

WorkCoverSA

A guide to deemed workers – building work (other than wall or floor tiling)

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Disclaimer

The information produced by WorkCoverSA in this publication is correct at the time of printing and is provided as general information only. In utilising general information about workplace health and safety and injury management, the specific issues relevant to your workplace should always be considered. This publication is not intended as a substitute for the requirements of the *Workers Rehabilitation and Compensation Act 1986* or the *Work, Health and Safety Act 2012*.

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Introduction

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

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 guide, please call WorkCover on 13 18 55.

Who is a worker?

The Act provides for the rehabilitation and compensation of workers who suffer injuries arising from their employment.

The Act requires that an employer register with WorkCover and pay a premium based on remuneration paid to workers in their employ (unless they are exempted – see the WorkCover website for information on the small employer registration exemption). Under the Act, ‘worker’ is a broader definition than ‘employee’.

Whether someone is deemed a worker under the Act needs to be considered on a case-by-case basis, from the viewpoint of the worker-employer relationship, against well-tested common law principles.

The definition of ‘contract of service’ under the Act establishes that when a person (the principal) contracts with another person (the contractor) - and this includes otherwise independent contractors - for the purposes of the contractor undertaking work for the principal, the principal is deemed the ‘employer’ and the contractor is deemed the ‘worker’.

Under this provision and subject to meeting particular criteria, persons performing building work (other than wall or floor tiling work) can be a worker.

Important notes

1. Whether a worker is engaged to perform work on an ongoing basis 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) for inclusion in the calculation of premium payable.
2. A principal should ensure that an otherwise independent contractor who employs a worker(s) is, at all times when performing work for the principal, registered as an employer with WorkCover. If a contractor (who employs) is not registered, then under section 3(6) of the Act the principal is deemed the employer. It is therefore in the principal’s best interests to ensure that any contractors who also employ are registered with WorkCover.

Section 3(6) of the Act – states:

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.

Regulation 5 Sub-regulation 7 of the *Workers Rehabilitation and Compensation Regulations 2010* states:

For the purposes of section 3(6) of the Act, a prescribed circumstance is where a person (the principal) contracts with another person (the contractor) who is not registered as an employer under the Act.

How the Act relates specifically to building work (other than wall or floor tiling work)

Depending on the terms of an individual contractual relationship, a person performing building work may be a worker on the basis of an employer/employee relationship as described above. (An apprentice is also a worker under the Act.)

Alternatively, an otherwise independent contractor may be deemed a worker under the provisions of the *Workers Rehabilitation and Compensation Regulations 2010*. Regulation 5 extends the definition of 'contract of service' to persons performing building work (other than wall or floor tiling work).

Regulation 5 defines 'building work' as having the same meaning as the *Building Work Contractors Act 1995*. Accordingly, 'building work' means:

- the whole or part of the work of constructing, erecting, underpinning, altering, repairing, improving, adding to or demolishing a building
- the excavating or filling of a site for the above-listed work
- onsite construction work associated with a pool or spa and paving and fencing (excluding post and wire).

Persons engaged in performing 'building work' (other than wall or floor tiling work) are deemed to be working under a contract of service and have the corresponding status of worker where the following conditions are *all* fulfilled.

Work performed under a contract, arrangement or understanding includes the following:

- Work carried out by the person (worker) in respect of the trade or business of the other party (employer) eg, carpentry work for a builder.

This would also include the situation where a hotel owner subcontracts directly with a builder to renovate his/her hotel and the builder does not supply materials. Whilst the renovations do not directly relate to the operation of a hotel, the work is for the purpose of the trade or business.

- Work performed personally by the worker (whether or not the worker supplies tools, plant or equipment).
- Where the worker does not employ any other person to carry out any part of the work. This relates to all the work required for the contract.

For example:

The contract is to lay a foundation. There are various stages to complete that contract and if the worker employs another to assist in any part of the work, say digging a trench, then the worker does not fulfil the requirement, having employed another to carry out part of the work. The person is an employer in their own right.

- Where the value of 'materials' supplied or expected to be supplied does not exceed 4% or \$50 of the contract price, whichever is the greater.

'Material' includes timber, bricks, paint, mortar, nails. It does not include plant, equipment or tools of the trade.

- Where the worker does not own or lease any item of plant or equipment, or any tool which exceeds the yearly index adjusted amount*. (The value of any plant or equipment referred to is the price that at the time of entering into the contract or agreement, the worker would have reasonably been expected to pay for an equivalent new plant or equipment). A vehicle which is primarily used by the worker to transport tools, plant or equipment to a worksite is excluded when calculating the value of any tool, plant or equipment.

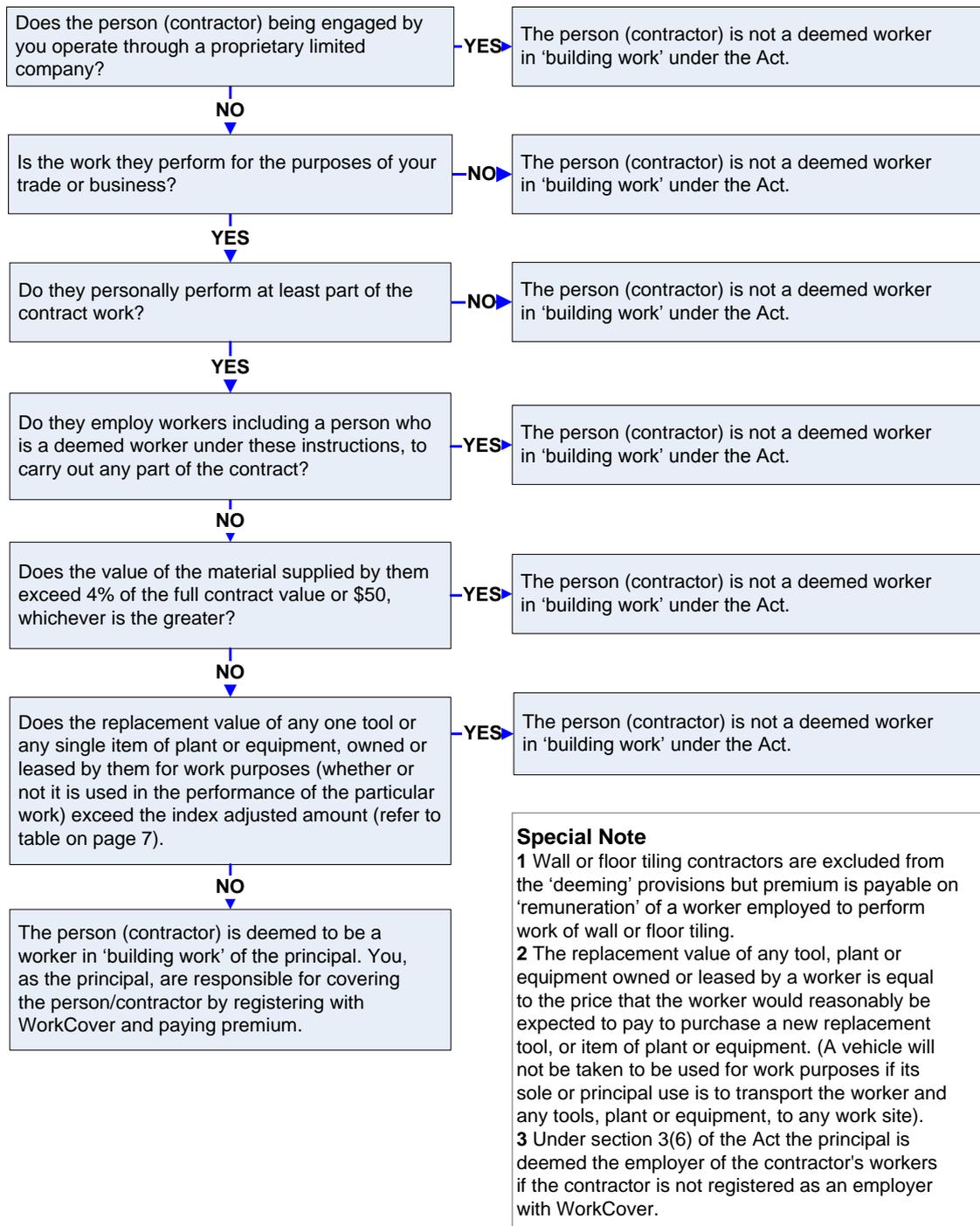
* Refer to information on page 7.

A flowchart incorporating a range of questions is provided on page 6 to assist in relating 'building work' to the operation of the Act.

Building work flowchart

Is the person (contractor) performing the building work deemed a worker by the regulations?

*NOTE: ***The flowchart is a guide for either employers or contractors using the services of contractors in building work to determine if they are deemed to be their workers for the purpose of the Act. The regulations are not to be interpreted to deny coverage to persons working under a contract of service (ie, person may fail the deeming test yet still be a worker under common law criteria).*



Replacement value of any tool or plant of equipment

Regulation 5 Sub-regulation (1)(a)(v) of the *Workers Rehabilitation and Compensation Regulations 2010* states the value of any one tool, or any single item of plant or equipment, owned or leased by the worker for work purposes (whether or not it is used in the performance of the particular work) does not exceed \$16,800*.

**This amount is indexed and adjusted annually.*

The table below sets out the original and subsequent indexed amounts for the replacement value of any tool or plant or equipment from 1999 to 2012.

Year	Amount
2013	\$18,235
2012	\$17,923
2011	\$17,240
2010	\$16,800
2009	\$16,600
2008	\$15,800
2007	\$15,500
2006	\$15,000
2005	\$14,500
2004	\$14,200
2003	\$13,700
2002	\$13,200
2001	\$12,900
2000	\$12,200
1999	\$12,000

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Free information support services: If you are deaf or have a hearing or speech impairment you can call WorkCoverSA through the National Relay Service (NRS):

- TTY users can phone 13 36 77 then ask for 13 18 55.
- Speak & Listen (speech-to-speech) users can phone 1300 555 727 then ask for 13 18 55.
- Internet relay users can connect to NRS on www.relayservice.com.au then ask for 13 18 55.

For languages other than English call the Interpreting and Translating Centre (08) 8226 1990 and ask for an interpreter to call WorkCoverSA on 13 18 55. For Braille, audio or e-text call 13 18 55

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