

# WorkSafe Contractor Guidelines

## General contractor provisions and rules for incorporated contractors

These guidelines apply from 1 July 2011

### Preamble

The main purpose of the general contractor provisions under section 8 of the Accident Compensation Act 1985 (the Act) is to deem an individual to be the worker of the hirer for WorkSafe purposes where the contractual arrangement is akin to an employment relationship. In most cases, an objective three-part test under the provisions will determine if deeming applies.

The rules for incorporated contractors under section 9 and 10 of the Act are required because an individual may be a deemed worker of a hirer under the general contractor provisions and also be a worker of their own company in respect of an instance of work. The rules clarify when an incorporated contractor is required to hold a policy, what is rateable remuneration under that policy and how WorkSafe will handle a compensation claim received from the deemed worker.

These guidelines explain how the general contractor rules and the rules for incorporated contractors operate. Please note that certain key terms are defined at the end of this document.

### Guidelines

#### How do the general contractor rules operate?

For a relevant period under a contractual arrangement between a contractor and a hirer, if **all** of the following three conditions apply -

- 1) **the provision of materials or equipment is not the principal object of the arrangement:** (See WorkSafe Contractor Guidelines – Contracts mainly for equipment or materials); and
- 2) **at least 80% of the work is performed by the same individual:** under the arrangement, at least 80% of the contractor's gross contractual income is, or is to be, a direct result of the services performed by the same individual; or under the arrangement, at least 80% of the contractor's total time to complete the services is, or can be expected to be, taken up by the same individual; and
- 3) **at least 80% of the contractor's overall services income is earned from the hirer:** under the arrangement, the contractor's gross contractual income that is earned, or is expected to be earned is at least 80% of the contractor's overall services income -

then unless, in rare cases, WorkSafe determines that the arrangement is part of the contractor's independent trade or business –

- the individual is deemed to be a worker of the hirer for that period; and
- the amounts paid or payable to the contractor under the arrangement less the applicable deduction (see the guideline *General contractor provisions – Contractor Deductions*) is deemed to be rateable remuneration for the purposes of the hirer's policy.

## **What factors will WorkSafe consider in determining whether a contractual arrangement is part of a contractor's independent trade or business?**

In making its decision, WorkSafe will review the contractor's business and consider factors including -

- the use of a business name by the contractor
- the history of the formation of the contractor's business
- the extent and nature of advertising undertaken by the contractor
- the range of clients serviced by the contractor
- the extent and nature of plant and equipment provided by the contractor in execution of the services
- the engagement of staff or sub-contractors by the contractor
- the use of business premises by the contractor
- the method of operation of the business (such as tendering for jobs)
- the contractor's entrepreneurial risk
- the nature of contracts entered into (e.g. formal long term or informal rolled over contracts)
- whether work is performed on separate contracts at the same time
- the nature of the contractor's business and the type of services provided
- whether the contractor quotes competitively for jobs on an all inclusive basis (all labour and materials), and
- whether the contractor merely charges for services on an hourly rate and adds on the cost of materials.

None of the above factors is conclusive on its own. The above is not an exhaustive list of factors that WorkSafe will take into account. WorkSafe will also consider any other matters that are relevant to making the required decision.

The mere fact that a contractor works on a succession of jobs for different hirers does not always mean that WorkSafe will be satisfied that the contractor is carrying on an independent trade or business.

## **How should a hirer under a contractual arrangement request a determination from WorkSafe?**

To request a determination from WorkSafe, the hirer must make a request in writing to their WorkSafe agent that provides WorkSafe with -

- sufficient information to be satisfied that the contractor under the contractual arrangement meets all of the three conditions noted above for one or more relevant periods; and
- the reasons and evidence that support the hirer's claim that the relevant contractual arrangement is part of the contractor's independent trade or business. This should include consideration of the factors listed above and any other relevant factors.

## **When do the rules for incorporated contractors apply?**

The rules apply whenever there is a deemed worker under a contractual arrangement between a hirer and an incorporated contractor.

## **If the rules apply, how will WorkSafe treat a workplace injury claim from a person that is a deemed worker?**

If the rules apply and the person that is a deemed worker under the relevant contractual arrangement incurs a workplace injury while performing work under that arrangement, that person may only make a claim for WorkSafe compensation with the hirer under that arrangement.

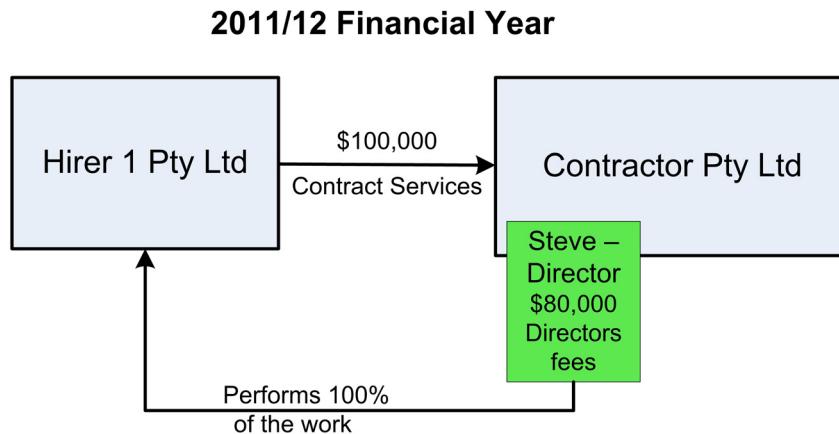
However, If that person incurs a workplace injury in circumstances other than the above, then WorkSafe will treat that claim in accordance with all the usual rules that apply in relation to WorkSafe insurance.

## Does an incorporated contractor need their own WorkSafe Insurance policy?

Like any other employer, an incorporated contractor must obtain and keep in force a policy if it pays, or expects to pay more than \$7,500 per financial year in rateable remuneration, or if it hires apprentices or trainees.

However, incorporated contractors should note that if, for any reason, their company is liable to make a payment to a person that is a deemed worker under a contractual arrangement between their company and a hirer, any such payment is not required to be declared as remuneration. Accordingly, not all incorporated contractors are required to obtain and keep in force their own policy.

### Example



Under this example, if it is assumed that Steve is a deemed worker of Hirer 1 Pty Ltd throughout the 2011/12 policy period, then for that period -

- the **\$100,000** payable by Hirer 1 to Contractor Pty Ltd for the performance of contract services by Contractor Pty Ltd is remuneration for the purposes of Hirer 1 Pty Ltd's WorkSafe insurance policy;
- the **\$80,000** of director's fees payable by Contractor Pty Ltd to Steve is not required to be declared as remuneration by Contractor Pty Ltd; and
- in relation to the performance of the contract services, Steve may only make a claim for WorkSafe compensation with Hirer 1 Pty Ltd.

## 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.

### Deemed Worker

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

### 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 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.

### **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.

### **Incorporated Contractor**

“Incorporated contractor” means a contractor that operates under any incorporated business structure (e.g. an incorporated company registered under the Corporations Act 2001 or a trust with an incorporated company as the trustee) that enters into a contractual arrangement with a hirer for the performance of services.

### **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.

### **Overall services income**

“Overall services income” means the overall gross contractual income earned by the contractor from all hirers during a relevant period for the performance of services of the same kind as under the contractual arrangement.

### **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.

### **The Act**

“The Act” means the Accident Compensation Act 1985

### **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.*