Independent
Review Office

IRO Regional Seminars

Newcastle

May 2022

IRO acknowledges traditional owners

We acknowledge the Awabakal and Worimi People as the Traditional Custodians of the land we are meeting on today, and part of the oldest surviving continuous culture in the world. We recognise their continuing connection to Country and thank them for protecting this land and its ecosystems since time immemorial.

We pay our respects to Elders past and present, and extend that respect to all First Nations people present today

Agenda

- Welcome – Simon Cohen, Independent Review Officer
- WPI and Domestic Assistance, Steve Groves, Special Counsel, Lamrocks Solicitors
- Pre-injury Average Weekly Earnings; Fundamentals And Recent Cases
  Kevin Sawers, Senior Associate, Walker Law Group
- ILARS Update - Philip Jedlin, Director, IRO
- CTP/Solutions - Jeffrey Gabriel, Director, IRO
- Substantive Law Update
  - Federal Jurisdiction... The Story so Far – Michelle Riordan, Manager, Legal Education
- Questions

WPI and Domestic Assistance

Steve Groves, Special Counsel,
Lamrocks, Solicitors

S.66(1A) of the 1987 Act – You only get One Shot, so give it your BestShot

S.66(1A) of the 1987 Act provides: -

"66(1A) Only one claim can be made under this Act for permanent impairment compensation in respect of the permanent impairment that results from an injury."

S.322A of the 1998 Act provides:

"322A (1) Only one assessment may be made of the degree of permanent impairment of an injured worker.

(1A) A reference in sub-section 1 to an assessment includes an assessment of the degree of permanent impairment made by the Commission in the course of the determination of a dispute about the degree of the impairment that is not the subject of a referral under this Part.

(2) The Medical Assessment Certificate that is given in connection with that assessment is the only Medical Assessment Certificate that can be used in connection with any further or subsequent medical dispute about the degree of permanent impairment of the worker as a result of the injury concerned (whether the subsequent or further dispute is in connection with a claim for permanent impairment compensation, the commutation of a liability for compensation or a claim for Work Injury Damages).

Nathan Ross v. SR Constructions Pty Limited [2020] NSW WCC232
Decision of Arbitrator John Harris on 10 July 2020

Domestic Assistance

60AA (1) If, as a result of an injury received by a worker, it is reasonably necessary that any domestic assistance is provided for an injured worker, the worker's employer is liable topay, in addition to any other compensation under this Act, the cost of that assistance if—

(a) a medical practitioner has certified, on the basis of a functional assessment of the worker, that it is reasonably necessary that the assistance be provided and that the necessity for the assistance to be provided arises as a direct result of the injury, and

(a) the assistance would not be provided for the worker but for the injury (because the worker provided the domestic assistance before the injury), and

(a) the injury to the worker has resulted in a degree of permanent impairment of the worker of at least 15% or the assistance is to be provided on a temporary basis as provided by subsection (2), and

(a) the assistance is provided in accordance with a care plan established by the insurer in accordance with the Workers Compensation Guidelines.

Mark Bellamy v Watertech Resources Pty Limited (2017) NSWWCC

195 Decision of Arbitrator Paul Sweeney dated 22 August 2017

Lamrocks SOLICITORS

Questions?

PIAWE fundamentals and recent PIC decisions/insights

Walker

LAW GROUP

Agenda

- Why is PIAWE important to review?
- The PIAWE we are looking at today
- PIAWE fundamentals
- An example
- Recent PIC decisions/insights
- Questions

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Why is PIAWE important to review?

It could be wrong!

Errors in workers comp victims payments for six years with 25 per cent underpaid by icare

Michael Evans
March 9, 2020 — 12.00am

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A review of payments to 3000 workers compensation claimants from the state-government owned insurer icare has revealed half contained errors, with a quarter of recipients underpaid over a six-year period.

There are concerns the true figure may be higher and cost the agency millions.

In the latest controversy surrounding icare, a review conducted last year and revealed by the regulator last week identified errors in around half of the 3000 reviewed claims from 2012-18.

One quarter "were potentially underpaid, at least initially, and a similar proportion were potentially overpaid".

Errors have been made in icare's workers compensation payments.

Why is PIAWE important to review?

Sometimes PIAWE definitely is wrong

SIRA's claims management guide:

Interim PIAWE

If an insurer is not able to either approve, or refuse to approve, an application for agreement by day seven from initial notification of injury, then they may give effect to the agreed amount as the PIAWE. This is an interim payment decision and allows the insurer to make weekly payments based on the agreed amount of PIAWE until the application for approval of the agreement has been determined.

Why is PIAWE important to review?

PIAWE is itself a work capacity decision

It is a reviewable decision

Workers Compensation Act NSW 1987

43 Work capacity decisions by insurers

(1)The following decisions of an insurer are
"work capacity decisions" --
(d) a decision about the amount of an injured worker's **pre-injury average weekly earnings** or current weekly earnings,

The PIAWE we are considering today

- **Current PIAWE**

- Applied in full to workers injured on or after 21 October 2019
- Schedule 3 of the Workers Compensation Act NSW 1987 including a PIAWE agreement
- Workers Compensation Regulation 2016
- Sections 79-82D Workers Compensation Act NSW 1987
- Personal Injury Commission has jurisdiction over PIAWE

The PIAWE we are considering today

- **Current PIAWE**

- Clause 8EA of the Workers Compensation Regulation 2016 introduced to allow for **Adjustment for prescribed periods relating to COVID-19**

PIAWE fundamentals

Schedule 3 of the Workers Compensation Act NSW 1987

Fundamentally PIAWE then is a maths equation that can be expressed like this:

Gross pre-injury earnings

÷ **=** **Pre-injury average weekly earnings**

Relevant earning period

PIAWE fundamentals

Schedule 3 of the Workers Compensation Act NSW 1987

Fundamentally PIAWE then is a maths equation that can be expressed like this:

Gross pre-injury earnings (dollars)

÷

Relevant earning period (time)

=

Pre-injury average weekly earnings (PIAWE)

PIAWE fundamentals (relevant earning period / time)

- **Schedule 3 of the Workers Compensation Act NSW 1987**
- **A closer look at the Relevant earning period (time)**
- **Defined in Schedule 3(2)(2)**

PIAWE fundamentals

- **Schedule 3 of the Workers Compensation Act NSW 1987**
- **2 Meaning of "pre-injury average weekly earnings“**
- (2) Except as provided by this clause (or by regulations made under this clause), in calculating the "pre-injury earnings" received by **a worker in employment** for the purposes of subclause (1), no regard is to be had to earnings in the employment paid or payable to the worker for work performed before or after the period of 52 weeks ending immediately before the date of the injury ("the relevant earning period").

PIAWE fundamentals (relevant earning period / time)

1 February 2019

Commencement of employment

PIAWE fundamentals (relevant earning period / time)

- **Schedule 3 of the Workers Compensation Act NSW 1987**

- **2 Meaning of "pre-injury average weekly earnings“**

- (2) Except as provided by this clause (or by regulations made under this clause), in calculating the "pre-injury earnings" received by a worker in employment for the purposes of subclause (1), no regard is to be had to earnings in the employment paid or payable to the worker for work performed before or after the period of 52 weeks ending immediately before **the date of the injury** ("the relevant earning period").

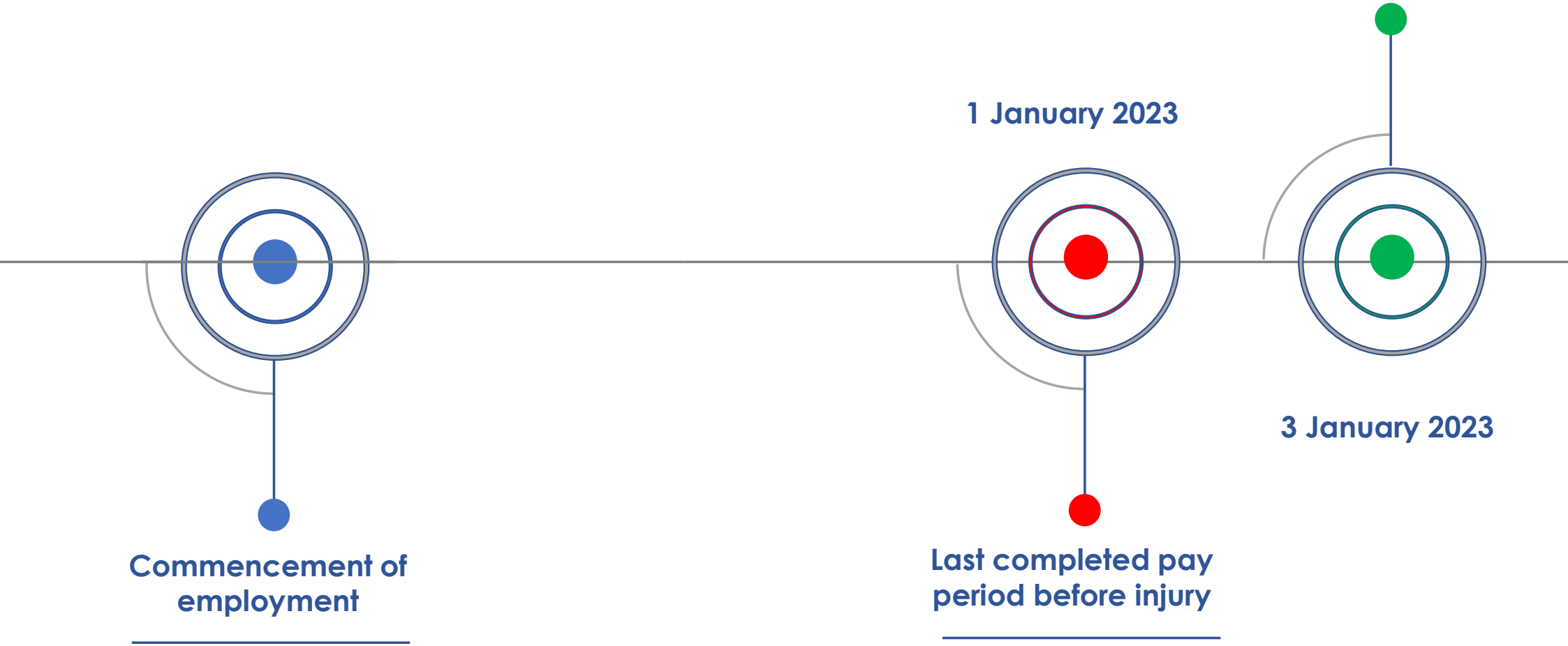
PIAWE fundamentals (relevant earning period / time)

PIAWE fundamentals (relevant earning period / time)

- **Workers Compensation Regulation 2016**
- **8D Alignment of relevant earning period with pay period**

- (1) The relevant earning period for a worker in employment may be adjusted to align the relevant earning period with any regular interval at which the worker is entitled to receive payment of earnings for work performed in the employment.

PIAWE fundamentals (relevant earning period / time)



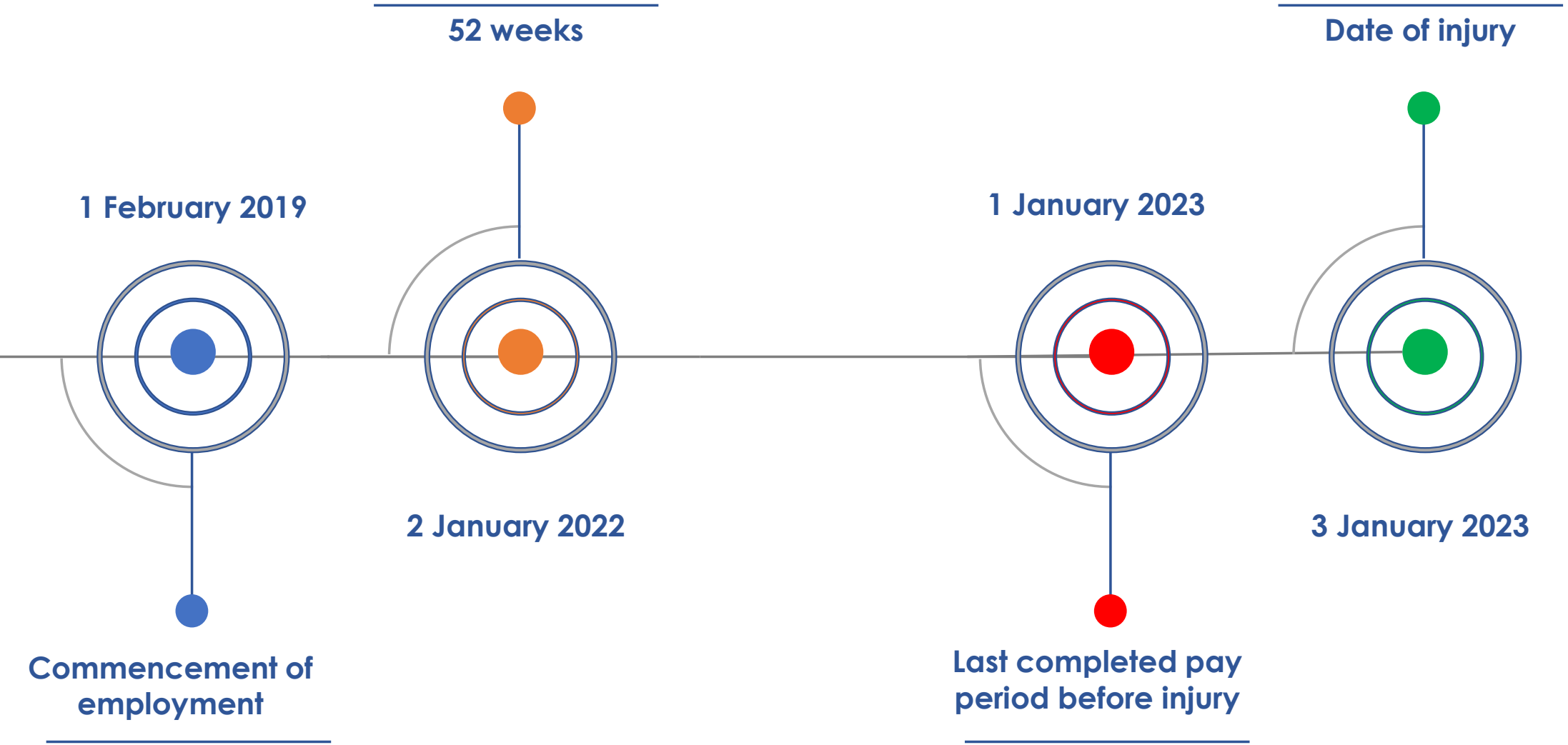
PIAWE fundamentals (relevant earning period / time)

Schedule 3 of the Workers Compensation Act NSW 1987

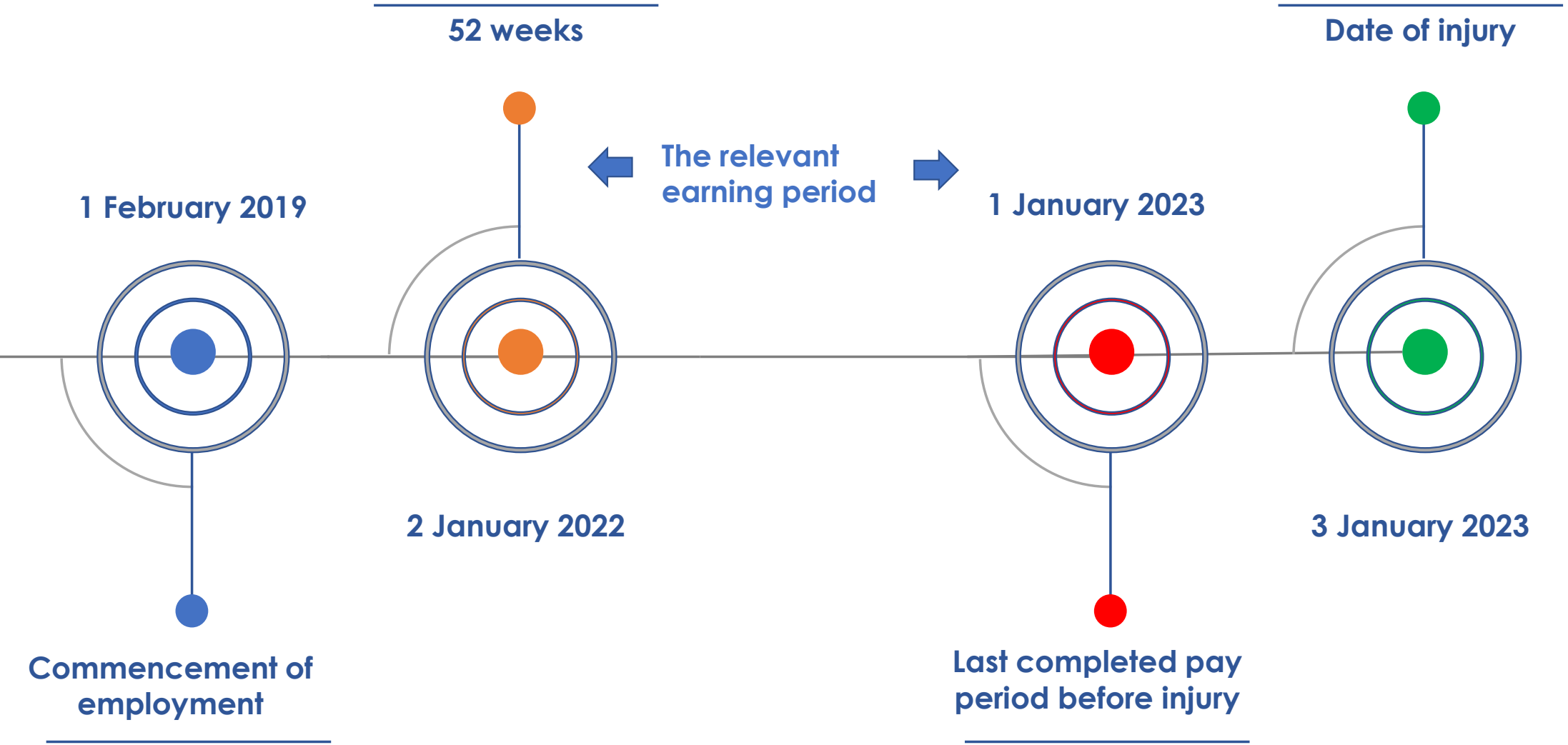
2 Meaning of "pre-injury average weekly earnings“

(2) Except as provided by this clause (or by regulations made under this clause), in calculating the "pre-injury earnings" received by a worker in employment for the purposes of subclause (1), no regard is to be had to earnings in the employment paid or payable to the worker for work performed before or after the **period of 52 weeks** ending immediately before the date of the injury **("the relevant earning period"**).

PIAWE fundamentals (relevant earning period / time)



PIAWE fundamentals (relevant earning period / time)



PIAWE fundamentals (relevant earning period / time)

- Adjusting the relevant earning period
- **Schedule 3 of the Workers Compensation Act NSW 1987**
- **2 Meaning of "pre-injury average weekly earnings“**
- (3) The regulations may provide for the adjustment of the relevant earning period for a worker in employment (including, for example, by extending or reducing the period)—
- (a) to take into account any period of unpaid leave or other change in earnings circumstances in the employment, or

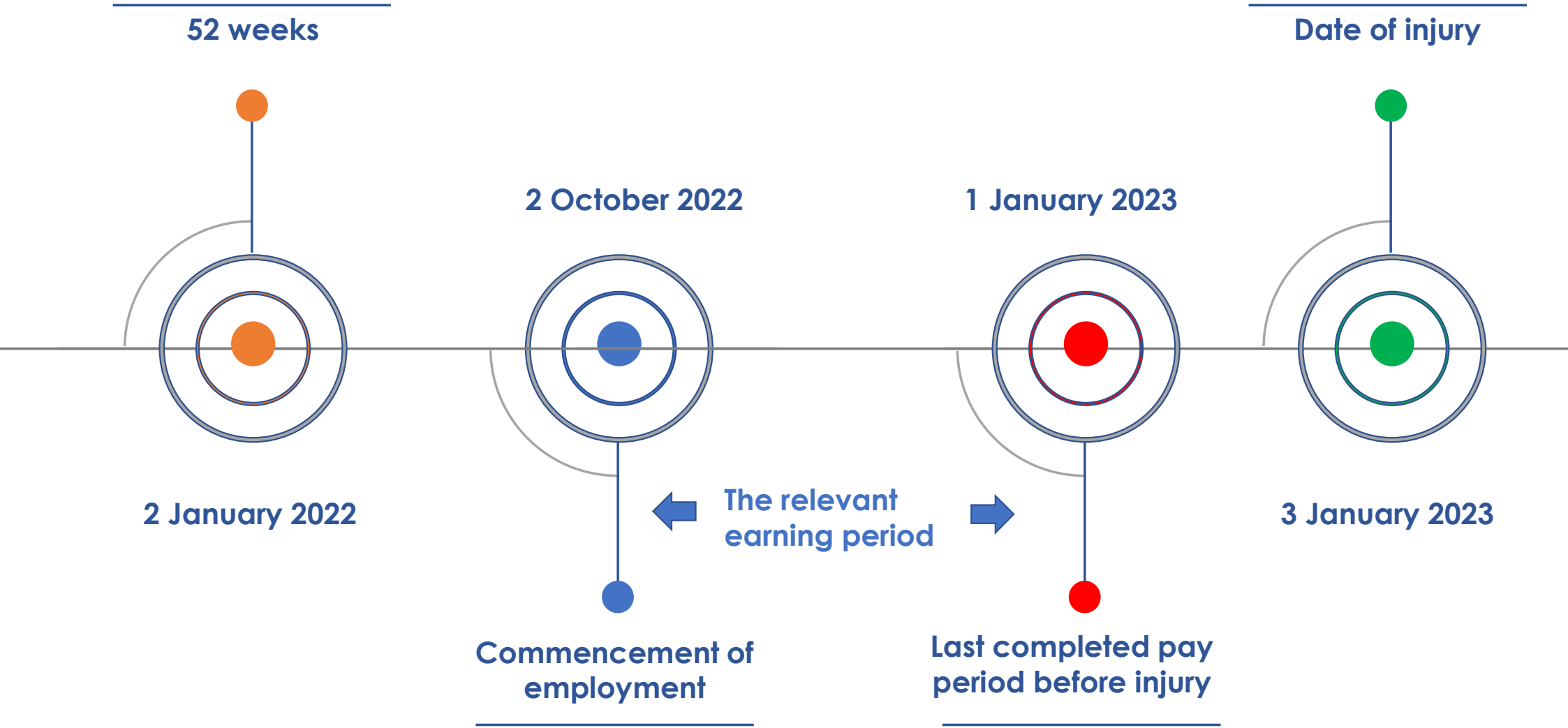
PIAWE fundamentals (relevant earning period / time)

Workers Compensation Regulation 2016

8B Adjustment for workers not continuously employed

(1) The relevant earning period for a worker in employment is to be adjusted in accordance with this clause if the worker was not engaged in the employment from the beginning of the unadjusted earning period.

(2) The relevant earning period for the worker in the employment is to be adjusted by **excluding any period before the day on which the worker was first engaged in the employment.**


52 weeks
Date of injury
2 October 2022
1 January 2023
2 January 2022
The relevant earning period
3 January 2023
Commencement of employment
Last completed pay period before injury

PIAWE fundamentals (relevant earning period / time)

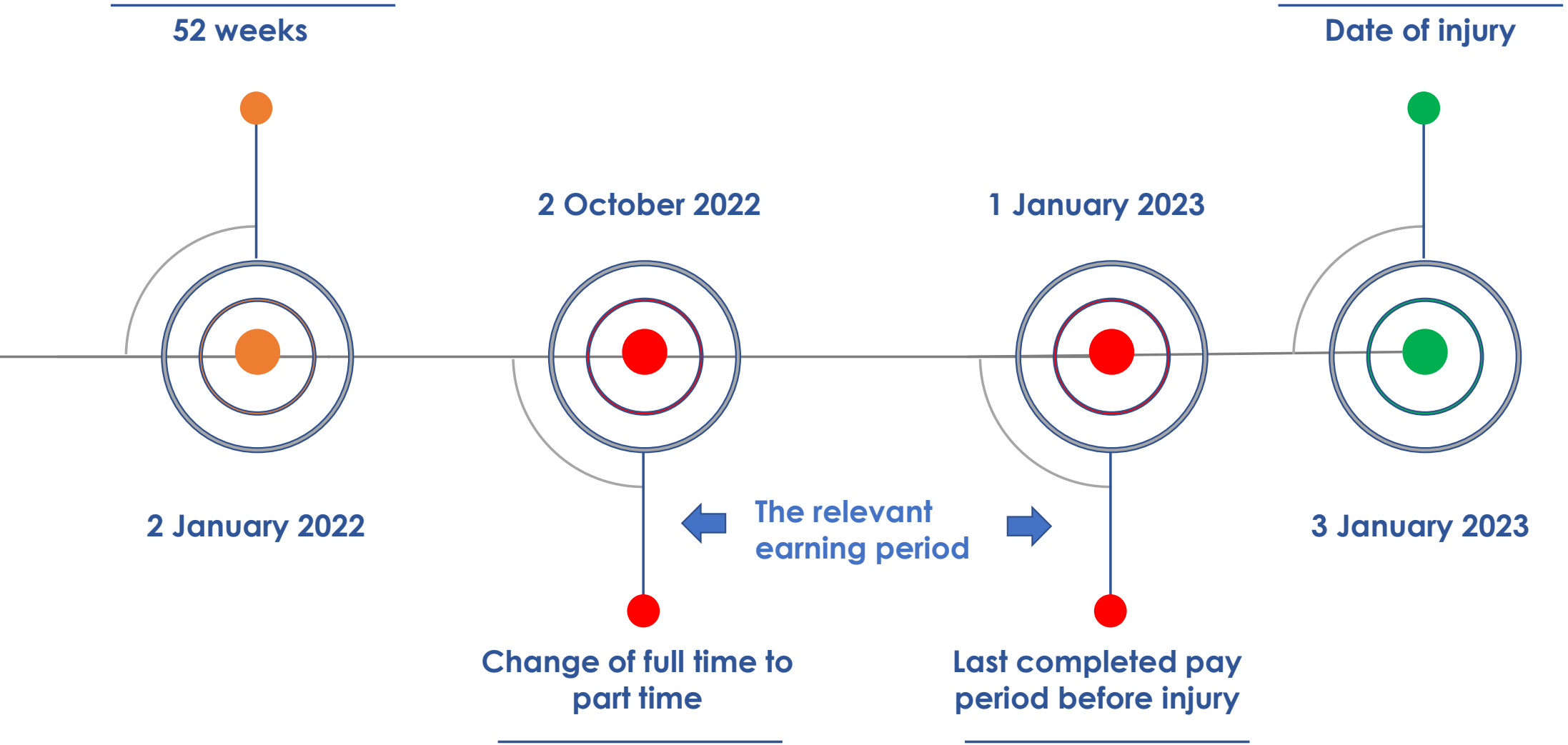
- Adjusting the relevant earning period

- **8C Adjustment for financially material change to earnings Workers Compensation Regulations 2016**

(1) The relevant earning period for a worker is to be adjusted in accordance with this clause if, during the unadjusted earning period, there was a change of an ongoing nature to the employment arrangement resulting in a financially material change to the earnings of the worker (for example, a change from full-time to part-time work).

(2) The relevant earning period is to be adjusted by excluding from the period any period before the change to the earnings of the worker occurred.

8C Adjustment for financially material change to earnings



PIAWE fundamentals (relevant earning period / time)

- Adjusting the relevant earning period
- **8E Adjustment for unpaid leave Workers Compensation Regulation2016**
- (1) The relevant earning period for a worker is to be adjusted in accordance with this clause if, during any **period of not less than seven consecutive calendar days** within the unadjusted earning period—
- (a) no earnings in the employment were paid or payable to the worker, and
- (b) the worker took a period of unpaid leave (***the unpaid leave period***) commencing on the first day of that consecutive period..

8E Adjustment for unpaid leave—
Schedule 3, clause 2(3)(a) of 1987 Act

PIAWE fundamentals (gross earnings / dollars)

A closer look at the Gross pre-injury earnings (dollars)

PIAWE fundamentals (gross earnings / dollars)

Minimum

- Clause 8AB of the Workers Compensation Regulation 2016 sets a minimum PIAWE of $155.00

Maximum

- PIAWE calculation is subject to section 34 of the Workers Compensation Act NSW 1987 which sets a maximum weekly compensation amount, currently $2,341.70 per week as of 01/10/22. This is indexed every six months.

PIAWE fundamentals (gross earnings / dollars)

- **Schedule 3 of the Workers Compensation Act NSW 1987**
- **6 Meaning of "earnings"**
- (1) The **"earnings"** received by a worker in respect of a week means the amount that is the income of the worker received by the worker for work performed in any employment during the week.

PIAWE fundamentals (gross earnings / dollars)

- **Schedule 3 of the Workers Compensation Act NSW 1987**

- **6 Meaning of "earnings"**

- (2) The **"income"** of a worker does not include—
- (a) any minimum amount paid to a superannuation fund or scheme in respect of the week to avoid an individual superannuation guarantee shortfall, within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, for the worker, or.

PIAWE fundamentals (gross earnings / dollars)

- **Schedule 3 of the Workers Compensation Act NSW 1987**

- **6 Meaning of "earnings"**

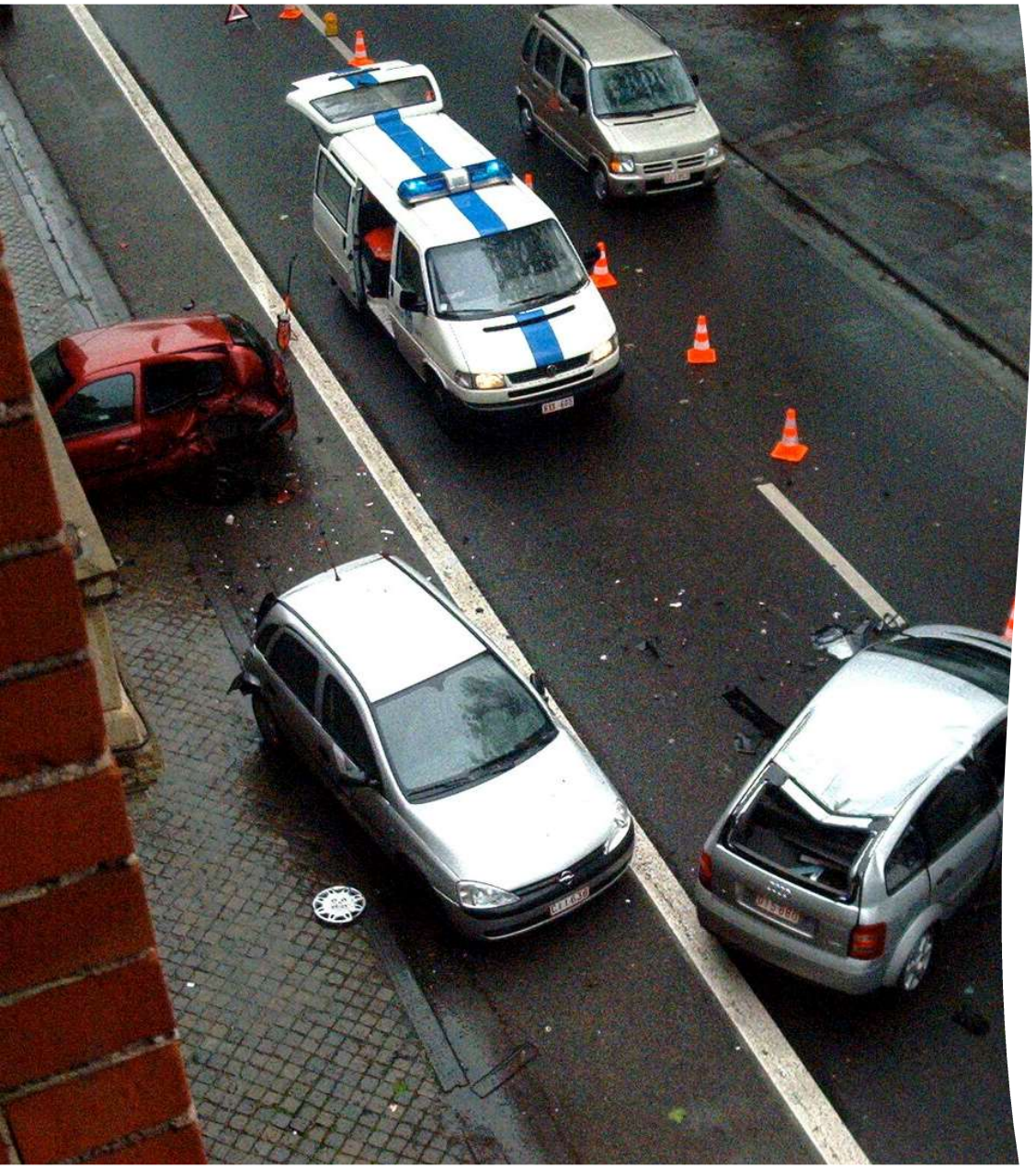
- (2) The **"income"** of a worker does not include—
- (b) the monetary value of any non-monetary benefit provided to the worker for the performance of work by the worker, or

PIAWE fundamentals (gross earnings / dollars)

- **Schedule 3 of the Workers Compensation Act NSW 1987**

- **6 Meaning of "earnings"**

- (3) However, the monetary value of a non-monetary benefit of a worker is to be included as part of the income of the worker for the purposes of the calculation of the weekly payments of compensation payable to the worker if the worker is not entitled to the use of the benefit.



PIAWE fundamentals (gross earnings / dollars)

- **Schedule 3 of the Workers Compensation Act NSW 1987**

- **6 Meaning of "earnings"**

- (2) The **"income"** of a worker does not include—
- (c) any payment in respect of loss of earnings under a scheme to which the workers compensation legislation relates or under any other insurance or compensation scheme, or

PIAWE fundamentals (gross earnings / dollars)

- **Schedule 3 of the Workers Compensation Act NSW 1987**

6 Meaning of "earnings"

(2) The **"income"** of a worker does not include—

(d) any payment made without obligation by the employer.

PIAWE fundamentals (gross earnings / dollars)

Schedule 3 of the Workers Compensation Act NSW 1987

10 Effect of Commonwealth jobkeeper scheme

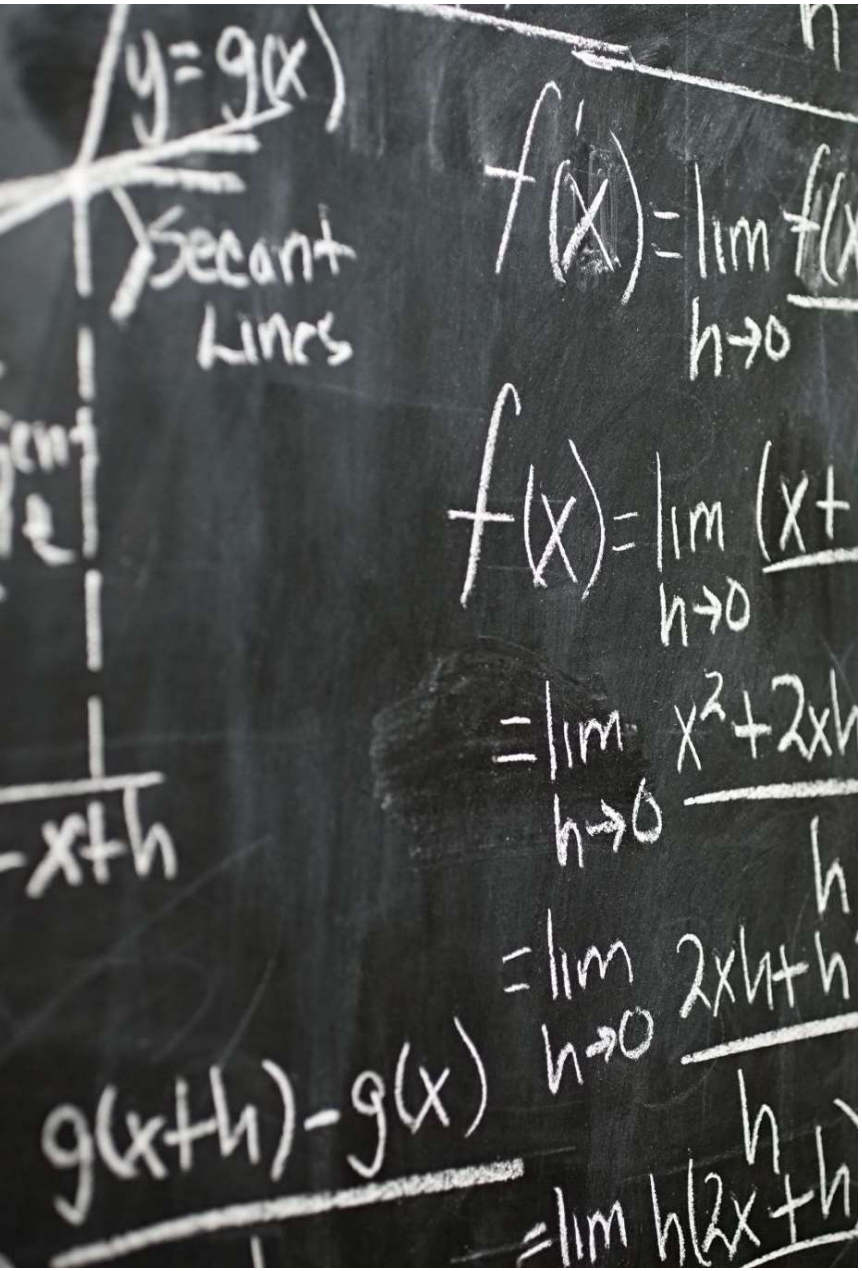
(2) For the purposes of determining the **"pre-injury average weekly earnings"** of a worker who received jobkeeper scheme payments during the relevant earning period for the worker, for each week to which a jobkeeper scheme payment applies, the worker's earnings in the employment to which the payment relates are taken to be the amount of income the worker is entitled to receive for work performed in the employment in that week.

PIAWE fundamentals (gross earnings / dollars)

Schedule 3 of the Workers Compensation Act NSW 1987

6 Meaning of "earnings"

(1) The **"earnings"** received by a worker in respect of a week means the amount that is the income of the worker received by the worker for work performed in **any employment during the week**.



PIAWE fundamentals

A basic example

PIAWE example

Commenced employment

1 February 2019

Commencement of employment

PIAWE example

Date of injury

1 February 2019

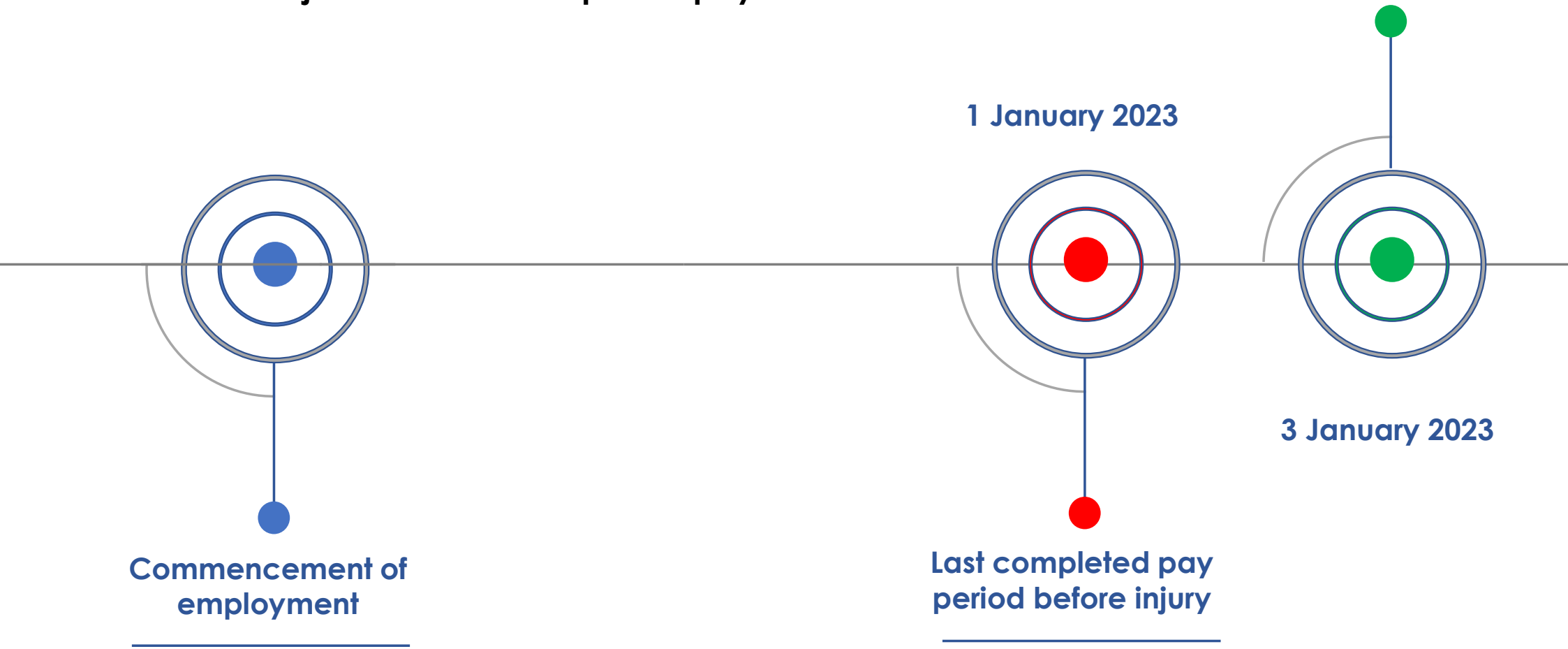
Commencement of employment

Date of injury

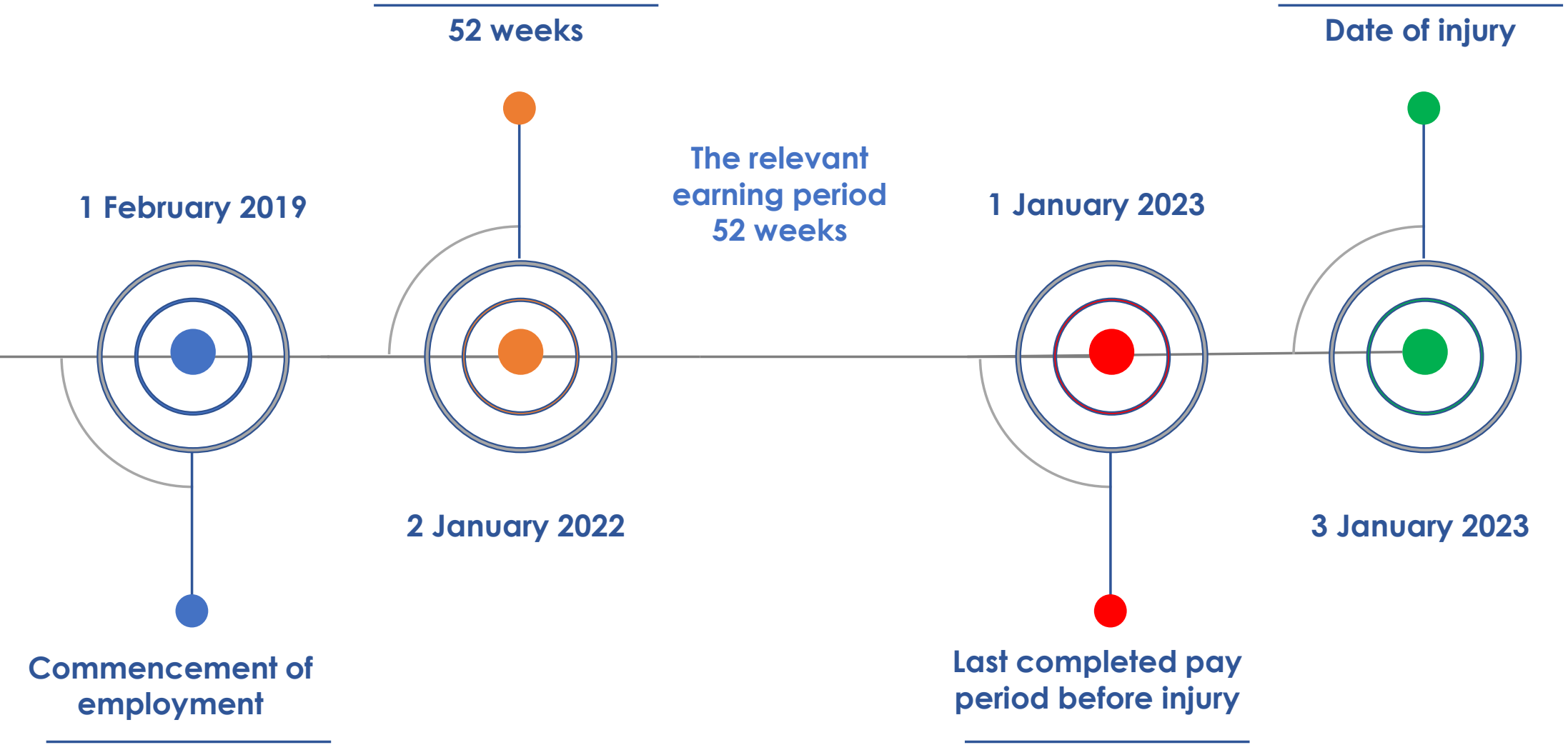
3 January 2023

PIAWE example

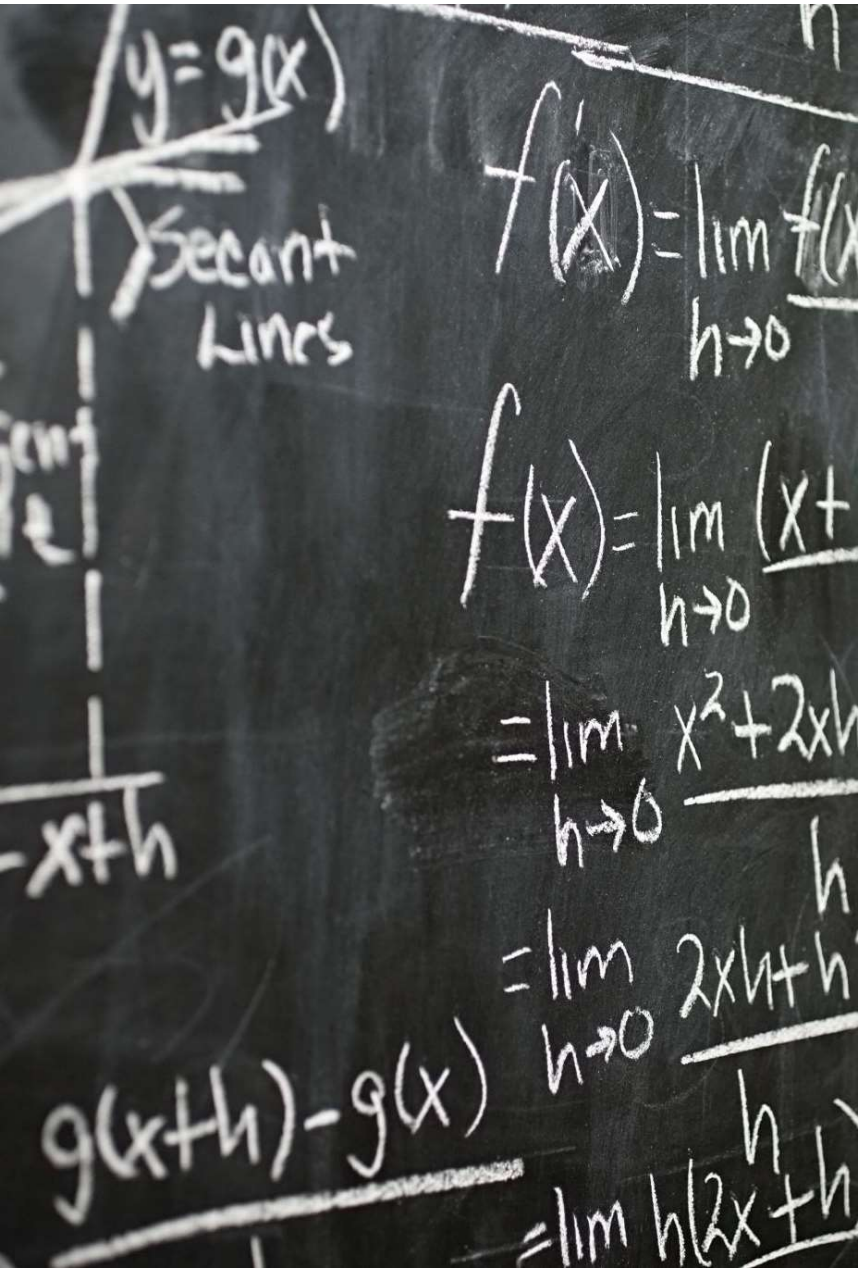
Adjusted to last completed pay



PIAWE example



PIAWE example



PIAWE example

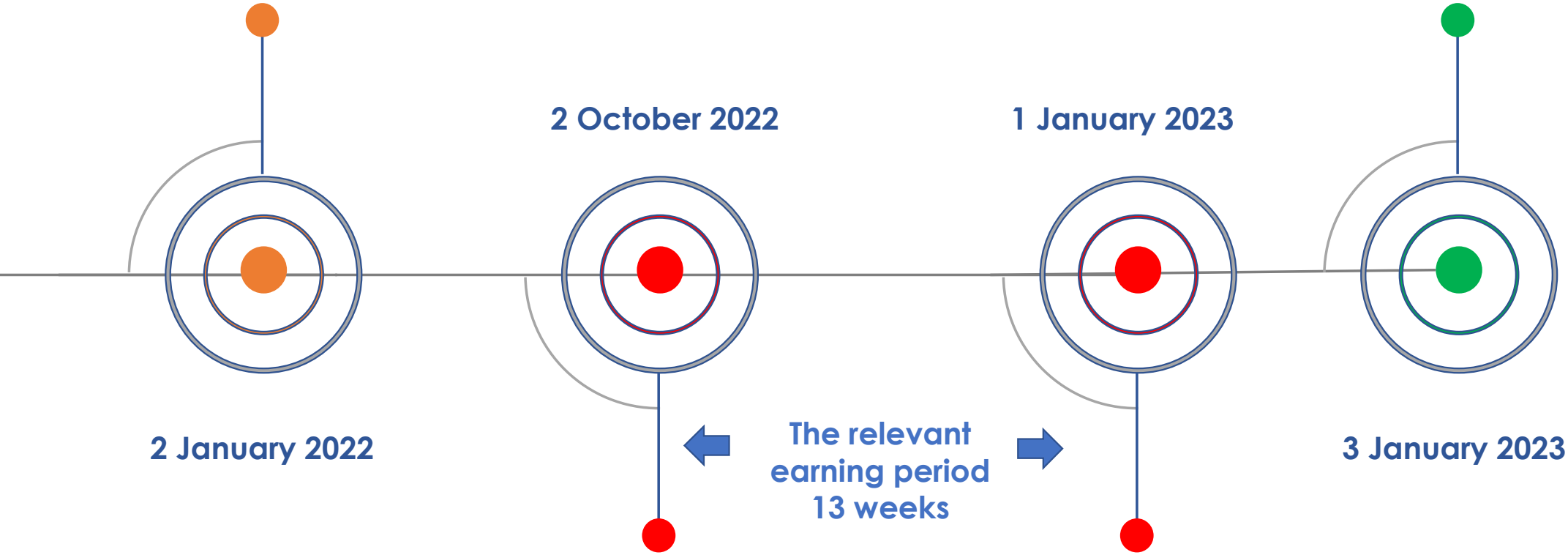
- Relevant earning period
- 52 weeks from 02 January 2022 to 1 January 2023
- Earnings $104,000.00
- $104,000.00 / 52
- PIAWE of $2000.00 per week

PIAWE example

52 weeks

8C Adjustment for financially material change to earnings

Date of injury

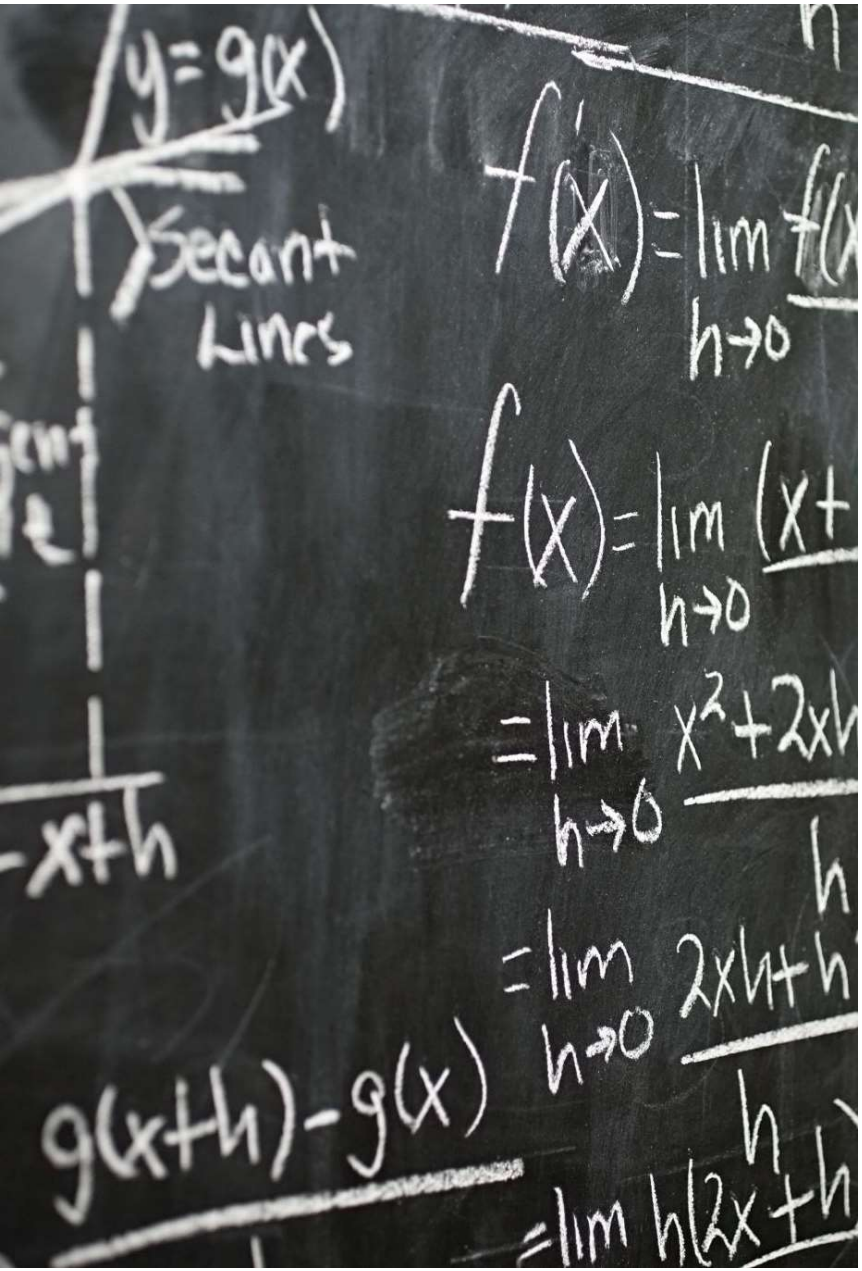


PIAWE example

52 weeks

8C Adjustment for financially material change to earnings

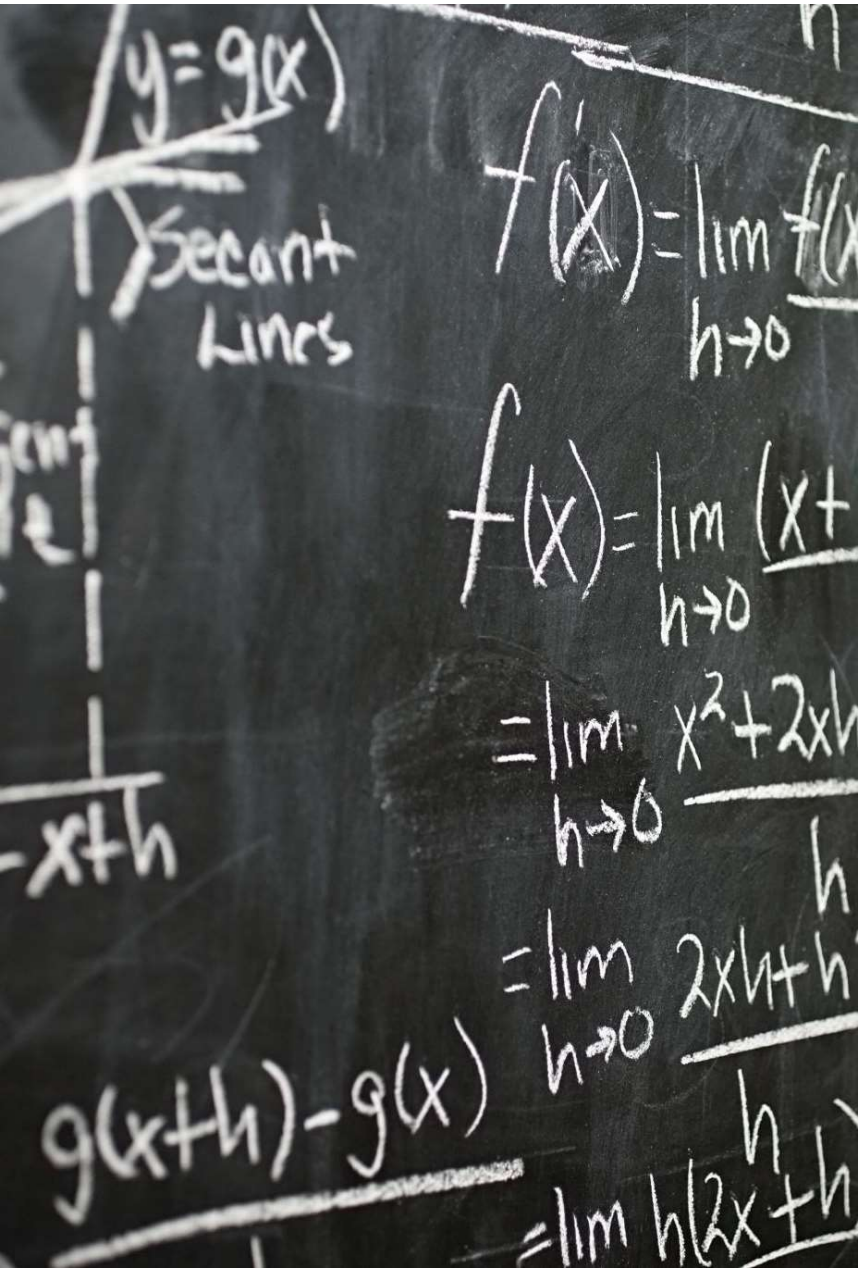
Date of injury



PIAWE example

- PIAWE over 52 weeks was $2000.00 per week
- Relevant earning period is now adjusted because of ongoing change from full time to part time
- 13 weeks from 02 October 2022 to 1 January 2023
- Earnings $13,000.00
- $13000/13 weeks
- PIAWE of $1000.00 per week

8E Adjustment for unpaid leave—
Schedule 3, clause 2(3)(a) of 1987 Act



PIAWE example

- PIAWE over 13 weeks was $1000.00 per week
- Relevant earning period is now adjusted because of three week unpaid leave from 7 November 2022 to 27 November 2022
- 13 weeks from 02 October 2022 to 1 January 2023
- Earnings $13,000.00
- $13000/10 weeks
- PIAWE of $1300.00 per week

PIAWE in the PIC

Some recent decisions and our insights

Ongoing financial material changes

Our experience is that an hourly rate increase during the 52 weeks is not treated as an ongoing financial material change adjusting the relevant earning period

When there is an hourly rate increase, all the income, both before the increase and then after, are averaged over the whole 52 weeks

Cain v Tamworth Aboriginal Medical Service [2021] NSWPIC 193

Facts

- Mr Cain employed more than one year before injury
- 25/06/20 hourly rate increase from $24.00 per hour to $26.00 per hour
- 04/08/20 date of injury
- Insurer calculates piawe over 52
- Approx $920.00 per week
- Mr Cain claimed that his PIAWE should be calculated off the $26.00 per hour rate only leaving $988.00 per week

Cain v Tamworth Aboriginal Medical Service [2021] NSWPIC 193

8C Adjustment for financially material change to earnings

(1) The relevant earning period for a worker is to be adjusted in accordance with this clause if, during the unadjusted earning period, there was a change of an ongoing nature to the employment arrangement resulting in a financially material change to the earnings of the worker (for example, a change from full-time to part-time work).

(2) The relevant earning period is to be adjusted by excluding from the period any period before the change to the earnings of the worker occurred.

Cain v Tamworth Aboriginal Medical Service [2021] NSWPIC 193

Member Wright at para 26

- "Wages or other consideration are a condition of the contract of service. A change to the hourly rate of pay is a change in the wages paid to the worker. Hence, a change in the hourly rate of pay is a change of an ongoing nature to the employment arrangement.

Cain v Tamworth Aboriginal Medical Service [2021] NSWPIC 193

Member Wright's decision (para 37)

- "Accordingly, I find that the change in the applicant's hourly rate of pay from $24 to $26 with effect from 25 June 2020 was, pursuant to regulation 8C, a change of an ongoing nature to the employment arrangement resulting in a financially material change to the earnings of the applicant. Pursuant to regulation 8C(2) the relevant earning period is from 25 June 2020 to 3 August 2020. I accept the applicant's submission that the payslips for this period disclose that the applicant's PIAWE were $988, being $26 per hour for a 38 hour week."

Insights gained concerning ongoing financial material changes

An ongoing increase to an hourly rate of pay can adjust the relevant earning period

This will often lead to an increase in the overall calculated PIAWE

Unpaid leave

Our experience is that insurers often don't apply unpaid leave for casual workers

This inevitably leads to a reduced PIAWE outcome

Wake v State Emergency Services [2022] NSWPIC 50

- **8E Adjustment for unpaid leave—Schedule 3, clause 2(3)(a) of 1987 Act**

- (1) The relevant earning period for a worker is to be adjusted in accordance with this clause if, during any period of not less than seven consecutive calendar days within the unadjusted earning period—

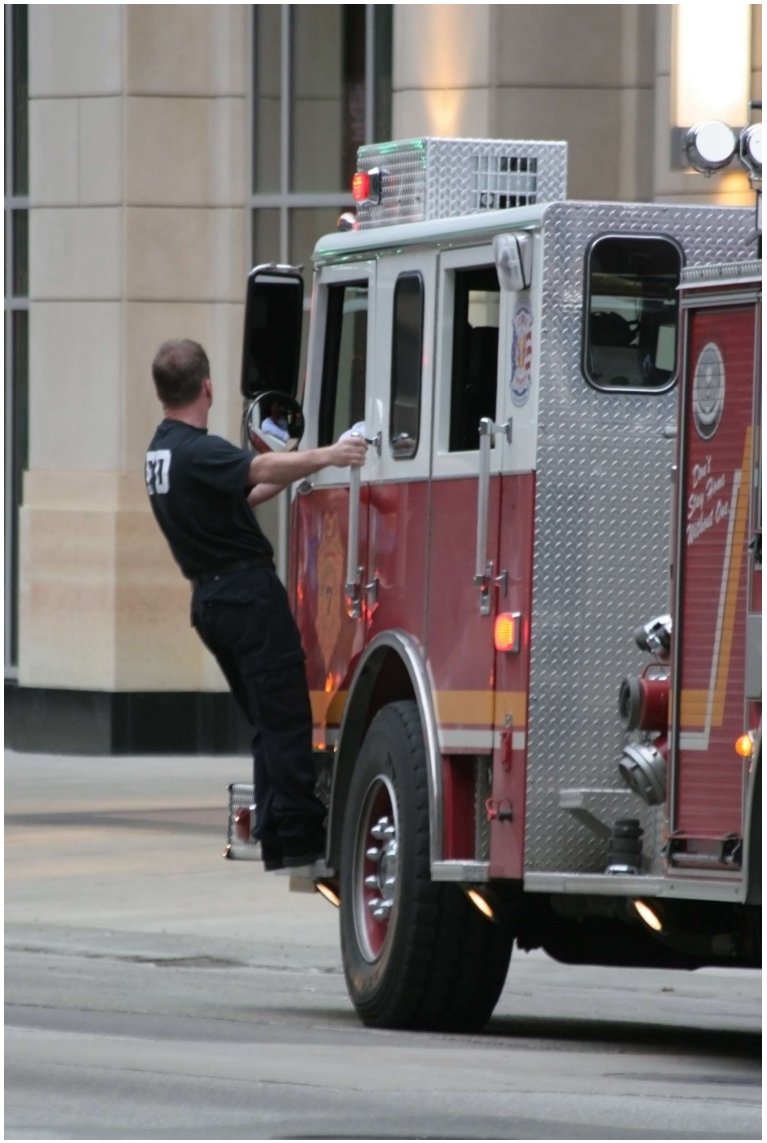
- (a) no earnings in the employment were paid or payable to the worker, and

- (b) the worker took a period of unpaid leave (***the unpaid leave period***) commencing on the first day of that consecutive period..

Wake v State Emergency Services [2022] NSWPIC 50

Member Wright comments at para 47

- 47. This outcome, in my view, would not be anomalous with other not uncommon working situations, such as casual, seasonal or piecemeal workers who may experience unfortunate periods of not receiving earnings in any particular week. As a simple example, a casual worker, who earns $500 gross per week for work performed in a particular week, may work 26 weeks out of the relevant 52 weeks, for example they work every other week. If earnings received are regarded as "0" for weeks not worked and average weeks include weeks not worked, then the PIAWE calculation results in $250 gross per week. The interpretation that I have found in my view avoids such anomalous situations.



Insights gained concerning unpaid leave

Casual workers may be entitled to have leave at least 7 days in length, treated as unpaid leave

Applying this approach will usually lead to an increased PIAWE

Sole trader income

Our experienced is when additional worker is as a ‘sole-trader’, insurers tend to not include this as ‘earnings’

This inevitably leads to a reduced PIAWE outcome

Benten v William Campbell Foundation [2021] NSWPIC 15 (11 March 2021)

The facts

- Date of injury 14/04/20
- Working four days per week with William Campbell Foundation
- At time of injury also had one day a week of her own practice as a clinician one further day a week
- Insurer would not include the second job in PIAWE calculatyion explaining ‘we are of the view that you are not a ‘worker’ when performing services in your private clinic’

Benten v William Campbell Foundation [2021] NSWPIC 15 (11 March 2021)

- **Schedule 3 of the Workers Compensation Act NSW 1987**

- **6 Meaning of "earnings"**

- (1) The **"earnings"** received by a worker in respect of a week means the amount that is the income of the worker received by the worker for work performed in any employment during the week.

Listen

Who needs a policy

If you have employees in NSW, you probably need a workers insurance policy.

A workers insurance policy provides an employer coverage in the event one of their employees suffer a work related injury or illness.

The policy will insure your business against the cost of supporting your injured worker and may include:

- weekly compensation benefits
- medical and hospital expenses

Get a quote or take out a policy

Find out what your workers insurance policy could cost

What's

Sole traders and proprietorships

Sole traders / proprietors, or members of a partnership are not considered as workers. Hence they cannot take out workers insurance to cover themselves for injuries.

For sole traders and partnerships, a suitable alternative may be a personal accident and illness policy, or an income protection insurance policy. However, it's not a legal requirement to take out one of these policies.

If you're not an exempt employer you will still need to take out a workers insurance policy to cover any workers you might have.

If you're hired as a worker by a sole trader or partnership, then your employer may need to take out a workers insurance policy to cover you.

Examples:

Benten v William Campbell Foundation [2021] NSWPIC 15

Member Dalley comments at para 30 cont

- "The interpretation of the term "employment" sought to be applied by the respondent would result in pre-injury average weekly earnings being calculated without reference to additional earnings from self-employment, notwithstanding that earnings from self-employment, following injury, would clearly be deducted from the worker's entitlement to weekly payments."

Benten v William Campbell Foundation [2021] NSWPIC 15

Member Dalley comments at para 31

- "If the respondent's submission is accepted there would be an imbalance between the pre-injury average weekly earnings of a worker and the worker's entitlement to weekly payments. The resulting payment would not reflect the worker's pre-injury income from personal exertion."

Benten v William Campbell Foundation [2021] NSWPIC 15 (11 March 2021)

Member Dalley comments at para 3 cont

- "A worker who supplemented earnings from his or her own business by a few hours casual employment would be severely disadvantaged if the worker was injured while performing the casual employment so as to be unable to carry on his or her business. The mere fact that a worker adopted a business model so that he was employed by his own family company or a family trust would, on the respondent's contention, result in income from that employment being included in the calculation of pre-injury average weekly earnings but a worker who did not interpose a corporation or trust in the business model would be penalised."

Insights gained concerning sole trader income

Consideration should be given for including sole trader income in additional employment for the calculation of PIAWE.

Applying this approach will usually lead to an increased PIAWE

When workers compensation payments are made for a prior claim, during the relevant earning period

Insurers often exclude the weekly compensation paid but include the weeks it was paid when calculating PIAWE

This inevitably leads to a reduced PIAWE outcome

Nitchell v Secretary (Department of Communities and Justice) [2022] NSWPIC 625

The facts

- Ms Nitchell sustained an injury on 17 March 2022.
- The insurer used a full 52 weeks prior to the injury to calculate PIAWE as the relevant earning period time for calculation.
- Over the 52 weeks of the relevant earning period time, Ms Nitchell received $88,116.76 in payments.
- During the 52 weeks of the relevant earning period, Ms Nitchell had received 14 weeks of weekly compensation for a prior workers compensation injury.
- The 14 weeks were a mix of no capacity for work and capacity for light duties with ‘make up’ pay paid in that period

Nitchell v Secretary (Department of Communities and Justice) [2022] NSWPIC 625

The facts

- The workers compensation payments in these 14 weeks totalled $16,162.23.
- The insurer excluded/removed the workers compensation payments when calculating the earnings leaving $71,954.53 gross earnings correctly consistent with Clause 6(2)(c) of the Schedule.
- The insurer divided the $71,954.53 by a full 52 weeks to calculate Ms Nitchell's PIAWE
- The insurer calculated the PIAWE to be $1,383.74 per week

Nitchell v Secretary (Department of Communities and Justice) [2022] NSWPIC 625

- **Schedule 3 of the Workers Compensation Act NSW 1987**
- **6 Meaning of "earnings"**
- (2) The **"income"** of a worker does not include--…
- (c) any payment in respect of loss of earnings under a scheme to which the workers compensation legislation relates or under any other insurance or compensation scheme, or

Nitchell v Secretary (Department of Communities and Justice) [2022] NSWPIC 625

Member Wynyard at para 68

- "Thus **an apparent anomaly arises** – cl (6) provides that the period when compensation and reduced earnings were paid is to be excluded from the PIAWE (as the income is not "earnings") but cl(2)(2) requires an insurer to apply the period of 52 weeks ending immediately before the date of the subject injury in calculating the PIAWE. The only lawful adjustment to the period is pursuant to the regulations which "may" be made, which brings us back to regulation 8C."

Nitchell v Secretary (Department of Communities and Justice) [2022] NSWPIC 625

Member Wynyard at para 73

- "…This **lacuna in the scheme** has resulted in the insurers applying the whole period notwithstanding that part of it related to the receipt of income which was expressly excluded from the calculation. This is **unconscionable**."

Nitchell v Secretary (Department of Communities and Justice) [2022] NSWPIC 625

Member Wynyard at para 83

- In Bermingham v Corrective Services of NSW McHugh JA said at 203:
- "[It] is not only when Parliament has used words inadvertently that a court is entitled to give legislation a strained construction. **To give effect to the purpose of the legislation, a court may read words into a legislative provision if by inadvertence Parliament has failed to deal with** an eventuality required to be dealt with if the purpose of the Act is to be achieved."

Nitchell v Secretary (Department of Communities and Justice) [2022] NSWPIC 625

Member Wynyard at para 88

- "… read the words "immediately before the date of injury" in Schedule 3(2)(2) as meaning "immediately before the date of injury, or as adjusted where a worker receives income as defined by Clause 6((2)(c) hereof."

Nitchell v Secretary (Department of Communities and Justice) [2022] NSWPIC 625

Member Wynyard's decision

- "86. The insurer contravened the provisions of Schedule 3(6)(2)(c) when it included in the calculation of the PIAWE the period when the applicant had been in receipt of compensation for her unrelated injury.

- 87. The 52 week period provided for the calculation of the PIAWE is adjusted by deducting the 14 weeks to which Schedule 3(6)(2)(c) applied.

Insights gained when workers compensation payments are made for a prior claim during the relevant earning period

Consideration should be given to excluding both the weeks the weekly compensation was paid in and the workers compensation payments themselves

Applying this approach will usually lead to an increased PIAWE

- Questions?

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ILARS Update

Philip Jedlin
Director ILARS

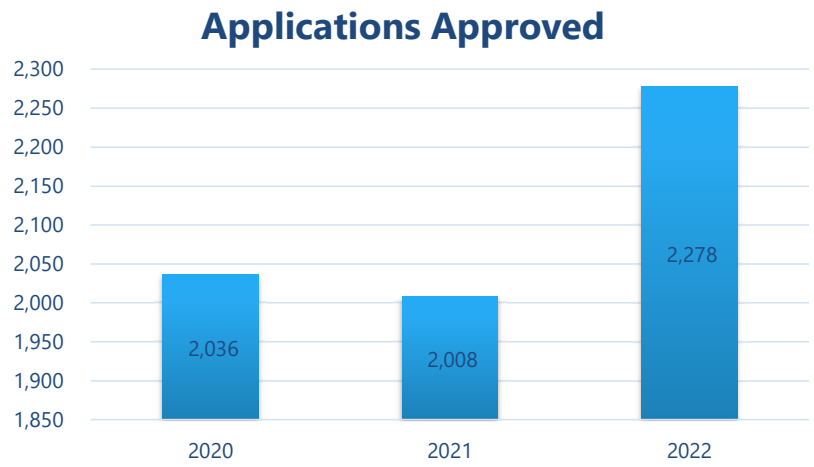
ILARS Update

- ILARS – key statistics
- Applications and invoices – how to improve productivity
- Right to reviews under the ILARS Funding Guidelines
- Changes to ILARS Processes
  - Automated Updates
  - Centralised email management

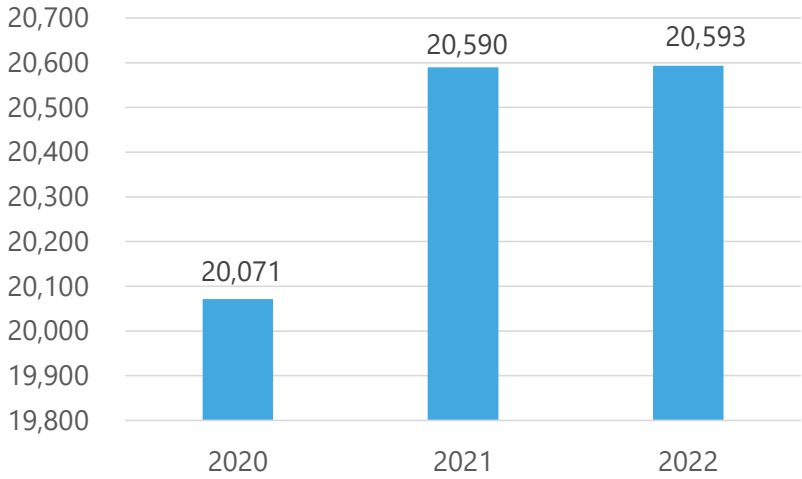
Applications Approved

Your region includes Hunter and the Central Coast

Your Region

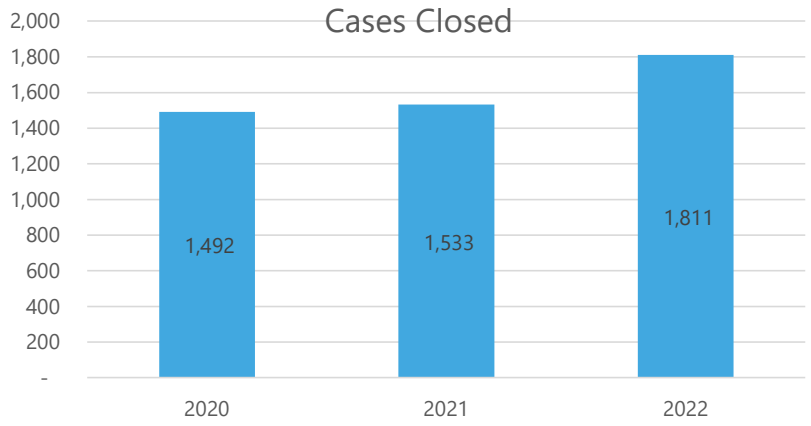


All Firms



Closed Cases

Your Region



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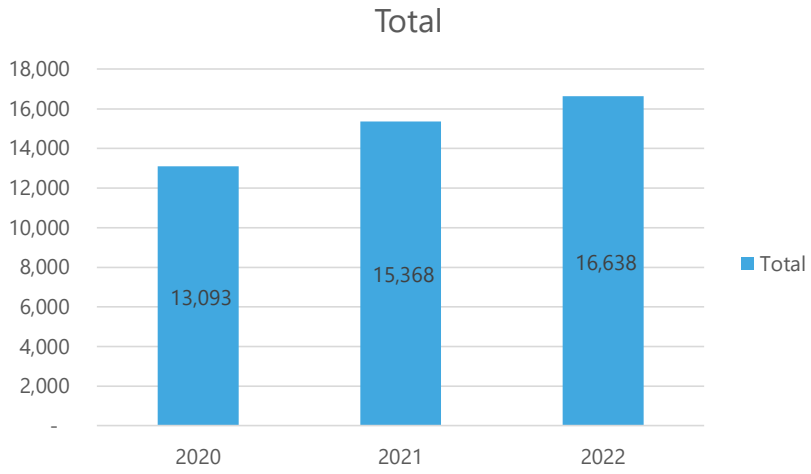

Injured persons in your Region

Table shows the number of cases for injured workers in your region the region and where their law firm is located

	Top 5 body systems for injuries					
Top 10 Regions for law firms	**Hearing**	**Lower extremity**	**Psychiatric and psychological disorders**	**The spine**	**Upper extremity**	**Grand Total**
Your Regions	789	595	762	872	922	3940
All other Regions	1434	607	1024	858	929	4852
Total	2223	1202	1786	1730	1851	8792
Percent of matters managed by AL's in your region	35%	50%	43%	50%	50%	45%
-Excluding Hearing loss						48%

Application for Grants issues - 2020-22

Issue	All Regions		Your Region	
	Number	%	Number	%
Duplicate Applications	787		64	
Applications Consolidated with other grant	808		48	
Request for further information	4552	8	541	9
Remind Request for further information	683	15	102	19
Average time to approve application - All accepted applications	3.8 days		4.0 days	
Where NO request made for further information	2.5 days		2.6 days	
Where a request is made for further information	23.6 days		26.5 days	

Applications

- Supporting material –request for funding this includes detailed submissions
- Explanation of the merit/arguable case of a request for funding
- Details of insurer's response to claims. Be Mindful of the timeframes for responses to claims by Insurers.
- Requests for Updates
- Correct ILARS reference in the subject line in correspondence
- Accurate details in application for funding
- Attaching PDF's, not links

Invoices - 2020-22

Issue	All Regions		Your Region	
	Number	%	Number	%
Invoices processed from law firms	46,924		6,605	14
Total number of invoices with errors *-an invoice may have more than one error or is returned more than once*	10,907	23	1,597	24
-Grant related issues	7,791	17	1,138	19
-Invoice related issues	4,333	9	646	10
Issues with MRP invoices	1,978	3	344	3

Recurring Themes

- Date Missing or incorrect
- ILARS reference incorrect or missing
- GST added to disbursements
- Incorrect amounts
- Copies of medico-legal reports
- EFT details
- Format –PDF is required
- Invoices do not tally

Invoices in Your Region - Requests for amendment

Grant related errors

- Disbursements exceed approved funding – 22%
- Legal cost exceed approved funding -27%
- Supporting documents not supplied -49%

Invoice related errors

- Incorrect bank details -4%
- Wrong amount -59%
- Wrong GST -11%

Impact of Invoice errors

Extended response times

Multiple interactions

Causes delay in
the payment of the invoice.

Reviews of Funding Decisions under the ILARS Guidelines

Clause 2.12 of the Funding Guidelines sets out the review process

- 2.12.1 When the IRO will review a funding decision
- 2.12.2 What a review will consider
- 2.12.3 How a review will be conducted
- 2.12.4 Possible outcomes of a review of a funding decision
- 2.12.5 Final Review

Example of review - Request for Stage 2 funding

- AL submits the following to the PL
  - IP still receiving treatment from various providers.
  - IP unable to work.
  - The injuries are affecting the IP's concentration, and social and recreational activities.
- Funding Request is refused by IRO and further information is sought.
- AL seeks review and provides additional information with submissions

Examples of reviews - Request for Stage 2 funding cont

- On Review additional submissions were sought
  - A medical report which provides a diagnosis of the IP's condition.
  - Another medical report that indicates that there is severe psychological trauma.
- Learnings
  - Had the information provided to the reviewer been available to the PL stage 2 would have been provided.
  - There would have been a far more timely funding of this matter.
  - Far fewer interactions and emails.

What have we learned from reviews?

- There is great benefit when the Approved Lawyer provides all relevant and up to date information to the Principal Lawyer when the request for funding is first made.
  - You can always provide the additional information to the Principal Lawyer after they decline your request rather than asking for a Director Review
- If there is a difficulty with a request from a Principal Lawyer please call them to discuss the circumstances of the matter.
  - Ask the Principal Lawyer what further information they need to approve your request

Changes to update requests

Recent Changes

- Automated Updates

What has changed

- Increased frequency in update requests

What is expected of you

- Timely response to update requests

Where contact is unsuccessful

- After 12 months your grant maybe closed.

Where contact is unsuccessful

Your attention is drawn to clause 2.14 of the ILARS Funding Guidelines.

- Where a grant matter remains open for a period of twelve (12) months without any progress, the grant matter may be closed without payment of legal costs.
- A fresh application maybe required to continue funding.
- Submissions will be required to support the payment of any costs on the closed matter.
- Please respond to our update requests to avoid closure of your grant.

KEY Messages

- Completion of all the fields in the Update form assists IRO
- Where information is received by you please advise IRO by forwarding the information to the ILARSALmail@iro.nsw.gov.au from 23 March
- Where extension requests are made please address the merit test and the arguable case test.
- If there is a doubt please call the Grant Manager or an ILARS Manager.
- When you call 13 94 76 the call is answered by our Solutions team who deal with Injured Persons and not ILARS cases. They often cannot assist you and will pass your message onto the Principal Lawyer or paralegal managing your matter.
- Updates
  - Please respond to the update requests.
  - Please reply using the email option on the email rather than creating a new email.
  - Please use the templates provided in your response.

Changes to how we send and process emails

- On 23 March IRO will introduce changes to how we manage received emails and how we send emails to Approved Lawyers
- The change is designed to help us improve our productivity in responding to and managing emails
- Currently received emails are managed from and individual PL/paralegal's inbox
- The Centralised Email Management System will send all emails to you from a new mail box - ILARSALmail@iro.nsw.gov.au

What impact will the email changes have upon you?

There is no change to how you send new applications to ILARS	• Please continue to use ILARScontact@iro.nsw.gov.au
When sending emails to ILARS or responding to ILARS emails in the "To" field	• Please use ILARSALmail@iro.nsw.gov.au in the "To" field.

Independent
Review Office

IRO Solutions and Observations from Motor Accident Compensation Complaints

Jeffrey Gabriel
A/Director Strategy, Policy and Support

IRO Solutions Jurisdiction

Complaints

- Schedule 5, Clause 8 of the *Personal Injury Commission Act 2020*

Early Solutions

- Schedule 5, Clause 9 (2)
  "The purpose of ILARS is to…provide assistance in finding solutions for disputes between workers and insurers."

Workers Compensation Enquiries

Operationalising the Complaint Function

- **The IRO Complaint Handling Protocol**
  - Defines how and which matters we deal with
  - Consultation with industry participants
  - Complaints outcome seeking response that is “fair and reasonable”
  - What complaints we may not deal with?
    - Matters the subject of the PIC
    - Where no attempt to resolve with insurer

IRO Early Solutions

- Specifically called put in PIC Act
- No Response to Claim (NRTC)

  TIP: If NRTC – carefully check timelines and check with insurer before seeking Stage 3 funding

- Case Study
- Other early solutions

What IRO Values in a Complaint

- A good chronology
- Evidence of trying to resolve things with the insurer
- A paper trail. E.g. the email evidencing a request was made
- A suggested solution or solutions that you seek
  - (Remember - IRO cannot adjudicate disputes)

Key Lessons from our Experience in Complaints

Service

- Unreturned phone calls + emails are behind a lot of complaints
- Keep claimants updated
- Timeliness
- Start weekly payments ASAP – MAIA claims
- Try to find out the issue behind the question

Detail

- Notices that lack detail attract complaints. E.g., dispute notices in MAIA claims

IRO Complaints Overview

- 1 July – 31 December 2022
  3766 WC complaints (up 10% on H1 2021-22)
  408 CTP complaints (like for like up 18%* on H1 2021-22)

- Main drivers
  - Increased economic activity year on year due to COVID-19 restrictions ending
  - Increased TMF complaints (up 36%)**
  - Increased awareness of IRO CTP function

Common Workers Compensation Matters

Percentage of all workers compensation complaints for H1 2022-23

- Delay in determining liability 26.3%
- Delay in payment 19.7%
- General Case Management 13.0%
- Request for documents 10.3%

Common CTP Complaint Matters

Percentage of all motor accident complaints for H1 2022-23

Subjects

- Income support/weekly payments 22.3%
- Case Manager 16.4%
- Treatment and Care 15.9%

Issues

- Timeliness 34.1%
- Service/Communication 27.0%
- Decisions 23.0%

CTP Focus

IRO Solutions Priority

- Uplift in CTP work
  - CTP Care
  - Adapt to changes in legislation
  - Emerging case law from PIC
- Deal with increasing volumes
- More engagement with insurers

CTP Focus

Income Support/Weekly Payments

- Biggest driver of IRO CTP complaints in 2022-23
- Time taken to commence weekly payments.
- Time taken to confirm PAWE, meaning extended periods on interim rate
- Case studies

CTP Focus

Treatment and Care

- Complaints related to medical expenses and domestic assistance.
- Most prominent issue for this complaint subject is timeliness.
- Timeliness is critical in claims where compensation period is limited (e.g., minor injury / threshold injury or at fault claims). Claimants often miss out due to untimely decisions.
- Changes to minor injuries
- Case studies

CTP Focus

Case Manager

- Complaints of this kind often relate to customer service issues
- Often tied to processing of benefits
- Case studies

CTP Focus

IRO Impact

- At a local level with insurer – changes to payment cycles
- Referral of matters to SIRA
- Aggregated data and significant matters
- Contributes to SIRA's regulatory work
    - Licence conditions on insurers
    - Penalties

CTP Focus

Motor Accident Injuries Amendment Act 2022

- Removal of the ‘minor’ injury terminology, now be known as a ‘threshold injury’
- Extension of the entitlement of statutory benefits for claimants wholly or mostly at fault, for a period of up to 52 weeks
  - Problems with 26 weeks were highlighted by IRO
- Claims made after 28 days – weeklies payable for earlier periods.
  - Something highlighted in IRO submissions
- Removal of the waiting period of 20 months before an injured person can lodge a claim for modified common law damages

CTP Focus

Motor Accident Injuries Amendment Act 2022

- Removal of s6.23(1), enabling parties to resolve damages claims at any time.
- Removal of the requirement to seek internal review prior to lodging a medical dispute to determine the degree of whole person impairment
- SIRA's (State Insurance Regulatory Authority, NSW) ability to enact guidelines which specify what treatment and care will be considered necessary for treatment of certain injuries

Questions?

Independent
Review Office

Substantive Law Update

Federal Diversity Jurisdiction – The Story So Far

Michelle Riordan

Manager Legal Education

Relevant decisions

- Burns v Corbett [2018] HCA 15
- Johnson v Dibbin; Gatsby v Gatsby [2018] NSWCATAP 45
- Attorney General for New South Wales v Gatsby [2018] NSWCA 254
- Citta Hobart Pty Ltd v Cawthorn [2022] HCA 16
- Ritson v State of New South Wales [2021] NSWPIC 409
- Ritson v State of New South Wales [2022] NSWDC 133
- Ritson v State of New South Wales (No 1) [2022] NSWDC 345
- Ritson v State of New South Wales (No 2) [2022] NSWDC 347
- Lee v Fletcher International Exports Pty Ltd [2022] NSWPIC 271
- Fletcher International Exports Pty Ltd v Lee [2022] NSWPICPD 39
- Watts v BKFY Pty Ltd [2022] NSWPIC 700
- State of New South Wales v Kanajenahalli [2023] NSWPICPD 1
- Mizzi v State of New South Wales (New South Wales Police Force) [2023] NSWPIC 53

Burns v Corbett [2018] HCA 15

- The High Court held that a State tribunal, which is not a "court of a State", is unable to exercise judicial power to determine matters between residents of different states.

Johnson v Dibbin; Gatsby v Gatsby [2018] NSWCATAP 45

- NCAT determined 3 residential tenancy disputes where a party lived outside NSW.
- The NSW Attorney General intervened in the appeal.
- The Appeal Panel held that it had authority at first instance to hear and determine the application ***because it was exercising judicial power and it is a court of a state*** for the purposes of Ch III of *the Constitution* and s 39 of the *Judiciary Act 1903 (Cth)*
- The NSW Attorney General appealed to the Court of Appeal and applied for judicial review and the Commonwealth Attorney General intervened.

Attorney General for New South Wales v Gatsby (Gatsby) [2018] NSWCA 254

The Court of Appeal found that NCAT is not a court of a State and it could not exercise judicial power to determine the dispute.

Bathurst CJ held:

> Judicial power *means "the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action"*: *Huddart, Parker and Co Pty Ltd v Moorehead* (1909) 8 CLR 330 per Griffith CJ at 357.

Gatsby

***Bathurst CJ (with Beazley P, McColl and Leeming JJA* agreeing**) found that NCAT was not a court.

Basten JA *also* held that NCAT is not a court of a State

Gatsby

Leeming JA cited the decision of Brennan J in *Re Adams and the Tax Agents' Board* (1976) 12 ALR 239 at 242:

> "An administrative body with limited authority is bound, of course, to observe those limits. Although it cannot judicially pronounce upon the limits, its duty not to exceed the authority conferred by law upon it implies a competence to consider the legal limits of that authority, in order that it may appropriately mould its conduct. In discharging its duty, the administrative body will, as part of its function, form an opinion as to the limits of its own authority. The function of forming such an opinion for the purpose of moulding its conduct is not denied to it merely because the opinion produces no legal effect."

NCAT erred as its orders *"conveyed concluded determination"* and *"formally recorded a concluded determination on two legal issues."*

Citta Hobart Pty Ltd v Cawthorn (Cawthorn) [2022] NSWCA 16

- The ***Tasmanian Anti-Discrimination Tribunal*** dismissed a complaint for lack of jurisdiction when a constitutional defence was raised.
- The ***Full Tasmanian Supreme Court*** held that the defence was "misconceived," but did not clearly identify an appealable error.
- The ***High Court allowed the appeal.***
- As the defence was genuinely raised and "*it was not incapable on its face of legal argument*", there was "*a single justiciable controversy*" (of a matter described in ss 76(i) and (ii) of *the Constitution*) and the Tribunal was correct to dismiss it for want of jurisdiction.
- A Tribunal has power to determine the limits of its State jurisdiction.

Cawthorn

- The starting point is the principle that "*all power of government is limited by law*" and that within the limits of its jurisdiction, "*the function of the judicial branch of government is to declare and enforce the law that limits its own power and the power of other branches of government through the application of judicial process and through the grant, where appropriate, of judicial remedies*".
- A Tribunal must have power to take the steps needed to ensure its compliance with that duty and this power is not inherently judicial, because its exercise is incapable of quelling a controversy between parties about existing legal rights.
- A Tribunal, which is invested with non-judicial power, "*has authority to make up its mind*" or "*decide in the sense of forming an opinion*" about the limits of its own jurisdiction "*for the purpose of determining its own action*".

Cawthorn

- A State Tribunal exercises judicial power when it decides that a claim or complaint is or is not a matter described in ss 75 or 76.
- If jurisdiction is wrongly found to exist, the order made in its purported exercise is wholly lacking in legal force.
- The Tribunal's decision that the complaint was beyond its jurisdiction was a judicial opinion and the order dismissing it for want of jurisdiction was made in the exercise of its State judicial power. The question for the Full Court and in this appeal was whether that order was correct?
- The existence and scope of a matter described in ss 75 or 76 must be determined by *"objective assessment"* and an examination of its prospects of success, were it to be judicially determined on its merits, forms no part of the required assessment.

Ritson v State of New South Wales [2021] NSWPIC 409 (Ritson)

- In 2011, the worker received damages for injuries including a right thumb injury in 2006. The parties signed a deed of release.
- In 2021, after he moved to Queensland, the worker claimed $825 under s 60 *WCA*.
- The respondent relied upon s 151A WCA, but it also disputed jurisdiction.
- ***Member Harris*** stated that:
  - The relevant time to determine residency is when the ARD is filed;
  - The insurer (SiCorp) was a State for the purposes of s 75(iv) of *the Constitution;* and
  - As the matter was between a State and a resident of another State, the PIC lacked jurisdiction to determine it.

Ritson v State of New South Wales [2022] NSWDC 133

Judge Dicker SC held that Principal Member Harris' analysis was correct and that the court is bound by the High Court's decisions in:

- *Foxe v Brown* [1984] HCA 69; 59 ALJR 186 at [14] per Mason J;
- *Watson v Marshall & Cade* [1971] HCA 33; 124 CLR 621 at [2] per Walsh J; and
- *Momcilovic v The Queen* [2011] HCA 34; 245 CLR 1 at [134] per Gummow J.

- He granted the plaintiff leave to proceed and reserved the question of costs pending determination of either the substantive dispute or the defendant's Notice of Motion seeking summary dismissal.

Ritson v State of New South Wales (No 1) [2022] NSWDC 345
Ritson v State of New South Wales (No 2) [2022] NSWDC 347

- In *Ritson (No 1)*, ***Judge Neilson*** entered an award for the defendant. He found that the deed that the parties signed in 2011 included the 2006 thumb injury.

- In *Ritson (No 2)*, His Honour held that based upon a proper construction of the PIC Act, neither the PIC nor the District Court could order the plaintiff to pay the defendant's costs.

Lee v Fletcher International Exports Pty Ltd **[2022] NSWPIC 271**

- The worker lived in QLD, but the respondent's registered office was in NSW.
- The respondent disputed jurisdiction.
- ***Member Whiffin*** held that the PIC would not be exercising federal jurisdiction because the employer was *a corporation* and it was "*not a resident of a State*" within the meaning of s 75(iv) of *the Constitution*.

Fletcher International Exports Pty Ltd v- Lee **[2022] NSWPICPD 39**

- ***Deputy President Snell*** revoked the COD.
- The appellant relied on 2 PIC decisions regarding damages claims under the motor accidents legislation, but these did not bind him as the relevant rule does not apply to a workers compensation application.
- The Member purported to determine the ***substantive dispute on its merits***, rather than considering the arguability of the defence: *Cawthorn*.

Watts v BKFY Pty Ltd [2022] NSWPIC 700 (Watts)

- The worker lived in Victoria when the ARD was filed. The employer was a private company and was insured in NSW by Icare.
- The worker claimed compensation under s 66 *WCA*. The respondent disputed jurisdiction and argued that as it was insured by Icare (incorporated by s 4 of the *State Insurance Care Governance Act 2015)*, it was "*a government agency*" and therefore "*a State*".
- ***Member Harris*** noted that State Tribunals are not forbidden from taking steps or resolving issues that do not involve the exercise of judicial power, even if the dispute might otherwise be seen to fall within the scope of federal jurisdiction, such as attempts at conciliation: *Searle* at [20]. This is arguable until a Court definitively rules on the issue.

Watts

The High Court (in *Crouch)* and the Federal Court (in *Deputy Federal Commissioner of Taxation v State Bank of New South Wales)* held that a reference in *the Constitution* to the Commonwealth or States includes "*a corporation which is an agency or instrumentality of the Commonwealth or the State as the case may be*".

In this matter:

- The claim was made against the employer and not the insurer;
- the action was brought against a private company and not the insurer;
- While the insurer exercises a statutory right of subrogation, this does not alter the identity of the parties to the proceedings; and
- There was no arguable defence that the employer was a "*State*" for the purposes of *the Constitution*.

Watts

- The parties relied upon his decision in *Ritson,* but he stated that in *Ritson* the State of NSW was the employer and the matter is not authority for the proposition that all self-insurers are statutory bodies representing the Crown.
- The fact that a private corporation has a right to a self-insurer license because private funds are secured against potential claims, in circumstances where it is operating a private business, does not suggest that it is a "S*tate*" or an agency or instrumentality of a State.

State of New South Wales v Kanajenahalli (Kanajenahalli) [2023] NSWPICPD 1

The worker left NSW before commencing PIC proceedings. The employer disputed the claim under s 11A *WCA*, but it did not object to jurisdiction.

Member Burge rejected the s 11A defence and awarded compensation to the worker. He did not note any jurisdiction issue.

On appeal, ***Deputy President Wood*** identified a jurisdiction issue and she held that for the PIC to have jurisdiction it must be either a court of a State (and thus invested with relevant federal jurisdiction) or be exercising administrative power.

- Both parties agreed that the PIC is not a court of a State.
- Wood DP rejected the parties' arguments that the Member was exercising administrative power and that determining the appeal would also involve an exercise of administrative power. The issue was whether the constitutional defence was "*colourable*" or "*arguable*"?: *Cawthorn*.

Kanajenahalli

Wood DP:

- Cited the decision in *Orellana-Fuentes*, in which Ipp JA (Spigelman CJ and Handley JA agreeing) held:

  > *Undoubtedly, the Commission does exercise judicial powers, but this does not necessarily make it a court. There are many institutions that exercise judicial powers but are well recognised not to be courts.*

- She held that the fact that the PIC is not a court does not necessarily mean that all its decisions are administrative in nature: see in *Tasmanian Breweries per* Kitto J.
- She also held that the Court of Appeal's decision in *Searle* does not assist the parties, as the Court did not consider the nature of the power exercised in the Workers Compensation Division and/or at Presidential level.

Kanajenahalli

- In ***Rafiqul Islam v Transport Accident Commission of Victoria and Heather Worldon v Transport Accident Commission of Victoria*** *[2022] NSWDC 582 (**Islam**),* Weber SC DCJ stated that **judicial power**:
  (a) Is exercised independently of the person against whom the proceedings are brought;
  (b) Is binding and authoritative, whether or not it is subject to appeal;
  (c) Determines existing rights and obligations according to law, thus quelling the controversy between the parties, and
  (d) Must be exercised judicially by way of an "open and public enquiry (unless the subject matter necessitates an exception)" and the "observance of the rules of procedural fairness".

Mizzi v State of New South Wales (New South Wales Police Force) [2023] NSWPIC 53

Member Capel held that the COD ***merely formalises*** the WPI, quantifies an amount of compensation that is payable, and orders that it be paid.

As there is ***no determination per se***, it is not arguable that the Medical Assessor's assessment, and PIC's issue of the Medical Assessment Certificate and the Certificate of Determination, involve the exercise of federal jurisdiction: see Kirk JA in *Searle v McGregor*.

Final points

- *Cawthorn* is authority for the proposition that where a constitutional defence is raised, and it is not incapable on its face of legal argument, the matter is potentially federally impacted.
- However, the PIC has State power to determine the limits of its own jurisdiction – appropriately to mould its conduct - and failure to exercise or observe the jurisdictional limits can be rectified by the Supreme Court.
- In *Fletcher,* the Member erred by undertaking a merits assessment of the jurisdictional dispute rather than considering whether that defence was arguable.
- In *Watts, the PIC* set out the relevant criteria to consider in deciding whether a matter is potentially federally impacted and confirmed that references to a "State" in *the Constitution* include references to a corporation which is an agency or instrumentality of a State.

Final points

- In *Kanajenahalli,* the Member wrongly exercised judicial power and determined the substantive dispute as his decision operated to quell the dispute about the reasonableness of the appellant's conduct and the worker's entitlement to compensation.
- Therefore, determining the appeal would also involve an impermissible exercise of judicial power.

Note: Kanajenahalli is currently on appeal to the Court of Appeal.

- However, Member Capel's decision in *Mizzi* is to the effect that the issue of a COD, following a MAC, does not involve an exercise of judicial power.
- Accordingly, it is unlikely that there will be any certainty in relation to this issue until a determination is made by a higher Court (such as the Court of Appeal or the High Court).

ILARS funds federal jurisdiction matters

- Legal advice and assistance at no cost to worker
- Funding is done on a 'best equivalence' basis
- Additional work is funded as the complexity increases (at Attorney-General's rates)
- Separate funding is available for Counsel
- Please see: Federal jurisdiction funding policy.pdf (nsw.gov.au)

Questions?