

WorkCoverSA

# Guide to miscellaneous classes

Including:

Ministers of religion

Sporting professionals

Prescribed volunteers

Other volunteers

Work experience

Self-employed persons and partners

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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 an injury 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’.

## Important notes

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) in the calculation of premium payable.

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.*

## Ministers of religion

Specific ministers of religion are **excluded from coverage** under the Act (this applies irrespective of whether the minister is working under a Contract of Service). They are:

- a minister ministering within the Anglican Church of Australia
- a priest or other member of a religious order ministering within the Catholic Church
- a pastor ministering within the Lutheran Church
- an ordained minister, deaconess or lay pastor of the Uniting Church ministering in an approved placement under the Classification of Ministers of that Church or
- an officer of The Salvation Army appointed in South Australia under the orders and regulations for officers of The Salvation Army.

All other ministers of religion, priests or members of a religious order are deemed to be workers, if they are working under a contract of service.

## Sporting professionals

Sporting participants, umpires and referees are generally **excluded** from cover under the Act. There are two exceptions to the blanket exclusion. These are persons engaged in boxing/wrestling and riders/drivers as defined by the *Authorised Betting Operations Act 2000*. However, persons in these categories would need to satisfy the contract of service test to be entitled to benefits under the Act. Special provisions may apply for referees in the boxing/wrestling profession. Please contact WorkCover for further clarification.

Information on the control test of a contract of service is included in the *Guide to definition of a worker* brochure available at [www.workcover.com](http://www.workcover.com)

## Prescribed volunteers

Under Section 103a, the Crown (the State) is deemed to be the employer of voluntary workers if they are engaged in work which is of benefit to the State. The type of work has to be a prescribed class of work. Regulation 17 sets out the prescribed class of work which includes volunteer fire-fighters, members of the South Australian Country Fire Service and fire control officers under the *Fire and Emergency Country Services Act 2005*.

## Other volunteers

Volunteers of organisations are not paid remuneration and accordingly are **not covered** under the Act. However, volunteer workers can be deemed to be in prescribed class of work where they are engaged in work which is for the benefit of the State, under Section 103(a).

## Work experience

Work experience, where no remuneration is paid, is not a contract of service. A valid contract is only created between at least two separate legal entities, where some consideration (usually money) is involved. Enquiries from students/employers should be directed to Centrelink officers or insurance companies to establish which insurance schemes cover students who are on work experience.

## Self-employed persons

Generally self-employed persons are **not workers** and are not provided coverage under the Act. However, a person working in a prescribed class of work and who meets certain criteria **may be** deemed a worker.

## Partners

A partnership exists where there is an association of two or more people (or in some cases differing types of legal entities) who contribute towards a business with a view to making a profit.

Partners are **not usually considered to be workers**; they cannot employ themselves and are not required to be registered unless the partnership employs. However, a **partner working in a prescribed class of work and meeting certain criteria may be deemed a worker** and the principal contracting the partner would need to register.

**NB: Trusts can not legally employ.**

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

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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](http://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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