

Instruction Pack A

As you are familiar with this system, only the following supporting material has been provided to assist you with your reporting obligations:

NSW Workcover

- Workers compensation insurance – A guide for NSW employers
- Wages Definition Manual

NSW Payroll Tax

- Extracts from the Office of State Revenue NSW website
 - o Payroll tax overview
 - o Register for payroll tax
 - o Employers questionnaire
 - o Checklist for liable & exempt items
 - o Wages definition

Victorian Workcover

- Your workcover insurance – A guide for employers
- Contractors and workers (extract from Worksafe website)
- Fringe benefits (extract from Worksafe website)

Victorian Payroll Tax

- Extracts from the State Revenue Office Victoria
 - o Payroll tax guide
 - o Register for payroll tax
 - o Nexus provision
 - o Contractors

Should you require additional information or wish to refer to the numerous rulings and case law examples, please visit the following websites in the first instance.

www.workcover.nsw.gov.au

www.osr.nsw.gov.au

www.worksafe.vic.gov.au

www.sro.vic.gov.au



WorkCover



Workers compensation insurance

A guide for NSW employers

Disclaimer

This publication may contain work health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. 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 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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Introduction

This guide provides an overview of workers compensation insurance for NSW employers and is designed to help you understand how your insurance works.

The workers compensation scheme can seem complicated for employers. With this in mind, we have provided the guide in an easy to understand question and answer format based on questions that employers typically ask.

All employers in NSW who pay annual wages over \$7500 are required by law to have a workers compensation insurance policy.

In the event of a workplace injury, illness or disease, a workers compensation insurance policy ensures an employer is covered for the costs of all benefits due to the injured worker, which may include rehabilitation assistance, weekly payments, lump sums for permanent impairment and payment of medical bills.

This guide does not include claim, policy or premium information for self insured employers or specialised insurers. Please email self&specialisedinsurers@workcover.nsw.gov.au if you require information.

Please contact your scheme agent if you have any questions about this guide or require further support.

Kind regards,



Jason McLaughlin,
Director of Underwriting
WorkCover NSW

Insurance cover for employers

All employers in NSW (except exempt employers) are required to have a workers compensation insurance policy.

An employer is a business or individual that employs, engages or hires workers on a full time, part time or casual basis, under an oral or written contract of service, including an apprenticeship or traineeship.

Which employers are covered?

Employers covered in the NSW Workers Compensation Scheme include but are not limited to the following:

Individual or sole trader

Insurance cover for all employees but not the policy holder.

If the individual or sole trader does not have workers they do not need a policy. A personal accident and illness policy or an income protection insurance policy for the individual is recommended but this is not a workers compensation requirement.

Partnerships

Insurance cover for all employees of the partnership but not the partners themselves.

A personal accident and illness policy or an income protection insurance policy is recommended for partners of a partnership but this is not a workers compensation requirement.

Companies

Insurance cover for all employees of the company including the working directors.

Trusts

Insurance cover for all employees of the trust.

When the trustee of a trust employs workers, the trustee needs to have a policy. The trustee may be a sole trader, partnership or company.

Strata Plan

Insurance cover for all employees of the strata corporation.

The employer is a strata scheme. The workers compensation policy is held in the name of the owners' corporation – eg The Owners Corporation of Strata Plan 12345.

Some employers won't need a workers compensation policy – who are they?

Employers who pay \$7500 or less in annual wages (known as exempt employers) are not required to take out an insurance policy unless they employ an apprentice or trainee, or are part of a group (see Appendix B) for premium purposes.

Exempt employers need to play a role in helping their injured worker return to work. Please call WorkCover for further details on 13 10 50.

Exempt employer arrangements do not apply to employers in the thoroughbred racing industry who are required to hold a policy of insurance with Racing NSW or to employers whose business is covered by a 'per capita' WorkCover Industry Classification, for example taxi drivers.

Note: Volunteers are not regarded as workers. Employers of volunteers are not required to take out workers compensation insurance for their volunteers, but still have a duty to provide a safe working environment for them.

Who provides workers compensation insurance cover?

Scheme agents issue and administer workers compensation insurance policies. They also:

- determine and collect insurance premiums
- manage workers compensation claims
- provide support for injured workers including rehabilitation
- pay workers compensation benefits to injured workers
- manage any third party service providers (eg medical or rehabilitation services) in the event of a claim.

How do employers take out a workers compensation policy?

You can contact a scheme agent (see Appendix A) by phone, fax, letter, email or online to have a workers compensation insurance policy set up.

Insurance cover is effective immediately or at a future date agreed with the scheme agent and cannot be backdated.

What happens if my annual wages change?

If an employer becomes aware their estimated wages for the policy period will change significantly, they should advise their scheme agent of the change and if necessary the scheme agent will issue an amended premium calculation.

When an employer becomes aware they have advised their scheme agent of an incorrect actual wage amount they should immediately advise the scheme agent of the correct amount.

If an exempt employer becomes aware they will pay more than \$7500 in wages during a financial year, or they become a member of a group (see Appendix B) or employ an apprentice or trainee, they must contact a scheme agent (see Appendix A) immediately to take out an insurance policy. The policy starts from the date the employer notifies the scheme agent. An employer who becomes a member of a group should contact their group scheme agent as group policies must be aligned to a common renewal date and have the same scheme agent.

What information do you need to give the scheme agent?

To ensure you pay the correct premium for your workers compensation policy, the scheme agent will ask you a range of questions about your wages, number of employees, business activities and whether you are related to other employers.

How long will I be insured for?

Insurance cover is for a 12 month period. It can be shorter:

- to align the policy period to an employer's financial/calendar year
- if the employer is joining a group
- to align the policy period with a month end.

What happens after my policy has been set up?

Once information is collected and a new policy has been set up, your scheme agent will issue you with a new business package that includes:

- information on how your premium was calculated
- your policy conditions
- a certificate of currency
- a schedule with your policy details
- claim lodgement and management information.

How is my workers compensation premium calculated?

Your workers compensation insurance premium is based on a number of things including the:

- industry/industries in which you operate
- amount of wages you pay your workers involved in each industry
- costs of any claims made by your injured workers over the past two years (medium and large employers only)
- dust diseases levy
- mine safety premium adjustment (for mining industry employers).

What information is required for my premium to be calculated?

Medium/large employers

Your scheme agent will ask you to complete a declaration of estimated wages form at the beginning of your policy year, and a declaration of actual wages form at the end of your policy year.

Your premium will then be calculated twice during each policy period:

1. The initial premium – called the estimate premium – is calculated at the beginning of the policy period, based on an estimate of wages you are likely to pay during the policy period.
2. The final premium – called the hindsight premium – is calculated at the end of the policy period, using the actual amount of wages you pay during the policy period.

Small employers

Your scheme agent will invite you to renew your policy four to six weeks before your current policy expires.

The invitation outlines your renewal premium for the upcoming year and how it was calculated. It also contains an actual wages declaration and details of your payment options.

You do not need to submit estimated wages.

Are there different categories of employer for premium calculation?

For premium calculation, there are three categories of employer:

1. Small employer has a basic tariff premium of \$30,000 or less – claims costs do not impact the premium charged.
2. Medium employer has a basic tariff premium greater than \$30,000 up to \$500,000 – claims costs impact the premium charged.
3. Large employer has a basic tariff premium of more than \$500,000 – claims costs impact the premium charged.

What can I do to reduce my workers compensation premium?

The WorkCover industry classification rate, industry claims cost rates, dust disease levy rates and the premium formula are fixed under the *Insurance Premiums Order*.

Variable components include the wages paid to your workers and for medium and large employers the cost of claims lodged by your injured workers.

Any claim costs for medium and large employers will be included in your premium calculation for a maximum period of three years. You can reduce this cost by having:

- a safe workplace
- an active involvement in the injured worker's return to work.

Small employer – Safety Assistance Program

What premium discounts are available for small employers?

Small employers have an Employer Safety Incentive (ESI) or a Return to Work Incentive (RTWI) automatically calculated in their premium.

What is the Employer Safety Incentive?

The ESI is a discount applied to the basic tariff premium of all new and renewed policies at the beginning of the policy year.

Do I lose the Employer Safety Incentive if I have an injured worker?

The ESI is removed at the final premium calculation for the period of insurance when an injured worker has not returned to suitable work, including with another employer, within four weeks of the injury.

What is the Return to Work Incentive?

The RTWI is a discount applied to the basic tariff premium at the final premium calculation for the period of insurance, if the employer returns all injured workers to suitable work, including with another employer, no later than 13 weeks after the date of injury.

The policy renewal cycle

What is the policy renewal cycle?

Four to six weeks before a policy expires you will receive a policy renewal invitation package.

Will my policy be automatically renewed?

Your policy will be automatically renewed unless you write to your scheme agent to cancel your insurance.

What if I need to cancel my insurance policy?

Write to your scheme agent if you no longer need workers compensation insurance because you:

- have ceased trading
- ceased employing workers
- sold your business
- have changed legal entity.

What is my basic tariff premium?

Your basic tariff premium is calculated by multiplying your annual wages by the industry classification rate applicable to your business activity.

You'll find your basic tariff premium and business activity on the premium calculation forms provided by your scheme agent.

How are premiums determined for small employers?

Your scheme agent calculates your premium based on the most recent wages for the last period of insurance. For example, if the renewal is for the 2013/14 policy year, estimated wages for the 2012/13 year will be used to calculate the initial premium.

How is my premium calculated if I have not submitted actual wages?

Your agent calculates your premium based on the most recent estimate of wages for the current (unexpired) period of insurance, plus a 30 per cent loading.

When do small employers submit their actual wages declaration?

You must declare actual wages within four months after the expiry of your policy.

How is the apprentice discount calculated if I don't provide estimated wages?

Contact your scheme agent before renewal of your policy and provide details of apprentices' wages. Your premium will be adjusted accordingly.

What about contractors' wages?

Contact your scheme agent before renewal of your policy and provide details of contractors' wages. Your premium will be adjusted accordingly.

What is the minimum premium?

The minimum premium payable for a workers compensation policy is \$175.

What happens if I don't lodge declaration forms by the due date?

For medium and large employers, the scheme agent will calculate your initial premium for the new policy period using the previous year's wages plus a 30 per cent loading.

For example:

Previous year's wages	=	\$250,000
\$250,000 x 30% (loading)	=	\$75,000
Total wages used to calculate employer's initial premium	=	\$325,000

What are my payment options?

The payment options for your initial premium depend on your basic tariff premium.

Basic tariff premium	Payment in full	Quarterly instalments	Monthly instalments
<\$1000	Receive discount if paid by due date	Not available	Not available
>\$1000	Receive discount if paid by due date	Available	Not available
>\$5000	Receive discount if paid by due date	Available	Available

The payment options for your final hindsight premium depend on your adjustment premium.

Adjustment premium	Payment in full	Instalment plan
< or = \$1000	Due date is one month	Not available
>\$1000	Due date is one month	Due dates are 1, 2 and 3 months

What is the 'payment in full' discount?

You receive a three per cent discount for paying the annual premium in full by the due date. This does not apply to \$175 policies.

Small employers – receive a five per cent discount for payment in full.

When are quarterly and monthly instalments due?

Quarterly and monthly instalments begin one month after the renewal date.

If an instalment is not paid by the due date, the full initial premium must be paid within one month after the date of the initial premium calculation notice.

What happens if I don't pay by the due date?

If the employer does not pay their initial premium in full by the due date, they will not be entitled to the discount for payment in full. The full amount becomes due and payable.

If an employer misses an instalment or is having difficulty paying their premium they should immediately contact their scheme agent.

What are my payment methods?

Payment methods may include:

- direct debit
- electronic funds transfer (EFT)
- BPAY
- cheque
- direct deposit
- credit card.

What happens if my circumstances change during my policy period?

Once you are aware of a change in wages or business activity, you must provide a written statement to your scheme agent detailing the revised estimated wages and the reason for the decrease or increase.

Your estimated wages must decrease by 25 per cent or more for the scheme agent to re-calculate your initial premium; the decrease can only occur if your actual wages have been provided for the previous year's policies. You can decrease your estimated wages twice during the current insurance period but can increase them more than once.

If the initial premium has been paid, a decrease in estimated wages is not allowed. Any premium refunds will be issued at the end of the policy period when calculating the final premium.

What happens after the final premium calculation?

There will be one of four outcomes:

1. If the final premium is higher than the initial premium, you will need to pay the difference to your scheme agent – eg if the initial premium was \$25,000 and the final premium is \$30,000 you must pay the balance of \$5000 to your scheme agent.
2. If the final premium is lower than the initial premium, your scheme agent will repay or credit your overpayment – eg if the initial premium was \$30,000 and the final premium is \$25,000 your scheme agent will pay or credit \$5000 to you.
3. If the final premium is equal to the initial premium, your premium is correct and will stay the same.
4. For small employers, the final premium will be adjusted to cater for a change to the ESI and RTWI.

How do I change scheme agents?

If you decide to transfer your workers compensation insurance policy to another scheme agent, the following steps need to be completed before your policy expires:

1. Advise your current scheme agent you are transferring your insurance policy to a new scheme agent in writing.
2. Inform your new scheme agent you are transferring your insurance policy to them.

Note: the commencement date of the policy with the new scheme agent must be the same as the expiry date of the policy with the current agent.

What is a certificate of currency?

A certificate of currency is proof that you hold a current workers compensation insurance policy. A certificate of currency is issued by your scheme agent on request.

Note: For an employer to obtain a certificate of currency, they must not have any overdue premiums or outstanding wage declarations.

Wages audits

WorkCover has an ongoing compliance program that verifies if employers have paid their correct premium. Please keep records relating to wages and any contracts for five years.

What happens after I am audited?

When an audit reveals a wage under declaration, the employer must pay the outstanding premium as well as a late payment fee dating back to when the premium was originally due.

In addition, when wages are under declared by more than 25 per cent, the employer will be charged the wage audit cost.

When an audit reveals a wage over declaration, the scheme agent will reimburse or credit the employer.

Claims

How do I make a claim?

If your employee is injured, immediately notify your scheme agent.

If someone who works for an exempt employer is injured, please immediately notify the WorkCover Claims Assistance Service on **13 10 50**.

Each claim lodged by an exempt employer has a one off administration fee of \$175 and the claim is assigned to a scheme agent.

Complaints

What if I have a complaint?

The first step is to contact your scheme agent for a review of your concern.

What if my scheme agent doesn't address my complaint?

Call the WorkCover Customer Service Centre on **13 10 50**.

What if I disagree with the premium my scheme agent charges?

The first step is to contact your scheme agent for a review.

Additionally you can contact the Nominal Insurer's (NI) Underwriting branch if you believe the premium has not been calculated correctly.

Contact the NI Underwriting Branch on:

Phone: 13 10 50

Email: premiums.branch@workcover.nsw.gov.au

Post: The Manager, Underwriting Operations, Level 9, 383 Kent Street, Sydney NSW 2000.

If you still disagree, an appeal can be lodged with WorkCover provided you have contacted your scheme agent within one month of your scheme agent sending out the premium calculation forms.

If a premium appeal is made outside the one month, you must provide details of special circumstances as to why you did not lodge the appeal sooner.

A special circumstance would be surrounding an employer's ability to conduct their normal business as usual.

The following are not considered special circumstances:

- delays caused by negotiations with a scheme agent, corporate governance issues or an employer not knowing the legislation
- transfer of a claim between scheme agents
- a subsequent change in staffing at the employer, consultant or scheme agent with a differing point of view.

Any premium appeal must relate to the policy period on the premium calculation forms.

While an appeal is pending, the employer must continue to pay their premium.

Penalties

Penalties apply for failing to have a current workers compensation insurance policy and for supplying information that is false and misleading.

Penalties may also apply for failing to comply with the *Workers Compensation Act 1987* (WC Act) and other related legislation.

Other penalties include late payment fees.

Further information

Contact your scheme agent if you have any questions about this guide or require further support.

Appendix A

The five scheme agents

Allianz Australia Workers' Compensation (NSW) Limited

Phone: 1300 130 664

Fax: (02) 9266 7387

Email: yourcovered@allianz.com.au

Web: allianz.com.au

CGU Workers Compensation (NSW) Limited

Phone: 1300 666 506

Fax: (02) 9088 9709

Email: wcnswenquiries@cgu.com.au

Web: cgu.com.au

Employers Mutual NSW Limited

Phone: (02) 8251 9000 or 1800 469 931 (toll free)

Fax: (02) 8251 9496

Email: info@employersmutual.com.au

Web: employersmutual.com.au

GIO General Limited

Phone: 13 10 10

Fax: 1300 666 346

Email: wcpolicy_nsw@gio.com.au

Web: gio.com.au

QBE Workers Compensation (NSW) Limited

Phone: 1300 377 892 or (02) 9375 4444

Fax: (02) 9848 4855

Email: enquiries.nswpolicyservices@qbe.com

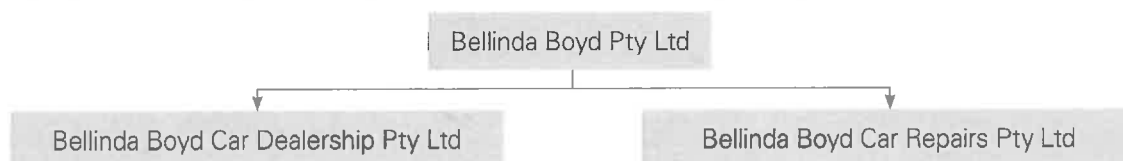
Web: qbe.com

Appendix B

Who forms part of a group?

Grouping is when two or more related employers are treated collectively for workers compensation premium calculation and debt collection purposes.

A typical group structure is a parent company with one or more subsidiary companies.



In this example, Bellinda Boyd Pty Ltd, Bellinda Boyd Car Dealership Pty Ltd and Bellinda Boyd Car Repairs Pty Ltd are related and grouped.

Employers are grouped for workers compensation premium calculation purposes when two or more employers each hold a NSW workers compensation policy and are related for grouping under the WC Act.

Total NSW wages paid for the group must also exceed the prescribed threshold. Related employers include:

- corporations related under section 50 of the *Corporations Act 2001*
- businesses that are commonly controlled – eg common directors
- businesses that have common employees
- the same person(s) have a controlling interest in each of two or more businesses – eg same partners.

For more information on employer grouping call 13 10 50.

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WorkCover NSW, 92–100 Donnison Street, Gosford, NSW 2250
Locked Bag 2906, Lisarow, NSW 2252 | Customer Service Centre **13 10 50**
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Wages Definition Manual

January 2014

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Important information

1. Paragraphs preceded by a number in the *Wages Definition Manual* are variously referred to throughout the manual as ‘rules’. These rules provide guidance as to what is included in remuneration and how the provisions are generally applied for workers compensation insurance purposes.
2. The two main Acts referred to in the *Wages Definition Manual* are:
 - *Workers Compensation Act 1987* (the Act)
 - *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act).

Introduction

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

WorkCover's policy is 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 *Workers Compensation Act 1987* (the Act) 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, WorkCover uses the term 'remuneration'.

The aim of this manual is to help ensure that there is a consistent approach to the declaration of remuneration. This consistency will help make sure that each employer covered for workers compensation through the WorkCover Scheme pays the correct premium amount.

This edition supersedes the June 2009 edition.

How the system works

Scheme Agents collect workers compensation premiums from employers on behalf of WorkCover 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, treatment, rehabilitation and lump sums for permanent disabilities.

What can you use this manual for?

1. Employers and Scheme Agents can use this manual to help 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 WorkCover's interpretation in relation to many different types of payments.
2. The law governing whether a payment is remuneration for the purposes of workers compensation is set out in the Act and the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act). The purpose of this manual is to provide general information about the law and how WorkCover interprets the law.

Why is this manual needed?

3. This manual is intended to assist all NSW employers to apply a consistent approach to the declaration of remuneration and help to ensure that all employers are treated fairly and consistently.

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

What is an employer's premium based on?

4. 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 (please see relevant *Insurance Premiums Order* (IPO) for definitions), the cost of any claims made by their workers.

From 4.00pm on 30 June 2008 some employers will no longer be required to obtain a workers compensation insurance policy for workers if they pay, or expect to pay, \$7500 or less in annual remuneration during a financial year.

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, no matter the amount of annual wages paid. This also applies to employers whose WorkCover 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 fail to take out a policy, if not an exempt employer, when their wages exceed \$7500 in a financial year.

For further information on how premiums are calculated, refer to the relevant IPO available on the WorkCover website <http://www.workcover.nsw.gov.au/>.

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

5. Payments of weekly compensation benefits to an injured worker are calculated in accordance with the Act.

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 or pain and suffering.

The relevant law

6. This manual sets out the criteria WorkCover applies in determining the amount of remuneration an employer must declare to their Scheme Agent. WorkCover also uses the same criteria for the purposes of:
- determining an employer's appeal regarding the payments included in a worker's remuneration. See section 170 of the Act
 - considering an employer's understatement of wages. See section 174 of the Act
 - considering an employer's possible evasion of correct premiums. See sections 175 and 175A of the Act. For penalties for non-payment of premiums, see sections 155 and 156 of the Act.

Improving this manual

7. WorkCover welcomes your comments on this manual and any suggestions as to how it might be improved. The manual will be updated as required.

Any questions?

8. If you have any questions about this manual, please contact WorkCover at the address below.

Compliance Improvement Branch
WorkCover Authority of New South Wales
92–100 Donnison Street, Gosford, NSW 2250

or

Locked Bag 2906, Lisarow, NSW 2252
Phone: Compliance Improvement Branch Hotline (02) 4321 4808
Email: wageaudit@workcover.nsw.gov.au

If you are an employer wishing to dispute your Scheme Agent's assessment of your premium, check the information on disputes in Chapter L.

Using this manual

Definition of 'worker' and 'remuneration'

9. Because each employer's premium is based on the amount of 'remuneration' the employer pays to its 'workers', it is important to be careful about determining who is a 'worker' and what constitutes 'remuneration'.

Each of those words is defined broadly. For example:

- **worker** includes many contractors (see Chapter F)
- **remuneration** includes many kinds of payments. The general rules about what is included as remuneration are set out in Chapter A. In addition, WorkCover has prepared a list covering many types of payments that employers make to workers. In the list, WorkCover sets out its interpretation as to which of those payments are to be counted as 'remuneration' (see Chapter B).

These broad definitions help to ensure that employers are treated fairly and consistently.

What records must employers keep?

10. Employers are required to keep records of:

- the remuneration they pay their workers (and contractors who are deemed to be workers)
- all information that may form the basis for calculating their workers compensation premium.

The employer must keep those records in good order and condition for at least five (5) years as outlined in section 174 of the Act.

See Chapter J for the rules about the records employers must keep.

How does a Scheme Agent's interpret what is assessable as wages?

11. The Scheme Agent is required to comply with this manual when deciding what is to be counted as remuneration for workers compensation purposes. This manual provides general information about the law and how WorkCover interprets the law. If an employer disputes what is included as remuneration, WorkCover will assess the matter consistent with the law and the principles in this manual.

What if an employer disputes the amount of its premium?

12. Any employer who queries or disputes the premium calculation made by their Scheme Agent should discuss the matter with the Scheme Agent.

if, after those discussions, the employer still believes the premium calculation does not comply with the law or the principles outlined in this manual, the employer may contact WorkCover to discuss a review of the issue. A formal review may be conducted under section 170 of the Act. See Chapter L for the rules about applying to WorkCover for a review.

Chapter A – Meaning of ‘remuneration’

Many of the payments covered by the Act 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 WorkCover uses the term ‘remuneration’.

What is this chapter for?

13. 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 F).

This chapter covers the general principles in relation to ‘remuneration’. The detailed list of WorkCover’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 E

deemed workers – see Chapter G

contractors – see Chapter H

apprentices, trainees and government training programs – see Chapter I.

What payments are counted as remuneration?

14. The Act defines ‘wages’ broadly. (The definition is set out below).

To give employers and Scheme Agents guidance on WorkCover’s interpretation of the definition of ‘remuneration’, WorkCover has prepared a detailed list in Chapter B. In that list, WorkCover sets out its interpretation in relation to many particular types of payments.

Generally, a payment to a worker is ‘remuneration’ if it is made to, or for the benefit of, the worker. (‘Worker’ is explained in Chapter F).

What is the Act’s definition of ‘wages’?

Section 174 (9) of the 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
- (b1) 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

(b2) 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

(b3) 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

(b4) 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

(b5) includes a distribution to a worker as beneficiary under a trust that is required to be included as wages by Section 174AA, and

(c) 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
- (vii) any GST component in a payment to a worker.

For information on how WorkCover interprets this definition, see this chapter for the general principles, and see Chapter B for the detailed list of WorkCover's interpretation in relation to particular types of payments.

Inclusion of trust distributions as wages

Section 174AA of the 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.

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- (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 WorkCover Guidelines or as determined and notified by the Authority in the particular case.

Refer to Chapter D for more information on trust distributions.

Chapter B – WorkCover’s interpretation in relation to particular payments

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

How do you use this list?

15. The list in this chapter sets out WorkCover’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 WorkCover’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 these guidelines:

- Employers should contact their Scheme Agent for advice.
- If a Scheme Agent is not sure, they may contact WorkCover to clarify whether the payment should be counted as remuneration.
- If an employer disputes what is included as remuneration, WorkCover will assess the matter consistent with law and the principles outlined in this manual. This manual provides guidance about WorkCover’s interpretation of the law.
- Unless stated otherwise (eg fringe benefits) the gross amount is 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)

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 (such as shift allowance, skill allowance, etc) is counted as remuneration.
- Any consideration subject to fringe benefits tax is counted as remuneration.
- Other allowances may be counted, depending on the payment.

'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.

Apprenticeship Schemes

See Chapter I.

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'.

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. The value to be given to the 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.

Book expenses

If the employer pays for or reimburses a worker for book 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 'Allowances and expenses'.

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 are counted as remuneration.

Camping allowance

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

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 in the applicable IPO 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 included in the relevant schedule of the applicable IPO.

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 (ie 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 (eg 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.

Construction Employees Redundancy Trust (CERT)

See 'Australian Construction Industry Redundancy Trust (ACIRT)' and 'Termination payments'.

Contractors – deemed to be workers

See Chapter H.

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

See 'Share Options'.

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'.

Fares

See 'Travel allowance'.

First aid allowances

First aid allowances are counted as remuneration.

Flexible work package payments

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*. It is the actual value of the benefit provided (as determined by the *Fringe Benefits Tax Assessment Act 1986*), that is **the grossed-up amount**.

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 (available from the ATO website).

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'.

Government training schemes

See Chapter I.

Government training subsidies

See Chapter I.

Group apprenticeship schemes

See Chapter I.

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.

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 their Scheme Agent to ensure they have the appropriate coverage.

Housing

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.

Housing loans (interest free or reduced interest)

See 'Housing'.

Income splitting

Wages, salary, fringe benefits and/or any other consideration provided by an employer to a person other than the worker as part of an income splitting arrangement is counted as remuneration.

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.

For policies which commenced prior to 4.00pm on 1 January 2006

If an employer pays a worker who works both within NSW and interstate and the employer:

- Does not have a workers compensation policy applying in the other State or Territory, then the worker's total remuneration is counted as remuneration in NSW.
- Has a workers compensation policy applying in the other State or Territory, then the amount to be counted corresponds to the proportion of the wages that can be attributed to the time the worker is in NSW. If not declared elsewhere, all remuneration paid should be declared in NSW.

For new or renewed policies commencing on or after 4.00pm on 1 January 2006

The cross border provisions contained in the 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. Section 9AA of the Act states the following

(3) A worker's employment is connected with:

- (a) the State in which the worker usually works in that employment, or
- (b) if no State or no one State is identified by paragraph (a), the State in which the worker is usually based for the purposes of that employment, or
- (c) if no State or no one State is identified by paragraph (a) or (b), the State in which the employer's principal place of business in Australia is located.

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 'Schedule 7 Reduction of premium for employers of the previously injured workers etc' in the relevant IPO.

See 'JobCover Placement Program Guidelines' (catalogue no. WC03389) issued by WorkCover for further details.

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 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

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

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 employees 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 for or reimburses the worker for meal 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', '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

Ordinary time earnings

Ordinary time earnings are counted as remuneration.

Options

Share options are not counted as remuneration.

See 'Share options'.

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-based worker, working temporarily 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.

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.

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 Government. Eligible working parents can get 18 weeks of government funded parental leave pay at the rate of the national minimum wage (currently \$589.40 a week before tax).

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 (eg 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 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.

If the employer contributes to the worker's superannuation fund or pays any amounts of fringe benefits and those contributions or payments are debited to the worker's salary package, then they are counted as remuneration.

See 'Flexible work package payments'.

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.

Share options

Share options provided under employee share schemes are usually not counted as remuneration. However, where these benefits are provided in lieu of wages, then the benefit is counted as remuneration for the purposes of calculating workers compensation premiums.

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 contributions and benefits

See Chapter E.

Telephone allowance

If the employer pays for or reimburses the worker for telephone-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 '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.

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 employees 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 I.

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 as regulated in the applicable IPO 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.

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 – Fees and payments to directors

How are fees to a 'non-working' director treated?

16. Any fees the employer pays 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 and/or perform administrative functions of the business.

How are fees to a 'working' director treated?

17. 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 fees, wages, salary, allowances, fringe benefits, superannuation etc) are counted as remuneration.

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

How are dividends treated?

18. 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 scheme agent 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 an employee under that award. For example, making decisions that relate to financial strategy/ management decisions.

In the absence of a relevant industrial award being appropriate, WorkCover 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, WorkCover 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?

19. Any distribution that an employer and/or trustee pays 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 administrative functions of the business.

Are distributions to a 'working' beneficiary counted?

20. 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 Scheme Agent 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 an employee under that award. For example, making decisions that relate to financial, strategy and/or management decisions.

Who in relation to a trust is a worker?

21. 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 (see rule 20 for further details). This situation is no different to the position of directors of other proprietary limited companies where the directors are considered to be employees of the corporation (which is the employer).

See Chapter C for further details.

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.

See rule 20 for further details.

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

22. 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 WorkCover obligations apply to: the trustee or the trust?

23. The obligation to make declarations and ensure that the Act is complied with apply 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.

Inclusion of trust distributions as wages

Section 174AA of the Act states

- (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, and
 - (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, or
- (b) if paragraph (a) does not apply, pursuant to an industrial instrument in force under a law of the Commonwealth, or
- (c) if neither paragraph (a) nor (b) applies, as provided by the WorkCover Guidelines or as determined and notified by the Authority in the particular case.

In calculating the market rate of remuneration and in the absence of a relevant industrial award being appropriate, WorkCover 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.

Chapter E – Superannuation contributions and benefits

Are an employer's extra contributions counted as remuneration?

24. All employer contributions to superannuation schemes paid on behalf of a worker are counted as remuneration.

Is superannuation paid under an award or enterprise agreement counted?

25. Any employer contributions to superannuation schemes as part of an award or enterprise agreement are counted as remuneration.

Are Superannuation Guarantee Levy payments counted?

26. All employer contributions to superannuation schemes in accordance with the superannuation guarantee levy, or those parts of an award or enterprise agreement, are counted as remuneration.

Are additional contributions the employer pays on the worker's behalf counted?

27. If the employer contributes to the worker's superannuation fund and these contributions are debited to the worker's salary package, then they are counted as remuneration.

Are a worker's contributions counted?

28. Worker's contributions to superannuation schemes are counted as remuneration. However, these contributions form part of the worker's gross wages and are generally deducted from these wages. The amount the employer needs to declare is the gross wages before the worker's contribution has been deducted.

Are benefits paid to workers counted?

29. Benefits paid to workers from superannuation schemes are not counted as remuneration.

What happens if the only remuneration paid to the worker is superannuation contributions?

30. If the employer makes contributions to a worker's superannuation scheme or fund but does not pay the worker any other remuneration for the work the worker performed, the contribution is counted as remuneration.

Chapter F – Meaning of ‘worker’

What is this chapter for?

31. 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?

32. A person may be a worker for the WorkCover 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 G and H for further information on deemed workers and contractors.

What does the term ‘worker’ include?

33. ‘Worker’ means:

- any person who has entered into, or who works under, a contract of service or a training contract with an employer (this includes some contractors, see Chapter H), 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 (see rule 38).

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.

Which contractors are treated as ‘workers’?

34. WorkCover’s interpretation of the contractors who are workers for the purposes of the law is set out in Chapter H, as is WorkCover’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’?

35. WorkCover has worked with employers and associated groups to create a service to help employers determine which people should be included in their workers compensation premiums.

Employers can contact WorkCover’s Worker Status Service for assistance, which offers:

- the Workers Status Rulings Branch within WorkCover to provide specialised assistance to employers
- a web-based self-assessment tool on the WorkCover website to help employers determine the status of their workers
- a provision for employers to apply to WorkCover to issue a prospective private ruling as to whether a person, or class of persons, is a worker for premium calculation purposes.

A private ruling is a binding notice from WorkCover 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

www.workcover.nsw.gov.au/insurancepremiums/Policies/Workerstatusservice/Pages/default.aspx.

See also, Chapter F.

How are interstate and overseas workers treated?

36. 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?

37. If working directors receive payments (eg wages, salary, allowances, fringe benefits, fees, superannuation), 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 Act define 'worker'?

38. 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 Act also 'deems' certain persons to be workers. Details of these deeming provisions are outlined in Chapter G.

Chapter G – ‘Deemed workers’

39. 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 H)
- contractors under labour hire services arrangements
- rural workers
- timbergetters
- 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.

WorkCover 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 the services regarding private rulings can be obtained at

www.workcover.nsw.gov.au/insurancepremiums/Policies/Workerstatusservice/Pages/default.aspx

See also, Chapter F.

Chapter H – Contractors

Why can contractor payments be treated as remuneration?

40. Many people working as contractors are treated as workers for workers compensation purposes. The 1998 Act refers to them as 'deemed workers' (see Chapter G). 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 NSW 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 Workers Compensation Commission and this is decided on the individual facts of each case. WorkCover 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 Workers Compensation Commission, the Courts and WorkCover in determining if a contractor is a deemed worker are whether the:

- arrangement is in writing
- contractor/deemed worker employs any person(s) to perform the work
- contractor/deemed worker works at stated hours on usual days and the contract specifies the hours and/or days
- contractor/deemed worker measures and inspects the site and provides a fixed price quotation inclusive of labour and material
- contractor/deemed worker deals directly with the client requesting the work or the principal contractor for whose benefit the work is to be done
- contractor/deemed worker can make a profit or loss over the market rate for a tradesman working in the industry
- contractor/deemed worker supplies the materials, plant and equipment used in completion of the job
- contractor/deemed worker could 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 WorkCover and Scheme Agents. See Chapter J and rule 52 for information about record keeping.

The amounts an employer pays to its contractors who are 'deemed workers':

- as remuneration are to be included in the total remuneration the employer declares when calculating the employer's premium
- as payments for materials, tools, equipment, or plant are excluded when calculating the employer's remuneration and premium. See rule 41.

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

41. In relation to contractors, the law provides that 'costs necessarily incurred by that person in performing that contract' (see section 174 (9)(b) of the Act) are not remuneration and are not used to calculate the employer's premium. However, the 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 the Scheme Agent should consider 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 Scheme Agent 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
Labour only	100 per cent
Supply of labour and tools	90 per cent
Including hand-held tools, power tools, chainsaws, staple guns, and incidental materials such as, screws, pop rivets, glue and masking tape	
Supply of labour and plant	80 per cent
Such as cement mixers, conveyors, ladders, trestles and the like	
Supply of labour, plant and materials	
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
Transport Industry Contractors	
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
Timber/Sawmilling (snigging, felling)	50 per cent
Earthmoving/Bobcat	
Up to 3 tonnes	75 per cent
3 tonnes and over	50 per cent

WorkCover 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 the services regarding private rulings can be obtained at <http://workcover.nsw.gov.au/workerstatusworkcover.nsw.gov.au/workerstatus>. See also Chapter F.

Chapter I – 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

42. For policies commenced prior to 4.00pm on 31 December 2006

Wages to an apprentice are counted as remuneration.

For new or renewed policies commencing on or after 4.00pm on 31 December 2006

Employers who engage an apprentice in recognised trade vocations as designated by the Commissioner for Vocational Training under the *Apprenticeship and Traineeship Act 2001* (Refer to www.det.nsw.edu.au/rtow/vto/vtoEnquiry.do?command=goToVTOSearch for a list of recognised apprenticeships) are exempt from paying workers compensation premium on those wages paid. However, those wages will still need to be included/declared on the estimate and actual wage declarations supplied to the Scheme Agent.

Note: 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.

For new or renewed policies on or after 4.00pm on 31 December 2006 to 30 December 2007

The apprentice premium exemption will be deducted from the employer's final premium. At the end of the policy period the Scheme Agent will calculate the premium using the actual amount of wages paid during the policy period (excluding apprentice/trainee wages). The Scheme Agent will rebate any credit owing as a result of this adjustment.

For policies commenced or renewed on or after 4.00pm on 31 December 2007

The apprentice premium exemption will be applied to the employer's premium at the start of the policy period. This means that the premium exemption will reduce the initial invoiced premium. The exemption will be applied again when the final premium is calculated at the end of the policy period.

Group Apprenticeship Schemes

43. 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 Scheme and not the 'host employer'. Therefore, remuneration the 'host employer' pays to the apprentice under one of these schemes that the Scheme reimburses 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.

Trainee Apprentice

44. For policies commenced prior to 4.00pm on 31 December 2006

Wages paid to a trainee apprentice are counted as remuneration.

For new or renewed policies commencing on or after 4.00pm on 31 December 2006

If the trainee apprentice is undertaking an apprenticeship in a trade vocation approved by the NSW DEC, employers may claim the exemption. 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 and any other conditions are met, the exemption may 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 exemption for those periods they employ the apprentice.

Trainees

45. Trainees are defined as employees under the Australian Traineeship System.

For policies commenced prior to 4.00pm on 1 January 2004

Remuneration paid to new entrant trainee workers employed under the Australian Traineeship System is not counted for the purposes of calculating an employer's premium. Instead, the worker is regarded as an employee of the Traineeship System and covered for workers compensation through that system.

For new or renewed policies commencing on or after 4.00pm on 1 January 2004

From 1 January 2004 employers will be required to meet workers compensation premium costs for new entrant trainees employed on or after 1 January 2004. The Government will continue to meet the cost of workers compensation premiums of new entrant trainees, who commenced their traineeship prior to 1 January 2004, for a period up to 31 December 2004 or the completion of the traineeship, whichever occurs first.

Government training schemes

46. 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)

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

Government training subsidies

48. 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 J – Record-keeping requirements

What records are employers required to keep?

49. Employers are required to:

- keep detailed records of all payments made to their workers
- keep copies of any other documents relevant to those payments
- provide access to them when required.

What are the legislative requirements about records for workers?

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

- be in writing in English (or readily accessible and readily convertible into writing in English)
- record 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
 - details of all deductions including the amount of each deduction
- record all wage payments made in the 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 or group certificates, fringe benefit tax returns, sub contractor workers compensation statements (section 175B of the Act), 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 who may be 'deemed workers'?

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

- record a description of the services the contractor provided
- record full details of component parts of each payment made to the contractor – eg labour only, labour and materials, labour, materials and plant, or labour and plant
- contain documents that support the claim for contractor status such as evidence of questions, letterhead, business cards, contractor invoices, Certificates of Currency, ABN, and Department of Finance and Services, NSW Fair Trading licences. Refer to Chapter H
- record payments to contractors, including full details of each payment made including the dates of payment and the amounts
- maintain copies of any private ruling decisions.

For further information on contractors, see Chapter H.

What records should employers keep about contractors who aren't 'deemed workers'?

52. Employers who determine that a 'contractor' is not a 'deemed worker' should keep the same detailed records about those contractors and any details of the contractor's workers compensation policies. The employer may find those records useful if they later need to justify to the Scheme Agent, or to WorkCover, that a contractor was not a 'deemed worker'.

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

- contain documents that support the claim for contractor status such as evidence of questions, letterhead, business cards, contractor invoices, Certificates of Currency (workers compensation, public liability etc.), ABN and Australian Company Number (ACN)
- record payments to contractors, including full details of each payment made including the dates of payment and the amounts
- contain copies of Certificates of Currency 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.

How long should employers keep the records?

53. Employers should keep the records in good order and condition for at least five (5) years. This is consistent with the ATO requirements.

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

54. If an employer claims that its records have been stolen or destroyed, it must provide written evidence to support the claim if possible – 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?

55. 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).

When must the employer provide information to their Scheme Agent?

56. The employer must use their records to provide the following information to the Scheme Agent within two (2) months:
- after the start of a policy period, an employer must provide an estimate of the remuneration which it will pay during the policy year
 - after the end of a policy period, an employer must provide a declaration of the actual remuneration it paid during that period
 - when requesting a Certificate of Currency.

Failure to provide a wage estimate or declaration may incur a fine of \$500, or prosecution and a penalty of up to 20 penalty units (that is, \$2200 at the time of printing).

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

57. Each employer must make sure that the information provided to the Scheme Agent in the declarations is correct. The penalty for providing false or misleading information to a Scheme Agent to obtain or renew a workers compensation policy is up to 100 penalty units (that is, \$11,000 at the time of printing).

If an employer's declarations are found to be incorrect, then various penalties may apply – for example, Scheme Agents may charge employers a late payment fee at the rate specified in the relevant year's IPO. These fees are charged on any premium that the employer has not paid because it under-declared the remuneration it paid. If the employer is a company, the directors of the company may be personally liable for this debt.

Chapter K – Wage audits of employers

What rights do WorkCover and the Scheme Agent have to examine an employer's records?

58. WorkCover and its Scheme Agents have a legal right to audit an employer's records. They use this right to make sure that employers are paying the appropriate premium.

WorkCover and its Scheme Agents have a legislative right to access an employer's wages records under section 174 of the Act.

Section 174 stipulates that employers shall keep and maintain in good order records of all wages paid to workers employed by them and can be further required to provide these records to WorkCover or an authorised person under section 174 of the Act.

Details of the right to access wages record details are also outlined in policy documents issued by WorkCover's Scheme Agents. See policy conditions contained in the policy document issued to employers by their Scheme Agent.

It should be noted that even though certain payroll records contain sensitive information, such as tax file numbers, these records must still be made available when requested.

How does WorkCover select which employers will be audited?

59. WorkCover and its Scheme Agents utilise a range of data interrogation methods to review employers' policy details and develop risk profiles for identifying areas of high-risk for premium related non-compliance.

What notice of a wage audit must Workcover or the Scheme Agent give an employer?

60. The employer is to be notified in writing that they have been selected for a wage audit. The notice must include details of the auditor. That auditor is to contact the employer to make arrangements for the wage audit to take place.

Note: A wage audit would normally be conducted for three completed policy periods.

To what extent must the employer cooperate with an inspection?

61. An employer must cooperate in relation to a wage audit. In particular, they must cooperate in making arrangements for the audit to take place within a reasonable time after the initial request.

If the employer does not comply with the request to audit the employer's wage records, then the Scheme Agent may request that WorkCover issue an order requiring the employer to provide access to the requested records. WorkCover has the power to make those orders under section 174 of the Act. If an employer does not comply with the Order, the employer may be issued an infringement notice or be prosecuted and fined up to 500 penalty units (that is, \$55,000 at the time of printing).

How often may a Scheme Agent inspect a particular employer?

62. An employer may be inspected more than once. There is no limit on the number of times a Scheme Agent may audit an employer's records.

What powers does WorkCover have to request information in an inspection?

63. An employer must comply with WorkCover's request to provide information. If the employer does not comply, then WorkCover may make various orders directing the employer to provide information. WorkCover's powers to request this are set out in section 174 (5) of the Act.

Those powers include the power to do any one or more of the following:

- require an employer to supply information to WorkCover
- require an employer to make information available for inspection by someone authorised by WorkCover
- set the time in which the information must be supplied or made available for inspection.

What information may WorkCover request?

64. WorkCover may request:

- information that the employer is required to record in relation to remuneration. See Section 174 (1) of the Act. The record requirements are set out in rules 50 to 52 in this manual
- 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 WorkCover may require include:

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

Chapter L – Appealing a premium assessment

What if an employer disputes the amount of the premium?

65. Any employer who queries or disputes the premium calculation made by their Scheme Agent should discuss the matter with the Scheme Agent.

If, after those discussions, the employer still believes the premium calculation does not comply with the law or the principles outlined in this manual, the employer may contact WorkCover to discuss a review of the issue.

A formal review may be conducted under section 170 of the Act.

How may an employer apply to WorkCover in relation to a dispute?

66. If an employer wishes to dispute their Scheme Agent's assessment of their premium, they may apply to WorkCover to make a determination in relation to the disputed aspects.

For the application to be considered:

- WorkCover must receive it within one month after the date on which the Scheme Agent issues the notice of the premium to the employer. (However, WorkCover may agree to extend that period). See Rule 67 below.
- it must be in the form approved by WorkCover and must contain all the information needed to consider the employer's application.

The application is made under section 170 of the Act.

For assistance please call WorkCover's Appeals Branch on (02) 4321 5502.

When will WorkCover allow a time extension?

67. WorkCover will only allow an extension of time in special circumstances, relating to issues to do with the employer's ability to attend to normal business activities. WorkCover will generally not allow a time extension merely because of negotiations with a Scheme Agent, corporate governance issues, or the employer not knowing the law.

Can an employer withhold premium payment if they disagree with the calculation?

68. The employer must pay the premium to the Scheme Agent even if the employer:

- disputes the assessment of the premium
- has lodged an application with WorkCover for a review of the Scheme Agent's decision about the premium assessment.

If an employer's appeal is successful, their premium will be adjusted accordingly. See section 170 (3B) of the Act.

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WorkCover NSW, 92-100 Donnison Street, Gosford, NSW 2250
Locked Bag 2906, Lisarow, NSW 2252 | Customer Service Centre **13 10 50**
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Payroll tax

Payroll tax is applied to a business's New South Wales (NSW) wages that exceed the payroll tax threshold.

New payroll tax clients can use our [online registration form](#) [[/info/online/payroll#registration](#)] to register for payroll tax.

Existing clients can log in to [Payroll tax online](#) [<https://www.apps07.osr.nsw.gov.au/mars-online/pages/payrollTax/>] to:

- lodge your monthly calculation, annual reconciliation or nil return
- change your details, including grouping and banking
- register for online payment
- cancel your registration and payments
- view your payment history, return history summary, payment options and payment codes
- complete the employers questionnaire.

Rates and thresholds

What is the current rate and threshold?

The payroll tax rate is 5.45%.

The payroll tax threshold for 2015-16 (July - June) is \$750,000.

The monthly threshold amounts are:

Days in the month	Threshold
29 days	\$59,426
30 days	\$61,475
31 days	\$63,525

The monthly threshold is calculated using the number of days in the month, divided by the number of days in the year, multiplied by the threshold.

To view rates and thresholds for previous years, visit the [rates and thresholds](/taxes/payroll/rates) [//taxes/payroll/rates] page.

Are there any factors that may affect my entitlement to the threshold?

The following factors will determine whether you get the full threshold entitlement:

- **Wages are only paid for part of the year**

If you start or stop employing in NSW within a financial year, you are not entitled to the full threshold. You will receive a proportion of the threshold equal to the ratio of the number of days you employ to the number of days in a year.

- **A business pays liable wages in another State or Territory**

If you pay wages in another State or Territory the threshold will be determined as a proportion equal to the ratio of NSW wages to total Australian wages. For example, if 75% of your total wages are paid in NSW then you are entitled to 75% of the threshold.

- **A business is part of a group**

If your business is part of a [group of businesses](/taxes/payroll/grouping) [//taxes/payroll/grouping], only one threshold applies to the whole group.

Calculate, lodge and pay payroll tax

How do I calculate, lodge and pay my payroll tax?

To calculate and pay your monthly liability, use our [monthly calculator](/node/611) [//node/611].

To calculate, lodge and pay your annual liability, complete an [annual reconciliation](/node/607) [//node/607].

For example payroll tax calculations, download the example calculations for the [monthly calculator](/node/600/attachment) [//node/600/attachment] and [annual reconciliation](/node/2153/attachment/latest?filename=example_calculations_ar.pdf) [//node/2153/attachment/latest?filename=example_calculations_ar.pdf].

When are my payments due?

Each monthly payment or 'nil' return is due within seven days after the end of each month. The due date is the next business day if the seventh day is a weekend or public holiday.

Your annual reconciliation and payment are due by 21 July.

Rebates

Are there any rebates available?

The Jobs Action Plan rebate is available if you employ new employees.

View the [Jobs Action Plan](/taxes/payroll/jap) [//taxes/payroll/jap] page for more information on eligibility, payments and

registration/application.

A rebate was available if you employed an employee with a disability under the Payroll Tax Rebate Scheme (Disability Employment) Act 2011. This Act has been repealed from 1 July 2014.

If you were employed prior to 1 July 2014 and believe you were eligible for the Payroll Tax Rebate Scheme (Disability Employment), you may still make a claim for payment. [Contact us \[/contact#prt\]](#) to make a claim.

Records

What records do I need to keep?

When keeping records you must meet the following requirements:

- They must be sufficient to enable a payroll tax liability to be properly assessed.
- Records need to be kept for no less than five years.
- The Chief Commissioner can require a person to keep additional specified records.
- Records must be kept in English or in a form easily translated to English.
- Records must be readily available for production to the Chief Commissioner if required.

New clients

Can I get help working out my payroll tax?

If your business is working out payroll tax for the first time, you can contact our client account managers for help.

Your dedicated client account manager will help you with all legislative or administrative enquiries during your first year of registration, and will provide:

- a single point of contact for all payroll tax legislative and administrative enquiries
- high level tax technical assistance
- information about your rights and obligations
- free payroll tax seminars and online resources
- help using our website resources and calculators
- assistance to correctly determine your payroll tax liability.

To get in touch with a client account manager, contact us.

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Register for payroll tax

Online registration

Note: From the 2014-15 financial year onwards, in addition to the current wage component fields, you will be required to separately declare wages that fall within the definition of:

- bonuses and commissions
- director fees
- shares and options.

Please read the following information and ensure that you have all the necessary details before starting the online form.

Information required

Client information

- if you are already a registered client for any other revenue type, you will need to enter your existing Client ID. Your Client ID is generally included on correspondence from us.
- your ABN - your business name and type of business will be retrieved from the Australian Business Register. If you have an ARBN issued by ASIC and you do not have an ABN, please contact us on 1300 139 815 for information on how to register
- trusts - if the business is a trust you must enter the trust's ABN
- business address details
- contact name and daytime telephone number
- your bank account details. If you have an overseas bank account, please contact us on 1300 139 815 for information on how to register.

Employment

- the date the business first employed staff in New South Wales (NSW)
- the date the business first employed staff interstate.

NSW and interstate wages

NSW and interstate wages for the current year, plus the 4 previous years. Wages include:

- salaries and wages
- fringe benefits
- employer superannuation contributions
- termination payments
- contractor payments
- allowances
- bonuses and commissions
- director fees
- shares and options
- apprentice and trainee wages.

For more information, visit the [Checklist of liable and exempt items \[/taxes/payroll/checklist\]](#) page.

Grouping

- list the names of all group members who pay wages and directors' fees in NSW and/or interstate
- details of other group member wages.

For more information, visit the [Grouping \[/taxes/payroll/grouping\]](#) page.

Estimated time

If you have all the required information, it should take you about **20 minutes** to complete and submit this form online.

Warning

The current version of our online form does not allow you to save your work and come back at a later time to complete the form. If you decide to exit the form before completing it, you will need to start again.

Privacy statement

Information collected from you on this form is required by us to determine if you have a liability or entitlement. The information may be provided to third parties with your consent or as required or permitted by law. We will correct or update your personal information at your request.

For more information, visit the [Privacy \[/info/terms/privacy\]](#) page.

Payroll tax online registration

Login 

[\[https://www.apps07.osr.nsw.gov.au/mars-online/payroll/register\]](https://www.apps07.osr.nsw.gov.au/mars-online/payroll/register)

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Employers questionnaire

Please read the following information and ensure that you have all the necessary details before starting the online form.

Information required

Client information

- your Client ID and Correspondence ID from your payroll tax notice of investigation correspondence
- your ABN or ARBN
- business address details
- contact name and daytime telephone number.

Business Records

- Employee and management payroll reports
- Year-end superannuation reports for employees and directors
- Balance sheets (with notes), trading and detailed profit and loss statements
- Fringe Benefit Tax (FBT) returns
- General ledger account reports detailing payments made to contractors or subcontractors engaged by the business.

Note: it will be useful for you to sort the report for each year by subcontractor name

- Confirmation letter from State Training Services NSW regarding the approval of any apprenticeships or traineeships for employees you wish to claim a payroll rebate.
- Details of shareholders, directors and beneficiaries of the business and their interest in other businesses or entities, if applicable.

Instructions

Download a copy of the Employers Questionnaire and save it to your computer system by entering your Client ID and Correspondence ID in the login box below.

Once completed, you will need to log in and upload the questionnaire along with the records listed below:

- Balance sheets, trading and detailed profit and loss statements for each year subject to investigation.

Note: If the financial statements of the business have not been finalised for any period a “draft copy” will be acceptable.

- FBT returns for each year subject to investigation.
- Any other relevant documents or information.

If the business is a member of a group for payroll tax, copies of the above records for all group members need to also be uploaded.

Estimated time

If you have all the required information, it should take you about **30 minutes** to complete and submit this form online.

Privacy statement

Information collected from you on this form is required by us to determine if you have a liability or entitlement. The information may be provided to third parties with your consent or as required or permitted by law. We will correct or update your personal information at your request.

For more information, visit the [Privacy \[info/terms/privacy\]](#) page.

Client ID/Correspondence ID login

You can login using your Client ID and Correspondence ID from your notice of investigation correspondence.

Continue 

[\[https://www.apps07.osr.nsw.gov.au/mars-online/pages/uprtQuestionnaire/uprt_questionnaire.jsf\]](https://www.apps07.osr.nsw.gov.au/mars-online/pages/uprtQuestionnaire/uprt_questionnaire.jsf)

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Checklist of liable and exempt items

- [A to C](#)
- [D to G](#)
- [H to P](#)
- [Q to Z](#)

A to C

Wage type	Liability status	Comments
Aboriginal Persons (payments made to)	Exempt under certain conditions	Wages exempt if an approved project
Accommodation allowances	Exempt component applies	
Adoption leave	Exempt up to 14 weeks full-time or equivalent period if paid at a reduced rate of pay.	Paid in addition to normal leave
Allowances	Liable	All types liable except for exempt component for motor vehicles and accommodation
Apprentice wages	Liable	Rebate scheme applies
Back pay	Liable	
Benefits	Liable	Rebate scheme applies
Bonuses	Liable	
Commissions	Liable	

Contractor payments under a relevant contract	Liable	Relevant contractor provisions apply
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D to G

Wage type	Liability status	Comments
Defence Force payments	Exempt	For time taken as military leave
Directors fees	Liable	
Dividends	Not liable	Return on investment is not liable
Early retirement scheme benefits	Liable (income taxable component only)	
Employment Termination Payment (ETP)	Liable (income taxable component only)	Statutory redundancy components not liable
Emergency operations	Exempt	For wages paid to a volunteer member involved in emergency operations
Employment agencies payments	Liable	Employment agency itself is liable for on-hire contracts unless end user is exempt
Free holidays	Liable	As per Fringe Benefits Tax Assessment Act 1986
Fringe benefits	Liable	As per Fringe Benefits Tax Assessment Act 1986
Gifts related to service	Liable	
Gifts unrelated to service	Not liable	Fringe benefits tax limits apply

Golden handshakes	Liable	Employment Termination Payment
Gross wages	Liable	

H to P

Wage type	Liability status	Comments
Holiday pay	Liable	
Jury Duty (employer payments)	Liable	Payments made by an employer to an employee are liable wages
Jury Duty (court payments)	Not liable	Payments made by the court system to an employee are not liable wages
Leave paid out	Liable	All unused leave paid out
Leave loading	Liable	
Living Away from Home Allowance (LAFHA)	Liable	As per Fringe Benefits Tax Assessment Act 1986
Loans	Liable	As per Fringe Benefits Tax Assessment Act 1986
Long service leave	Liable	
Make up pay	Liable	Payments additional to compulsory workers compensation amounts
Maternity leave	Exempt up to 14 weeks full-time or equivalent period if paid at a reduced rate of pay.	Paid in addition to normal leave
Meal money	Liable	Declared as an allowance

Meals	Not liable	As per Fringe Benefits Tax Assessment Act 1986
Motor vehicles	Liable	As per Fringe Benefits Tax Assessment Act 1986
Motor vehicle allowances paid as flat or fixed amount	Exempt component applies	Applies to business use of private vehicles
Motor vehicle allowances paid on per kilometre basis	Not liable	Applies to business use of private vehicles. The car expense payment must be exempt under the Fringe Benefits Tax Assessment Act 1986
Overtime	Liable	
Paid parental leave (PPL) paid by the Commonwealth Government	Not Liable	
Partnership drawings	Not liable	
Paternity leave	Exempt up to 14 weeks full-time or equivalent period if paid at a reduced rate of pay.	Paid in addition to normal leave
Payments in lieu of notice	Liable	Employment Termination Payment
Piece work payments	Liable	For payments by quantity of output
Portable long service leave fund payments	Not liable	
Prizes	Liable	As per Fringe Benefits Tax Assessment Act 1986

Q to Z

Wage type	Liability status	Comments
Quarters/Housing	Liable	As per Fringe Benefits Tax Assessment Act 1986
Redundancy Payments	Liable (income taxable component only)	Statutory redundancy component not liable
Redundancy benefit scheme payments	Not liable	Payments made into or out of scheme
Reimbursements	Not liable	Must be a business expense which is accounted for
Retirement payout	Liable	All unused leave is liable
Severance payments	Liable	Employment Termination Payment
Service contracts (Contract of service)	Liable	If there is an employer/employee relationship
Shares/options scheme	Liable	Declare market value at granting or vesting date (conditions apply)
Shift allowances	Liable	
Sick pay	Liable	
Staff discounts	Liable	As per Fringe Benefits Tax Assessment Act 1986
Study leave	Liable	
Study expenses	Liable	As per Fringe Benefits Tax Assessment Act 1986
Subcontractors	Liable unless exemption applies	Relevant contractor provisions apply

Subscriptions	Exempt component applies	As per Fringe Benefits Tax Assessment Act 1986
Superannuation	Liable	Including all lump sum and pre-tax effective salary sacrifice amounts
Termination payments	Liable (income taxable portion only)	Statutory redundancy components not liable
Tool allowances	Liable	
Trainee wages	Liable	Rebate scheme applies
Travel allowances	Liable	
Trust distributions	Not liable	
Uniform allowance	Liable	
Unused leave	Liable	Termination Payments
Volunteer fire-fighters	Exempt	For wages paid while involved in bushfire fighting activities
Vouchers	Liable	As per Fringe Benefits Tax Assessment Act 1986
Workers compensation	Not liable	Only statutory compulsory amounts are not liable

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Wages

Wages are any remuneration paid or payable by an employer to an employee for services provided.

Payments made to certain contractors [[/taxes/payroll/contractors](#)] may also be deemed wages.

What payments are liable for payroll tax?

Payments liable for payroll tax include:

- Allowances [[/taxes/payroll/wages/allowances](#)]
- Apprentice and trainee wages [[/taxes/payroll/wages/apprentice](#)]
- Bonuses and commissions [[/taxes/payroll/wages/bonuses](#)]
- Contractor and consultant wages [[/taxes/payroll/contractors](#)]
- Director's fees and other payments [[/taxes/payroll/wages/director](#)]
- Employment agency contracts [[/taxes/payroll/wages/agencies](#)]
- Fringe benefits [[/taxes/payroll/wages/fbt](#)]
- Salary sacrifice [[/taxes/payroll/wages/salary](#)]
- Shares and options [[/taxes/payroll/wages/shares](#)]
- Superannuation [[/taxes/payroll/wages/superannuation](#)]
- Termination payments [[/taxes/payroll/wages/termination](#)]
- Third party payments [[/taxes/payroll/wages/third-party](#)]

What payments are not liable?

The following payments are not liable for payroll tax:

- Commonwealth Paid Parental Leave Scheme payments
- Jury duty payments

Payments made by the court system are not liable. Payments made to an employee by their employer while on jury duty are liable, even if you are partly or fully compensated from the court

- Reimbursements

If in the course of work an employee incurs an expense and is reimbursed for that expense

against receipts, then the payment is not a wage. You must be able to account for the payments either as an advance which is later adjusted against receipts, or payments against receipts. Any payments that do not have documentation are not accepted as reimbursements and will be liable.

■ Workers Compensation

Payments made by an insurance company to an employee on workers compensation are not liable.

Make up payments (the difference between the compensation payments and an employee's regular pay) paid by the employer are liable.

What wages are exempt from payroll tax?

Exempt wages are predominately those paid by non-profit organisations that are religious institutions, charitable organisations or organisations set up for the public benefit.

Some wages are exempt based on the circumstances in which they are paid. This includes wages paid to employees on maternity, paternity or adoption leave or on military leave.

For more information on exempt wages, visit the [exempt wages \[https://www.osr.nsw.gov.au/taxes/payroll/wages/exempt\]](https://www.osr.nsw.gov.au/taxes/payroll/wages/exempt) page.

Where are wages taxable?

All wages paid to an employee for a month's service are taxable in one jurisdiction. The nexus provisions determine which jurisdiction the wage is taxable.

If a worker performs services in only one jurisdiction in a calendar month, payroll tax is payable in that jurisdiction.

If a worker performs services in more than one jurisdiction in a calendar month, a four-tiered test is used to determine where the wages for that month are taxable:

1. The employee's principal place of residence
2. The employer's registered Australian Business Number address/principal place of business
3. The place where the wages are paid to the employee
4. The place where most of the services were performed.

For more information, view [Revenue ruling PTA 039 - Payroll tax nexus provisions \[https://www.osr.nsw.gov.au/info/legislation/rulings/payroll/pta039\]](https://www.osr.nsw.gov.au/info/legislation/rulings/payroll/pta039).

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Allowances

Allowances are usually a specific amount paid in addition to an agreed salary, such as allowances for tools, uniforms and overtime.

All allowances paid to an employee are liable for payroll tax except for the exempt component of both the overnight accommodation and motor vehicle allowance or if they are a direct reimbursement against a receipt.

For more information, view [Revenue ruling PTA 011 - Allowance and Reimbursements](#) [[/info/legislation/rulings/payroll/pta011](#)].

Overnight accommodation allowance

An overnight accommodation allowance is paid to an employee to cover temporary accommodation costs for a night's absence from their usual place of residence.

This allowance, including meals and incidental expenses, is only liable for payroll tax if the payment exceeds the exempt rate of \$255.45 a night.

Note: Temporary accommodation means for a continuous period of:

- no more than 21 days
- more than 21 days where the employee continues to maintain a domestic dwelling to accommodate the employee and/or their family.

For more information on overnight accommodation for truck drivers, view [Revenue ruling PTA 024 - Overnight accommodation allowances paid to truck drivers](#) [[/info/legislation/rulings/payroll/pta024](#)].

Living away from home allowance

A living away from home allowance is paid to an employee who has moved and taken up temporary residence away from their usual place of residence so that they are able to carry out their employment duties at a new, temporary workplace.

This allowance is liable only if it exceeds the reasonable benefit limits under the [Fringe Benefits Tax Assessment Act 1986](#) [<https://www.comlaw.gov.au/Details/C2013C00635>].

Note: A living away from home allowance is commonly misinterpreted as an accommodation allowance.

Motor vehicle allowance

A motor vehicle allowance is paid to an employee to compensate them for any business use of their own private vehicle.

How can a motor allowance be paid?

A motor vehicle allowance can be paid in one of the following ways:

- **Per kilometre** – A car expense payment paid per kilometre is not subject to payroll tax.
- **Flat amount, fixed amount or fixed amount plus a rate per kilometre** – the allowance is liable for payroll tax if the payment exceeds the exempt component. You must keep records of the business kilometres travelled to claim the exempt component. If you have not kept records, the total allowance is liable.

You must record business kilometres using the continuous recording method or averaging method used by the [Australian Taxation Office \[https://www.ato.gov.au/\]](https://www.ato.gov.au/). The Chief Commissioner may approve another method and this approval must be in writing.

For information on real estate salespersons, view [Revenue ruling PTA 025 - Motor vehicle allowance paid to real estate salespersons \[info/legislation/rulings/payroll/pta025\]](/info/legislation/rulings/payroll/pta025).

How do I calculate the exempt component?

The exempt component of a motor vehicle allowance is calculated using the following formula:

$$E = K \times R$$

E = exempt component.

K = number of business kilometres travelled during the financial year.

R = the exempt rate of 77c per kilometre

For more information, view [Revenue ruling PTA 005 v2 - Exempt Allowances: Motor Vehicle and Accommodation \[info/legislation/rulings/payroll/pta005v2\]](/info/legislation/rulings/payroll/pta005v2).

Previous exempt rates

To view the exempt rates for previous year's, visit our previous [rates and thresholds \[taxes/payroll/rates\]](/taxes/payroll/rates) page.

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Apprentice and trainee wages

You must include the wages paid to apprentices and new entrant trainees in your payroll tax calculation, including superannuation, allowances and Fringe Benefit Tax.

What is the rebate for apprentice and trainee wages?

New South Wales (NSW) introduced a payroll tax rebate on wages paid to apprentices and trainees recognised by the [NSW Department of Industry](http://www.industry.nsw.gov.au/) (NSW DOI) and under the definition of an apprentice or trainee in the [Apprenticeship and Traineeship Act 2001](http://www.legislation.nsw.gov.au/viewtop/inforce/act+80+2001+cd+0+N/)

[\[http://www.legislation.nsw.gov.au/viewtop/inforce/act+80+2001+cd+0+N/\]](http://www.legislation.nsw.gov.au/viewtop/inforce/act+80+2001+cd+0+N/).

You cannot claim a rebate for trainee wages when the trainee has been continuously employed by you for more than three months full-time or 12 months casual or part-time immediately prior to commencing employment.

Generally, we will accept claims for a rebate if the NSW DOI accepts the trainee as a new entrant trainee. If you are unsure, you should seek clarification from NSW DOI regarding the status of your trainees.

How do I claim the rebate?

The rebate is a self-administered scheme allowing the rebate amount to be calculated and offset against the monthly payments and annual reconciliation.

If you use your own spreadsheet or a commercial software package, such as MYOB, to calculate your monthly payment, you have the option of either determining your own monthly offset or claiming it at the end of the financial year.

How do I calculate the rebate?

To calculate your monthly rebate, use the following formulas.

Step 1 - Tax Liability

$(\text{Total wages for the month} - \text{Monthly threshold}) \times \text{Payroll tax rate}$

Step 2 - Rebate

Apprentice and/or Trainee wages x Payroll tax rate

Step 3 - Tax Payable

Tax liability - Rebate

For example payroll tax calculations, download the example calculations for the [monthly calculator](#) [/node/600/attachment] and [annual reconciliation](#) [/node/2153/attachment/latest?filename=example_calculations_ar.pdf].

Note: if you also have interstate wages, the inclusion of the apprentice and/or trainee wages will affect threshold deduction entitlements between each State and/or Territory.

I am a non-profit group-training organisation, do I need to declare the wages?

No, wages are exempt if they are paid to an employee who is employed by a non-profit group-training organisation in accordance with a group apprenticeship or traineeship scheme approved by NSW DOI.

What common errors are made when claiming the rebate?

Some of the common errors made when claiming the rebate include:

- continuing to apply old rules by claiming an exemption instead of the rebate by not including apprentice and/or trainee wages after 1 July 2008
- apprentices and/or trainees not registered with NSW DOI
- continuing to claim the rebate despite the worker no longer being considered an apprentice or new entrant trainee by NSW DOI
- not claiming the rebate despite being eligible
- only claiming the rebate on apprentice/trainee hourly wages, instead of including all remuneration such as superannuation, allowances and bonuses.

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Bonuses and commissions

All bonuses and commissions paid to employees are liable for payroll tax.

Bonuses

If you pay a bonus that does not relate to any particular month, the payment will be considered to be for services performed in the month when it is paid.

For example, if you make the payment in June, it will be considered to be for services performed in June.

Commissions

Commissions include all payments based on sales and are liable even if they are the only payments received by an employee.

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Contractors

Payments to contractors performing work under a relevant contract are liable for payroll tax unless the contract satisfies one of the nine criteria outlined under the heading 'When is a contract not liable for payroll tax?'.

For payroll tax purposes the meaning of an employee and a contractor may be different. Before checking the liability of contractor payments, first determine whether or not the worker is performing their services as an employee or a contractor. Even if a worker has an ABN and calls themselves a contractor, an employer/employee relationship may exist, in which case the contractor provisions don't apply.

Who is an employee?

An employee is typically subject to control on how, where and when they perform their work. They are paid regularly and cannot pay someone else to do their work. You need to consider the total relationship with the business including:

- **Control** - who determines who, when, where and how the tasks are completed, and when and how the worker is paid.
- **Integration** - is the worker providing the services while conducting a business or as part of the operations of the employer.
- **Contract vs practical relationship** - are the terms of the contract consistent with the practical relationship between the parties.
- **Contracts to achieve a given result** - does the contract focus on the ultimate result or what must be performed during the performance of the contract.
- **Independent business** - is the worker conducting a business on their own or actually participating in the business of the business operator.
- **Power to delegate** - does the worker have the power to delegate work or sub-contract to another person to complete the services for which they were engaged.

For more information, view [Revenue ruling PTA 038 - Determining whether a worker is an employee](#) [[/info/legislation/rulings/payroll/pta038](#)].

Who is a contractor?

An independent contractor is an entity that agrees to produce a designated result for an agreed price and in most cases:

- is paid for results achieved
- provides all or most of the necessary materials and equipment to complete the work
- is free to delegate work to other entities
- has freedom in the way the work is done
- provides services to the general public and other businesses
- is free to accept or refuse work
- is in a position to make a profit or loss.

Contractors can include:

- sub-contractors
- consultants
- sole traders
- companies
- partnerships
- trusts.

What is a relevant contract?

A relevant contract is a contract under which:

- a business is supplied with services

or

- goods are supplied to natural persons for the re-supply of those goods to the business in a modified form.

Under a relevant contract:

- all the payments under the contract (except GST and materials) are deemed to be wages
- the person in receipt of deemed wages is taken to be an employee
- the persons (usually a corporation) paying those wages are taken to be an employer.

When is a contract not liable for payroll tax?

If a contract meets any of the following nine criteria, the contract is not liable for payroll tax:

1. Contracts under which the basic purpose is to supply goods, and the labour or services provided under the contract is only incidental to this.

For more information, view [Revenue ruling PTA 033 - Contractors - Services Ancillary to the supply of goods](#) [/info/legislation/rulings/payroll/pta033].

2. Contracts for services a business does not normally require and the contractor provides these services to the public generally.

For more information, view [Revenue ruling PTA 022 - Contractors - Services not ordinarily required](#) [/info/legislation/rulings/payroll/pta022].

3. Contracts for services normally required by a business for less than 180 days in a financial year.

For more information, view [Revenue ruling PTA 020 - Contractors - 180-day exemption](#) [/info/legislation/rulings/payroll/pta020] and [Revenue ruling PTA 014 - What constitutes a day's work](#) [/info/legislation/rulings/payroll/pta014].

4. Contracts under which a contractor provides services up to 90 days in a financial year.

For more information, view [Revenue Ruling PTA 035v2 - Contractors - 90-day exemption](#) [/info/legislation/rulings/payroll/pta035v2] and [Revenue ruling PTA 014 - What constitutes a day's work](#) [/info/legislation/rulings/payroll/pta014].

5. Contracts that do not meet any of the above criteria, but the Chief Commissioner is satisfied the contractor provides services of that kind to the public generally within a financial year. To qualify you must submit a written request, together with evidence that the services were actually provided to the public, to the Chief Commissioner.

For more information, view [Revenue Ruling PTA 021 - Contractors - Exemption for contractors ordinarily rendering services](#) [/info/legislation/rulings/payroll/pta021] and [Revenue ruling PTA 014 - What constitutes a day's work](#) [/info/legislation/rulings/payroll/pta014].

6. Contracts under which the contractor engages additional labour (two or more people) to fulfil the terms of the contract.

For more information, view [Revenue Ruling PTA 023 - Contractors engaging others](#) [/info/legislation/rulings/payroll/pta023].

7. A contract for the conveyance of goods in a vehicle, which must be provided by, and owned or leased by the contractor.

For more information, view [Revenue Ruling PTA 006 - Payroll tax exemption for payments to owner-drivers](#) [/info/legislation/rulings/payroll/pta006].

8. A contract for services solely related to procuring persons who want to be insured by the principal business. Services must be provided by a genuine independent contractor conducting an agency business.

Note: From 1 January 2016, this exemption will no longer be applicable.

9. A contract for services related to the door-to-door sale of goods solely for domestic purposes. Goods must be sold directly to the public, who must be the ultimate consumer. The sale must be made at the consumer's home or work and be unsolicited.

Note: From 1 January 2016, this exemption will no longer be applicable.

For more information, view [Revenue Ruling PTA 007 - Contractor provisions - Door-to-Door sale of goods](#) [/info/legislation/rulings/payroll/pta007].

Note: these exemptions will not apply where the Chief Commissioner determines that any part of the arrangement(s) was entered into with the intention of avoiding payment of tax.

What payments are liable under a contract?

Where services are provided under a contract, only payments relating to the labour component are a wage, and therefore liable. The Goods and Services Tax component is not liable.

If the contract does not separate the material component from the labour component, the agreed percentage deductions listed in the following table will apply. A reduction does not apply for other costs such as transport and home office incurred by the contractor.

If you believe a lesser percentage applies to labour in your contract or if your industry is not listed below, you will need to contact us for determination.

Trade	Deduction from gross payments to contractor (%)
Architects	5%
Blind fitters	25%
Bricklayers	30%
Building supervisors who provide their own vehicles and inspect more than 6 sites per week	25%
Cabinet makers/ kitchen fitters	30%
Carpet layers	25%
Carpenters	25%
Computer programmers	5%
Draft persons	5%
Electricians	25%
Engineers	5%
Fencing contractors	25%
Painters who provide their own paint	30%
Painters who do not provide their own paint	15%

Plumbers	25%
Resilient floor/vinyl layers	37%
Roof tilers	25%
Tree fellers	25%
Wall and ceiling plasterers	20%
Wall and floor tilers	25%

For more information, view [Revenue Ruling PTA 018 - Contractor deductions](#)

[\[info/legislation/rulings/payroll/pta018\]](#) and [Revenue Ruling PTA 019 - Contractors - Labour and non-labour components](#) [\[info/legislation/rulings/payroll/pta019\]](#).

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Director's fees and other payments

Any amount of money paid by a company to remunerate a director for services performed is liable for payroll tax and must be included in your company's wages in the month in which the payment was paid or payable.

This includes director's fees, superannuation contributions, consultancy fees, on call allowances, marketing fees and any other form of value.

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Employment agencies

What is an employment agency contract?

An employment agency contract is a contract under which an employment agency or labour hire firm obtains the services of an individual worker for a client. The worker can provide these services individually, through a corporation or a trust.

An employment agency contract is not a relevant contract under the contractor provisions. This means that none of the contractor exemptions apply.

Who is liable for payroll tax?

Under an employment agency contract, the amounts paid by the agency in connection with the work performed by the service provider are wages and the employment agency is liable. Wages are liable when paid to a service provider through a corporation.

The amounts paid to the employment agency by the end user client are not wages.

Example

An end user client pays \$12,000 to an agency and the agency pays \$10,000 to David Hunt, the service provider. The liable employer is the agency and the \$10,000 is a liable wage.

A business pays \$1,000,000 to an agency for the services of John Green. The agency pays \$800,000 to Green Pty Ltd. Green Pty Ltd then pays \$700,000 to John Green. The liable wages are the \$800,000 paid by the agency to Green Pty Ltd.

What payments are liable?

Any monies, benefits and superannuation contributions paid to or on behalf of the contract worker are liable wages.

What is not liable?

An employment agency contract is not liable:

- when the employment agency only receives a 'one-off' fee to place a person with a client under a contract of employment. In this situation the employer accepts the employer/employee relationship and is responsible for any liability.

For more information, view [Revenue ruling PTA 029 - Recruitment Agencies/Placement Agencies/ Job Placement Agencies](#) [/info/legislation/rulings/payroll/pta029].

- Where the client of the employment agency signs an approved declaration form [Employment Agency Contracts - Declaration by client \(OPT 006\) \(PDF\)](#) [/node/300/attachment/latest?filename=opt006.pdf] stating they are an employer paying exempt wages, such as public hospital or charitable body.

For more information, view [Revenue ruling PTA 026v2 - Employment Agency Contracts Declaration by exempt clients](#) [/info/legislation/rulings/payroll/pta026v2].

Note: The Crown is a company for payroll tax purposes. As such, a government department or other government body can be a client of an employment agent.

Any monies paid by an employment agent for a worker's services obtained for a government department or other government body must be included in the agent's taxable wages.

For more information, view [Revenue ruling PTA 028 - Workers on-hired to Government](#) [/info/legislation/rulings/payroll/pta028].

What if several employment agencies supply a service provider?

If two or more employment agencies are involved in providing a worker to a client, the liable employment agency is the one paid by the client. In most cases, the amounts paid by the employment agency to secure the worker from another employment agency will be liable wages.

Example

A business seeking labour pays \$120,000 to Agency A, which pays \$110,000 to Agency B which pays \$100,000 to the service provider.

Only Agency A is liable and the liable wages are the \$110,000 paid to Agency B.

For more information, view [Revenue ruling PTA 027 - Employment Agency Contracts Chain of on-hire](#) [/info/legislation/rulings/payroll/pta027].

Anti-avoidance provisions

If the Chief Commissioner determines that the effect of an employment agency contract is to reduce or avoid the liability of any party to the contract to payroll tax he may determine that any party to the contract is the liable employer.

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Fringe benefits

Fringe benefits tax (FBT) is paid on certain benefits employers provide to their employees in place of wages. All fringe benefits with taxable value under the Fringe Benefits Tax Assessment Act 1986 [<https://www.comlaw.gov.au/Details/C2013C00635/>], except tax-exempt body entertainment fringe benefits, are liable for payroll tax.

If the benefit is exempt, except for deposits to the Superannuation Holding Accounts Special Account, or has a nil value it is not liable for payroll tax.

For more information on values and exempt benefits, view the Fringe Benefits Tax Assessment Act 1986 [<https://www.comlaw.gov.au/Details/C2013C00635/>].

How do I calculate the fringe benefit value for payroll tax?

The value of the benefits used for payroll tax is the total of the Type 1 and Type 2 aggregate amounts multiplied by the Type 2 gross up rate.

The table below provides the relevant gross up rate for the following financial years.

Note: Although the FBT year is from April to March, for payroll tax purposes we allow employers to assume the rates apply from July to June in line with the financial year.

Period	Gross up rate
01/07/2015 - onwards	1.9608
01/07/2014 - 30/06/2015	1.8868
01/07/2010 - 30/06/2014	1.8692

Note: the 'reportable value' shown on the taxation statements of employees should not be used.

How do I declare the fringe benefits in my payroll tax assessment?

You are required to declare the actual value of total fringe benefits for each month. However, you can elect to use the monthly estimate method if you have 15 months or more of fringe benefit

payments. Otherwise, you must provide actual fringe benefit amounts. You can do this monthly by adding all Type 1 and Type 2 benefits then multiplying the aggregate by the relevant Type 2 gross up rate for the specific year.

Monthly estimate method

For July to May, you must use 1/12 of the taxable value from your FBT return for the year ending 31 March immediately preceding the current financial year. The below example uses the gross up rate for the 2015-16 financial year.

Example

A business' 31 March FBT return has:

Type 1 aggregate amount =	\$80,000
Type 2 aggregate amount =	\$150,000
Taxable value =	$(\$80,000 + 150,000) \times 1.9608$
	\$450,984
Monthly returns =	$\$450,984 / 12$
	\$37,582

What amount do I declare in my annual reconciliation?

Annual calculation

The amount declared is the taxable value from your FBT return for the year ending 31 March immediately preceding the Annual Reconciliation. You can do this by adding the sum of all Type 1 benefits to the sum all Type 2 benefits then multiplying the aggregate by the Type 2 gross up rate for the specific year.

What if I pay fringe benefits in other States or Territories?

If you pay fringe benefits in New South Wales (NSW) and interstate but you cannot accurately determine your NSW fringe benefits value, you can pro-rata your FBT value for NSW based on the ratio of NSW wages to total Australian wages.

Monthly estimate method

The formula is total NSW wages (excluding fringe benefits) divided by total Australian wages

(excluding fringe benefits) multiplied by the taxable value from your FBT return for the year ending 31 March immediately preceding the current financial year divided by 12.

Annual calculation

The formula is total NSW wages (excluding fringe benefits) divided by total Australian wages (excluding fringe benefits) multiplied by the taxable value from your FBT return for the year ending 31 March immediately preceding the annual reconciliation.

What if I cease to employ?

If you cease to employ and therefore cease to be liable for payroll tax, the amount of fringe benefits you declare in your final payroll tax return will be the difference between:

- the actual taxable value of the NSW fringe benefits paid for the period from the preceding 1 July to the cease date
- the taxable value of the NSW fringe benefits declared each month for payroll tax during that period.

For more information, view [Revenue ruling PTA 003 - Fringe Benefits](#)

[\[info/legislation/rulings/payroll/pta003\]](#).

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Salary sacrifice

An effective salary sacrifice refers to an arrangement between an employer and employee, whereby an employee agrees to forego part of their future salary or wage in return for some other form of non-cash benefits of equivalent cost to the employer. To be an effective salary sacrifice arrangement, the arrangement must be as follows:

- be entered into before the employee performs the work
- be between the employee and employer, and
- the employee no longer has access to the sacrificed salary.

Under this arrangement:

- the employee pays income tax on the reduced salary or wage,
- salary sacrificed (pre-tax) superannuation contributions are classified as employer contributions (not employee contributions), and
- the employer may be liable to pay fringe benefits tax (FBT) on the fringe benefits provided

Payroll tax applies to an effective salary sacrifice arrangement as follows:

- the reduced salary or wage on which the employee pays income tax is treated as taxable wages,
- the pre-tax superannuation contribution is classified as the employer contribution and is taxable,
- the taxable value of the benefit under the Fringe Benefits Tax Assessment Act 1986 (FBTAA) is to be declared as a Fringe Benefit [[/taxes/payroll/wages/fbt](http://taxes/payroll/wages/fbt)].

If the benefit provided is exempt from fringe benefits tax (FBT) (such as a laptop that is provided primarily for work purposes), no payroll tax is payable in respect of the amount sacrificed for that benefit. Payroll tax is payable only on a reduced salary on which the employee pays income tax.

Examples of effective salary sacrifice arrangements

1. David negotiates a salary sacrifice arrangement for a new car. David's salary is reduced from \$70,000 to \$58,000 per annum because of the arrangement. Payroll tax is payable on \$58,000 & the remainder will have a taxable value under fringe benefits. The fringe benefit taxable value for payroll tax of the salary sacrifice will be determined when

calculating the total of the Type 1 and Type 2 aggregate amounts multiplied by the Type 2 gross up rate on the FBT annual return.

2. Stephanie negotiates a salary sacrifice arrangement for a \$3000 laptop for work purposes. Stephanie's salary is reduced from \$65,000 to \$62,000 per annum because of the arrangement. The laptop is exempt from FBT, therefore payroll tax is payable on \$62,000.
3. Harold makes pre-tax (salary sacrifice) superannuation contributions of \$5,400 per annum. Harold's salary is reduced from \$60,000 to \$54,600 with his employer making pre-tax superannuation contribution of \$5,400. Payroll tax is payable on \$60,000 (\$54,600 salary plus employer super contribution of \$5,400). Superannuation contributions have the same value as the wage sacrificed.

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Shares and options

Wages include the value of shares and options given to employees and directors.

Any employee contribution is not liable for payroll tax.

Employee share schemes

If the share or option is an Employee share scheme (ESS) interest you can elect to declare the taxable value of the share or option when it is granted or vested (the date when the employee is legally entitled to or receives the benefit). If you choose to declare on the granting date and the share or option is later rescinded, you can deduct the value of the wages previously declared in the same year the share or option was rescinded.

Shares in an unrelated corporation

If the share or option scheme is not an ESS interest, you need to declare the fringe benefit value as wages.

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Superannuation

All contributions to superannuation you make on behalf of an employee are liable for payroll tax.

These include contributions paid or payable:

- to a superannuation fund
- including the superannuation guarantee charge
- to any provident or retirement fund or scheme
- as salary sacrifice arrangements
- as lump sums paid on behalf of a class of employees
- as any other form of superannuation
- to contractors under a relevant contract.

Note: any contributions made by an employee into a fund administered by the employer out of their own Pay-As-You-Go (PAYG) post tax pay are not liable as they are not contributions made by you.

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Termination payments

Termination payments include:

- an Employment Termination Payment (ETP) declarable as income for the Australian Tax Office, including golden handshakes and similar payments
- all paid out annual and long service leave no matter when it was accrued.

The amount of the ETP that is liable is the amount paid by you (whether paid to your employee or to a roll-over fund) less the income tax exempt component when received by your employee.

The following list outlines a summary of all liable and exempt termination payments:

Liable

- Termination payments in respect of unused annual leave, sick leave, long service leave or a bonus or loading related to leave
- Act of grace redundancy payments (golden handshakes) paid to employees after termination
- Act of grace redundancy payments (golden handshakes) paid to directors and contractors
- Payments in lieu of superannuation
- Payments for notice period worked by employee or contractor
- Payment in lieu of notice
- Non-cash payment in satisfaction of an ETP Compensation for loss of job or wrongful dismissal - lost earnings component
- Income taxable component of approved redundancy or early retirement scheme payments

Exempt

- Genuine superannuation lump sum paid on retirement
- Compensation for loss of job or wrongful dismissal - amount for personal injury, for example, damage to reputation

- Income tax-exempt component of redundancy or early payments - as shown at lump sum D of the PAYG payment summary
- Capital payment for contract in restraint of trade, for example, restriction on who the terminated employee can work for.

For more information, view [Revenue ruling PTA 004 - Termination payments](#)

[\[/info/legislation/rulings/payroll/pta004\]](#).

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A guide for employers

Your WorkCover Insurance

2015/2016



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About this booklet

This booklet is designed to help you understand your WorkCover Insurance premium for 2015/16. It outlines general information about how your premium is calculated and the factors that influence what you pay.

It also contains information on what constitutes remuneration and the circumstances in which it will be "rateable" for the purposes of calculating your insurance. It is important that you refer to this booklet when estimating or certifying your rateable remuneration.

Important information

The information presented in this booklet is intended for general use only, and has been issued by WorkSafe Victoria ("WorkSafe") in good faith to address the most commonly raised issues in relation to your premium.

This booklet should not be viewed as a definitive guide to the law, and should be read in conjunction with the *Workplace Injury Rehabilitation and Compensation Act 2013*, and the *Workplace Injury Rehabilitation and Compensation Act 2013 Premiums Order (No. 23) 2015/16* along with other guidance material available at **worksafe.vic.gov.au/insurance**

The information in this booklet is correct at the time of publishing (June 2015). If you need more detailed information on any issue mentioned in this booklet, please contact your WorkCover Agent (your Agent).

WorkCover premium

Insurance cover for employers

Your WorkCover Insurance premium provides insurance cover for the costs of benefits if your workers are injured or become ill because of their work. It is a legal requirement for most Victorian employers to register for WorkCover Insurance.

If a worker is injured because of their work, benefits they may be entitled to include weekly benefit payments, medical treatment and rehabilitation costs, legal costs, or, in the event of a serious injury, lump sum compensation. The cost of providing these benefits to a seriously injured worker can run into hundreds of thousands of dollars.

If you fail to register for WorkCover Insurance as required, and one of your workers suffers a work-related injury or illness the benefits payable to them are guaranteed by WorkSafe. However the cost of benefits provided to your worker may be recovered from you, in addition to severe penalties for failing to register for WorkCover Insurance.

Further details on your WorkCover Insurance obligations are available at worksafe.vic.gov.au/insurance

Companies

If you are a proprietary limited company, your directors and employees who receive salaries or wages are workers and are covered for WorkCover Insurance purposes. This includes where the company is a trustee. This means that if you are a director of your own company and receive any payments expensed as salaries, wages, or if you run a company that has directors who receive salaries, wages or directors fees, you must register for WorkCover Insurance if the company's annual remuneration (i.e. wages, salaries, etc) exceeds \$7,500.

Sole traders and partnerships

If you are a sole trader/proprietor or a member of a partnership, you are not a worker of your own business. This means you will not be covered by your WorkCover Insurance. You should consider taking out some form of insurance to cover yourself in the event that you cannot work. If you are hired as a worker by someone else, that person may need to register for WorkCover Insurance to cover you.

WorkCover premium

How the scheme is funded

The amount of premium that is collected in Victoria each year is based on the projected costs of claims and the operation of Victoria's workers' compensation scheme.

The amount of premium that needs to be collected to adequately fund the scheme is set based on independent actuarial advice. This covers entitlements to injured workers, health and safety activities, future liabilities and administration costs. The cost is then spread across all employers in the scheme.

WorkCover Insurance costs are largely determined based on an employer's health and safety performance, and their ability to achieve safe, sustainable return to work for their injured workers. For smaller employers, insurance costs are determined by the safety performance of the industry within which they operate. Each industry has its own rate which is determined by the relative safety performance of the industry over the preceding five years.

Key dates for 2015/16

Please note the following dates for 2015/16:

Date	Action
1 August 2015	Due date for annual premium payment (discounted by 5%)*
	Last day to take up the excess buy-out option.
1 October 2015	Due date for annual premium payment (discounted by 3%)* Due date for first premium instalment (if you pay on a monthly or quarterly plan)*
30 October 2015	Certify your Rateable Remuneration for 2014-15 (if your rateable remuneration for 2013-2014 was more than \$200,000).**
1 November 2015	Due date for annual premium payment (without discount)*
31 March 2015	Complete your <i>Declaration of Rateable Remuneration</i> form (if your rateable remuneration for 2013-2014 was \$200,000 or less).**

Note: * You can pay your premium online

** You can complete your remuneration certification online, and update your estimated remuneration for 2015/16 at any time

To access WorkSafe's Online Employer Services, visit worksafe.vic.gov.au/employer

How the premium calculation works

If your most recent estimated annualised rateable remuneration for 2014/15 was \$200,000 or less then your premium for 2015/16 is calculated using your industry rate and your rateable remuneration.

If your most recent estimated annualised rateable remuneration for 2014/15 was more than \$200,000, then your 2015/16 premium will be calculated using your industry rate and any recent workers' compensation claims that have been made. This is referred to as your claims experience.

The larger your business, the greater the influence your claims experience can have on your premium calculation.

All employers' claims costs are measured in the same way so that your performance can be compared to that of your industry.

Your claims reported in the period **1 January 2012 to 30 June 2014** will be used in the calculation of your premium for 2015/16. Claims reported between 1 July 2014 and 30 June 2015 will not be used in your premium calculation for 2015/16. However, these claims will form part of your claims experience and consequently affect your premium in the future.

We will provide you with a performance rating in the premium notice (sent in July 2015) so that you can see if you are performing better or worse than other employers within your industry.

Generally, any premium rate increases will be capped at 30% for continuing operations (e.g. where your classification has not changed and/or you have not added any workplaces to your WorkCover Insurance).

Changes to your business

The *Workplace Injury Rehabilitation and Compensation Act 2013* establishes that employers may be penalised for failing to inform their Agent of a change in their registration circumstances that may impact on the calculation of their premium. These changes can include the following issues.

Acquiring another business

If you take over part or all of another employer's business, you will inherit the claims history of that employer **unless** you can demonstrate that you, the new employer, are not associated with, or connected to, the previous employer.

Transferring operations to a new workplace

If you transfer your operations to a new workplace, the WorkCover Insurance history (the premium and claims history) that you accumulated at your original workplace will transfer with you.

If you change your activity at any of your workplaces during the 2015/16 year, the rate applicable to that workplace for the rest of the financial year will be your Employer Performance Rating multiplied by the industry rate for your new classification. Capping of the rate in this period is not applied to workplaces after they change classification.

If your main activity changes at any of your workplaces you need to inform your Agent immediately to ensure your premium is calculated accurately.

WorkCover premium

If you added a new workplace to your WorkCover Insurance during 2014/15, this workplace will be included in your premium calculation. The rate for new workplaces is determined by your Employer Performance Rating and the relevant industry rate for the new workplace. Capping of the rate is not applied to the calculation of your premium for the new workplace.

If you change your business status

If you are a sole trader or a partnership and you are going to incorporate, or if you are a sole trader and you are becoming a partnership, or if you are making any other similar change to your type of business you must contact your Agent to inform them of the change. You may be required to take out WorkCover Insurance as a result of the change.

Labour or on-hire employers

If your business provides labour or on-hire services the premium you pay will be largely determined using the industry rate of the workplaces in which your on-hired workers are placed (your imputed workplaces). Your premium for 2015/16 will be calculated using your Employer Performance Rating and the industry rate for each of these workplaces.

This approach provides a greater incentive to labour hire employers to improve workplace health and safety for their workers and reduces inequities between on-hire/employment agencies and other employers.

For more details, please talk to your Agent or visit the labour hire/on-hire classification arrangements section of worksafe.vic.gov.au/insurance. This section also contains the Worker and Contractor Assessment Tool that helps determine who is the employer of a worker and guidance material on the process for completing the Employer Injury Claim Report form if one of your on-hired workers is injured at work.

Online Employer Services

Employers can manage their WorkCover Insurance online at WorkSafe's Online Employer Services. There are a number of online functions available:

- Choose how you receive most of your premium related correspondence (ie. via email or post), and view past premium correspondence
- Pay your Premium online
- Obtain a Certificate of Currency to prove you have up to date WorkCover Insurance.
- Manage your workplace information e.g. add or remove workplaces, update contact information
- Complete your annual remuneration certification
- Update your estimate of rateable remuneration for the year
- Correspond directly with your Agent on premium issues
- View graphs that explain why your premium has changed

To access WorkSafe's Online Employer Services, visit worksafe.vic.gov.au/employer

Renewing your cover

Information you need to give us

What we need to finalise your 2014/15 premium

You need to certify your rateable remuneration for 2014/15 by **30 October 2015** so that your 2014/15 premium can be finalised.

Note: Information required to access Online Employer Services can be found in the initial WorkCover Insurance Renewal letter issued in July.

If you do not certify your rateable remuneration for 2014/15, it will be assessed to be a minimum of 20% above the highest previous figure. Where rateable remuneration is not certified, or is incorrectly certified, penalties may be applied.

For more information about what should be included as rateable remuneration please see pages 18 to 20 of this booklet.

If your rateable remuneration was estimated as being less than \$200,000 in 2014/15 then you do not have to certify your rateable remuneration until March 2016. This extended timeframe is provided to give smaller employers the opportunity to gather the information they require to complete the declaration, while continuing to focus on running their business. This does not stop you from completing the declaration before March; it can be submitted at any time before the due date.

To access WorkSafe's Online Employer Services, visit
worksafe.vic.gov.au/employer

What we need to calculate your 2015/16 premium

Your 2015/16 premium will be calculated using estimated rateable remuneration determined by WorkSafe. This amount will be based on the most recent estimated 2014/15 remuneration figure available. If you agree with this estimated remuneration, and there are no other factors that require changing your registration, then you do not need to provide any other information to your Agent.

If you do not agree with the estimated remuneration figure used in your 2015/16 premium calculation then you need to provide your own based on what you expect your rateable remuneration to be for the 2015/16 financial year. This estimate will be used to recalculate your initial premium for 2015/16. Premiums are still due by the dates indicated in the Renewal Notice or any subsequent Adjusted Premium Notice.

Estimated remuneration for 2015/16 can be submitted using the WorkSafe's Online Employer Services:
worksafe.vic.gov.au/employer

Renewing your cover

If your actual rateable remuneration differs from your estimate

You are required to revise your estimate of rateable remuneration if it exceeds or is likely to exceed the WorkSafe estimate, or your own previous estimate, by more than 20%, or **if at any time (prior to 30 April 2016)** the rateable remuneration you have paid, or you are liable to pay is greater than the last estimate you provided your Agent.

You **must** provide your Agent with a revised estimate **within 28 days** of becoming aware of the changed circumstances.

In the event you fail to advise your Agent of changes to your estimated rateable remuneration, a penalty of up to 100% of the premium difference may be applied for the financial year.

You may also advise your Agent if your actual rateable remuneration during the premium period will be less than your previous estimate of rateable remuneration. Your premium can then be adjusted in line with the reduced amount. However, you need to be sure that your estimate is realistic or penalties may apply.

You can update your estimate of rateable remuneration online at **worksafe.vic.gov.au/employer**

Paying your premium

Renewal notices are sent out in July, with the first premium payments due on 1 October 2015. If your premium is \$1,000 or less you **must** pay the full amount by 1 November 2015.

If your premium is greater than \$1,000 there are different payment options available. You can choose to pay your premium either as a one-off payment in advance, or in quarterly or monthly instalments.

You can pay your Premium online at **worksafe.vic.gov.au/employer**

Paying via credit card

You can make your premium payments using your credit card. Payments of up to \$10,000 are possible using either Visa or MasterCard. Further information about all of the available payment options will be provided in your renewal notice.

Pay in full to receive a discount

There are two available discounts to WorkCover Insurance premiums for 2015/16. If you pay the full amount stated on the Renewal Notice by 1 August 2015 you will be entitled to a 5% discount. If you pay the full amount stated on the Renewal Notice by 1 October 2015 you will be entitled to a 3% discount.

To obtain either discount, you need to pay the discounted premium for 2015/16 and any outstanding amounts for prior years.

If you are paying the minimum premium of \$204.60 (including GST), you are still eligible for either of the discounts.

Paying quarterly

If you pay using a quarterly instalment plan, you must pay the instalments by the first day of **October, December, March and June**.

Paying monthly

If you choose to pay your premium monthly, payment is due in 10 instalments on the first day of each month, starting on 1 October 2015 and ending on 1 July 2016.

Renewing your cover

Premium under \$1,000

If your premium is \$1,000 or less you **must** pay the full amount by 1 November 2015. Remember you can receive either a 5% or a 3% discount if you pay your full premium by 1 August 2015 or 1 October 2015.

Late payment penalties

Late payments attract a penalty on the outstanding amount, compounding monthly. The interest rate applied to late payment of premiums will be calculated in accordance with section 454 of the *Workplace Injury Rehabilitation and Compensation Act 2013*. It uses the average daily Reserve Bank Bills Rate for the month of May each year plus an 8% penalty. The rate applied for 2015/16 is 10.15%.

Your instalment plan may be cancelled if you do not make the required payments by the due date. If this happens, the remaining premium for the whole year will be due immediately.

Goods and Services Tax

Your premium is subject to the Goods and Services Tax (GST). The majority of businesses can claim all or part of the GST from the Australian Taxation Office (ATO) as an input tax credit. GST is added after your premium has been calculated.

If you pay your premium by either 1 August 2015 or 1 October 2015, the invoice becomes a tax invoice for the discounted renewal amount. If you pay your premium in full by 1 November 2015, the invoice becomes a tax invoice for the full renewal amount. Otherwise, it is a tax invoice for the instalment amount.

If you pay by instalments, the invoices issued to you during the year are also tax invoices for GST purposes.

Buying out your excess

If one of your workers is injured at work, in most instances, as their employer you are responsible for the first 10 days of weekly benefit payments and also for the first \$667 (2015/16) (indexed annually) of reasonable medical and related like expenses.

However, you can remove this amount, known as an employer excess, by taking up the buy-out option and paying an additional loading of 10% on your premium. This means that your claims are managed and paid for by your Agent from day one. This makes it easier for employers, especially small businesses, to manage the early stages of a claim.

The buy-out option is available to all employers. If you intend to take up this option for the 2015/16 premium period, or you already have buy-out and do not intend to continue with it, you must notify your Agent by **1 August 2015**.

Note, the date by which you must inform your agent of any change to your current excess buy-out preference has changed this year.

Renewing your cover

Compliance and audit

To ensure employers pay their fair share of premium, WorkSafe operates a premium compliance program to target employers who have potentially underpaid their premium or failed to register for WorkCover Insurance.

The premium compliance program includes auditing employers of different sizes and industries, employer self assessments and investigation of unregistered employers. The audits are undertaken to identify employers who may have avoided their WorkCover Insurance obligations.

The employer self assessment process allows employers to review the factors that contribute to the calculation of their premium and self-disclose any inaccuracies. If an employer self-discloses inaccuracies, they will be given favourable treatment such as lower penalties for underpaying their premium.

If you provide incorrect information or withhold the information required, you can be liable for a penalty of up to 120% of the difference in premium that results from correct information being applied to your premium calculation. If you intentionally provide incorrect information or in any other way set out to avoid paying your correct premium, you can face penalties of up to 200% of the difference in premium between the amount paid at the correct premium.

Further information on premium compliance, employer self-assessment and compliance audits can be found at [worksafe.vic.gov.au/insurance](https://www.worksafe.vic.gov.au/insurance)

Premium penalties

Penalty provisions play an integral role in WorkCover Insurance as they promote equity among employers, deter non compliance by making it unprofitable, and compensate the scheme for being denied the use of funds to which it is entitled.

This is important given that the premium system is largely based on the principle of employer self-assessment. This places the onus on employers to exercise reasonable care and make full and true disclosures to their Agent and WorkSafe regarding their WorkCover Insurance.

Penalties may also apply if you underestimate your rateable remuneration or fail to notify your Agent of the correct figure within 28 days of exceeding your last estimate.

Usually when an employer identifies that they have provided incorrect information that has caused their premium to be calculated incorrectly, as a result paying less premium than they should, and they inform their Agent of the error, any penalty that is applied will be minimal.

Where an employer identifies that they have provided incorrect information as a result of WorkSafe compliance activities and they assist in rectifying the error, the penalties will be reduced in line with the relevant WorkSafe Guideline. Guidelines relating to all premium penalties and their application are available at [worksafe.vic.gov.au/insurance](https://www.worksafe.vic.gov.au/insurance)

How premiums are calculated

For small employers

If your estimated rateable remuneration for 2014/15 was \$200,000 or less then your premium for 2015/16 is calculated using the overall industry rate.

The individual claims experience of small employers does not affect the premium they pay. However, it may affect the overall rate for their industry. For small employers premiums are based on industry-wide experience and risk.

The rates of small employers depend on a number of factors as summarised in the following table.

If in 2014/15 your premium was calculated using:	In 2015/16 your premium will be calculated using:
The relevant industry rate	Your rate, moving up or down with the industry rate
A rate frozen below industry rate	Your rate, that remains frozen below industry rate if you have had no claims in 2014/15 Your rate moving to the industry rate (subject to capping) if you have had claims in 2014/15
A rate transitioning to industry rate	Your rate either continuing to move to, or being the industry rate (subject to capping)

Generally, unless your activity or your industry classification changes at a workplace, any premium rate increases will be capped at 30% for continuing operations (e.g. where your classification has not changed and/or you have not added any workplaces).

Many small employers will only be required to pay the minimum premium of \$186 (including GST).

How premiums are calculated

For larger employers

If your rateable remuneration for 2014/15 was estimated to be over \$200,000 then your premium rate for 2015/16 is calculated using:

- the rate of your industry
- your claims experience compared to your industry's experience and
- the size of your business (measured by your remuneration).

If your claims performance is better than your industry's you will pay less than the industry rate. If your claims performance is worse than your industry's you are likely to pay a higher amount than the industry rate.

The degree to which you can move above or below your industry rate is dependent on the size of your business (based on your remuneration), the performance of the industry you operate in and your claims performance in relation to claims reported in the Claims Reporting Period (1/1/2012 to 30/6/2014) compared to the performance of your industry.

Your industry classification

When you first register for WorkCover Insurance, you are asked to give details of your workplace(s), including a description of the activities carried out there. This information is used to identify the activity that contributes, or is likely to contribute more than any other activity, to the value of goods and or services produced or provided by operations carried out within your workplace(s). In turn this is used to determine your workplace's industry classification. This is one of the key factors in your premium calculation.

In most cases, when a new business starts, the premium is set at the industry rate relevant to the predominant activity at that workplace.

Industry rates are calculated using the claims experience of all employers in the industry over a five year period. If your industry's health and safety and return to work performance improve, employers within the industry will benefit from a lower industry rate.

You must notify your Agent of any changes in your business activity that may affect your classification. If you fail to do so, penalties may apply.

If you think your business may be wrongly classified, you should write to your Agent providing full details of the activities you undertake and the reasons why you believe the current classification is wrong.

How premiums are calculated

The impact of claims

If you reported WorkCover Insurance claims in the period between 1 January 2012 and 30 June 2014 then you will be able to access a WorkCover Insurance Claims Statement using WorkSafe's Online Employer Services at **worksafe.vic.gov.au/employer**. These claims will be used in the calculation of your premium for 2015/16.

If you haven't had any claims for the period between 1 January 2012 and 30 June 2014 you will not receive a statement.

Your claims statement highlights the actual cost of the claims for the period and any estimated future cost of those claims. This estimated future cost is calculated using statistical data drawn from the experience of many thousands of previous claims managed by the WorkCover Insurance scheme.

Claims estimates are calculated with a three month set back. This is to allow a claim to develop over three months before an estimate is included in an employer's claims experience.

Your estimated costs and those of all the other employers in your industry are used to determine the industry rate. All employers have their claims costs measured in the same way – objectively and consistently – so your performance relative to your industry can be compared.

Your relative performance is determined by comparing your estimated claims costs with the industry claims cost rate, and is a factor in the determination of the premium you pay.

If you work with your Agent to improve your occupational health and safety, reduce the incidence of workplace injury and manage your claims more effectively by achieving safe, sustainable and timely return to work outcomes, you will be rewarded with a premium lower than your industry **rate**.

How premiums are calculated

If you believe your premium calculation is incorrect

The *Workplace Injury Rehabilitation and Compensation Act 2013* provides for the review and adjustment of an employer's premium if it has been incorrectly calculated. A review may be initiated by an employer or WorkSafe.

If you consider that your premium is incorrect you should first lodge a request for review with your Agent using the Request for Review of Premium Form, available from **worksafe.vic.gov.au/insurance**

The Request for Review of Premium Form should be sent to your Agent within 60 days of receiving your notice of premium. If you are dissatisfied with the outcome of your Agent's decision, you have the right to request a further review by WorkSafe within 28 days of the Agent's decision.

If you consider that your premium is incorrect as a result of a WorkSafe audit you should complete a Request for Review of Premium Form and lodge it directly with WorkSafe. This request needs to be made to WorkSafe within 60 days of your receipt of your Notice of Adjusted Premium.

Please note that you are still required to pay the premium indicated in the disputed notice by the due date. If your request for review is upheld, any overpaid premium will be refunded to you. Further you may also be entitled to interest on the overpayment payable.

Following a formal premium review undertaken by WorkSafe, employers, if they are dissatisfied by the outcome, may request a review by the Victorian Civil and Administrative Tribunal (VCAT). Alternately, or following a VCAT review, employers may apply for a hearing by the Supreme Court.

For more details and to obtain the Request for Review of Premium Form, visit the "Applying for a review of your premium" section of **worksafe.vic.gov.au/insurance** or contact your Agent.

Rateable remuneration

One of the key determinants of your WorkCover premium is the size of your business. WorkSafe determines your size using your rateable remuneration (e.g. gross wages, salaries and other benefits provided to your workers).

Rateable remuneration is more than payroll

It is important to identify your rateable remuneration accurately. You need to know what should, or should not be included as there are penalties for underestimating or understating your rateable remuneration.* If you think you may have calculated your rateable remuneration incorrectly, contact your Agent.

Some remuneration may not be quite so obvious

Some payments to workers are not part of your payroll, however they can still be considered rateable. These payments may be fringe benefits or they may be payments that are expensed as payments to contractors or consultants. It is important that you are aware of what must be included in your calculation of rateable remuneration.

Rateable remuneration can include both cash and non-cash (in-kind) payments.

See the rateable remuneration checklist on pages 18 to 20 of this booklet for details.

Remuneration deductible benefit

Employers who operate for a full financial year have the first \$15,500 of their total rateable remuneration automatically deducted in the calculation of their premium. Those who operate for part of the year receive a pro-rata amount of this deduction.

This deduction will be shown as the remuneration deductible benefit on your 2015/16 premium notice. Employers whose annual rateable remuneration is between \$7,500 and \$15,500 are still required to pay at least the minimum premium of \$204.60 (including GST) less any applicable discount for early payment.

* Please refer to the 'If your actual rateable remuneration differs from your estimate' section on page 7 of this booklet.

Rateable remuneration

Workers and contractors

The term "contractor" covers a wide variety of people in different work circumstances. It includes consultants, service providers and people working under similar arrangements. These people may operate, and are engaged, as sole proprietors, partnerships or companies.

If you hire such persons on a contract, you need to know that they may actually be workers, or deemed to be workers, under some contracts. Each time you hire a contractor, you need to determine whether he or she is a worker or deemed to be a worker.

If the person is a worker or deemed to be a worker, you effectively become his or her employer for WorkCover Insurance purposes and you must include the amount you pay in your total remuneration.

Additional information regarding workers and contractors, including an online assessment tool and guidelines, is available from worksafe.vic.gov.au/contractor

What remuneration is rateable in Victoria?

If you have workers who work for you in other states or territories you must ensure you only include the remuneration relating to them if they are connected to Victoria for WorkCover insurance purposes.

Workers in other states or territories

To determine which state or territory a worker is connected to, you must consider the following 5 steps in order. It is important that you always start with Step 1. After that, it is only necessary to consider the next step if the previous step does not decide your worker's State of Connection.

Step 1	Where does your worker usually work?
Step 2	Where is your worker usually based?
Step 3	Is there a there a State or Territory in which your principal place of business in Australia is located?
Step 4	What if steps 1, 2 and 3 don't decide the State of connection and your worker works on a ship?
Step 5	If steps 1, 2, 3 and 4 don't decide the State of connection and your worker is injured - unless the worker is entitled to compensation for the same injury under the laws of a place outside Australia, then the State of connection is the State or Territory in which the injury or illness was suffered

More information regarding workers in other states or territories can be found by visiting worksafe.vic.gov.au/insurance

Note: You should speak to workers' compensation authorities in other states or countries where you engage workers outside of Victoria, even if your worker is connected with Victoria. You may also have an insurance obligation interstate or in another country.

Rateable remuneration

If you employ apprentices and/or trainees

If you hire any apprentices and/or trainees – even if you only hire one – you must register for WorkCover Insurance, regardless of the size of your rateable remuneration.

Some apprentice/trainee remuneration is exempt from WorkCover Insurance and for that reason it is important that you are aware of certain restrictions and qualifications that apply.

Remuneration is exempt if the apprentice and/or trainee:

- is an apprentice or trainee within the meaning of the *Education and Training Reform Act 2006*; and
- has entered into an authorised training agreement with an employer.

Further conditions relating to a limit on the length of any pre-apprenticeship or traineeship employment can affect whether or not remuneration is exempt. If any pre-apprenticeship or trainee employment relationship existed check the conditions that are provided at worksafe.vic.gov.au/insurance

Trainee remuneration threshold

A cap has been placed on trainee remuneration. This means you can only claim an exemption for your trainee's remuneration if it:

- was \$42,540 or less in 2014/15; or
- will be \$42,540 or less in 2015/16.

If your trainee's annualised remuneration was **more** than this amount **none** of their remuneration would be exempt.

If your trainee's annualised remuneration for 2014/15 was, or for 2015/16 will be, \$42,540 or less, all existing rules (noted previously) must still be met to claim an exemption.

This rule does not apply to apprentices you may engage, there is no exemption threshold on apprentice remuneration.

For a list of apprenticeship and traineeship qualifications that this relates to please visit worksafe.vic.gov.au/insurance or the Department of Education website at education.vic.gov.au/training

If you have more than one workplace

You need to declare the rateable remuneration paid or payable to workers at each workplace. Rateable remuneration should be declared against the relevant workplace at which workers were engaged during each period.

If an employee regularly works at two or more workplaces, you should allocate their rateable remuneration as a proportion of the number of hours that they worked at each workplace.

Rateable remuneration

Items that may be considered as rateable remuneration

Rateable remuneration is the gross amount paid or payable before tax. The relevant items listed on pages 18 to 20 of this booklet should be included in your certification and estimation of rateable remuneration. You can complete your certification and estimation of rateable remuneration requirements online at worksafe.vic.gov.au/employer

To help you, the items have been grouped and numbered to correspond with the *Certification of Rateable Remuneration* form. For example, under the heading "A. Salaries & wages" it lists items that should be included under "A. Salaries & wages" on the form.

This list contains items that are commonly included in each of the five components. A more comprehensive list is available online at worksafe.vic.gov.au/insurance

Exempt allowances

Determining the rateable component of motor vehicle allowances

A motor vehicle allowance is paid or payable to a worker in relation to the use of their own vehicle for work purposes. The basic formula for determining the exempt component of a motor vehicle allowance is:

$$E = K \times R$$

where **E** is the exempt component, **K** is the number of business kilometres travelled and **R** is the exempt rate.

- For 2014/15 the exempt rate "R" = 77 cents*

After determining E as a dollar amount subtract it from the amount of allowance paid to the worker. Any remainder is considered to be rateable remuneration and should be included in the determination of salaries and wages.

Determining the rateable component of accommodation allowances

Accommodation allowances are paid to workers to compensate them for the expense of having to stay overnight in a location other than their home for business purposes. Where the accommodation allowance extends beyond 30 continuous days the worker must also be maintaining a personal domestic dwelling for their own use in order for the allowance to retain the exemption.

- For 2014/15 the exempt rate is \$253.25 per night*

Any amount paid per night over the exempt rate is considered to be rateable remuneration and should be included in the determination of salaries and wages.

* Please refer to worksafe.vic.gov.au for the 2015/16 indexed figures

Rateable remuneration checklist

A. Salaries & wages

- salaries
- wages
- gross pay before tax
- allowances, including (but not limited to):
 - the non-exempt component of motor vehicle and accommodation allowances
 - clothing
 - cost of living
 - dirt money
 - dry cleaning
 - entertainment
 - footwear
 - meal
 - overtime
 - site
 - tools
 - travelling
 - representation allowance
 - uniform
- annual leave payments (including leave loading)
- long service leave
- paid parental leave
- make-up pay
- back pay
- bonuses
- directors' fees and all remuneration to directors or members of a governing body of a company
- fees for work performed by a worker or deemed worker
- trust distributions, company dividends or distributions of profit where the distributions represent payment to a worker, for work performed, and are in lieu of wages.

Rateable remuneration checklist

B. Payments to contractors

Where contractors have been deemed to be your workers under the *Workplace Injury Rehabilitation and Compensation Act 2013*, payments made to them should be included as rateable remuneration.

Note: Where a contractor operates as a company, the person who performs the work may also be deemed to be a worker. Payment for services supplied by such contractors should also be included in rateable remuneration.

Additional information regarding workers and contractors, including an online assessment tool and guidelines, is available from worksafe.vic.gov.au/contractor

C. Fringe benefits

Employers are required to total their fringe benefits (i.e. add together their type 1 and type 2 benefits), and gross this amount up using the type 2 gross up rate for WorkCover Insurance purposes.

For 2014/15 the gross up rate is 1.8868*

For 2015/16 the gross up rate is 1.9608*

Employers that have a fringe benefits tax exemption provided by section 57, 57A or 58 of the *Fringe Benefits Tax Administration Act* will be required to declare any amount that exceeds their ATO-provided exemption threshold (in other words, the amount that they declare on their FBT return). Employers covered by sections 57, 57A and 58 of the *Fringe Benefits Tax Assessment Act* include: Public and not-for-profit hospitals, public ambulance services, public benevolent institutions, health promotion charities and religious institutions (for benefits provided to ordained religious practitioners).

Benefits declared by these exempt organisations have already been subjected to grossing up so further grossing up is not required.

**This rate is tied to the Type 2 Lower gross up rate for the given FBT Year published by the ATO.*

D. Superannuation contributions

Employer superannuation contributions in respect of a worker or deemed worker are rateable remuneration. This includes any contribution (including compulsory, voluntary or pre-tax salary sacrifice) made by an employer to a superannuation fund or scheme, a superannuation guarantee charge, or any other form of superannuation provident or retirement fund. This also includes employer contributions to defined benefit funds as required by actuarial determinations on amounts in relation to service after 1 January 1998.

E. Other

- commission to insurance or part-time canvasser or collector
- commissions and incentive payments.

Items not included in remuneration

The following types of remuneration are exempt from your WorkCover insurance premium calculation:

Rateable remuneration checklist

- some remuneration paid to apprentices and trainees is not included in the calculation of your premium. If you employ apprentices or trainees, please refer to page 16 of this booklet for further information
- compensation payments under the *Workplace Injury Rehabilitation and Compensation Act 2013* or the *Accident Compensation Act 1985* (e.g. weekly benefit payments). This includes payments made under the employer threshold.
- dividends paid to a shareholder*
- Trust distributions*
- payment by you as host employer for work experience purposes:
 - to a student of a TAFE provider in an approved TAFE course or
 - a pupil at schoolthese arrangements must be made in writing:
- partners' drawings
- payments to Construction Industry Long Service Leave Board and contributions to the Redundancy Payments Central Fund, as long as they are not taxable under the *Fringe Benefits Tax Assessment Act 1986*
- termination payments (e.g. payments in lieu of notice, accrued holiday pay, long service leave or severance pay) made to a worker on cessation of employment

Note: If a person is given notice of termination or gives notice of resignation but works until the termination or resignation takes effect, the payment for this period is not exempt remuneration.

**Where trust distributions or dividends are provided to workers and the true character of the payments are that they are for work performed or services provided and they are in lieu of wages, then the payments are considered to be rateable. For more information see the WorkSafe Guideline "Trust Distributions, Dividends and Loans".*

Contacts

This booklet contains important information about your WorkCover insurance premium for 2015/16. If you need help in your own language, please call 1300 782 343.

Contacting your WorkCover Agent

For individual claims or WorkCover Insurance premium enquiries, please contact your Agent:

Allianz Australia Workers' Compensation (Victoria) Limited	Tel: 03 9234 3285 Toll free: 1800 240 335
Xchanging	Tel: 03 9947 3000 Toll free: 1800 802 200
CGU Workers Compensation (Vic) Limited	Tel: 03 8630 1000 Toll free: 1800 066 204
Gallagher Bassett Services Workers' Compensation Vic Pty Ltd	Tel: 03 9297 9000 Toll free: 1800 774 377
QBE Workers Compensation (VIC) Limited	Tel: 03 9246 2444 Toll free: 1800 817 820

WorkSafe Victoria

Advisory Service
222 Exhibition Street
Melbourne 3000
Phone 03 9641 1444
Toll-free 1800 136 089
Email premium@worksafe.vic.gov.au
Website worksafe.vic.gov.au

Contractors And Workers

It is your responsibility to find out whether your contractors are considered workers by the WorkSafe. If they are, this may impact your total remuneration, which is one of the key factors that influences your premium and whether you need to register for WorkCover insurance. If your total remuneration then exceeds \$7,500, you must register for WorkCover insurance. Additionally, as the employer you may be liable if the contractor is injured while performing work for you.

The term 'contractor' covers a wide variety of people, including:

- Consultants
- Agents
- Outworkers

Contractors may operate as sole proprietors, partnerships, companies or through family trusts.

Each time you hire a contractor, you need to determine whether they are considered to be a 'worker' by the WorkSafe. If the person is considered a worker, you effectively become their employer for WorkCover insurance purposes, and you must include the money you pay them in your total remuneration.

Assessing a contractor

A range of guidance material has been developed to assist in understanding the contractor provisions and in determining if a contractor you engage may be considered your worker for WorkCover insurance purposes.

- [General contractor guidelines](#)
- [General contractor provisions – Contracts mainly for equipment or materials](#)
- [General contractor provisions – Contractor deductions](#)

The Worker and Contractor Assessment Tool has been developed to assess the relationship between the hirer and the contractor to assist in the determination of the status of both.

- [Worker and Contractor Assessment Tool](#)

Different types of workers

In addition to contractors that may be seen as workers for WorkCover insurance purposes there are a range of occupations where those undertaking them have specific treatment as either workers or as running their own business. Information on these specific occupations can be found on the Types of workers page.

- [Tests for different types of workers](#)

Further information

- [Apprentices and trainees](#)
- [Labour hire](#)
- [Determining your remuneration](#)
- [What to do if a worker is injured - A guide for employers](#)

Any questions should be directed to your [WorkSafe agent](#).

Contractual relationships pre 30 June 2011

The tests for determining if a contractor is the deemed worker of their hirer were different prior to 1 July 2011. If you are assessing a contractual relationship that existed before then the following guideline should be used.

- Contractor guidelines - Determining rateable remuneration for contractors

Fringe Benefits

WorkSafe uses the Australian Tax Office's definition of items that are taxable fringe benefits. If you are unclear whether an item is a taxable fringe benefit, please [visit the Australian Tax Office website](#).

When determining fringe benefits as a component of your rateable remuneration for a financial year WorkSafe recognises the fringe benefits calculated for the period 1 April to 31 March (the Australian Tax Office's Fringe Benefits Tax year) ending in the year being certified.

Calculating your fringe benefits

Most employers' rateable fringe benefits will be determined by adding together the taxable value of their Victorian Type 1 and Type 2 fringe benefits then applying a gross up factor to the amount.

The gross up factor will increase each year until 2014/15 when it will be aligned with the Australian Taxation Office's lower gross up rate. The following rates will be applied to the relevant years:

2010/11	1.17384
2011/12	1.34768
2012/13	1.52152
2013/14	1.69536
2014/15	1.8868*
2015/16	1.9608

**This is a change to the previously notified gross up rate. This rate reflects the Type 2 lower gross up rate for the FBT year ending 31 March 2015 as published by the ATO.*

Exemptions

For employers that have a fringe benefits tax exemption provided by section 57, 57A or 58 of the *Fringe Benefits Tax Administration Act 1986* **only** the taxable fringe benefits they declare to the Australian Tax Office are considered rateable for WorkSafe premium purposes (this is referred to as the "aggregate non-exempt amount" by the Australian Taxation Office). Employers covered by these sections include:

- Public and not-for-profit hospitals
- Public ambulance services
- Public benevolent institutions
- Health promotion charities

If these employers do not have fringe benefits to report to the ATO (they have only provided fringe benefits to their workers under their exemption threshold), then they will have no fringe benefits to declare as rateable remuneration for WorkCover insurance premium purposes.

The impact of declaring fringe benefits for these employers will be introduced over five financial years. In 2010/11, for these employers, 20% of any benefits provided in excess of the ATO exemption will be treated as rateable remuneration. In subsequent years the following percentages will be used:

2011/12 - 40%
2012/13 - 60%
2013/14 - 80%
2014/15 - 100%

More information is available in this WorkSafe guideline [Exempt Fringe Benefits](#)

Victorian workers

WorkSafe only requires the declaration of the taxable value of fringe benefits tax that applies to Victorian workers.

If this is unclear, then an amount comparable to the proportion of wages paid in Victoria from your total Australian wages should be used.

Benefits declared by organisations with both Victorian and interstate workers have already been subjected to grossing up, so are not required to do it again.



(<http://www.vic.gov.au/>)

(/)

Payroll Tax

Lodge your 2014-15 annual reconciliation  ([ar2015](#))

Register for payroll tax  ([payroll-tax/register-payroll-tax-0](#))

Self-assess your liability  ([payroll-tax/self-assess-your-liability-0](#))

Apply for exclusion from grouping  ([payroll-tax/apply-exclusion-grouping](#))

Declaration by exempt client for employment agency purposes ⓘ (payroll-tax/declaration-exempt-client-employment-agency-purposes)

Declaration for chain of on-hire for employment agency purposes ⓘ (payroll-tax/declaration-chain-hire-employment-agency-purposes)

If your monthly wages bill reaches a certain amount, you will have to pay payroll tax

Employers do business in a variety of industries across Victoria every day. If you are one of them, and your wage bill goes above a certain threshold, you will have payroll tax obligations.

Here are some important tips you should know if you pay wages.

1. Your wage bill determines your obligations

Payroll tax applies if you pay wages in Victoria and your Australian wages exceed the monthly threshold (/node/1411) of \$45,833.

2. You must register with us

Registering with us (/node/594) is a simple process and you'll need your payroll records handy to help you. Penalties and interest may apply if you fail to register.

3. Paying is easy

Once registered, use our secure online system PTX Express (/node/425) to lodge a monthly return, pay your tax, complete your annual reconciliation, apply for a refund and update your records.

Who pays?

You, or your group of employers (/node/1390), pay this state tax if you pay wages in Victoria and your Australian wages exceed the monthly threshold of \$45,833, and the annual threshold (/node/1411) of \$550,000. This annual threshold will be adjusted if you are not an employer for the full financial year.

Our current payroll tax rate is 4.85 per cent.

When do you pay?

If you are registered to lodge and pay on a monthly basis, you must submit your wage details every month, even if you do not have a payroll tax liability. Employers self-assess their liability on a monthly basis, and pay by the seventh day of the following month (or the next business day).

All employers must lodge an annual reconciliation (/node/1466) by 21 July each year.

What are wages?

Wages are defined under the *Payroll Tax Act 2007* (/legislation#pta2007) (the Act) and include:

- Wages,
- Remuneration,
- Salaries,
- Allowances,
- Commissions,
- Bonuses,
- Employer (pre-tax) superannuation contributions (/node/1388) such as:

- superannuation guarantee payments,
- salary sacrifice contributions (/node/1347),
- from 1 July 2007, the value of non-monetary contributions, and
- superannuation contributions to defined benefit funds (/node/1388#defined)
- Fringe benefits within the meaning of the *Fringe Benefits Tax Assessment Act 1986* (/legislation#fbtaa1986) (Cth) (FBT Act),
- The value of shares and options (/node/1387) granted to employees, directors, former directors and some contractors,
- Payments to some contractors, (/node/1345)
- Payments by employment agencies (/node/1392) arising from employment agency contracts,
- Remuneration paid by a company to company directors, and
- Employment termination payments and accrued leave

Payments (considered wages) to employees engaged on a permanent, temporary or casual basis are always subject to payroll tax.

Exempt wages

Some wages (/node/1389) are exempt from payroll tax. These include, but are not limited to:

- Adoption and maternity leave,
- Parental leave,
- Contributions to redundancy benefit schemes,
- Wages paid to employees absent from work to volunteer as firefighters or respond to other emergencies,
- Wages paid to a person while on military leave as a member of the Defence Forces, and
- Bone fide redundancy or early retirement payments

Wages taxable in Victoria

When an employee provides services wholly in Victoria, payroll tax is paid in Victoria on the wages of that employee.

Where the employee provides services in more than one Australian jurisdiction in a calendar month and/or partly overseas in a calendar month, a four-tiered test (/node/1393) is used to determine a payroll tax liability.

This test uses the location of the employee's principal place of residence as a starting point, and can take into account other factors related to the employer's business.

Exempt organisations

Wages paid by the following organisations may be exempt (/node/1389):

- Non-profit organisations, (/node/230)
- Public benevolent institutions, (/node/230)
- Religious institutions (/node/230),
- Non-profit non-government schools,
- Municipalities, other than wages paid or payable in connection with specified business activities such as the supply of water or electricity,
- State school councils within the meaning of the *Education and Training Reform Act 2006* (/legislation#e).
- Prescribed not-for-profit group training organisations (to apprentices that satisfy funding requirements as a new entrant (/node/221)), and
- Healthcare service providers (i.e. public hospitals, non-profit hospital, denominational hospital, public health service, registered community health centre, multi-purpose service, ambulance service and the Victorian Institute of Forensic Mental Health) for wages paid for work ordinarily performed in connection with the conduct of the healthcare service provider

Contractors

Payments to contractors will be deemed wages and taxable in certain circumstances. The person or entity engaging the contractor is deemed to be an employer and is liable to payroll tax on those deemed wages.

“Contractors” include sub-contractors, consultants and outworkers. The provisions apply regardless of whether the contractor provides services via a company, trust, partnership or as a sole trader.

Several exemptions are allowed under the provisions, and if any one of the exemptions applies to a particular contract, the payments are not taxable. People on-hired under an employment agency contract are subject to different provisions.

Employment agencies

Employment agents are liable for payroll tax on payments made under an employment agency contracts to “on-hire” a worker (service provider) to their client, and the client and service provider do not enter into any form of agreement between themselves.

Where there is an employment agency contract, the employment agent will be deemed to be an employer, the on-hired person an employee and payments made wages.

A contract includes an agreement, an arrangement and an undertaking. However, a contract is not an employment agency contract if it is, or results in the creation of, a contract of employment between the service provider and the client. This arrangement is typically known as a placement arrangement. In these circumstances, the client is liable for payroll tax as the employer.

Employment agency contracts are not eligible for the contractor exemptions.

Grouping

Businesses may be grouped together and effectively treated as a single entity for payroll tax purposes.

A payroll tax group exists where:

- Corporations are related bodies corporate within the meaning of s50 of the *Corporations Act 2001* (this situation is commonly known as a holding and subsidiary relationship),
- Employees are shared between businesses, or
- The same person has (or the same persons together have), a controlling interest in at least two businesses
- An entity has a controlling interest in a corporation

A company includes all bodies and associations (corporate and unincorporated) and partnerships.

A corporation has the same meaning as in s9 of the *Corporations Act 2001* (/legislation#ca2001)(Cth).

Effect of the grouping provisions

The grouping provisions have the effect of deeming businesses to be related and including these businesses in a group. The wages of these related businesses are then added together, and only one member of the group is entitled to claim the threshold amount.

Therefore in most cases, although each member of the group must register for payroll tax and lodge a separate return, the businesses which constitute the group are effectively treated as one entity and the calculation of their payroll tax liability is based on the group's total wages.

Further, all members of the group (irrespective of whether or not they are employers) become jointly and severally liable for the debts of the group which are incurred while they are members of that group. This means that if one member defaults in the payment of tax, that amount may be recovered from any of the other group members.

More information

You can also read our frequently asked questions (</node/1627>).

AUSkey

AUSkey allows you to securely access and send business information to government online. It simplifies the way you can interact with government. You can use your AUSkey for a range of government online services (<https://abr.gov.au/AUSkey/Where-you-can-use-AUSkey/>).

By reducing the number of usernames and passwords you need, AUSkey gives you the ease and convenience of online access to help your business deal with government in a more efficient way.

A payroll tax customer will need to link (a one-off process) their AUSkey if they intend to use it for PTX Express or to lodge returns via SBR-enabled software. Visit the Australian Business Register (<https://abr.gov.au/>) for more information including how to register, set up and manage your AUSkey.

Payroll Tax Australia

All Australian states and territories have a payroll tax system, and have worked together to ensure our legislation is aligned (excluding rates and thresholds).

Registering for WorkSafe insurance

If you engage workers or contractors deemed to be workers and you pay, or expect to pay, more than the current threshold limit per year in rateable remuneration (as defined in the Workplace Injury Rehabilitation and Compensation Act 2013 (<http://www.worksafe.vic.gov.au/laws-and-regulations/accident-compensation>)), or if you engage apprentices or trainees, you must register for WorkSafe (<http://www.worksafe.vic.gov.au/>) insurance.

Please note there are differences between “wages” for payroll tax purposes and “remuneration” for WorkSafe insurance purposes.

Getting it right

Our priority is to help you pay the right amount of tax at the right time. Learn more (</node/1369#ptx>) about how we'll do this.

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Register for payroll tax

As an employer (or group of employers) in Victoria, you must pay payroll tax ([/payroll-tax](#)) on your employee wages if, during any one month, your total Australian wages exceed the monthly threshold.

You are, generally, required to self-assess your payroll tax liability ([/node/1473](#)) and pay on a monthly basis (by the 7th day of the following month). You are also required to submit an annual reconciliation at the end of each financial year (by 21 July).

If you are unsure of your liability to pay payroll tax, you can download the wages worksheet ([/node/1539](#)) (a Word document), and save it to your device or portable USB as a template for future use. You can use it to calculate your total annual taxable Australian wages. If this amount is over \$550,000 and you employ in Victoria, you will be liable to pay payroll tax in Victoria. If you are liable for payroll tax and are not registered with us, you must register.

1 Register for payroll tax

PTX Express enables you to register for payroll tax purposes. If you are not registered to pay payroll tax and your wages exceed the threshold for any month, please complete an application to register for payroll tax

(<https://www.e-business.sro.vic.gov.au/eBusiness/ptx/faces/register/welcome.xhtml>).

Next steps

Once you are registered for payroll tax, you can use PTX Express ([/node/425](#)) to self-assess your monthly and annual liability, make payments securely online, apply for refunds of overpaid tax and maintain up-to-date employer and contact records.

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Payroll Tax Registration - Welcome

Step 1

Information required before you start

Legal Name

ABN/ACN

WorkCover Employer Number (WEN)

Date you began to employ in Victoria and/or Interstate **Important: Record this date**

Current year wage estimates for Victoria and/or Interstate

Past four years wage details for Victoria and/or Interstate including superannuation and FBT

Business activities you are engaged in

Contact information including, name, phone number, email and address details

Group information (if applicable)

List of group members including Designated Group Employer, Ordinary members and Interstate only members.

Group members details including ABN and legal name

Date you joined the group

Current year wage estimates for the group for Victoria and/or Interstate

Past four years wage details for the group for Victoria and/or Interstate

Step 2

To start registration enter your email address and select 'Next':

If you are already registered and wish to lodge your monthly/annual return or update your current registration details please [click here](#)

[Exit](#)

[Next >](#)



(<http://www.vic.gov.au/>)

Nexus provisions

Employee wages and payroll tax in Victoria

Services provided wholly in Victoria

When an employee provides services wholly in Victoria, payroll tax is paid in Victoria on the wages of that employee.

Services provided in more than one jurisdiction

A four-tiered test (the nexus provisions (</node/587>)) is used to determine a payroll tax liability when the employee provides services:

- In more than one Australian jurisdiction in a calendar month, or
- In one or more Australian jurisdiction and partly overseas in a calendar month

This test uses the location of the employee's principal place of residence (PPR) as a starting point and can take into account other factors related to the employer's business as follows:

1. Payroll tax is payable in the jurisdiction where the employee is based. This is where their PPR is located.
2. If an employee is not based in any Australian jurisdiction during the relevant month, payroll tax is payable in the jurisdiction where the employer is based. This is where they have their Australian Business Number (ABN) address. If the employer does not have a registered ABN address, or has two or more ABN addresses in different jurisdictions, payroll tax is payable in the jurisdiction where the employer has their principal place of business (PPB).
3. If the employee is not based in any Australian jurisdiction and the employer does not have an ABN address or PPB in any Australian jurisdiction, payroll tax is payable in the jurisdiction where the wages are paid or payable in that calendar month. If wages are paid or payable in a number of jurisdictions, payroll tax is paid in the jurisdiction where the largest proportion of wages is paid. If wages are paid by the employer into an employee's bank account, the wages are deemed to be paid in the jurisdiction in which the employee holds his or her bank account.

4. If both the employee and employer are not based in any Australian jurisdiction and wages are not paid in Australia, a payroll tax liability arises in Victoria if the services are mainly performed in Victoria in that calendar month (that is, the work performed in Victoria during that month is greater than 50 per cent).

If, after applying the nexus provisions, you are still unsure as to whether you should be paying payroll tax in Victoria, you can contact us on 13 21 61.

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Contractors

Payments to contractors are, in certain circumstances, taken to be wages. Division 7, Part 3 of the *Payroll Tax Act 2007* ([/legislation#pta2007](#)) (the Act) contains the contractor provisions, which are intended to tax payments to contractors who provide predominantly labour services and who work exclusively or primarily for one designated person in a financial year.

The provisions initially capture all contracts for the performance of work. These are referred to as relevant contracts. Some contracts are specifically excluded from the definition of relevant contracts and, as such, the payments under those contracts are not taxable.

If a contract is a relevant contract, payments under the contract are deemed to be wages (excluding GST). The designated person who engages the contractor is deemed to be an employer and is liable to pay payroll tax on those deemed wages.

The term "contractors" is generic and includes sub-contractors, consultants and outworkers. The provisions apply regardless of whether the contractor provides services via a company, trust, partnership or as a sole trader. The nature of the contracting entity does not affect the application of the contractor provisions.

The Act contains separate provisions relating to workers that are on-hired under an employment agency contract to a client of the employment agency ([/node/1392](#)).

When do you pay?

In summary, there are three steps to determining a payroll liability in respect of your contractor:

Step 1: Is the person an employee?

Although you may consider a worker to be a contractor, they may actually be your common law employee.

The Act does not define the term employee, in most instances it is not difficult to determine if a person is an employee or a contractor.

Only natural persons can be considered employees. If the person engaged conducts their business via a company or a trust, they cannot be considered an employee. Payments to them may, however, still be taxable under the contractor provisions.

If it is unclear whether the person is an employee or a contractor, a number of significant factors (/node/586) (established by the courts) should be considered.

If uncertainty exists as to the status of a person, a ruling should be obtained from the SRO. In cases where it has been determined a person is a contractor and not an employee, it is necessary to consider the contractor provisions in the Act.

If the person is an employee, the payments made to, or in relation to, that person are subject to payroll tax. If the person is not an employee, it is necessary to consider Step 2.

Step 2: Is the contract a relevant contract?

If the contract involves being supplied with services, supplying services or giving out goods for their re-supply, it is a relevant contract and it is necessary to consider Step 3. If the contract does not involve any of these, it is not a relevant contract and payments under the contract are not subject to payroll tax.

Step 3: Do any exclusions apply?

Payments under a relevant contract are not taxable if:

- Any one of six exclusions provided in the Act apply, or
- The services provided under the contract are of a type specifically excluded by the Act

Relevant contracts

The Act (s32) provides that payroll tax is imposed on payments made for services provided under a relevant contract. A relevant contract is one where a person in the course of their business:

- Supplies services to another person for or in relation to the performance of work,
- Receives services from another person for or in relation to the performance of work, or
- Gives out goods to natural persons for work to be performed by those persons in respect of those goods and for re-supply of the goods to the first mentioned person, or where that person is a member of a group, to another member of that group

In practical terms, a relevant contract exists where the contractor provides some labour services in fulfilling the requirements of the contract. If a contract is not a relevant contract, payments will not be subject to payroll tax.

Contracts that are not relevant

Certain contracts are not relevant contracts for payroll tax purposes. Specifically, s32(2)(d) of the *Payroll Tax Act 2007* (/legislation#pta2007) excludes contracts where services are supplied by:

- Owner-drivers,
- Insurance agents, and
- Door-to-door sellers

Payments made to contractors who provide any of these types of services are not taxable, even if no other exclusions apply.

Note: for these contracts to be excluded for payroll tax purposes, the services must be provided by a contractor and not an employee.

Owner-drivers

Generally, these are contractors engaged primarily to transport goods (/node/553) where the contractor provides and drives the vehicle used for the transport of those goods (s32(2)(d)(i)).

Insurance agents

Generally, these are contractors who only sell insurance. Specifically, the provision excludes contracts under which services are supplied solely to the insurer for, or in relation to, obtaining customers to be insured by the insurer (s32(2)(d)(ii)).

The exclusion does not apply to commissions from the sale of other non-insurance products.

Door-to-door sellers

Door-to-door sales (/node/552) contracts are excluded if various criteria are met, including the requirement that the goods sold are essentially domestic goods and the sale is made at the purchaser's residence (s32(2)(d)(iii)).

Other exclusions

Section 32(2) also provides six other, more general, exclusions. As such, relevant contracts do not include contracts whereby:

1. The contractor provides services to the one designated person for 90 days or less in a financial year,

2. The contractor engages others to do all or part of the work pursuant to the contract subject to certain conditions being met,
3. The provision of labour is ancillary or secondary to the supply of materials or equipment by the contractor,
4. The services provided under the contract are of a type not ordinarily required in the designated person's ongoing business and the contractor usually provides those services to a range of clients,
5. The services are of a type ordinarily required by the designated person for less than 180 days in a financial year, or
6. The Commissioner is satisfied the contractor ordinarily renders services of the type under the contract to the public generally in a financial year

The contractor provides services to the one designated person for 90 days or less in the financial year

This is the first exclusion which should be considered when determining if payments to contractors are subject to payroll tax.

Payments made to contractors who work for one designated person for 90 days or less in total during a financial year are not included for payroll tax purposes. This operates to exclude payments to short-term contractors.

Importantly:

- This cannot be used to exclude payments to casual, short-term or part-time employees,
- Any work carried out on a given day will count as one full day (/node/562),
- The days worked do not have to be consecutive. They can be worked intermittently throughout the financial year. It is the total number of days worked during the financial year that must be considered in determining if this exclusion applies,
- Once the 90-day limit is exceeded, all payments made to the contractor during the financial year are taxable, including payments made for the first 90 days (subject to none of the other five exclusions applying), and
- The exclusion will not apply where the contractor is providing the same or similar services to a designated person under various contracts where the number of days on which the services are provided in total is greater than 90 days in that financial year

Generally, the number of days a contractor has rendered services can be ascertained by reference to time sheets, attendance sheets or invoices. In some circumstances, however, it may not be possible to determine the actual number of days on which services are provided.

Accordingly, where such difficulties exist, the Commissioner has set out a replacement method to determine whether this exclusion applies. Under the replacement method, a formula is used to calculate the estimated remuneration a contractor would receive from a designated person for 90 days of service. If the actual amount earned by the contractor is less than, or equal to, the amount calculated using the formula, the 90-day exclusion will be accepted as being applicable to that contract.

For further information, refer to the Commissioner's ruling ([/node/574](#)) on the replacement formula.

The contractor engages others to do all or part of the work pursuant to the contract (subject to certain conditions being met)

Payments made to contractors who hire employees or engage other contractors to perform some or all of the work required under the contract are not included for payroll tax purposes.

For this exclusion to apply, the number of people required to be engaged varies according to the nature of the entity through which the services are provided. A Commissioner's ruling ([/node/573](#)) explains this in more detail.

Where the conditions outlined in the ruling are not met, but the designated person believes that the exclusion should apply, an application should be made to the SRO for a private ruling.

The provision of labour is ancillary or secondary to the supply of materials or equipment by the contractor

Payments made under contracts where the provision of labour is ancillary or secondary to the supply of equipment or materials by the contractor (in other words, the provision of materials or equipment is the main object of the contract) are excluded for payroll tax purposes.

Examples

1. A company has an air-conditioning unit installed. The contractor who supplied the unit also installed it. In this instance, the installation work is ancillary to the provision of the air-conditioning equipment and payments under the contract are not taxable.
2. Jones Constructions Pty Ltd enters into a contract with Riggs Crane-Hire Pty Ltd to supply the use of a crane and Riggs Crane-Hire Pty Ltd also supplies the crane operator. This contract is excluded because the supply of the crane is the main purpose of the contract. The supply of the operator is ancillary to the supply of the crane.

The Commissioner has ruled (/node/576) that the provision of labour under a contract will be considered to be ancillary to the provision of materials or equipment where the cost to the designated person of the provision of the materials or equipment exceeds 50 per cent of the total contract amount.

The services provided are of a type not ordinarily required in the course of the designated person's ongoing business and those services are provided by a contractor who normally renders such services to the general public

This provision excludes payments for services of a type not ordinarily required in the designated person's business, where the contractor usually provides those same services to the public generally.

This recognises the fact that businesses may require certain services that are not associated with their mainstream business.

Example

A bank hires painters and decorators to paint and decorate its office once every five years. Those painters and decorators also render their services to the public generally. The contract is excluded for payroll tax purposes because the bank does not ordinarily require the services of painters and decorators.

A Commissioner's ruling (/node/572) provides further detail on this.

The services are of a kind or type ordinarily required by the designated person for less than 180 days in a financial year

This provision excludes payments made under contracts for a type of service which the designated person requires for less than 180 days in a financial year.

This takes into account the fact that businesses require ad-hoc services allied to the mainstream work of the business, but so infrequently that employees are not engaged to perform those services.

A Commissioner's ruling (/node/570) provides more detail on, and some examples of, this exclusion.

The Commissioner is satisfied the services are rendered by a contractor who ordinarily renders services of that type to the public generally in that financial year

This provision excludes contracts for services that do not meet any of the other five exclusions and the Commissioner is satisfied that the services are rendered by a contractor who ordinarily renders such services to the public generally in that financial year.

In applying this exclusion, the Commissioner needs to be satisfied that the contractor provides the services in the course of conducting a genuine independent business, which stands in the market place and actually renders like services to a range of clients in that financial year.

A Commissioner's ruling ([/node/571](#)) provides more detail on, and some examples of, this exclusion.

Amounts payable under relevant contracts

Generally, the full amount paid to a contractor is taxable (excluding GST). However, it is recognised that many of the contracts subject to payroll tax involve some element of materials or equipment being supplied by the contractor, although not enough for the labour ancillary exclusion to apply.

Accordingly, the Commissioner has approved certain deductions for various classes of contracts to reflect a deemed amount for materials and equipment. A Commissioner's ruling ([/node/568](#)) provides more detail on contractor deductions.

Example

A contract computer programmer is engaged by a designated person and is paid \$100,000 (excluding GST) in the financial year. The programmer provides some materials and equipment in performing the work under the contract.

A deduction of 5 per cent has been approved for computer programmers. Assuming the payments to that contractor are subject to payroll tax, the amount to be declared is \$95,000 (that is, \$100,000 less the 5 per cent approved deduction (\$5000)).

There are three important points regarding these deductions:

- They are only available in respect of contractors who provide some materials or equipment to fulfil their duties, and do not apply to employees,
- The materials or equipment provided by the contractor must not have been purchased from the designated person or a member of the designated person group, and
- Approved deductions are the only allowable method to take account of materials or equipment provided by contractors

Where contractors provide invoices showing separate amounts for the labour and non-labour items, it is the full amount of the invoices which is subject to payroll tax, less any approved deduction. You cannot declare the invoiced labour component only.

GST included as wages

An employer can exclude the GST component (/node/551) of payments made to contractors which are taken to be taxable wages under the Act.

Anti-avoidance provisions

The Act (s47) contains an anti-avoidance provision, which relates to agreements under which payments by an employer for the services of a natural person are paid to another person (i.e. trust, company or partnership) related to that natural person, and the effect of such agreement is to avoid or reduce payroll tax.

The Commissioner may disregard such an agreement and determine any party to be the employer and any payment under the agreement to be wages.

A determination under this provision must be in writing and served on the employer setting out all the facts upon which the Commissioner relies and the reasons for making the determination.

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