

A guide to

Fishing crews

April 2000



www.workcover.com

Introduction

This brochure has been produced to help employers and/or workers who may be uncertain about coverage under the Workers Rehabilitation and Compensation Act, 1986.

The information provided in this publication is correct at the time of printing and is provided as general information only. The specific issues relevant to your workplace should be considered in light of this general information.

To ensure correct information is being used, or if you are in any doubt after reading this brochure,

please telephone WorkCover Corporation on 13 18 55 , Toll Free 1800 188 000 (for SA outside the metropolitan area) or Toll Free 1800 888 508 (for Interstate callers).

Translating and interpreting

If you would like more information in your language, please call the Telephone Interpreting Service on 8266 1990 and ask them to contact WorkCover Corporation on (08) 8233 2001.

Who is a worker?

The Workers Rehabilitation and Compensation Act, 1986 provides for compensation and rehabilitation of workers who sustain disabilities at work. Eligibility for compensation depends on whether a person is a 'worker' as defined under the Act.

Section 3 of the Act states that a 'worker' means a person by whom work is done under a 'contract of service'

(whether or not as an employee)

Contract of service normally represents a work relationship formed between an employer and employee.

Where a person is working under a contract for service, that person is not entitled to compensation as they are not workers under the Act. This term is used when a person is considered to be a true independent contractor.

However, cover is extended to persons working under a contract for service in certain circumstances.

These circumstances are prescribed under the Act and are known as 'prescribed classes of work' or 'prescribed work'.

Important Notes

1 Whether a person is employed ongoing, or for a short period, eg. for as little as one hour on a given day, or on a casual basis, an obligation exists on the employer to include remuneration paid to any such worker(s) in their calculation of levy payable.

2 A principal should ensure that a contractor employing a worker(s) is, at all times when performing work for the principal, registered as an employer with WorkCover Corporation.

If a contractor (who employs) is not registered, Section 3(6)* may apply and the principal be deemed the employer. It is therefore in the principal's best interests

to ensure that any contractors, who may also employ, are registered and paying levy on their workers.

- Section 3(6) - Where in a prescribed industry or in prescribed circumstances a person (the principal) contracts with another person (the contractor) for the performance by the contractor of work undertaken by the principal, the principal shall, for the purposes of this Act, be deemed to be the employer of workers employed by the contractor.

If you need any further assistance in deciding whether a person is a worker, please contact a Customer Service Officer on:-

Telephone: 13 18 55 Facsimile: (08)8233 2990
Toll Free: 1800 188 000 (for SA outside the metropolitan area)
Toll Free: 188 888 508 (for Interstate callers)

Fishing Crews

A crew member of a fishing vessel who is remunerated by a share in profits or gross receipts obtained by working the boat is **excluded** for cover under the Workers Rehabilitation & Compensation Act.

Remuneration to a member of the crew of a fishing boat can take various forms. The following can be used as a **guide only**.

Where the crew member is paid a 'share of proceeds' it would be considered a joint venture & he/she would not be considered a worker.

Where a working director elects to be remunerated by a 'share of profits' obtained by working the boat (therefore excluded from cover) that person is required to advise WorkCover Corporation of that intention at the beginning of each financial year. If the advice is not received it will be assumed that the person will receive remuneration in the form of salaries/wages or directors fees.

Where 'wages' are paid on a weekly, fortnightly or monthly basis and the crew member satisfies the control test - see Contract of Service, then he/she **would be** considered a worker.

Where the crew member is paid at a "fixed rate" per tonne or number of fish, the distinction of a share of profits or gross receipts is subject to market forces and implies a joint venture. If however, the crew member satisfies the control test of a contract of service, the crew member would be considered to be a worker.

If 'both wages & a fixed rate' are paid, the person **would** generally be considered a worker.

If further clarification is needed please contact WorkCover Corporation for assistance to establish if a contract of service exists.