Rehabilitation and Compensation

– Workers' Compensation

104 weeks provision >

This information bulletin outlines the 104 weeks provision covered in Section 65(2) (b) (ii) of the *Workers Rehabilitation and Compensation Act*.

An amendment of the previous *Work Health Act* commenced on 1 November 2002 regarding the 104 weeks provision.

104 weeks provision

At any stage of long term incapacity (after 26 weeks) a worker can be deemed to have an earning capacity. The monetary value of this capacity can then be deducted from the workers' compensation payments.

Until 104 weeks of incapacity has elapsed, suitable employment which could provide this earning capacity must be reasonably available.

After 104 weeks (2 years) of total or partial incapacity, the worker, once assessed, may be deemed to have an earning capacity on the most profitable employment that could be undertaken by that worker, whether or not such employment is available to the worker.

However, if after two years of total or partial incapacity, the injured worker still has no current earning capacity, they will continue to receive 75% of normal weekly earnings (NWE) until they acquire a capacity for suitable employment, or they reach age 65, whichever is the earlier.

This provision will only apply after 104 weeks of total or partial incapacity. It will not affect those who, because of the seriousness of their injury, will have little or no real ability to return to the workforce.

Assessment of the most profitable employment after 104 weeks

The assessment for earning capacity is assessed in conjunction with section 68 of the *Workers Rehabilitation and Compensation Act*.

In assessing what is the most profitable employment available to a worker, regard shall be had to:

(a) his or her age;

(b) his or her experience, training and other existing skills;

(c) his or her potential for rehabilitation training;

(d) his or her language skills;

(e) the impairments suffered by the worker; and

(f) any other relevant factor.

Who carries out the assessment?

Appropriately qualified medical practitioners and allied professionals carry out the assessment.

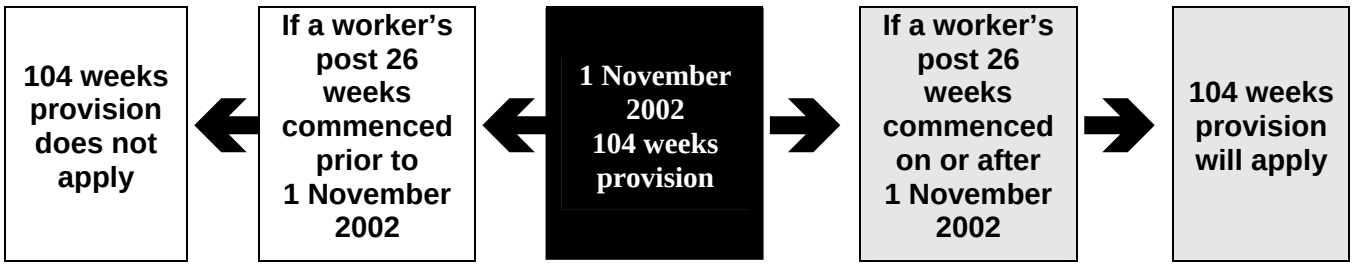
When does the 104 weeks start?

The 104 weeks provision is calculated from the first day of total or partial incapacity.

To whom the 104 weeks will apply

- If post 26 weeks incapacity commenced on or after 1 November 2002, the 104 weeks provision will apply.
- This in effect means that the 104 weeks provision does not potentially affect any claimant until 1 May 2004.
- If a worker is already on post 26 weeks benefits prior to 1 November 2002, this 104 weeks provision does not apply.

Example to whom the 104 weeks will or will not apply



Appeals

Injured workers receiving workers' compensation can appeal to the Work Health Court if they dispute the monetary value deemed by the insurer to represent their earning capacity. **Please note: before making an application to the Work Health Court the worker and the insurer *MUST* first apply for and complete the mediation process.**

See NT WorkSafe bulletin 13.01.09 Compensation - Mediation.

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