

WorkSafe Contractor Guidelines

General contractor provisions – Contractor Deductions

These guidelines apply from 1 July 2011

Preamble

An individual may be deemed to be a worker of a hirer under the general contractor provisions which are explained under *WorkSafe Contractor Guidelines - General contractor provisions and rules for incorporated contractors*. If this occurs then the amounts paid or payable to the contractor less the applicable deduction for materials, goods or equipment (if any) is deemed to be remuneration for the purposes of the hirer's WorkSafe insurance policy.

This ruling explains when a hirer will be entitled to use a deduction and provides the applicable prescribed deductions for certain professions or trades. Please note that certain key terms are defined at the end of this document.

Guidelines

When will a hirer be entitled to use a prescribed deduction?

A hirer will be entitled to use a prescribed deduction where WorkSafe is satisfied that all of these conditions are satisfied –

- the hirer has entered into a contractual arrangement with a contractor and for a relevant period, an individual is deemed to be a worker of the hirer for that period under the general contractor rules;
- the contractor provides their own materials, goods or equipment during the relevant period which have not been purchased from the hirer;
- the amounts paid or payable to the contractor for the relevant period includes amounts in respect of those materials or equipment; and
- the services provided by the contractor under the contractual arrangement are included in the professions/trades listed below.

What are the applicable prescribed deductions?

Type of contractor	Prescribed deduction from gross payments to contractor
Architects	5%
Bricklayers	30%
Building Supervisors (who provide their own vehicles and are required to supervise and inspect more than six different building sites each 7 day period)	25%
Cabinet makers	25%
Carpenters	25%
Carpet layers	25%
Computer programmers	5%
Draftspersons	5%
Driving instructors who provide their own vehicles	30%
Electricians	25%

Type of contractor	Prescribed deduction from gross payments to contractor
Engineers	5%
Fencing contractors	25%
Painters	15%
Plasterers	20%
Plumbers	25%
Resilient floor layers	37%
Roof tilers or slaters	25%
Tree fellers	25%

Can a hirer use a deduction for other types of contractors?

If a profession/trade is not listed above, a hirer may apply to WorkSafe for a determination with details regarding the cost of materials, goods or equipment (non-labour amounts) provided by the contractor in conjunction with the supply of services.

As WorkSafe is a self-assessing system in respect to remuneration, the evidentiary burden of proving non-labour amounts provided by the contractor in conjunction with the supply of services lies with the hirer. That is, if it is not clear from the contract document itself, the hirer must be able to provide supporting documentation for each contract. It is inappropriate for a hirer to state general percentages.

Written evidence may be documentation such as:

- contract costing that show the allowances for non-labour amounts; or
- copies of invoices clearly showing the breakdown of the contract costs; or
- copies of the contractor's tax returns showing deductions for non-labour amounts; or
- a copy of the contract.

Any written evidence provided must clearly identify:

- the names of the parties involved;
- the expense amounts;
- the exact nature of the expenses;
- the date the expense was incurred or the contract arrived at.

If a hirer fails to keep sufficient records to enable them to substantiate that the contract payment includes non-labour amounts, the whole contract amount must be declared as remuneration.

INTERPRETATION

For the purposes of these guidelines, the following definitions apply.

Contractor

“Contractor” means any business structure (e.g. an individual, company, partnership, sole trader, trustee) that enters into a contractual arrangement with a hirer for the performance of services.


Contractual arrangement

“Contractual arrangement” for the purposes of section 8 of the Act means a contract for the performance of work (whether the contract is express or implied, is oral or is in writing) or a series of such contracts between a contractor and a hirer during a relevant period.

However, a contractual arrangement for the purposes of section 8 of the Act does not include arrangements to which a more specific section of the Act applies.

Examples of contracts that do not fall under section 8 of the Act include:

- a contract of employment at common law (see section 5 of the Act)
- a contract for the carrying of goods between a hirer and an owner driver (see WorkSafe Contractor Guidelines – Owner Drivers)

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- a contract for the performance of work by a secretary of a co-operative housing society within the meaning of the Co-operative Housing Societies Act 1958 (see section 5I of the Act)
 - a contract for the performance of door to door selling work by an individual within the meaning of section 5 J of the Act
 - a contract for the performance of work by an individual that is a timber contractor within the meaning of section 6 of the Act
 - a contract of bailment between a taxi driver and another person within the meaning of section 7 of the Act
 - a contract between a land owner and a share farmer within the meaning of section 11 of the Act
 - a contract between a hirer and an outworker within the meaning of section 17 of the Act.

Hirer

“Hirer” means any business structure (e.g. an individual, company, partnership, sole trader, trustee) that operates a business and enters into a contractual arrangement with a contractor for the purposes of that business. A hirer does not include a non-commercial party such as private householder.

A hirer includes any person who is a member of the same group as the hirer within the meaning of section 66 of the *Accident Compensation (Workcover Insurance) Act 1993*. Accordingly, the ruling is to be applied as if the group is the hirer.

Individual

“Individual” means –

- the contractor; or
- if the contractor is a partnership, an individual member of the partnership; or
- if the contractor is a company, a member, director, shareholder or employee of the company; or
- if the contractor is a trustee of a trust, a person who may benefit under that trust or is an employee of the trustee.

Policy

“Policy” means a WorkSafe Insurance Policy issued under section 7 of the *Accident Compensation (WorkCover Insurance) Act 1993*.

Rateable remuneration

“Rateable remuneration” means remuneration that is subject to a premium within the meaning of section 8 of the *Accident Compensation (WorkCover Insurance) Act 1993*.

Relevant period

“Relevant period” in relation to services provided under a contractual arrangement means –

- the financial year in which those services are, or are to be, provided; or
- if those services are, or are to be, provided in two consecutive financial years, the twelve month period beginning on the date on which those services are first provided pursuant to the contractual arrangement.

Services

“Services” means and includes results (whether goods or services) of work performed.

WorkSafe

“WorkSafe” means either the Victorian WorkCover Authority or its authorised agent.

Disclaimer

Unless otherwise specified within these guidelines, this guideline is WorkSafe’s interpretation of the Law as it has operated to date and continues to operate. Guidelines do not have the force of law. Each decision is made on the merits of each individual case having regard to any relevant guidelines. It is an employer’s responsibility to ensure that they are using the current version of a guideline.