivor's grant, if:

- death occurred between 1 July 1992 and 30 June 1999
- no survivor's grant was paid before 1 July 1999.


c Who is an other dependant?

A person qualified as an other dependant if all the following applied:

- their annual income was less than the specified amount at the date of death. For the applicable amount at the date of death, see Accidental death claim indexation (1992 Act) and Accidental death claim indexation (1998 Act).
- they were financially dependent on the deceased at the date of death
- their financial dependency was due to a proven physical or mental disability
- they didn't qualify as a child of the deceased who was under 18 years
- they weren't a spouse of the deceased.

Under the ARCI Act 1992 an other dependant could include a child of the deceased as long the child is over 18 years at the date of death.

Under the AI Act 1998, a child of the deceased was excluded from the definition of an other dependant, regardless of the child's age.

 Accidental death claims indexation (1992 Act)
<http://thesauce/team-spaces/chips/compensation/accidental-death-entitlements/reference/indexation-ad-claims-index-1992/index.htm>

 Accidental death claims indexation (1998 Act)
<http://thesauce/team-spaces/chips/compensation/accidental-death-entitlements/reference/indexation-ad-claims-index-1998/index.htm>

7.0 Survivor's grant

a The AC Act 2001, Section 382 directs that a survivor's grant is payable at the rate set out in clause 65 of Schedule 1, where the following criteria are met:

- the client died on or after 1 July 1992 but before 1 April 2002 and the personal injury has cover under the ARCI Act 1992 or the AI Act 1998
- a spouse, child or other dependant was entitled to be paid a survivor's grant before 1 April 2002
- ACC did not paid a survivor's grant before 1 April 2002.


This means the survivor must be eligible as a spouse, child or other dependant under whichever prior legislation is relevant.

When this applies, the rates to pay are:

- \$4,702.79 for a spouse
- \$2,351.40 for a child under the age of 18 or other dependant.

For these transitional claims, these rates are not increased by indexation.

See Survivor's grant for the more information.

 AC Act 2001, Section 382
http://www.westlaw.co.nz/maf/wlnz/app/document?doc-guid=1679d8e68e03211e08eefa443f89988a0&tocDs=AUNZ_NZ_LEGCOMM_TOC&isTocNav=true&startChunk=1&endChunk=1

 clause 65 of Schedule 1
http://www.westlaw.co.nz/maf/wlnz/app/document?doc-guid=1679d8e68e03211e08eefa443f89988a0&tocDs=AUNZ_NZ_LEGCOMM_TOC&isTocNav=true&startChunk=1&endChunk=1

8.0 Eligibility for childcare

a ACC can make payments towards the cost of supervising or caring for children on a fatal claim if the following apply:

- the claim has been accepted for cover under the Accident Rehabilitation and Compensation Insurance Act (ARCI Act) 1992 or the Accident Insurance Act 1998
- you have confirmed that the child qualifies as a child of the deceased
- the child (or their representative) has applied for childcare entitlement
- the child is either:
 - under 14
 - under 21 and needs childcare because of their physical or mental condition
- the child lives in NZ.

The deceased does not have to have been the primary caregiver of the child.

There was no childcare for Accidental Death Unit (ADU) cases originally included in the ARCI Act 1992. The 1993 Amendment added the ability for ACC to develop regulations for childcare on fatal claims as follows:

NOTE What if the date of death is after 1 July 1992?

Then childcare commenced on the latest of 1 January 1994 or the deceased's date of death

NOTE What if the date of death is before 1 July 1992?

Then payment of childcare under the regulations could only be accessed if ACC had previously been providing childcare entitlements under the 1972/1982 Acts

9.0 Paying childcare

a Make payments from the later of the following dates:

- the date of death of the deceased
- 1 January 1994
- where the child is born after the date of death, the child's date of birth.

Make the payments:

- on the dependent child's child care subcase
- weekly, on behalf of the child, to the child care arranger.

10.0 Continue or cease childcare

a Children eligible for childcare on 31 March 2002

The AC Act 2001, Section 386 specifies that people eligible for childcare under Section 448 of the AI Act 1998 continue to be eligible after 31 March 2002. The cessation rules set out in Schedule 1 of the AC Act apply.

That is, entitlement ends at the earlier of:

- five years from the date entitlement started
- the date on which the child turns 14.


If the child is older, but has needed child care due to a disability, then the date they cease to need care applies.


This is a change to the AI Act 1998 cessation rules, which specified that in no circumstances could payments to a child with a disability go beyond the date they turned 21. This rule has been deleted, so that a child who continues to need care because of an ongoing disability is eligible for five years.


See *When to continue or cease childcare* for information about ongoing child care payments and cessation.

There was no indexation of accidental death childcare before 1 July 2002. The following rates applied from 1 January 1994 until 30 June 2002:

- 1 child - \$100
- 2 children - \$60 each
- 3 or more children - \$140 divided equally.

 AC Act 2001, Section 386
http://www.westlaw.co.nz/maf/wlnz/app/document?doc-guid=I679d8e68e03211e08eefa443f89988a0&tocDs=AUNZ_NZ_LEGCOMM_TOC&isToc-Nav=true&startChunk=1&endChunk=1

 Section 448 of the AI Act 1998
http://www.westlaw.co.nz/maf/wlnz/app/document?doc-guid=Ibad19b9ce02e11e08eefa443f89988a0&tocDs=AUNZ_NZ_LEGCOMM_TOC&isToc-Nav=true&startChunk=1&endChunk=1

 *When to continue or cease childcare Policy*

11.0 Weekly compensation

a Transitional provisions for ARCI/AI Act dependants

This information sets out the rules for ongoing eligibility and cessation for weekly compensation for a spouse, child or other dependant who:


- had their entitlement determined after 1 July 1992 but before 1 April 2002
- is eligible immediately before 1 April 2002.


b Relevant legislation

The AC Act 2001, Section 383 applies when a spouse, child or other dependant is entitled to weekly compensation immediately prior to 1 April 2002, which is:

- payable under the AI Act 1998, that is, usually because the deceased died and entitlement was established between 1 July 1999 and 30 June 2001
- payable initially under the ARCI Act 1992, and transitioned under Section 445 of the AI Act 1998, that is, usually because the deceased died between 1 July 1992 and 30 June 1999. This can also arise if the claim relates to a accidental death before 1 July 1992, but was not lodged before 1 October 1992.

Compensation continues to be payable as if calculated under Schedule 1 of the AC Act 2001. This means that, from 1 April 2002, the rules around cessation and upper age limits set out in the AC Act 2001 apply to these existing claims.

 AC Act 2001, Section 383
<http://www.brookersonline.co.nz/databases/modus/lawpart/statutes/ACT-NZL-PUB-Y.2001-49~BDY~PT.11~SG.!248~S.383?si=1878974479>

 Section 445 of the AI Act 1998
http://www.westlaw.co.nz/maf/wlnz/app/document?doc-guid=Ibad19b9ce02e11e08eefa443f89988a0&tocDs=AUNZ_NZ_LEGCOMM_TOC&isToc-Nav=true&startChunk=1&endChunk=1

12.0 NZSQA

a There is no difference between a claim transitioned from either the ARCI Act 1992 and AI Act 1998 and the AC Act 2001 in respect of the rules around the upper age limits based on the date a spouse or other dependant reaches NZSQA.


b Compensation based on minimum weekly earnings

The AC Act 2001 introduced a new basis for assessing minimum weekly earnings that apply when a client is a full-time earner immediately prior to the commencement of incapacity.

See the *Weekly compensation indexation tables* for the minimum weekly earnings rates.

Where the deceased's weekly earnings were less than the amounts set out in the minimum weekly earnings column, weekly compensation payable to any dependants can be increased accordingly from 1 April 2002.

Indexation date	Percent increase
1 July 2002	2.11%
1 July 2003	2.26%
1 July 2004	2.21%
1 July 2005	2.54%
1 July 2006	3.31%
1 July 2007	3.11%
1 July 2008	3.45%
1 July 2009	3.33%
1 July 2010	1.50%
1 July 2011	1.88%
1 July 2012	2.04%
1 July 2013	1.81%
1 July 2014	1.59%
1 July 2015	1.66%
1 July 2016	1.63%
1 July 2017	1.69%

 Weekly compensation indexation (2001 Act) Policy.PNG

13.0 Continue or cease weekly compensation

a Eligibility criteria for continued payments to a spouse

Payments to the spouse can continue until the latest of the following dates:

- at the end of five consecutive years from the date the entitlement first became payable
- when the surviving spouse no longer has the care of any other dependants of the deceased
- the youngest child of the deceased that the spouse has care of, turns age 18 or the spouse no longer has the care of any children who qualify as children of the deceased.

This date is referred to as the 'surviving spouse's weekly compensation cessation date'.

b Exceptions

Even if the spouse is eligible under the above criteria, you need to cease the payments if either:

- one or more of the standard weekly compensation criteria apply for ceasing payments, eg imprisonment of the spouse, or discovering the spouse should not originally have been eligible
- the spouse elects to receive NZ Superannuation. See 'Spouse's age and the NZ Superannuation qualification age limits'.

c Factors not relevant

The following factors aren't relevant to continuing eligibility for weekly compensation:

- if the surviving spouse remarries
- the age the deceased would have reached had they not died, ie the upper age limit.

d Spouse's age and the NZ Superannuation qualification age limits

Spouses, near or over the NZ Superannuation qualification age (NZSQA), can be eligible for either weekly compensation or NZ Superannuation, or both.

The 'date of death' is the date the deceased died.

NOTE What if the spouse had reached NZSQA at date of death or will reach NZSQA within 12 months after death?

they remain entitled to both weekly compensation and NZ Superannuation, up to 12 months from the later of:

- the date of attaining NZSQA
- the date of first entitlement.

Then the spouse elects which entitlement they want to receive from that date

NOTE What if the spouse reaches NZSQA more than 12 months after the date of death they elect which entitlement they receive

14.0 Electing entitlement after reaching NZSQA


a The spouse must at some stage elect which entitlement they wish to receive, when they can't receive both.


The standard weekly compensation procedures and rules apply for:

- how to notify the spouse that they must elect one entitlement
- how the spouse notifies their election
- the time limits for notifying us detailed in clause 69 of Schedule 1
- the circumstances under which they can later change their election.

In all cases, where the standard procedures and rules refer to 'the client', read this as referring to 'the spouse of the deceased'.

See When to continue or cease weekly compensation to spouse for more information.

 clause 69
<http://www.broekersonline.co.nz/databases/modus/lawpart/statutes/ACT-NZL-PUB-Y.1998-114~END~SCHG~SCH.1~PT.5~CL.69?si=1878974479>

 When to continue or cease weekly compensation to a spouse or partner Policy


15.0 Other dependant

a For an 'other dependant', after 1 April 2002, eligibility for weekly compensation continues if:

- they earn less on average than the minimum weekly earnings amount payable to a full-time earner
- the upper age limits do not apply.

There is no requirement to check periodically on the disability of the other dependant.

See When to continue or cease weekly compensation to other dependant for more information.

 When to continue or cease weekly compensation to an other dependant Policy

16.0 Child

- a** There is no effective difference between the ARCI Act 1992, AI Act 1998 and the AC Act 2001 in respect of the rules around general cessation criteria. That is, after 1 April 2002, eligibility continues until the later of:

- the end of the calendar year in which the child turns 18 years of age
- if the child is in full-time study, the earliest of ceasing the study or turning age 21.

Under the AI Act 1998 a child with a disability, to the extent that they qualify as an other dependant, is eligible to continue to receive compensation beyond the age of 18. Continuing eligibility rules for an other dependant apply.

17.0 Eligibility criteria for continued payments

- a** A child of the deceased, who receives weekly compensation payments for a fatal injury, continues to be entitled until the end of the calendar year in which they turn 18.

Where the child can prove they are currently engaged in fulltime study at a place of education, as defined under section 13 of the AI Act 1998, the entitlement continues until the earliest of the following dates:

- they cease study
- they complete the study
- they turn 21.

- b** Exception

Even when the child is eligible under the above criteria, you need to cease payments if one or more of the standard criteria apply for ceasing weekly compensation payments, for example, imprisonment, or discovering the child shouldn't originally have been eligible.

- c** Factors not relevant

It's not relevant to the decision, to consider the age that the deceased would have reached if they hadn't died, ie the upper age limit.

- d** Child recommencing study

When a child loses their entitlement because they're over 18, and aren't studying fulltime, they can apply to regain their entitlement if they take up or recommence fulltime study before age 21. The study doesn't have to be continuous. They are entitled for any period in which they're engaged in fulltime study.

A child of the deceased can regain their entitlement as long as:

- they remain under 21 years
- they can provide satisfactory proof that they're engaged in fulltime study.

This applies, whether they:

- take up fulltime study for the first time
- recommence fulltime study after having stopped.

See [When to continue or cease weekly compensation to child](#) for more information.



Summary

Objective

This information relates to ACC's application of the Accident Insurance Act 1998 (AI Act 1998), which applied from 1 July 1999 to 31 March 2002.

For more information about the application of the AI Act 1998 after 31 March 2002, refer to the transitional provisions for the Accident Compensation Act 2001 (AC Act 2001).

Owner

s(2)(a)

Expert

s(2)(a)

Policy

1.0 Rules

- a Clients with ongoing entitlement under Sections 39 to 46 and Sections 138 to 141 of the Accident Rehabilitation and Compensation Insurance Act 1992 (ARCI Act 1992) continue to be entitled to compensation under Sections 428 to 431 of the AI Act 1998.

For all transitional claims:

- payments will continue to be made under the ARCI Act 1992 up to and including 30 June 1999
- from 1 July 1999 onwards, payments will be made under the AI Act 1998
- the AI rules for incapacity and abatement will apply, with some modifications.

2.0 What's in this document

- a The following scenarios are covered in this document:
 - transitional claims with single employment
 - transitional claims with multiple employment
 - abatement for transitional claims
 - entitlements for injuries prior to 1 July 1999, where the claim is lodged after 1 July 1999
 - minimum rate for transitional claims
 - maximum rate for transitional claims
 - indexation
 - subsequent incapacity
 - NZSQA.

3.0 Transitional claims: Single employment at date of first injury (DOFI)

- a For claims receiving unabated weekly compensation up to 30 June 1999:
 - there will be no change to the rate of weekly compensation from 1 July 1999
 - when a further medical certificate is entered onto Pathway for a period on or after 1 July 1999, the ongoing assessment will automatically be made under the AI Act 1998.

4.0 Continuing entitlement

- a The client continues to be eligible for weekly compensation until:
 - ACC determines that they're no longer incapacitated, including work capacity assessment
 - any other normal cessation provisions apply, eg upper age limits.

5.0 Abatement

- a If the person derives earnings during incapacity for any period on or after 1 July 1999, apply the AI Act 1998 abatement provisions.

NOTE Example

An employee in non permanent work has an accident on 10 Jan 1999, and remains incapacitated from that date.

In the 52 weeks prior to 10 January 1999 he earns \$30,000.

Pre-incapacity earnings
\$30,000 ÷ 52

Weekly earnings
\$576.92

Weekly compensation at 80%
\$461.54

- b This rate, calculated under the ARCI Act 1992, continues to be paid after 1 July 1999, while the client remains incapacitated.

6.0 Transitional claims: Multiple employment at DOFI

- a From 1 July 1999, ACC needs to confirm:
 - any period a client is claiming weekly compensation relating to employment held at DOFI
 - if they're incapacitated for that employment.

This determines the calculations of weekly earnings and abatement at any given period.

Several scenarios will arise for transitional claims:

- b Scenario 1
Incapacity for all employment
- c Scenario 2
Initial incapacity for all employment, then full capacity regained for one employment
- d Scenario 3
Full capacity for one employment regained, without returning to that work

7.0 Scenario 1: Incapacity for all employment

- a** If a client is receiving weekly compensation on 30 June 1999 and they continue to have an incapacity for all employment from 1 July 1999 onwards, there'll be no change to the rate of weekly compensation.

NOTE Example

A client was employed in two casual employee jobs when he had an accident on 20 March 1999.

In the 52 weeks prior to his incapacity, he earned the following:

Job A
\$15,000

Job B
\$10,000

Total earnings \$25,000
Long term rate (divide total by 52)
\$480.77

Weekly compensation at 80%
\$384.62

- b** The client continues to receive the same rate following 1 July 1999, provided he has an ongoing incapacity for both jobs.

8.0 Scenario 2: Initial incapacity for all employment, then full capacity regained for one employment

- a** The following rules apply if a client:

- had multiple employment for which they've been incapacitated
- then has ceased to be incapacitated for one of those jobs, and has returned to that work.

From the date after 1 July 1999 the client ceased to be incapacitated for that employment:

- they are only eligible for weekly compensation based on weekly earnings for the employment(s) where they continue to be incapacitated
- any continuing earnings are considered in the no incapacity excess abatement calculation.

Note:

Ensure the client has regained a full capacity for the employment concerned before recalculating.

If the client is unable to engage in any part of the employment because of the injury, they are considered to have an ongoing incapacity in relation to that employment.

Resumption of full hours or normal pay alone doesn't indicate that there would be no incapacity for that employment.

b Possible scenarios

For transitional claims, two scenarios will arise:

- client returns to that employment before 1 July 1999
- client returns to that employment after 1 July 1999.

It is not feasible to prepare for a reassessment of claims in the first category by 1 July 1999. As there will be few claims in this category, consider this reassessment as part of the normal claim review process, and:

- if there is medical or other information indicating there is no incapacity for one employment, a complete investigation should be undertaken
- if it is determined the client no longer has an incapacity, the reassessed entitlement is effective from the date ACC determines there is no incapacity.

After completing investigations and determining that the client no longer has an incapacity, calculate the ongoing weekly compensation rate using the formula for recalculating earnings, shown later in this document.

Once the investigation and calculation have been completed, the TCM should contact Entitlements & Legislation in Corporate Office, to confirm the reassessment.

9.0 Scenario 3: Full capacity for one employment regained, without returning to that work

- a** The following rules apply if a client:

- has had multiple employment, for which they have been incapacitated
- is assessed as no longer being incapacitated for one of those employments
- doesn't actually return to that employment.

This is most likely to happen if that employment has been terminated during incapacity.

In this situation:

- the client is not eligible to receive weekly compensation for that employment, even though they receive no earnings from that employment
- there are no continuing earnings to be considered under the no incapacity excess abatement provision.

10.0 Medical confirmation of work capacity

- a** As this reassessment results in a lower weekly compensation entitlement, without the client actually deriving earnings from employment, ACC needs clear medical confirmation that the person would be fully capable of performing all the duties of the terminated or ceased employment.


11.0 Consult Entitlements & Legislation section

- a** Any decisions on the ongoing weekly compensation rate for transitional claims in this category should be confirmed by the TCM, in consultation with Customer Service Technical Support (CSTS) in Corporate Office.

12.0 Formula for recalculating earnings

- a Recalculate entitlement according to the following formula. Relevant earnings (RE)/Weekly earnings (WE) consist of:

Job 1 (ongoing incapacity)	= A
Job 2 (no incapacity)	= B
Total RE/AE	= C
Total RE/AE (C) updated by OICs or indexation	= D
Revised RE/AE	= (A + C) × D

 Formula for recalculating earnings.PNG

- b The continuing earnings from the no incapacity job (B) are considered for the no incapacity excess abatement calculation.

If there are any continuing earnings from Job 2, the formula for calculating the weekly earnings rate used in the no incapacity excess would be $\text{Total B} \div \text{C} \times \text{D}$.

NOTE Example

A client is incapacitated from 30 October 1994, following an accident. Prior to her incapacity, she was employed in two jobs.

On 10 October 1999, ACC determines that she no longer has incapacity for Job B but doesn't return to this position.

Her weekly compensation must be reassessed from 10 October 1999, to only include earnings from Job A.

Job A weekly earnings
\$300 (A)

Job B weekly earnings
\$200 (B)

Total weekly earnings
\$500 (C)

Total weekly earnings updated by indexation
\$539.88 (D)

Revised weekly earnings
 $\$300(A) \div \$500(C) \times 539.88(D)$

Rate payable from 10 October 1999
\$323.93

13.0 Abatement (overview)

- a Any payment beyond 1 July 1999 is subject to the new abatement rules.

You should refer to the abatement documents for information on:

- earnings liable for abatement
- applying the abatement formula
- applying abatement to weekly compensation.

For transitional claims, there are specific policies in relation to:

- the no incapacity excess, for an individual employment
- the total earnings excess.

These are outlined in the next topics.

14.0 No incapacity excess calculation for transitional claims

- a A new excess calculation applies to establish the amount of earnings liable for abatement when the client:

- held more than one job at DOFI (or DOSI)
- is not incapacitated for one of those jobs
- is deriving earnings from that no incapacity job.

The 'no incapacity excess' abatement calculation:

- applies for transitional claims where claimants held more than one employment at DOFI
- is calculated by using the formula detailed in the abatement document.

NOTE Example

A client had an injury on 14 April 1993 and was incapacitated from that date. They had two jobs prior to incapacity.

Job A
\$200.00 (A)

Job B
\$100.00 (B)

Total long term weekly earnings
\$300.00 (C)

After indexation
\$331.32 (D)

- b From 1 October 1999, the client becomes no longer incapacitated for Job B, returns to it, and earnings from that job are being abated.

From the date ACC confirms the person has no incapacity for Job B, the revised weekly earnings figure ($A \square C \square D$) applies: $\$200 \div \$300 \times \$331.32 = \220.88

- c The no incapacity excess calculation is performed for Job B, as follows:
- calculate the long term weekly earnings relating to that employment only
 - update that figure by any indexation ($B \div C \times D$): $\$100 \div \$300 \times \$331.32 = \110.44

- d This figure is applied as the long term calculation of pre incapacity earnings, in the no incapacity excess abatement calculation, as follows:

Earnings each week from Job B
\$200.00

Deduct long term weekly earnings for Job B
\$110.44

Earnings liable for abatement
\$89.56

15.0 Total earnings excess for transitional claims

a As per the ARCI Act 1992:

- total income from weekly compensation and from earnings during incapacity
- may not exceed earnings immediately prior to incapacity.

The calculation that applies, as shown below, is the same as that under the ARCI Act 1992, and any excess amount established as Total D is further deducted from the abated weekly compensation figure.

Total A			\$
Weekly compensation after abatement			
+	Total B	+	\$
	Earnings		
=	Subtotal	=	\$
-	Total C	-	\$
	Earnings prior to incapacity		
=	Total D	=	\$
	Excess		

Total A

Is the abated weekly compensation figure.

Total B

Is the total earnings during the week of incapacity, from all sources.

Note:

If the client is receiving earnings from employment that the no incapacity excess provision applies to, Total B should apply the full amount of earnings from that employment, not just the no incapacity excess amount.

Total C



Total earnings excess for transitional claims.PNG

b Is based on earnings details prior to DOFI. For transitional clients receiving abated earnings in the:

- short term period, the short term weekly earnings rate is used
- long term period, the long term relevant earnings or weekly earnings (rate as assessed under the 1972, 1982 or 1992 Act) is used with relevant Orders in Council (OICs) or Indexation already applied.

Note:

If the client is receiving earnings from employment that the no incapacity excess provision applies to, Total C should apply the full amount of earnings from that employment, not just the no incapacity excess amount.

16.0 Total earnings excess for transitional claims (example)

a This continues the scenario set out in the no incapacity excess calculation example, which established:

- weekly earnings of \$220.88 in respect of Job A
- a figure of \$89.56 as the earnings liable for abatement, after applying the no incapacity excess calculation.

Revised weekly compensation at 80% of \$220.88 = \$176.70.

17.0 Applying the abatement calculation

a Abatement applied to earnings of \$89.56, using abatement amounts as at October 1999 = \$8.62

Deduct \$8.62 from \$176.70 weekly compensation = \$168.08

18.0 Total earnings excess calculation

Total A			\$168.08
Weekly compensation after abatement			
+	Total B	+	\$200.00
	Earnings during incapacity		
=	Subtotal	=	\$368.08
-	Total C	-	\$331.23
	Total updated long term weekly earnings		
=	Total D	=	\$36.76
	Excess		
Therefore, the final calculation is:			
	Abated weekly compensation (Total A)		\$168.08
-	Excess (Total D)		\$36.76
=	Weekly compensation payable		\$131.32



Total earnings excess calculation.PNG

19.0 Abatement for the week including 1 July 1999

a For any claim receiving earnings over the week including 1 July 1999, Pathway automatically assesses, under the correct rules, the periods:

- prior to 1 July 1999
- on or after 1 July 1999.

The new AI Act 1998 rules apply from the next ACC pay day for that claim after 1 July 1999.

20.0 Entitlements for injuries prior to 1 July 1999, where claim lodged post 1 July 1999

a Section 423 of the AI Act 1998 directs that any claim lodged on or after 1 July 1999 will have entitlements assessed under the AI Act 1998 rules.

This includes entitlement for any period prior to 1 July 1999.

NOTE Example

A client has an accident on 1 March 1999, but doesn't lodge a claim until 20 August 1999.

- b** We accept the claim and agree that there's been an on-going incapacity since 1 March 1999 until 21 October 1999 when they receive a full clearance.

The client started permanent work on 10 May 1998 in Job A and earnings are:

- \$18,500 from 10 May 1998 to 28 Feb 1999
- \$1600 in the 4 weeks prior to incapacity.

Prior to 10 May 1998, the client was employed in Job B.

The AI Act 1998 weekly earnings calculations apply. That is, although the client worked for the full 52 week period, we only assess their weekly compensation on earnings from employment they held at DOFI, as shown:

From 8 March 1999 to 4 April 1999:

Short term earnings
\$1600 ÷ 4 = \$400

Weekly compensation
at 80% = \$320

From 5 April 1999 to 20 October 1999:

Long term earnings
\$18,500 ÷ 42 (weeks worked) = \$440.48

Weekly compensation
at 80% = \$352.38

Note:

The full explanation for determining weekly compensation for these clients is found elsewhere in CHIPS.

21.0 Minimum full time earner rate

- a** The minimum full time earner rate we pay depends on:

- the Act the entitlement was first calculated under
- the client's age

the period of entitlement.

Rules used to calculate	Client age	Period of entitlement				
		Before 1 Jul 99	1 Jul 99 – 31 Oct 99	1 Nov 99 – 30 Jun 00	1 Jul 00 – 30 Jun 01	1 Jul 00 on
ARCI Act 1992	20 and over	\$270.59	\$270.59	\$280.00	\$284.03	\$289.09
	Under 20	\$216.47	\$216.47	\$219.44	\$222.01	\$225.96
AI Act 1998	20 and over	N/A	\$280.00	\$280.00	\$284.03	\$289.09
	Under 20	N/A	\$216.47	\$219.44	\$222.01	\$225.96



Minimum full time earner rate.PNG

- b** Note:

The client age under 20 rate is the same under both Acts. If a client was entitled to the under 20 rate calculated under the ARCI Act 1992 and they reached age 20 before 1 November 1999, the rate of entitlement only increases to the ARCI Act 1992 over 20 rate for the period until 1 November 1999.

22.0 Minimum rate following subsequent incapacity

- a** If a client:

- receives the minimum rate under the ARCI Act 1992
- returns to work
- has a subsequent incapacity after 1 July 1999

Weekly compensation entitlement for that subsequent incapacity is calculated under the AI Act 1998 rules.

If they are entitled to the minimum for this subsequent incapacity, it would be paid at the AI Act 1998 rate of \$289.09 subject to indexation. These amounts are valid from 1 July 2001 or \$225.96 if the client is under age 20.

23.0 Subsequent incapacity – 28 day rule

- a** The 28 day rule that applies under the ARCI Act 1992 does not apply under the AI Act 1998.

Entitlement is recalculated under the AI Act 1998 rules, if an ARCI Act client has:

- a period of full capacity for employment
- a further incapacity after 1 July 1999.

Refer to the subsequent incapacity document elsewhere in Informe for more detail. The same rules also apply for transitional claims.

NZSQA

Section 434 of the AI Act 1998 outlines that Clause 25, Relationship between weekly compensation and New Zealand superannuation, of Schedule 1 applies to transitional clients receiving weekly compensation.

There is one important difference between the two Acts, regarding the trigger date for cessation of weekly compensation due to age.

From 1 July 1999 this alters:

- from being based on the date of first entitlement to 'compensation for loss of earnings', this wording includes first week compensation paid by an employer
- to being based on the date of first entitlement to 'weekly compensation', which does not include a first week payment.

The ARCI Act 1992 rules base cessation dates on the following:

- work injuries the date is taken as date of first incapacity
- non work injuries the date is taken from date of first weekly compensation entitlement, plus seven days.

For any claim receiving weekly compensation after 1 July 1999, the second rule applies and no distinction is made between work and non work injury claims.