

WorkSafe Contractor Guidelines

Owner Drivers

These guidelines apply from 1 July 2011

Preamble

Under section 7A of the *Accident Compensation Act 1985* (the Act), an unincorporated owner driver is deemed to be a worker of their hirer unless WorkSafe determines that the owner driver is carrying on an independent trade or business.

These guidelines explain when WorkSafe may determine that a contractor is carrying on an independent trade or business and what WorkSafe considers to be remuneration for WorkSafe insurance purposes.

These guidelines do not apply to pushbike couriers as WorkSafe considers that such persons are employees of the courier business for which they provide goods transportation services. Please note that certain key terms are defined at the end of this document.

Guidelines

Will an incorporated owner driver be deemed to be a worker of a hirer for WorkSafe insurance purposes?

Under section 8 of the Act, where an incorporated owner driver enters into a contractual arrangement with a hirer, then -

- the individual or individuals that perform, or are to perform, under that arrangement, the transport services will not be deemed to be a worker of the hirer; and
- the amounts paid or payable to the owner driver's company under that arrangement are not required to be declared as rateable remuneration under the hirer's WorkSafe insurance policy.

The incorporated owner driver will need to obtain and keep in force a WorkSafe insurance 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.

Will an unincorporated owner driver be deemed to be a worker of a hirer for WorkSafe insurance purposes?

For a relevant period under a contractual arrangement between an unincorporated owner driver and a hirer, the unincorporated owner driver will be deemed to be a worker of the hirer unless WorkSafe considers that the arrangement is part of the owner driver's independent trade or business during that period.

When will WorkSafe consider that an unincorporated owner driver is carrying on an independent trade or business?

Where an unincorporated owner driver enters into a contractual arrangement with a hirer (the relevant hirer), and any one of the following conditions apply for a relevant period –

1. Relief drivers perform or are to perform at least 20% of the goods transport services: under the contractual arrangement, the unincorporated owner driver engages, or is to engage, under that arrangement, relief drivers or sub contracted drivers (other than a member of a family) who perform at least 20% (by gross contractual income) of the goods transport services; or

2. Less than 80% of overall services income is or is to be earned from the relevant hirer: the unincorporated owner driver has performed, or is to perform, under contractual arrangements, goods transport services for the relevant hirer and at least two other hirers and does or will not earn more than 80% of their overall goods transport services income from any one hirer; or
3. Goods transport services are or are to be performed on less than 180 days for the relevant hirer: under contractual arrangements, the unincorporated owner driver provides, or is to provide, under contractual arrangements, goods transport services -
 - to the relevant hirer and at least one other hirer during the relevant period; and
 - to the relevant hirer on less than 180 days in that relevant period and has also provided those services to that hirer on less than 180 days in the previous relevant period; or
4. Services are performed on less than 3 days a week for the relevant hirer: under contractual arrangements, the unincorporated owner driver provides, or is to provide, under contractual arrangements, goods transport services –
 - to the relevant hirer and at least one other hirer during the relevant period; and
 - the unincorporated owner driver performs or is to perform goods transport services for the relevant hirer on less than 3 days a week for at least 26 weeks during that relevant period -

WorkSafe considers that the unincorporated owner driver is carrying on an independent trade or business for that relevant period.

What if an unincorporated owner driver is deemed to be a worker of a hirer?

If an unincorporated owner driver is deemed to be a worker of a hirer, the amount paid or payable under the contractual arrangement to the unincorporated owner driver (less the applicable percentage deduction specified in these guidelines) must be declared as rateable remuneration under the hirer’s WorkSafe insurance policy.

What are the applicable percentage deductions under these guidelines?

The following are the applicable percentage deductions for the purposes of these guidelines.

Vehicle Supplied	Percentage deduction from the amount paid or payable under a contractual arrangement
Prime Movers	70 per cent
From 10 tonnes to Prime Movers	50 per cent
Motor vehicles from 3 tonnes to less than 10 tonnes	25 per cent
Couriers – motor vehicles less than 3 tonnes	25 per cent
Couriers – motor cycles	10 per cent

INTERPRETATION

Contractual arrangement

“Contractual arrangement” means a contract for the performance of goods transport services (other than an employment contract) or a series of such contracts (whether the contract is express or implied, is oral or is in writing) between an owner driver and a hirer during a relevant period.

Goods transport services

“Goods transport services” means the transport and delivery of goods and any other services must be ancillary or secondary to this purpose.

Gross contractual income

“Gross contractual income” means the amounts paid or payable to an unincorporated owner driver under a contractual arrangement before that owner driver’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 an owner driver for the purposes of that business. A hirer does not include a non-commercial party such as private householder. This 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 owner driver

“Incorporated owner driver” means an owner driver that operates under any incorporated business structure (e.g. a company registered under the Corporations Act 2001 or a trust with a company as the trustee).

Overall goods transport services income

“Overall goods transport services income” means the overall gross contractual income earned by the unincorporated owner driver from all hirers during a relevant period for the performance of goods transport services.

Owner

“Owner” includes a part owner and also includes a person who has the possession and use of the vehicle under or subject to a hire-purchase agreement or a bill of sale or like instrument or under or subject to a written hiring agreement (not being a hire-purchase agreement) which requires that person to register the motor vehicle or trailer in that person's name, in accordance with the *Road Safety Act 1986*.

For the purposes of these guidelines, the hirer must make no contribution, whether directly or indirectly, to the capital or running expenses of the vehicle.

Owner driver

“Owner driver” means a contractor who drives a motorcycle, car or truck (“the vehicle”), of which he or she is the owner, for the purposes of providing goods transport services.

Member of a family

“Member of a family” means the partner, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister, uncle, aunt, nephew, niece, cousin and any person who stands in the place of a parent in relation to another person or that other person in accordance with the *Accident Compensation Act 1985*.

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.

Unincorporated owner driver

“Unincorporated owner driver” means an owner driver that is not an incorporated owner driver.

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.