



# Wages Definition Manual

30 June 2023

#### Disclaimer

This publication may contain work health and safety and workers compensation information. To ensure you comply with your legal obligations you must refer to the appropriate legislation. Information on the latest laws can be checked by visiting the NSW legislation website ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)).

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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## Important information

The two main Acts referred to in the Wages Definition Manual are:

- *Workers Compensation Act 1987 (the 1987 Act)*
- *Workplace Injury Management and Workers Compensation Act 1998 (the 1998 Act).*

For further information on how premiums are calculated, refer to icare’s website <http://www.icare.nsw.gov.au>

# Introduction

The purpose of this manual is to provide a guide to employers, accountants, auditors and other interested parties, on remuneration taken into account for the purposes of assessing an employer's workers' compensation premiums.

It aims to help ensure there is a consistent approach to the declaration of remuneration. This consistency will help make sure that each employer covered for workers' compensation insurance administered by icare pays the correct amount of premium.

Where a payment to a worker is made in lieu of wages (regardless of the terminology used to describe that payment) then the payment is counted as remuneration for the purposes of calculating workers' compensation premiums.

Many of the payments covered by the 1987 Act under the definition of 'wages' are not of the type that might be generally thought of as wages – for example, the definition includes 'any other consideration in money or money's worth given to the worker' under a contract of service or a training contract. For this reason, icare uses the term 'remuneration'.

This edition supersedes the June 2022 edition.

## How the system works

icare collects workers' compensation premiums from employers to cover the costs associated with work-related injuries and diseases. This includes payment of benefits to an injured worker, to cover them for the loss of wages, medical and other health related treatment, rehabilitation and lump sums for permanent disabilities.

## What can you use this manual for?

You can use this manual to help you determine whether a particular payment is to be counted as 'remuneration' for the purposes of assessing the employer's premium. See Chapter B, which sets out icare's interpretation in relation to many different types of payments.

Whether a payment is remuneration for the purposes of workers' compensation is set out in the 1987 Act and the 1998 Act. The purpose of this manual is to provide general information about the legislation and how icare interprets it.

## Why is this manual needed?

The manual deals with the definitions of 'remuneration' and 'worker' and some related administrative matters e.g. record keeping and resolving disputes.

## What is an employer's premium based on?

Each employer's workers' compensation premium is based on various things, including:

- the industry in which the employer operates
- the amount of remuneration the employer pays to its workers
- for those employers who are experience-adjusted the cost of any claims made by their workers. For a definition of an experience-adjusted employer go icare's website <http://www.icare.nsw.gov.au>.

Some employers are no longer required to obtain a workers' compensation insurance policy for their workers. If the employer pays, or expects to pay, \$7,500 or less in annual remuneration during a financial year then they are not required to hold a policy.

However, if an employer engages apprentices or is a member of a Group for workers' compensation purposes, they are still required to take out a workers compensation insurance policy, regardless of the amount of annual wages paid. This also applies to employers whose NSW Workers Compensation Industry Classification (WIC) is subject to per capita rates (e.g. Taxi Drivers (shifts/ No. of plates), Boxers (bouts) and Harness Racing jockeys (drives)).

Remuneration includes wages and other amounts such as allowances, fringe benefits, superannuation and payments made to contractors who are deemed to be workers.

Penalties may apply if an employer provides incorrect wage declarations or fails to take out a policy, if not an exempt employer, when their wages exceed \$7,500 in a financial year.

## Why is the level of weekly compensation benefits different to what an employer declares as remuneration?

Payments of weekly compensation benefits to an injured worker are calculated in accordance with the 1987 and 1998 Acts.

Weekly benefits form only one element of workers' compensation benefits that an injured worker may be entitled to receive. Depending on the nature and severity of their injury, they may receive medical and other health-related treatments, rehabilitation, medication for their injury, or be entitled to a lump-sum payment for a permanent impairment.

## The relevant legislation

This manual sets out the criteria icare applies in determining the amount of remuneration an employer must declare. icare also uses the same criteria for the purposes of:

- considering an employer's request for a review regarding the payments included in a worker's remuneration.
- considering an employer's understatement of wages. See section 174 of the 1987 Act
- considering an employer's possible evasion of correct premiums. See sections 175 and 175A of the 1987 Act. For non-insurance, see sections 155 and 156 of the 1987 Act.

## Improving this manual

icare welcomes comments on this manual and any suggestions as to how it might be improved. We will then update it as required.

## Any questions?

If you have any questions about this manual, please contact icare's Customer Service Centre on:

**Phone:** 13 44 22

If you are an employer wishing to dispute the assessment of your premium, refer to the information on disputes in Chapter I.

# Chapter A – Meaning of ‘remuneration’

Many of the payments covered by the 1987 Act under the definition of ‘wages’ are not of the type that might be generally thought of as wages – for example, the definition includes ‘any other consideration in money or money’s worth given to the worker under a contract of service or a training contract. For this reason, icare uses the term ‘remuneration’.

## What is this chapter for?

An employer’s premium is calculated on the basis of ‘remuneration’ paid to ‘workers’. So the meaning of each of those terms is crucial. This chapter deals with ‘remuneration’.

Worker is explained in Chapter E.

This chapter covers the general principles in relation to ‘remuneration’. The detailed list of icare’s interpretation in relation to particular types of payments is in Chapter B. However, because of the complexity involved in each of the following areas, there is a separate chapter for:

- directors – see Chapter C
- trusts – see Chapter D
- superannuation – see Chapter A & B
- deemed workers – see Chapter F
- contractors – see Chapter G
- apprentices, trainees and government training programs – see Chapter H.

## What payments are counted as remuneration?

The 1987 Act defines ‘wages’ broadly.

Generally, a payment to a worker is ‘remuneration’ if it is made to, or for the benefit of, the worker.

## What is the definition of ‘wages’ in the 1987 Act?

Section 174 (9) of the 1987 Act defines wages as follows

wages in relation to a worker-

- a. includes salary, overtime, shift and other allowances, over-award payments, bonuses, commissions, payments to working directors (including payments as directors’ fees), payments for public and annual holidays (including loadings), payments for sick leave, value of board and lodging provided by the employer for the worker and any other consideration in money or money’s worth given to the worker under a contract of service or a training contract
- b. includes payment (whether by way of commission, fee, reward or otherwise) under a contract (whether referred to as a contract, agreement, arrangement or engagement) by reason of which the person paid is deemed by Schedule 1 to the 1998 Act to be a worker, after deducting such amount for costs necessarily incurred by that person in performing that contract as may be agreed on or, in default of agreement, as may be determined by the Authority, and
- c. includes payments for long service leave (including a lump sum payment instead of long service leave and any payment under the *Building and Construction Industry Long Service Payments Act 1986*) or the *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010*, and
- d. includes a payment made in consequence of the retirement from, or termination of, any office or employment of a worker, being:
  - i. a lump sum payment paid before or after that retirement or termination in respect of unused annual leave, or unused annual leave and a bonus, loading or other additional payment relating to that leave, or
  - ii. an amount paid in respect of unused long service leave, or
  - iii. an amount paid in respect of unused sick leave, and
- e. includes the amount that is the employer’s fringe benefits taxable amount (within the meaning of the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth) in respect of fringe benefits payable to the worker, and
- f. includes a superannuation benefit, being money paid or payable by the employer in respect of the worker:

- i. to or as a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, or
  - ii. as a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, or
  - iii. to or as any other form of superannuation, provident or retirement fund or scheme, including a wholly or partly unfunded fund or scheme, and
- g. includes a distribution to a worker as beneficiary under a trust that is required to be included as wages by Section 174AA, and
- h. does not include:
- iv. directors' fees (except to the extent that these fees are payable to working directors and are included as wages under paragraph (a)), or
  - v. compensation under this Act, or
  - vi. (vii) any GST component in a payment to a worker.

See Chapter B for the detailed list of icare's interpretation in relation to particular types of payments.

## Inclusion of trust distributions as wages

Section 174AA of the 1987 Act states the following

1. A distribution to a worker as beneficiary under a trust constitutes wages for the purposes of section 174 to the extent that the distribution is in lieu of wages for work done for the trust by the worker.
2. Work that constitutes the provision of services to the trustee of a trust, or for the purposes of a business conducted by the trustee of a trust, is work done for the trust.
3. This section applies in respect of distribution to a worker only if:
  - a. there is a wages shortfall in respect of work done for the trust by the worker
  - b. the distribution is made in the financial year in which the work is done or in the following financial year.
4. There is a wages shortfall in respect of work done for the trust by the worker if the total wages (if any) paid or payable to the worker during the financial year in which the work is done is less than the wages that would be payable to the worker for that work if wages were payable at the market rate for that work (with the difference constituting the wages shortfall for the purposes of subsection (5)).
5. If the distribution does not exceed the wages shortfall in respect of the work, the whole of the distribution is in lieu of wages for work done for the trust by the worker. Alternatively, if the distribution exceeds the wages shortfall in respect of the work, the distribution is in lieu of wages to the extent of the shortfall.
6. For the purpose of determining whether a particular distribution is in lieu of wages for work done for the trust, the total wages (if any) paid or payable to the worker during a financial year for the work is taken to include any previous distribution (whether made during that financial year or the following financial year) that, by application of this section, is a distribution in lieu of wages for the same work.
7. The market rate for work is the minimum wage rate applicable in respect of the work (or work that is comparable to the work):
  - a. pursuant to an industrial instrument in force under a law of the State
  - b. if paragraph (a) does not apply, pursuant to an industrial instrument in force under a law of the Commonwealth
  - c. if neither paragraph (a) nor (b) applies, as provided by the Workers Compensation Guidelines or as determined and notified by the Authority in the particular case.

See Chapter D for more information on trust distributions.

## Chapter B – icare’s interpretation in relation to particular payments

(Supplement to section 174 (9) of the 1987 Act)

### How do you use this list?

The list in this chapter sets out icare’s interpretation as to what is remuneration (and what is not) as applied to many particular types of payments.

In the list, you can look up the type of payment about which you need guidance and then apply icare’s interpretation to your situation.

You need to bear in mind that it is impractical for this manual to deal with every particular type of payment an employer might ever make to, or in relation to, a worker or a deemed worker.

In unusual cases, not covered by this manual:

- Employers should contact icare for advice.
- If an employer disputes what is included as remuneration, icare will assess the matter consistent with the law and the principles outlined in this manual. This manual provides guidance about icare’s interpretation of the law.
- Unless stated otherwise (e.g. fringe benefits) the gross amount is counted as remuneration.

The following is a summary of common remunerations payments and shows if the payment is to be counted as remuneration.

### Adoption leave

Adoption leave payments are counted as remuneration.

### Advancement of salary payments

Payment in advance of salary or any other entitlements is counted as remuneration.

### Allowances and expenses (see details under the headings about various types of allowances and expenses)

Allowances and expenses can generally be separated into two broad categories, those which are intended to reimburse actual expenditure incurred by a worker as part of their employment (e.g. tool allowance, travelling allowance, meal allowance etc) and those which relate in some way to the nature or location of the work itself (e.g. height allowance, shift allowance, skills allowance etc).

Although the terms allowances and expenses are sometimes interchangeable, the following principles generally apply regardless of the terminology applied to the payment:

- Any ordinary amount paid as part of wages under an Award which are intended to reimburse actual expenditure incurred by a worker as part of their employment (such as tool allowance, travelling allowance, meal allowance etc) is not counted as remuneration.
- Any ordinary amount paid as part of wages under an award paid to a worker as part of their employment which relate in some way to the nature or location of the work itself (such as height allowance, shift allowance, skill allowance, etc) is counted as remuneration.
- Any payment greater than the Award rate is counted as remuneration.
- Any consideration subject to fringe benefits tax is counted as remuneration.
- Where there is no applicable Award or industrial instrument the entire payment is counted as remuneration unless indicated otherwise in the following notes. Further, where a payment is made having no regard to an actual expense being incurred, the entire payment is counted as remuneration.

Award means any industrial instrument within the meaning of the *Industrial Relations Act 1996*, any agreement with respect to salaries or wages entered into between an employer and a union under any other NSW law, and any other award, agreement or other instrument under a Commonwealth, State or Territory law.

## Annual leave and public holiday payments (including loadings)

Annual leave and public holiday payments are counted as remuneration. Lump sum payments on termination for annual leave are counted as remuneration, including payments made on the death of a worker.

## Apprenticeship Schemes

See Chapter H.

## Australian Construction Industry Redundancy Trust (ACIRT)

Payments to the Australian Construction Industry Redundancy Trust (ACIRT), known previously as the Construction Employees Redundancy Trust (CERT), are not counted as remuneration.

See Termination payments for further information.

## Board and lodging

If the employer provides free or subsidised board and lodging to the worker as part of their conditions of employment (whether expressed or implied) then the benefit is counted as remuneration. Remuneration is the relevant market value of the total value of the board and lodging.

See 'Housing' and 'Fringe benefits'.

## Bonuses

Bonuses are counted as remuneration.

## Building and Construction Industry Long Service Leave Scheme

Certain payments made under the Building and Construction Industry Long Service Payments Act 1986 are counted as remuneration.

Long service leave payments made directly to workers in the building and construction industry by their employers are counted as remuneration. The amount to be counted is the payment to the worker less the reimbursement receivable from the Building and Construction Industry Long Service Leave Corporation in respect of those payments.

Payments made on benefits accrued before 30 June 2003 and paid after that date is counted as remuneration.

## Car allowances and expenses

Payments made in accordance with an Award or industrial instrument that represent a reimbursement of actual expenses incurred by a worker as part of their employment, are not counted as remuneration. However, any payment greater than the award rate is counted as remuneration.

In instances where a payment is made having no regard to the actual expenses incurred, the entire payment is counted as remuneration.

Where there is no applicable Award or industrial instrument, any payment up to the nominated cents per kilometre rate as regulated by SIRA is not counted as remuneration. However, any payment greater than the nominated cents per kilometre rate is counted as remuneration.

Further information in calculating the extent to which motor vehicle allowances are excluded from wages are published by the State Insurance Regulatory Authority (SIRA) on its website in the Workers Compensation Market Practice and Premiums Guidelines - [www.sira.nsw.gov.au](http://www.sira.nsw.gov.au)

See 'Company car', 'Fringe benefits' and 'Allowances and expenses'.

## Charities, churches and public benevolent institutions

All fringe benefits provided to workers are counted as remuneration.

Charities, churches and public benevolent institutions may have different fringe benefit thresholds. These organisations should maintain with their wage records the appropriate fringe benefit thresholds for their organisations.

Worker benefits that are not subject to fringe benefits tax, that is they are less than the relevant Australian Tax Office (ATO) fringe benefit threshold, should be counted at the net value.

Once the workers' benefits exceed the ATO fringe benefit threshold then the employer must declare those fringe benefits at the grossed-up value. That is, the portion of the benefit that exceeds the ATO threshold (called the non-exempt amount by the ATO) must be declared at the grossed-up value and the portion of the benefit that is below the threshold should be declared at the net value (i.e. actual value of the benefit).

See 'Fringe benefits' and 'Rebatable employers'.



## Childcare expenses

If the employer pays the worker's childcare expenses, then the payment is counted as remuneration.

See 'Fringe benefits' and 'Allowances and expenses'.

## Cleaning Industry Portable Long Service Leave Scheme

The Cleaning Industry Portable Long Service Leave Scheme, established under the Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010, commenced on 1 July 2011 and is funded by quarterly levies that are payable by employers to the Long Service Leave Corporation.

Long service leave payments made directly to workers in the cleaning industry by their employers are counted as remuneration. The amount to be counted is the payment to the worker, less the reimbursement receivable under the Cleaning Industry Portable Long Service Leave Scheme from the Long Service Leave Corporation in respect of those payments.

Payments made on benefits accrued before 1 July 2011 and that are paid after that date are counted as remuneration. The quarterly levy is not counted as remuneration.

## Clothing

If the employer pays for or reimburses the worker for clothing expenses that the worker incurs as part of their employment, then the payment is not counted as remuneration. In any other case, the payment is counted as remuneration.

See 'Uniform allowance', 'Fringe benefits' and 'Allowances and expenses'.

## Commission(s)

Commissions are counted as remuneration.

## Community Development Employment Project (CDEP)

Remuneration an employer pays to workers in the CDEP is counted as remuneration for the purposes of calculating an employer's premium. However, the other costs funded by the Project are excluded (e.g. costs for equipment and rental).

## Company car – private use of

If an employer provides a worker with a car, including a worker's private use of a car or through any type of leasing arrangements for private use, the benefit is counted as remuneration.

See also 'Car allowances and expenses' and 'Fringe benefits'.

## Company house (market value of rental)

See 'Housing'.

## Compensation payments

See 'Workers compensation payments'.

## Construction allowances

Construction allowances are counted as remuneration whether or not they are paid in accordance with an Award or industrial instrument. Allowance types include; productivity, height, foreman, wet day, leading hand, dirty work, shift, skill, heat and cold and site allowances.

## Contractors – deemed to be workers

See Chapter G.

## Credit card expenses

Payment of personal expenses with an employer supplied credit card that are not subject to reimbursement by the worker is counted as remuneration.

See 'Fringe benefits'.

## Directors' fees and payments

See Chapter C.

## Dirt money

Dirt money is counted as remuneration.

## Distant work allowance

See 'Living-away-from-home allowance'.

## Dividends

See Chapter C.

## Domestic worker's payments

Wages, salary, fringe benefits, superannuation and/or any other consideration provided by an employer for a domestic worker are counted as remuneration under the Workers' Compensation policy.

## Early retirement benefits

See 'Termination payments'.

## Employee share schemes

Any benefit in money or money's worth received by a worker or their family members under an employee share scheme is counted as remuneration if the payment or remuneration (shares, share options, dividends, trust distributions, franking credits etc) is made in lieu of wages or classified as a fringe benefit under the Fringe Benefits Tax Assessment Act 1986 (Commonwealth)

## Entertainment expenses

If the employer pays for or reimburses the worker for entertainment-related expenses and the payment is subject to fringe benefits tax, then payment is counted as remuneration.

See also 'Fringe benefits' and 'Allowances and expenses'.

## Family and Domestic Violence Leave

Family and domestic violence leave payments are counted as remuneration. These payments are recorded on payslips as ordinary hours of work or another kind of payment such as an allowance, bonus or overtime and also noted as annual leave, special leave or some other type of paid leave, which are also assessable for remuneration purposes.

## Fares

See 'Travel allowance'.

## First aid allowances

First aid allowances are counted as remuneration.

## Flexible work package payments (pre-purchased leave arrangements)

Any wages, salary and any other consideration in money or money's worth the employer provides to a worker as part of a 'flexible work package arrangement' are counted as remuneration.

Payments made to a worker whilst on a flexible work leave arrangement are not counted as remuneration.

For example, five (5) year package, first four (4) years employee works and receives 80 per cent of salary and 20 per cent is held by employer, 100 per cent of remuneration is counted.

The fifth year employee does not work but receives the 20 per cent that has been put aside throughout the previous four (4) years, this payment is not counted as remuneration.

## Free housing

See 'Housing'.

## Fringe benefits

Generally, if a non-cash component of a worker's remuneration is considered taxable under the *Fringe Benefits Tax Assessment Act 1986* then, for the purpose of calculating the employer's premium, it is counted as remuneration.

For more information about specific items attracting fringe benefits, see the relevant headings in this list.

### At what value?

For any fringe benefit, the amount that is to be counted as remuneration is the value of the benefits calculated using the 'taxable value of fringe benefits' ending 31 March in the particular premium policy year, as specified in the *Fringe Benefits Tax Assessment Act 1986*. The value of the benefits provided is the total of the Type 1 and Type 2 aggregate amounts multiplied by the Type 2 gross up rate applicable at the time (available from the Australian Taxation Office (ATO) website).

For example, a \$2000 gym membership would be valued at the grossed-up taxable amount which is \$2000 x the relevant FBT grossed-up formula amount.

When a policy is cancelled mid-term, the benefit declared should be calculated on a pro-rata basis having regard to the period elapsed.

When a business ceases to operate, the employer should declare the value of the benefit up to the date of ceasing the business as per the employer's FBT return.

### **What if the benefit is available to all of an employer's workers?**

Any fringe benefits that are available to workers as an incidental benefit of employment are counted as remuneration.

See 'Charities, churches and public benevolent institutions' and 'Rebatable employers'.

## **Gifts**

If an employer provides a gift to a worker and it is subject to fringe benefits tax, then the gift is counted as remuneration. Bonuses and incentive awards are counted as remuneration.

See 'Fringe benefits'.

## **Goods and Services Tax (GST)**

The Goods and services tax component of any payment paid to a worker, or a contractor who is a deemed worker, is not counted as remuneration.

## **Government funded allowances to support retention of staff during COVID-19 pandemic**

The State Insurance Regulatory Authority (SIRA) has determined that:

### **1. Payments subsidised by government COVID programs**

An insurer must exclude from wages any payment (or any part of any payment) made to a worker by an employer if the insurer is satisfied that:

- i. the employer was provided funds to make the payment (or the employer was reimbursed for the payment) under a government program established to support workers and employers impacted by the COVID-19 pandemic; and

- ii. the worker was not entitled to receive the payment under their ordinary employment arrangements, for example the payment was not a payment for work performed or a paid leave entitlement.

The insurer must exclude from wages any amounts received by a worker that have been paid under a relevant government program, to the extent of the difference between the amount of the funds provided to the employer to make the payment (or the amount of the reimbursement) and any amount the worker was entitled to receive during the period to which the payment relates, for example wages for work performed.

This exclusion applies to all policies in force for any period during which relevant government programs were being administered, irrespective of policy issue date.

For the purposes of this exclusion, government programs include but are not limited to the "JobKeeper payment", the "Aged Care Retention Bonus" and the "Council Job Retention Allowance".

*Example: A part-time worker whose usual weekly earnings are \$500 may take annual leave and receive the full \$750 JobKeeper payment during that leave period. As the worker was entitled to receive \$500 under their usual employment arrangements, \$500 of the \$750 paid to the worker is considered wages for premium purposes and \$250 must be excluded from wages for premium purposes.*

### **2. COVID payments made to workers not working**

An insurer may exclude from wages any payment (other than a payment subsidised by a government program described in 1 above) made to a worker who performed no work during the period to which the payment relates but only if the payment was a type of payment that is temporary in nature and made to support workers during the COVID-19 pandemic.

*Example: An insurer may exclude a temporary paid leave entitlement for workers who are required to self-isolate because they contract or are exposed to COVID-19.*

## Government training schemes, Group apprentice Schemes and Government training subsidies

See Chapter H.

## Height money

Height money is counted as remuneration.

## Honorariums

Honorariums to volunteers or non-workers are not counted as remuneration. Volunteer workers are generally not covered for workers' compensation. However, employers may still be liable for any injuries to volunteers. Employers should check with icare to ensure they have the appropriate coverage. However, should an employer elect to pay wages to a worker so that they may volunteer, or take leave to volunteer, the wages paid to the worker for the period the worker takes leave/undertakes volunteer activities are counted as remuneration.

## Housing and Housing Loans

Generally, housing payments, including company house, free housing and housing loans, are counted as remuneration. Remote housing allowances are not counted as remuneration.

The following payments are counted as remuneration:

- the current market rental value of a company house less any amount the worker pays for the right to occupy the premises
- the amount of temporary accommodation, associated with relocation, that is assessable for fringe benefits tax
- the taxable value of a housing loan that is offered to a particular worker as part of their salary package and is subject to fringe benefits tax.

## Income splitting

Fringe benefits and/or any other consideration, in payment for work done by a worker and provided by an employer to a person other than the worker as part of an income - splitting arrangement, is counted as remuneration; also refer to Chapter D Trust Distributions.

## Interstate workers

Workers compensation insurance requirements vary throughout Australia. Employers must verify with the relevant State or Territory authority the legislative requirements of that State or Territory.

The cross-border provisions contained in the 1987 Act determine in which jurisdiction the worker is entitled to claim compensation.

A worker's 'State of Connection' is determined by a cascading series of tests as follows:

Test A: the State/Territory in which the worker usually works in that employment, or

Test B: if no single State/Territory is identified by Test A, the State/Territory in which the worker is usually based for the purposes of that employment, or

Test C: if no single State/Territory is identified by Test A or Test B, the State/Territory in which the employer's principal place of business in Australia is located, or

Test D: in the case of a worker working on a ship, if no single State/Territory is identified by Test A, Test B or Test C: a worker's employment is, while working on a ship, connected with the State/Territory in which the ship is registered or (if the ship is registered in more than one jurisdiction) the State/Territory in which the ship most recently became registered, or

Test E: If no single State/Territory is identified by Test A, B, C or D (if applicable), a worker's employment is connected with a State/Territory if the worker is in that State/Territory when an injury happens to that worker and there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.

Wages, salary, fringe benefits and/or any other consideration provided by an employer for a worker who has a NSW 'State of Connection' is counted as remuneration against the employer's NSW workers' compensation policy.

## JobCover Placement Program

If an employer engages a previously injured worker under the JobCover Placement Program, then the wages the employer pays that worker are not counted as remuneration for the first 24 months of that person's employment subject to the conditions contained in the 'JobCover Placement Program Guidelines'. The guidelines are available on the State Insurance Regulatory Authority (SIRA) website <http://www.sira.nsw.gov.au/>.

## Jury duty payments

Payments made by the Court to a worker for jury duty attendance are not counted as remuneration. Return travel and meal allowances included in jury fees paid by the Court are not counted as remuneration. Employers are obligated to pay full time and permanent part-time employees for the first 10 days of jury duty, which is counted as remuneration. If a juror reimburses their employer the allowance received from the court, because the employer has paid their normal wages, only the normal wages paid to the worker by the employer are counted as remuneration.

## Laundry allowance

If the employer pays for or reimburses a worker for laundry related expenses that the worker incurs as part of their employment, then the payment is not counted as remuneration. In any other case, the payment is counted as remuneration.

See 'Fringe benefits' and 'Expenses and allowances'.

## Lease payments

Payment of lease/rent (in whatever form or name) for the provision of premises, equipment etc to working directors/working beneficiaries/workers which are commercially based, legally documented and subject to taxation are not counted as remuneration. Otherwise the payment of rent to working directors/working beneficiaries/workers is counted as remuneration.

## Leave loadings

Leave loadings and lump sum payments of leave loadings are counted as remuneration.

## Living-away-from-home allowance

If the employer pays for or reimburses the worker for living-away-from-home allowance that the worker incurs as part of their employment (for items such as accommodation or meals and incidental expenses, such as telephone costs) and the payment is subject to fringe benefits tax then the payment is counted as remuneration.

The living-away-from-home allowance is usually paid where the worker has relocated for work purposes. For the treatment of allowances paid to a worker where the worker is temporarily away from their principal place of residence see travel allowance.

See 'Travel allowance', 'Fringe benefits' and 'Allowances and expenses'.

## Loan payments

### Loans to the business by workers

Repayment of loans to working directors/working beneficiaries/workers which are commercially based, legally documented and subject to taxation are not counted as remuneration.

Repayments by the business of undocumented loans to workers, which are shown in the Balance Sheet as a credit for the loan and as a debit for the repayment of the loan to the worker, are not generally counted as remuneration. However, where there is no other form of remuneration to a worker or the remuneration does not equate to what would be reasonable payment (under the relevant award or current market rate) to the worker for the duties/work performed, then the loan repayments up to the value of the relevant award or current market rate for the work performed will be counted as remuneration.

### Loans to workers by the business

The payment of loan amounts to working directors/working beneficiaries/workers are assessable as remuneration based on the hours worked and the type of work performed. The amount is limited to the current market value of the remuneration that would be paid to a worker undertaking the same mix of duties and hours of work, and with the same skills, together with any allowances or other remuneration paid to the working director/working beneficiary/worker for employee-related duties for the industry relevant to the work performed, for the relevant period.

## Long service leave

Payments for long service leave, including lump sum payments, are counted as remuneration.

See 'Building and Construction Industry Long Service Leave Scheme' and 'Cleaning Industry Portable Long Service Leave Scheme'.

## Lump sum payments in lieu of holiday, sick leave (and the like)

Lump sum payments in lieu of holidays, sick leave (and the like) including leave loadings and bonuses, are counted as remuneration.

## Management fees

Management fees paid to working directors, working beneficiaries and workers for employment related activities are counted as remuneration.

See also Chapter C.

## Maternity leave payments

Maternity leave payments are counted as remuneration.

See 'Paid parental leave'.

## Meal allowance

If the employer pays an amount intended to reimburse a worker's meal related expenses, or pays for or reimburses the worker for meal related expenses, in accordance with an award at a rate specified by the award, then the payment is not counted as remuneration. However, any payment greater than the award rate is counted as remuneration. Where the meal expense is part of a 'living-away-from-home allowance or a travel allowance, refer to that section of this manual. In any other case, the payment is counted as remuneration.

See 'Fringe benefits', 'Entertainment expenses' and 'Allowances and expenses'.

## Mechanical and Electrical Redundancy Trust (MERT)

MERT payments are not counted as remuneration.

See 'Termination payments'.

## Military leave payments

Military leave payments are counted as remuneration.

## Over-award payments

Any payment over the award rate is counted as remuneration.

## Overseas employers

An overseas employer who engages workers in NSW must have a NSW workers' compensation policy.

Wages, salary, fringe benefits, superannuation and/or any other consideration an overseas employer provides a worker working in NSW, is counted as remuneration.

## Overseas workers (from overseas, working in NSW)

Wages, salary, fringe benefits and/or any other consideration an employer provides an overseas worker working in NSW, is counted as remuneration. The amount to be counted corresponds to the proportion of the wages that can be attributed to the time the worker is in NSW. This applies whether the payments are made within or outside Australia.

An incorporated worker from overseas who works in NSW must take out their own workers' compensation policy. Wages, salary, fringe benefits and/or any other consideration to the incorporated worker is counted as remuneration towards their workers' compensation policy.

## Overseas workers (from NSW, working overseas)

Wages, salary, fringe benefits and/or any other consideration provided by an employer to any worker who is normally based in NSW, while that worker is temporarily employed or working overseas, is counted as remuneration. This is to apply whether the payments are made within or outside Australia. Employers should also verify with the relevant overseas authority the legislative requirements of that country.

Where a NSW employer engages a worker to work overseas, then the employer must accept a workers' compensation policy (or equivalent) in accordance with the legislative requirements of that country. Wages, salary, fringe benefits and/or any other consideration to the worker is not counted as remuneration for the NSW workers' compensation policy.

## Overtime payments

Overtime payments are counted as remuneration.

## Paid parental leave scheme

The Paid Parental Leave Scheme is a new entitlement for working parents of children who were born or adopted on or after 1 January 2011. The scheme was established under the *Paid Parental Leave Act 2010 (Commonwealth)*. Parental leave pay is available to working parents who meet eligibility criteria and is fully funded by the Australian Federal Government. Eligible working parents can get 18 weeks of government funded parental leave pay at the rate of the national minimum wage.

The 18 weeks of Commonwealth Government funded parental leave pay is not counted as remuneration. Any payments in excess of Paid Parental Leave Scheme entitlement are counted as remuneration.

All other maternity and paternal leave payments are counted as remuneration.

## Parental leave payments

Parental leave payments are counted as remuneration.

## Paternity leave payments

Paternity leave payments are counted as remuneration.

## Payments in lieu of notice

Payments in lieu of notice are not counted as remuneration.

See 'Termination payments'.

## Payments made on behalf of the worker

If the employer spends money on behalf of the worker to the direct benefit of the employment of the worker (e.g. a computer course, training in relation to employment) then the payment is not counted as remuneration. In any other case, the payment is counted as remuneration.

See 'Fringe benefits'.

## Penalty rates

Penalty rates are counted as remuneration.

## Personal services income

Any personal services income attributed to an individual and not otherwise taken as salary or wages or other non-exempt form of remuneration is counted as remuneration.

## Productivity allowance

Productivity allowances including those paid in the construction industry are counted as remuneration.

## Profit sharing schemes

Benefits workers receive from profit sharing agreements are not usually counted as remuneration. However, when these benefits are provided in lieu of wages, then the benefit is counted as remuneration for the purposes of calculating workers' compensation premiums.

## Private use of company car

If an employer provides a worker with the private use of a company car, then the benefit is counted as remuneration.

See 'Fringe benefits' and 'Company car'.

## Public and annual holiday payments (including loadings)

Public and annual holiday payments including loadings are counted as remuneration.

## Rebatable employers

All fringe benefits provided to workers are counted as remuneration.

Certain employers are deemed Rebatable employers by the Australian Taxation Office (ATO). These employers should declare payments less than the threshold amount at the net value and those greater than the threshold amount at the grossed-up value.

See 'Fringe benefits' and 'Charities, churches and public benevolent institutions'.

## Redundancy payments

See 'Termination payments'.

## Retrenchment payments

See 'Termination payments'.

## Reward – payment by way of

Payment by way of a reward is counted as remuneration.

See 'Commission(s)'.

## Rollovers and options

Payments made for rollovers and options in the broadcasting and/or publishing industry where no additional work activities are undertaken are not counted as remuneration.

## Royalties

Royalty payments are not counted as remuneration.

## Salary

Salary is counted as remuneration.

## Salary package/sacrifice

Generally, any wages, salary and the value of fringe benefits and any other consideration in money or money's worth the employer provides to workers as part of a salary package or salary sacrifice arrangement, are counted as remuneration. In the case of fringe benefits, the amount counted is the taxable value of the benefits according to the *Fringe Benefits Tax Assessment Act 1986*. See specific entries for details of particular benefits. See 'Flexible work package payments'.

## Salary protection insurance

Payments made by an employer to a worker under an income protection policy, sickness or accident insurance policy or salary continuance policy, even if the worker contributes to the policy premium, are counted as remuneration.

## Severance payments

See 'Termination payments'.

## Share of catch

Where a skipper or crew of a fishing vessel is paid by way of 'share of catch' then the value of the share of catch is counted as remuneration. The value of remuneration is calculated by multiplying the agreed percentage (share of the catch) by the sale price of the catch.



## Shares and Share options

Share options are counted as remuneration when these are made in lieu of wages or classified as a fringe benefit under the *Fringe Benefits Tax Assessment Act 1986* (Commonwealth). The granting of a share or option occurs if a person acquires a share, or in the case of an option, a right to the share. A value of the share or option becomes liable on the relevant day. The employer can elect to treat the relevant day as either the date that the share or option is granted to the employee or the 'vesting date'.

If a share or option granted is classified as a fringe benefit under the *Fringe Benefits Tax Assessment Act 1986* (Commonwealth), it is treated as a fringe benefit for workers' compensation purposes.

For further information refer to the *NSW Payroll Tax Act 2007*, Division 4, Section 18-26.

## Shift allowance

A shift allowance is counted as remuneration.

## Sick leave

Sick leave is counted as remuneration.

Lump sum payments on termination for sick leave are counted as remuneration.

## Site allowance

Site allowances are counted as remuneration.

## Staff discounts and benefits

Any fringe benefits that are available to workers as an incidental benefit of employment are counted as remuneration.

See 'Fringe benefits'.

## Strike-breaking allowance

A strike-breaking allowance is counted as remuneration.

## Study leave

Study leave is counted as remuneration.

## Superannuation payments

*Chapter A indicates that Wages "includes a superannuation benefit being money paid or payable by the employer in respect of the worker."*

Superannuation includes; salary sacrifice amounts paid to superannuation on behalf of the worker, extra superannuation payments made on behalf of the worker and Superannuation Guarantee Levy payments made on behalf of the worker.

Note: Superannuation payments made on behalf of non-working directors are not assessable. See Chapter C.

## Telephone allowance

If the employer pays for or reimburses the worker for telephone-related expenses in accordance with an award at a rate specified by the award, then the payment is not counted as remuneration. However, any payment greater than the award rate is counted as remuneration.

Where the telephone expense is part of a 'living-away-from-home allowance or a travel allowance, refer to that section of this manual. In any other case, the payment is counted as remuneration.

See 'Fringe benefits' and 'Allowances and expenses'.

## Termination payments

Payments that represent a lump sum payment of accrued sick leave, annual leave, including leave loadings or bonuses, and long service leave, made on termination or retirement, are counted as remuneration, including payments made on the death of a worker.

Payments made in lieu of notice on termination arising from redundancy, severance, retrenchment or early retirement are not counted as remuneration.

Redundancy, severance, retrenchment, early retirement benefits or termination payments (that do not represent accrued sick leave, annual leave, including leave loadings or bonuses, and long service leave) are not counted as remuneration.

Contributions to the Australian Construction Industry Redundancy Trust (ACIRT), Mechanical and Electrical Redundancy Trust (MERT) or Cleaning Industry Portable Long Service Leave Scheme (CIPLSLS) are not counted as remuneration.

*Ex gratia* payments to workers on termination are not counted as remuneration.

## Tips and gratuities

Tips and gratuities that employers pass on to their workers and are included on the worker's payment summary are counted as remuneration.

## Tool allowance

If an employer reimburses the worker for tool-related expenses that the worker incurs as part of their employment, then the reimbursement is not counted as remuneration. In any other case, the payment is counted as remuneration.

See 'Fringe benefits' and 'Allowances and expenses'

## Traineeship schemes

See Chapter H.

## Travel allowance

If the employer pays for or reimburses the worker for travel related expenses that the worker incurs as part of their employment, then the allowance is not counted as remuneration.

Where the payment is made in accordance with an award at a rate specified by the award, the payment is not counted as remuneration. However, any payment greater than the award rate is counted as remuneration.

If the employer provides a worker with a travel allowance and the payment is not paid under an Award, then any payment up to the prescribed amount per night is not counted as remuneration. If the payment is not under an Award, then any payment greater than the prescribed per night rate is counted as remuneration. Refer to <https://www.icare.nsw.gov.au/employers/premiums/premium-updates/> for the current motor and accommodation allowances.

See 'Fringe benefits', 'Living-away-from-home allowance' and 'Allowances and expenses'.

## Travelling time

Any payment to a worker for work-related travel time is counted as remuneration.

## Trust distributions

See Chapter D.

## Uniform allowance

If the employer pays for or reimburses the worker for uniform related expenses that the worker incurs as part of their employment, then the payment is not counted as remuneration. In any other case, the payment is counted as remuneration.

See 'Clothing', 'Fringe benefits' and 'Allowances and expenses'.

## Volunteers

See 'Honorariums'.

## Workers' compensation payments

Any workers' compensation benefits an employer pays to a worker including the excess on the claim which the employer pays are not counted as remuneration.

However, payments by an employer to an injured worker over and above the workers' compensation benefits paid to workers by the workers' compensation Scheme Agent are counted as remuneration.

## Working directors' payments

See Chapter C.

## Chapter C – Directors’ fees and payments

### How are fees to a ‘non-working’ director treated?

Any fees or payments the employer makes to a ‘non-working’ director for performing their duties as a director are not counted as remuneration.

Non-working director’s duties include attending board meetings, setting strategic goals and overseeing and reviewing the company’s progress towards those goals. A non-working director would have no involvement in the day-to-day operations or perform administrative functions of the business.

Note: Superannuation payments made on behalf of non-working directors are not counted as remuneration.

### How are fees to a ‘working’ director treated?

Any director is considered to be a ‘working’ director if they are performing work in the day-to-day operations of the business, which include administrative and management tasks.

Where a director is performing work in the day-to-day operations of the business and is receiving any form of consideration in money or money’s worth, then there is an implied contract of service between the director and the company. That is, the director is a working director and is therefore a worker for the purposes of NSW workers’ compensation legislation.

All payments to a working director (including allowances, fees, fringe benefits, salary, superannuation, wages etc) are counted as remuneration.

Any payment or remuneration (shares, share options, dividends, trust distributions or non-beneficially held shares via a trust, etc where there is a clear link between the beneficiary and the worker who performed the work and where the worker is covered by workers compensation insurance) that is made in lieu of wages or classified as a fringe benefit under the Fringe Benefits Tax Assessment Act 1986 (Commonwealth) should be declared as wages for workers compensation purposes.

See ‘Fringe benefits’ in Chapter B for information on the calculation of the value of the benefits.

### How are dividends treated?

Where the company’s constitution provides for dividend payments to members, including directors, then the payments are not usually counted as remuneration.

However, where a dividend is paid in lieu of wages, the payment is counted as remuneration for the purposes of calculating workers’ compensation premiums.

The amount of payment to be included is based on the hours worked and the type of work performed. The amount is limited to the current market value of the remuneration that would be paid to a worker undertaking the same mix of duties and hours of work, and with the same skills, together with any allowances or other remuneration paid to the director for employee-related duties.

To determine the current market value of the remuneration, the employer and icare may consider various sources, including: industrial awards, position vacant advertisements relevant to the general location of the director, salary surveys, or evidence supplied by recruitment firms or employment agencies. The amount may be more than in an industrial award, if activities undertaken exceed those duties that would be required of a worker under that award, for example, making decisions that relate to the financial, strategy and/or management direction of the organisation.

In the absence of a relevant industrial award being appropriate, icare can rely upon the ‘average weekly full time adult total earnings’ in accordance with statistical reports compiled by the Australian Bureau of Statistics (ABS) together with an allowance for the Superannuation Guarantee Levy.

## Chapter D – Trust distributions

When considering payments to trustees and beneficiaries of trusts, icare looks at the nature of the trust arrangement and the reality of the payment.

Workers compensation legislation requires that distributions to beneficiaries for work performed for the trust are counted as wages.

### Are distributions to a ‘non-working’ beneficiary counted?

Any distribution that an employer and/or trustee pay to a ‘non-working’ beneficiary of a trust is not counted as remuneration.

A non-working beneficiary would have no involvement in the day-to-day operations and/or perform any kind of administrative functions of the business.

### Are distributions to a ‘working’ beneficiary counted?

A distribution to a worker who is also a beneficiary under a trust constitutes wages to the extent that:

- the distribution is remuneration for their work
- the distribution is a substitute, in whole or in part, for wages (and there is no other form of reasonable remuneration given to the worker for the work they perform).

The amount of the distribution to be included is based on the hours worked and the type of work performed. The amount is limited to the current market value of the remuneration that would be paid to a worker with the same or similar duties and skills, as those carried out by the beneficiary, together with any allowances or other remuneration paid to the beneficiary for employee-related duties.

To determine the current market value of the remuneration, the employer and icare may consider various sources, including industrial awards, position vacant advertisements relevant to the general location of the employed beneficiary, salary surveys, or evidence supplied by recruitment firms or employment agencies. The amount may be more than in an industrial award if activities undertaken exceed those duties that would be required of a worker under that award, for example, making decisions that relate to the financial, strategy and/or management direction of the organisation.

### Who in relation to a trust is a worker?

The general position is that if a person is entitled to claim workers’ compensation benefits for a work-related injury or illness, then any remuneration paid to that worker is counted when calculating the employer’s premium.

#### Trustees

Whether remuneration paid to the trustee is to be counted depends on whether the trustee(s):

- are individuals (including partnerships and sole traders). In these cases, they are generally not entitled to workers’ compensation coverage, so any amounts the trust pays to them are not counted as remuneration
- is a proprietary limited company. In which case, any directors or beneficiaries employed by the trustee company will generally be workers for workers’ compensation purposes, so any amounts the trust pays to them are counted as remuneration.

#### Individuals employed by the trustees

Any individuals who the trustee(s) employs are covered by workers’ compensation and trustees are required to obtain workers compensation insurance covering those workers.

## Directors

Directors of a trustee company are able to claim workers' compensation benefits if they have a work-related injury, therefore any distribution paid to them for the work they do may be counted as remuneration. This situation is no different to the position of directors of other proprietary limited companies where the directors are considered to be workers of the corporation (which is the employer).

See Chapter C for further details about directors.

## Employed beneficiaries

An employed beneficiary is able to claim workers' compensation benefits if they have a work-related injury, therefore any distribution paid to them for the work they do may be counted as remuneration.

## How are payments from a trust to a worker 'through another trust' treated?

Payments to workers (including trust distributions) for work done for a trust are counted as remuneration. This applies whether the payment is made from the trust directly to a worker or made through another entity or trust on behalf of the original trust.

## Who do the workers compensation obligations apply to: the trustee or the trust?

The obligation to make declarations and ensure that the 1987 Act is complied with applies to the trustee or trustees. A workers' compensation policy that covers all workers of the trust must be in the legal name of the trustee. For example:

- AB Smith as trustee for the Smith Family Trust
- A & B Smith as trustee for the Smith Family Trust
- AB Smith Pty Ltd as trustee for the Smith Family Trust.

## How are wages calculated in the absence of an industrial award?

In calculating the market rate of remuneration and in the absence of a relevant industrial award being appropriate, icare can rely upon the 'average weekly full time adult total earnings' in accordance with statistical reports compiled by the ABS together with an allowance for the Superannuation Guarantee Levy. See section 174AA of the Act

# Chapter E – Meaning of ‘worker’

## What is this chapter for?

An employer’s premium is calculated on the basis of remuneration paid to workers. So the meaning of each of those terms is crucial. This chapter deals with the meaning of worker. Remuneration is explained in Chapter A.

## Does the tax law definition of worker apply?

A person may be a worker under the NSW workers’ compensation system, but not for the taxation law system. For this reason, you need to consider each person under the laws applying to workers’ compensation.

See Chapters F and G for further information on deemed workers and contractors.

## What does the term worker include?

Worker means:

- any person who has entered into, or who works under, a contract of service or a training contract with an employer, whether by way of manual labour, clerical work, or otherwise or whether the contract is expressed or implied, is verbal or in writing.

The definition of worker is in section 4 (1) of the 1998 Act. The definition is outlined at the end of this chapter.

As a general rule, if a person is entitled to receive workers’ compensation benefits in the event they have a work-related injury, then that person is counted as a worker for the purposes of calculating the employer’s workers’ compensation premium.

An entity (such as incorporated association, partnership, trust or company) is not a worker or deemed worker for workers compensation purposes.

## Which contractors are treated as workers?

icare’s interpretation of the contractors who are workers for the purposes of the law is set out in Chapter G, as is icare’s interpretation of the payments (or percentages of payments) to contractors that are to be treated as remuneration.

## How can I seek clarification on who is a worker?

Employers can contact the State Insurance Regulatory Authority (SIRA) for a private ruling. A private ruling is a binding notice from SIRA that states whether a person, or group of persons, are workers or contractors for the purpose of including wages for workers’ compensation premium calculations.

Further information can be obtained at <http://www.sira.nsw.gov.au/> or by calling 13 10 50.

See also, Chapter F.

## How are interstate and overseas workers treated?

There are special rules relating to interstate and overseas workers.

For specific information on interstate and overseas workers, refer to individual topics in Chapter B.

## How is directors’ remuneration treated?

If working directors receive payments (e.g. allowances, fees, fringe benefits, superannuation, salary, wages, etc), that if paid to a worker would be counted as remuneration for premium assessment purposes, those payments will be counted as remuneration.

Treatment of remuneration for directors is captured in Chapter C.

## How does the 1998 Act define worker?

Section 4 of the 1998 Act defines 'worker' as follows:

Worker means a person who has entered into or works under a contract of service or a training contract with an employer (whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, and whether the contract is oral or in writing). However, it does not include:

- a. a member of the Police Service who is a contributor to the Police Superannuation Fund under the *Police Regulation (Superannuation) Act 1906*, or
- b. a person whose employment is casual (that is for 1 period only of not more than 5 working days) and who is employed otherwise than for the purposes of the employer's trade or business, or
- c. an officer of a religious or other voluntary association who is employed upon duties for the association outside the officer's ordinary working hours, so far as the employment on those duties is concerned, if the officer's remuneration from the association does not exceed \$700 per year, or

- d. except as provided by Schedule 1, a registered participant of a sporting organisation (within the meaning of the *Sporting Injuries Insurance Act 1978*) while:
  - i. participating in an authorised activity (within the meaning of that Act) of that organisation, or
  - ii. engaged in training or preparing himself or herself with a view to so participating, or
  - iii. engaged on any daily or periodic journey or other journey in connection with the registered participant so participating or the registered participant being so engaged,

if, under the contract pursuant to which the registered participant does any of the things referred to above in this paragraph, the registered participant is not entitled to remuneration other than for the doing of those things.

The 1998 Act also 'deems' certain persons to be workers. Details of these deeming provisions are outlined in Chapter F.



## Chapter F – Meaning of Deemed workers

Schedule 1 of the 1998 Act lists different types of workers who are deemed to be workers for the purposes of workers' compensation in NSW. They include:

- workers lent or on hire
- outworkers
- other contractors (see also Chapter G)
- contractors under labour hire services arrangements
- rural workers
- timber getters
- salespersons, canvassers, collectors and others
- tributers
- mine employees
- mines rescue personnel
- jockeys and harness racing drivers
- drivers of hire-vehicles and hire-vessels (contract of bailment)
- caddies and others employed through a club
- shearers, cooks and others
- fire fighters in fire districts
- workers at place of pick-up
- boxers, wrestlers, referees and entertainers
- voluntary ambulance workers
- ministers of religion
- ministers of religion covered by policies
- participants in training programs.

If someone is deemed to be a worker, then they will be entitled to receive workers' compensation for a work-related injury. For this reason, their employer (or principal) must cover them for workers' compensation and include the remuneration paid to the deemed worker in the employer's wages declaration. If superannuation is required by law to be paid to a deemed worker, then it must be included as remuneration.

SIRA can issue a private ruling to an employer to determine whether a person is a worker or not for the purposes of declaring remuneration. Further information regarding private rulings can be obtained at <http://www.sira.nsw.gov.au/>.

See also, Chapters E and F.

# Chapter G – Contractors

## Why can contractor payments be treated as remuneration?

Many people working as contractors are treated as workers for workers' compensation purposes. The 1998 Act refers to them as deemed workers (see Chapter F). In those cases, the employer is treated as a principal, and is responsible for declaring remuneration for the purposes of workers' compensation.

A contractor with an Australian Business Number (ABN) or a Department of Finance and Services - Fair Trading licence is not necessarily an independent contractor – they may still be a deemed worker for the purposes of workers' compensation. The issue is whether the person is a worker in a particular case and must be determined on a case-by-case basis.

The final arbiter of whether a contractor is a deemed worker is the Personal Injury Commission (PIC) and this is decided on the individual facts of each case. icare may also apply tests determined by other Courts. One relevant test is whether the contract can be construed as a 'contract of service' (which would usually result in a finding that the person is a worker) or a 'contract for services' (which would usually result in a finding that the person supplying the services is not a worker).

Workers compensation legislation does not rely on the tax status of the person carrying out the work to determine whether that person is a worker, deemed worker or contractor.

Some of the indicators examined by the PIC, the Courts and icare in determining if a contractor is a deemed worker are whether the person:

- entered into an arrangement that is in writing
- employs any person(s) to perform the work
- works at stated hours on usual days and the contract specifies the hours and/or days
- measures and inspects the site and provides a fixed price quotation inclusive of labour and material
- deals directly with the client requesting the work or the principal contractor for whose benefit the work is to be done

- can make a profit or loss over the market rate for a tradesperson working in the industry
- supplies the materials, plant and equipment used in completion of the job
- can be liable for bad quality of work.

For this reason, it is important for employers to include records about contractors in the declarations and other records they make and present to icare. See Chapter I for information about record keeping.

SIRA can issue a private ruling to an employer to determine whether a person is a worker or not for the purposes of declaring remuneration. Further information regarding private rulings can be obtained at <http://www.sira.nsw.gov.au/> See also Chapter F.

## What costs are deducted from remuneration paid to 'contractors'?

The full amount an employer pays to a contractor deemed to be a worker (less any GST and payments covering materials, tools, equipment, and/or plant) is to be included for the purpose of calculating the employer's premium. However, the legislation provides that costs necessarily incurred by that person in performing that contract' (see section 174 (9)(b) of the 1987 Act) are not remuneration and are not used to calculate the employer's premium. However, the 1987 Act does not define those costs, nor does it set a process for how the value of a particular cost is to be determined.

The employer and icare should consider what is the estimated amount of overhead costs that the contractor would be required to expend (or has expended) in providing services other than labour. Those costs might include tools, equipment, materials and plant.

If the employer and icare are unable to come to a reasonable assessment (through examining invoices, receipts or other documentary evidence) of the amount the contractor will be required to spend (or has spent), then they may use the standard default percentages shown in the table below. The percentages shown in the table reflect the average situation for the average employer and the average type of contractor.

All GST paid to a contractor is not counted.

| Service supplied   | Percentage of contract payment |
|--|--------------------------------|
| <b>Labour only</b>   | 100 per cent                   |
| <b>Supply of labour and tools</b><br>Including hand-held tools, power tools, chainsaws, staple guns, and incidental materials such as, screws, pop rivets, glue and masking tape | 90 per cent                    |
| <b>Supply of labour and plant</b><br>Such as cement mixers, conveyors, ladders, trestles and the like  | 80 per cent                    |
| <b>Supply of labour, plant and materials</b>   |                                |
| Bricklayers supplying bricks   | 30 per cent                    |
| Carpenters supplying timber  | 30 per cent                    |
| Plasterboard fixers supplying plasterboard   | 30 per cent                    |
| Tilers supplying tiles   | 30 per cent                    |
| Electricians supplying conduit, wire and switchgear  | 50 per cent                    |
| Plumbers supplying pipes and fittings  | 50 per cent                    |
| Painters and decorators supplying paint and wallpaper  | 60 per cent                    |
| Carpet layers supplying underlay   | 70 per cent                    |
| <b>Transport Industry Contractors</b>  |                                |
| Prime movers   | 30 per cent                    |
| From 10 tonnes to Prime Movers   | 50 per cent                    |
| Motor vehicles to 10 tonnes (including couriers)   | 75 per cent                    |
| Couriers - motorcycles   | 90 per cent                    |
| Couriers - bicycles  | 90 per cent                    |
| Cranes   | 50 per cent                    |
| <b>Timber/Sawmilling (snigging, felling)</b>   | 50 per cent                    |
| <b>Earthmoving/Bobcat</b>  |                                |
| Up to 3 tonnes   | 75 per cent                    |
| 3 tonnes and over  | 50 per cent                    |

## Chapter H – Apprentices and trainees

For the purposes of this chapter the terms apprentice, trainee apprentice and trainee have the same meaning as in the *Apprenticeship and Traineeship Act 2001*.

### Apprentices

Employers who engage an apprentice in recognised trade vocations as designated by the Commissioner for Vocational Training under the Apprenticeship and Traineeship Act 2001 will not bear the costs of the workers compensation premium for the apprentice. However, the apprentice wages will still need to be declared on the estimate and actual wage declarations.

If an apprentice is injured at work, the cost of the apprentice's claim will still be used in the calculation of premium for experience-adjusted employers.

To be eligible, an employer must have a valid workers' compensation policy and have entered into a NSW Department of Education and Communities (NSW DEC) approved 'Training Contract' with the apprentice in a designated trade vocation. The apprentice must be identified in the training contract.

### Group Apprenticeship Schemes

Apprentices employed under an approved Apprenticeship Scheme that is registered by the NSW Department of Finance and Services, NSW Office of Industrial Relations are workers of the Group Apprentice Scheme and not of the host employer. Therefore, remuneration the host employer pays to the apprentice that is subsequently reimbursed by the Group Apprentice Scheme to the employer is not counted as remuneration for the host employer. Instead, the payment is counted as remuneration when the premium for the Group Apprenticeship Scheme is calculated.

Any amount that is not reimbursed is counted as remuneration by the host employer.

### Trainee Apprentice

If the trainee apprentice is undertaking an apprenticeship in a trade vocation approved by the NSW DEC, employers may claim the apprentice incentive discount. Employers should check to see if the apprenticeship is on the NSW DEC list of apprenticeships and the training contract is approved by the NSW DEC. If these conditions are met, the discount is to apply.

As the Apprenticeship and Traineeship Act 2001 defines a trainee apprenticeship as an apprenticeship under which the employer does not undertake to employ the apprentice for the whole of the term of the apprenticeship, employers should only claim the discount for those periods they employ the apprentice.

## Trainees

Trainees are defined as employees under the Australian Traineeship System. Employers will be required to meet workers' compensation premium costs for trainees.

## Government training schemes

If Centrelink or another Government Department directly pays an amount to a worker as part of a government-funded training scheme, that amount is not counted as remuneration for the purpose of assessing the employer's premium.

If an employer pays any amount to a worker for work experience or training as part of a government-sponsored training scheme and that payment is subsidised (wholly or partly) under the training scheme, then the total amount the employer pays to the worker is counted as remuneration.

## Community Development Employment Project (CDEP)

Remuneration an employer pays to workers in the CDEP is counted as remuneration for the purposes of calculating an employer's premium. However, the other costs funded by the Project are excluded (e.g. costs for equipment and rental).

## Government training subsidies

If the Government pays an employer a subsidy to encourage the employer to employ or develop staff, then any amount the employer pays to the worker from that subsidy is counted as remuneration.

# Chapter I – Record-keeping requirements & Premium Reviews

## What records are employers required to keep?

Employers are required to:

- keep detailed records of all payments made to their workers
- keep copies of any other documents relevant to those payments

## What are the legislative requirements about records for workers?

The employer's records about remuneration paid or payable to workers must:

- be in written English (or readily accessible and readily convertible into written English) that records full details of each individual payment made to a worker including: the worker's name; occupation and address; the date the payment was made; the period covered by the payment; the gross amount paid; and details of all deductions including the amount of each deduction
- record all wage payments made in date order in which they were paid
- be supported by confirming documents including copies of: all payslips, cheque butts, bank statements, cashbooks, profit and loss statements, business activity statements; PAYG summaries; fringe benefit tax returns; subcontractor workers' compensation statements and any other relevant documents, including computer records
- be kept in a secure place and not subject to damage or loss
- be kept for at least five (5) years

## What are the requirements about records for contractors?

The employer's records about contractors must comply with all the requirements about records for workers, and must also:

- record a description of the services the contractor provided
- record full details of component parts of each payment made to the contractor. For example: labour only; labour and materials; labour materials and plant; or labour and plant
- record payments to all contractors, including full details of each payment made including the dates of payment and the amounts
- keep supporting documents such as: evidence of questions; letterhead; business cards; contractor invoices; Australian Business Number (ABN); Australian Company Number (ACN); and Department of Finance and Services, NSW Fair Trading licences
- keep copies of Certificates of Currency for workers' compensation and public liability for the period of the contract
- maintain written statements by subcontractors that all workers' compensation insurance premiums payable in respect of the work done in connection with the contract have been paid
- maintain copies of any private ruling decisions

Employers who determine that a contractor is not a deemed worker should keep the same detailed records about those contractors. The employer may find those records useful if they later need to justify to icare that a contractor was not a deemed worker.

For further information on contractors, see Chapter G.

## What if an employer's records are stolen or destroyed?

If an employer claims that its records have been stolen or destroyed, it must provide written evidence to support the claim, including a Police Report, Fire Brigade Report or Insurance Claim that specifically mentions the loss or theft of the records, computer, briefcase, etc.

## What are the penalties for not keeping proper records?

The penalty for an employer who doesn't keep records properly is up to 500 penalty units (that is, \$55,000 at the time of printing this manual).

## When must the employer declare remuneration to icare?

### Small employers

A small employer's Average Performance Premium is \$30,000 or less.

Icare will invite a small employer to renew their policy four to six weeks before the current policy expires. The invitation outlines the renewal premium for the upcoming year and how it was calculated. It also contains an actual wages declaration and details of the payment options.

A small employer does not need to submit estimated wages but must provide a declaration of the actual remuneration paid during that period within four months after the end of the policy period.

### Experience-rated employers

An experience-rated employer's Average Performance Premium is greater than \$30,000 and their claims costs impact the premium charged.

These employers must use their records to provide the following information to icare:

- within four months after the end of a policy period, a declaration of the actual remuneration it paid during the immediately past period

## Loss Prevention and Recovery premium model employers

Employers (or a group of employers) under this premium model have an Average Performance Premium greater than \$500,000.

These employers must use their records to provide the following information to icare:

- within two months after the start of a policy period, a declaration of the estimate of the remuneration which it will pay during the policy year
- within four months after the end of a policy period, a declaration of the actual remuneration it paid during the immediately past period

## Certificate of Currency

When an employer requests a Certificate of Currency they must use their records to provide remuneration details before icare will issue the certificate.

## What are the penalties for employers who make or provide false records?

Each employer must make sure that the information provided in their wages declarations is correct. The penalty for providing false or misleading information is up to 100 penalty units (that is, \$11,000 at the time of printing this manual).

## What rights does icare have to examine an employer's records?

icare has a legal right to access and audit an employer's records. Employers may have their wages declarations audited by an icare appointed auditor. Auditors require access to the employer's financial accounts in order to consider all types of payments and whether or not they are assessable as wages for premium calculation purposes. An employer must cooperate in relation to a wage audit. In particular, they must cooperate in arrangements for the audit to take place within a reasonable time after the initial request.

## What information may icare request for audit purposes?

icare may request:

- information that the employer is required to record in relation to remuneration. See Section 174 (1) of the 1987 Act.
- information of a specified kind that is in the employer's possession and is relevant to calculating premiums payable under policies of insurance
- information of a specified kind that is in the employer's possession and is relevant to determining whether the employer (or another employer) is required to obtain a policy of insurance or has paid the correct premium for a policy of insurance.

The records icare require may include:

- financial statements
- minutes of Board meetings
- documents relating to contractual arrangements with other parties
- cashbooks, cheque butts, ledgers, journals etc
- details of long service leave and superannuation payments by employers
- details of all contracts of employment (see Chapter G)
- any other relevant documents.

Any employer who queries or disputes their premium calculation may contact icare to discuss a review of the issue. icare's contact details are:

**Phone:** 13 44 22

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