

WorkSafe Contractor Guidelines

General contractor provisions – Contracts mainly for equipment or materials

These guidelines apply from 1 July 2011

Preamble

Where the provision of equipment and/or materials by a contractor under a contractual arrangement is the main purpose of that arrangement, the individual that is the contractor, or is engaged by that contractor, will not be a deemed worker of the hirer under the general contractor rules.

The general contractor rules are explained under the guideline *General contractor provisions and rules for incorporated contractors*.

These guidelines explain when the provision of equipment and/or materials is the main purpose of a contractual arrangement. Please note that certain key terms are defined at the end of this document.

Guidelines

For a relevant period under a contractual arrangement, that arrangement will be mainly for the provision of materials and/or equipment if WorkSafe is satisfied that all of these conditions apply –

- under the arrangement, the provision of labour is ancillary to the provision materials and/or equipment by the contractor;
- under the arrangement, the cost to the contractor of the supply of the materials or equipment is, or is expected to be, more than 50% of the contractor's gross contractual income;
- based on market prices at the time of the arrangement, the above amount attributable to materials and/or equipment is reasonable; and
- the materials and/or equipment have not been purchased from the hirer or any entity that is a member of the same group as the hirer (within the meaning of section 66 of the Accident Compensation (WorkCover Insurance) Act 1993).

However, if the above does not apply because the contractor bought the materials and/or equipment from the hirer (or a member of a group to which the hirer belongs) at arm's length; and the hirer believes that the contractual arrangement is mainly for the provision of materials and/or equipment, the hirer may apply to WorkSafe for a determination.

Alternatively, the hirer may be entitled to a deduction depending on the profession of the contractor (see guideline *General contractor provisions – Contractor Deductions*).

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)
- 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 5J 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.

Deemed Worker

“Deemed worker” means the individual that is deemed to be the worker under a contractual arrangement.

Gross contractual income

“Gross contractual income” means the amounts payable to a contractor under a contractual arrangement before the contractor’s expenses, deductions or taxes are accounted for.

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.

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.