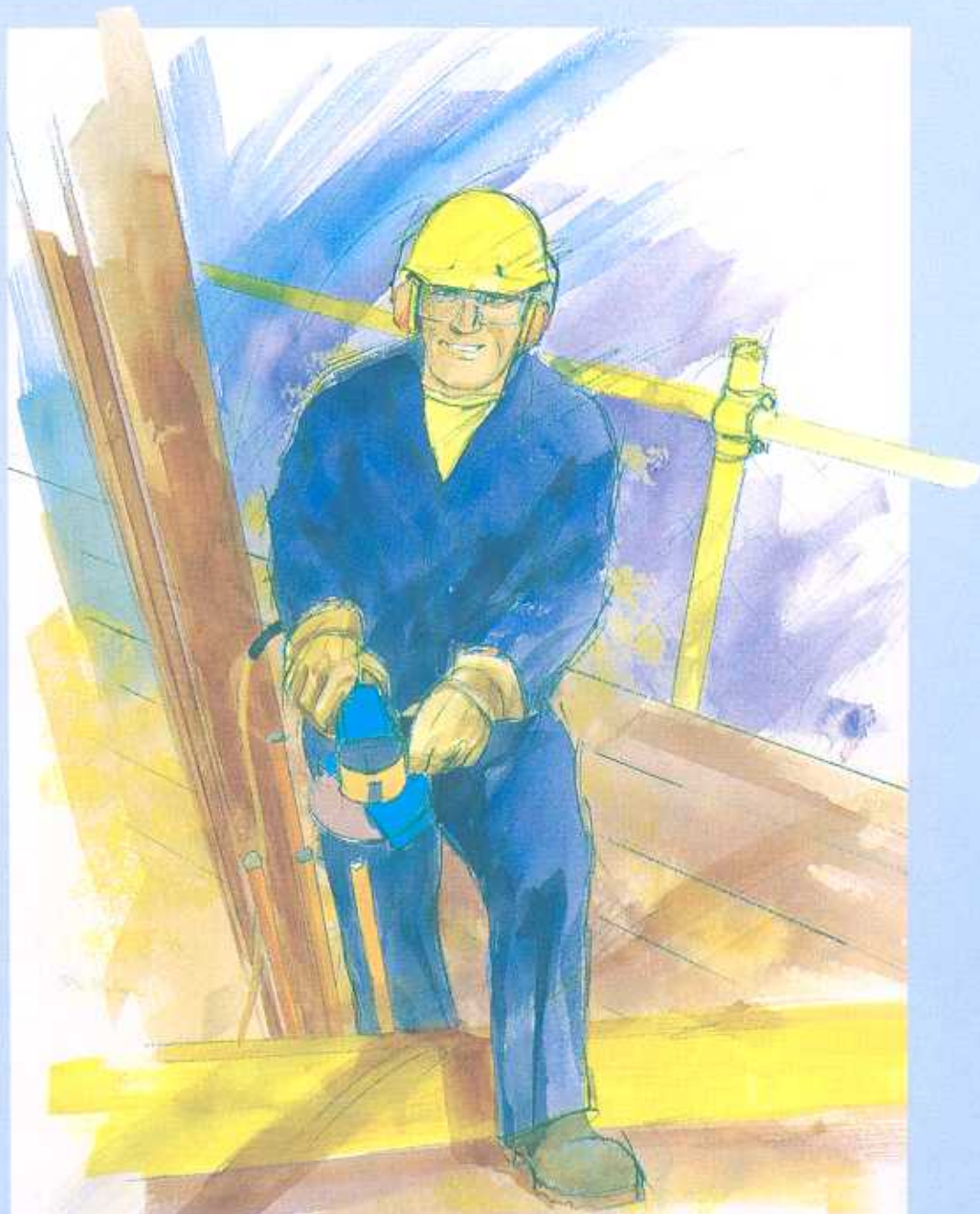


# Contractors and WorkCover



 **WorkCover Safety**  
*...think it, talk it, work it*

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# WorkCover policies - protection for workers and employers

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WorkCover is Victoria's workers' compensation system. Employers take out a WorkCover insurance policy to provide compensation if a worker is injured.

A WorkCover policy is compulsory for an employer<sup>1</sup>. A WorkCover policy cannot be replaced by any other form of insurance.

Under WorkCover, an employer pays premium to a WorkCover insurer of the employer's choice. The size of the premium partly depends on the remuneration paid by the employer - wages, salaries and other appropriate payments to all workers.

Contractors are sometimes considered to be workers and, therefore, payments made to a contractor may have to be included in an employer's remuneration.

In some cases, a contractor may be entitled to claim WorkCover compensation for an injury sustained during contract work.

So understanding how contractors fit into WorkCover is important for both employers and contractors whose business involves hiring or working under contracts or similar employment arrangements.

The specific relationship between the person hiring the services of a contractor and the person contracting to provide the services is critical.

This brochure contains a series of question tests which can help define the relationship involving a contractor.

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***1 Employers paying less than \$7,500 in remuneration are exempt from taking out a WorkCover policy (unless an injured worker claims compensation - then you must register as an employer).***

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## If you are a contractor

This simple test can help determine whether you may be a worker.

### If you operate as an incorporated company:

*Do you run a business that renders these services to a range of clients?*

*Do you employ two or more people to service the contract?*

### If you are a sole proprietor or partner:

*Do you run a business that renders these services to a range of clients?*

*Do you employ one or more people to service the contract?*

#### NO

**If your answer to both questions was "no", you are likely to be a "deemed" worker.**

This means you would not be required to include payments made to you as remuneration. The person engaging your services would be responsible to include your remuneration when estimating his/her payroll for premium calculation purposes.

#### YES

**If your answer to either question was "yes", you are not a "deemed" worker.**

This means that if you have a worker (or workers) working on the contracts you must take out a WorkCover policy and pay premium based on the remuneration paid to your workers.

However, if:

- you are a sole proprietor or partner; and
  - you are not a "deemed" worker; and
  - you do not employ any workers; and
- your annual remuneration is less than \$7,500, there are no WorkCover obligations.

You don't need to take out a WorkCover policy and the person hiring you services is not obliged to include your remuneration when estimating payroll for premium calculation purposes.



## If you hire contractors

This simple test can help determine whether you may have to include payments to contractors in your remuneration for WorkCover premium calculations.

### If the contractor operates as an incorporated company:

*Does the contractor run a business that renders these services to a range of clients?*

*Does the contractor employ two or more people to service the contract?*

### If the contractor is a sole proprietor or partner:

*Does the contractor run a business that renders these services to a range of clients?*

*Does the contractor employ one or more people to service the contract?*

**NO**

**If you answered "no" to both questions, the contractor is likely to be a "deemed" worker.**

This means you must declare payments to the contractor as remuneration. Turn to pages 4 to 8 for more detailed tests. (And see page 9 for advice on amounts which may be excluded.)

**YES**

**If you answered "yes" to either question, the contractor is not "deemed" to be a worker. But you must ask the following question:**

*Is the contractor an exempt\* employer or does he/she have a current WorkCover insurance policy?*

**NO**

If the answer is "no":

- and if the contractor is a sole proprietor or partner who does not engage workers, you are not liable to declare payments to the contractor as remuneration.

However, if the contractor did hire workers, you would become liable for them.

- but if **the contractor is an incorporated company or a sole proprietor or partner employing workers:**

you must declare payments made to the contractor's workers in your estimate of remuneration for WorkCover premium calculation purposes. (See page 9 for advice on amounts which may be excluded).

**YES**

If the answer is "yes", you must record:

- the details of the contractor's WorkCover policy or a copy of the contractor's exempt employer certificate (which the contractor can obtain from any WorkCover insurer;
- the period of time worked under the contract; and
- the amount paid.

These details may be requested by us as your WorkCover insurer or the Victorian WorkCover Authority.

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**\*Exempt employers are those who have an annual payroll of less than \$7,500 and do not employ an apprentice.**

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# Tests

These tests - based on Sections 5, 8, 9 and 10A of the Accident Compensation Act 1985 - can help determine whether a policy must be taken out and who is responsible for premium payments.

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## Test 1 - to determine if the person is a worker under section 5 of the Act

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Does the hired person operate through an incorporated company?

If yes refer to test 2

If no complete the following

Tick the appropriate box	Yes	No
1. Are regular defined hours worked?	<input type="checkbox"/>	<input type="checkbox"/>
2. Are these hours stipulated by the employer	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the person engaged on a continuing basis	<input type="checkbox"/>	<input type="checkbox"/>
4. Are plant and equipment provided to the person by you?	<input type="checkbox"/>	<input type="checkbox"/>
5. Are materials provided by you?	<input type="checkbox"/>	<input type="checkbox"/>
6. Is remuneration paid periodically rather than per job?	<input type="checkbox"/>	<input type="checkbox"/>
7. Is the person engaged personally required to perform the work?	<input type="checkbox"/>	<input type="checkbox"/>
8. Does the person work under similar conditions as members of your staff who are considered to be workers?	<input type="checkbox"/>	<input type="checkbox"/>
9. Does the person work exclusively for you?	<input type="checkbox"/>	<input type="checkbox"/>
10. Is the person obliged to obey instructions?	<input type="checkbox"/>	<input type="checkbox"/>
11. Do you have the right to control the manner in which the work is to be performed?	<input type="checkbox"/>	<input type="checkbox"/>

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If most of the above questions are answered "yes" (or if questions 9 and 10 are answered "yes"), the person engaged is most likely a worker. Therefore all payments to such a person should be declared as remuneration.

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If most of the above questions are answered "no", the person engaged is most likely not a worker under Section 5 of the Act, **proceed to Test 2 and 3.**

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## Test 2 - to determine if the contractor is a “deemed” worker under section 9 of the Act

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1. Are the kind of services supplied by the contractor outside the normal requirements of your business and does that contractor render those services to the public? For example: A firm of accountants engages a plumber to perform some plumbing work. If the plumber renders those services to the public, the firm of accountants would claim an exemption because this is the plumber’s normal work and those services are not normally required by the accountants.

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*If yes,  
read No. 11  
on page 6*

No to either or both

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2. Is the contractor engaged for less than 90 days in total in a financial year? (The reference to “days” is a reference to the number of days on which work is performed. The number of hours worked on each day is irrelevant.)

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*If yes,  
read No. 11  
on page 6*

No

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3. Is the supply of materials the main object of the contract? (If cost of materials, supplied by the contractor, exceeds 65 per cent of the contract price it will be accepted that the supply of materials is the main object of the contract.)

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*If yes,  
read No. 11  
on page 6*

No

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4. Is the supply of equipment the main reason for the contract? (This would be the case, for example, where your organisation enters into a contract to obtain the use of a crane and a crane driver is supplied with the crane. The supply of the crane would be the main reason for the contract.)

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*If yes,  
read No. 11  
on page 6*

No

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5. Are the kind of services supplied by the contractor required by your business on less than 180 days in total in a financial year? (The reference to “days” is a reference to the number of days on which work is performed. The number of hours worked on each day is irrelevant. All days worked by the person in a particular trade, profession etc. for you must be taken into account to determine whether you require a particular service for more than 180 days in a financial year. For example, if you employ a plumber on a full time basis you require plumbing services for more than 180 days in a financial year.)

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*If yes,  
read No. 11  
on page 6*

No

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## Test 2

6. Is the cost of the contract more than \$500,000 in a financial year?

*If yes,  
read No. 11 below*

No

7. **If the contractor operates as a company**

Is the work required under the contract performed by two or more persons engaged by the contractor company?

**If the contractor operates as a partnership**

Is the work required under the contract performed by at least one partner and at least one other person engaged by the partnership?

**If the contractor operates as a sole trader**

Is the work required under the contract performed by the contractor and at least one other person engaged by the sole trader?

Note: to be exempt the contractor engaged must be performing work regularly on the contract. Performance of other duties, such as administrative duties are not to be taken into account.

*If yes,  
read No. 11  
below*

No

8. Can it be demonstrated that the contractor rendering the services ordinarily renders services of that kind to the public? If it can be demonstrated that the contractor conducts an independent trade or business and provides such services to a wide range of clients throughout the financial year, an exemption from the 90 - day provision would normally be granted by the authorised insurer.

*If yes,  
read No. 11  
below*

No

9. Is this contractor supplying services to a principal, for or in relation to, the door to door sale of goods or of services ancillary to the sale of those goods, on behalf of the principal?

*Note:* This exclusion for direct sellers is restricted to the sale of goods on behalf of the principal to the end user at a place other than a place of business where goods or services of the relevant kind are offered or displayed for retail sale. Services are included only if they are ancillary to the sale of relevant goods.

No

10. If the answer to all the above questions is "no" the contractor is a "deemed" worker under section 9 of the Act and you are liable to pay premium on payments to the contractor.

11. Proceed to test 3 if the person engaged is a sole proprietor or partner to determine whether the contractor is a "deemed" worker under section 8.

12. If the answer to any of the questions is "yes" you are not liable under section 9 of the Act to pay premium on payments made to this contractor. Proceed to test 4 to ascertain liability to pay premium under section 10A.



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## Test 3 - to determine if the contractor is a "deemed" worker under section 8 of the Act

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1. Did you engage the contractor to perform work for the purpose of your trade or business?

The answer to this question would be "no" if the work to be carried out was of a private or domestic nature, for example, the removal of furniture from your residence.

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Yes

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*If the answer is "no" you are not liable to pay premium on this contractor.*

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2. Is the contractor a "natural person"? If the contractor is a company, the answer to this question is "no".

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Yes

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*If the answer is "no" you are not liable to pay premium on this contractor.*

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3. Does the contractor actually perform some part of the work personally?

Note: If the contractor is in a partnership, the answer will be "yes" if either partner does any of the work.

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Yes

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*If the answer is "no" you are not liable to pay premium on this contractor under section 8. Proceed to test 4.*

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4. Does the contractor work principally for you?

Is the work undertaken by the contractor outside the scope of the contractor's normal trade or business?

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Yes (to one or both)

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*If the answer to both questions is "no" you are not liable to pay premium on this contractor under section 8. Proceed to test 4.*

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5. The contractor is a "deemed" worker under section 8 and you are liable to pay premium on payments made to this contractor.
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## Test 4 - to determine if the principal is liable to pay premium on payments to workers employed by the contractor under section 10A of the Act

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1. Did you engage the contractor to perform work for the purpose of your trade or business?
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Yes

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*If the answer is "no" you are not liable to pay premium*

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- 
2. Is the contractor an exempt employer or does he/she have a current WorkCover insurance policy?
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No

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*If the answer is "yes" you are not liable to pay premium*

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3. As the principal you are liable to pay compensation and therefore should include payments made to the workers of the contractor in your estimate of remuneration for WorkCover premium calculation purposes.
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## Allowances for equipment and material costs for contractors

In specified circumstances in particular industries, prescribed amounts may be deducted from your payments to contractors for premium purposes. These include the cost of materials provided or costs related to significant equipment utilised by the contractor (excluding the materials or equipment obtained from the employer).

The following deductions may be made where the contractor is providing materials or equipment:

Type of contractor	Deduction from gross payment to contractor
Architects, draftspersons, engineers	5%
Bricklayers	30%
Building supervisors who provide their own vehicles and inspect more than six sites per week.	25%
Carpenters	25%
Carpet layers	25%
Computer programmers	5%
Driving instructors who provide their own vehicle	30%
Fencing contractors	25%
Painters	15%
Resilient floor layers	37%
Roof tilers or slaters	25%
Tree fellers	25%
Wall and ceiling plasterers	20%

(These deductions are reviewed from time to time.)

## Exempt payments for particular industries

Payments made to:

contracting electricians,  
contracting plumbers, or  
contracting cabinet makers

will be exempt remuneration for premium calculation purposes where:

- the contractor provides his/her own vehicle and equipment;
- supplies at his/her own cost all materials necessary to fulfil the contract; and
- those materials have not been purchased from the person who engaged the contractor.

(These exemptions are reviewed from time to time)



# WorkCover contacts

## City office:

Victorian WorkCover Authority  
Level 24, 222 Exhibition Street  
Melbourne, Vic 3000

GPO Box 4306  
Melbourne, Vic 3001  
Tel: (03) 9641 1555  
Fax: (03) 9641 1399  
Toll-free 1800 136 089

World Trade Centre  
Corner Flinders and Spencer Streets  
Melbourne, Vic 3005  
Tel 9628 8111

## Local Offices

Ballarat	5337 1400
Bendigo	5443 8866
Geelong	5223 2300
Melbourne	9628 8115
Mildura	5021 4001
Mulgrave	9565 9444
Preston	9485 4555
Shepparton	5831 8260
Traralgon	5174 8900
Wangaratta	5721 8588
Warrnambool	5562 5600

## Website

<http://www.workcover.vic.gov.au>

## Email

[info@workcover.vic.gov.au](mailto:info@workcover.vic.gov.au)

## Publications

Tel 9641 1333  
Fax 9641 1330

## WorkCover Advisory Service

Level 24, 222 exhibition street  
Melbourne, vic 3000  
Tel 9641 1444  
Fax 9641 1353  
Toll-free 1800 136 089

## WorkCover Conciliation Service

Level 3, 628 Bourke Street  
Melbourne, Vic 3000

GPO Box 251B  
Melbourne, Vic 3001  
Tel 9628 1111  
Fax 9628 1000  
Toll-free 1800 810 071

## WorkCover Medical Panels

Level 3, 628 Bourke Street  
Melbourne, Vic 3001

GPO Box 2709X  
Melbourne, Vic 3001  
Tel 9628 1010  
Fax 9628 1110  
Toll-free 1800 061 715

# WorkCover agents

## AMP Workers' Compensation Services (Vic) Ltd

Tel (03) 9622 6000 Fax (03) 9622 4556  
Toll-free 1800 812 964

## Catholic Church Insurances Ltd

Tel (03) 9934 3000 Fax (03) 9934 3462  
Toll-free 1800 011 028

## Civic Workers Plus Pty Ltd

Tel (03) 9867 6500 Fax (03) 9820 5840  
Toll-free 1800 817 969

## CGU Workers' Compensation (Vic) Ltd

Tel (03) 9628 1444 Fax (03) 9628 1422  
Toll-free 1800 818 485

## GIO Workers' Compensation (Vic) Ltd

Tel (03) 9649 1111 Fax (03) 9649 1050  
Toll-free 1800 335 993

## Guild Insurance Ltd

Tel (03) 9810 9820 Fax (03) 9819 5670  
Toll-free 1800 814 765

## HIH Workers' Compensation (Vic) Ltd

Tel (03) 9224 3204 Fax (03) 9224 3025  
Toll-free 1800 066 204

## Mercantile Mutual Worksure Ltd

Tel (03) 9230 3444 Fax (03) 9639 3587  
Toll-free 1800 814 614

## MMI Workers' Compensation (Vic) Ltd

Tel (03) 9234 3801 Fax (03) 9234 3760  
Toll-free 1800 032 302

## QBE Workers' Compensation (Vic) Ltd

Tel (03) 9246 2444 Fax (03) 9246 2401  
Toll-free 1800 817 820

## Royal & Sun Alliance Workers' Compensation Ltd

Tel (03) 9245 8000 Fax (03) 9245 8059  
Toll-free 1800 240 388

## VACC Insurance WorkSafe Pty Ltd

Tel (03) 9869 0360 Fax (03) 9867 3063  
Toll-free 1800 635 635

## Zurich Workers' Compensation Victoria Pty Ltd

Tel (03) 9520 6233 Fax (03) 9520 6520  
Toll-free 1800 812 196