Fishing crews guide

A guide to deemed and excluded workers

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# This guide has been produced to help employers and/or workers who may be uncertain about coverage under the *Return to Work Act 2014* (the Act). For further information please call ReturnToWorkSA (RTWSA) on 13 18 55.

# Who is a worker?

The Act provides for the recovery and financial support of workers who suffer a work injury arising from their employment. The Act requires that an employer register with RTWSA and pay an insurance premium based on remuneration paid to workers in their employ (unless they are exempted – see the RTWSA website for information on the small employer registration exemption). Under the Act, ‘worker’ has a broader definition than ‘employee’.

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

As there are some provisions which treat a person as a ‘worker’ for the purpose of the Act, there are some provisions which exclude persons even if they are engaged under a contract of service i.e. clearly an employee.

# Important notes

Whether a worker is engaged to perform work on an ongoing basis or for a short period e.g. for as little as one hour on a given day, or on a casual basis, an obligation exists on the employer to include remuneration paid to any such worker(s) in the calculation of premium payable.

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# Fishing crews

Section 4(2) of the Act provides that a crew member of a fishing boat who is remunerated by a share in profits or gross receipts obtained by working the boat is excluded for cover under the Act.

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

Where a crew member is paid a ‘share of profits or gross receipts’ the relationship would be considered more like a joint venture and he/she is not covered by the Act.

Where ‘wages’ are paid on a weekly, fortnightly or monthly basis and the crew member is employed under a contract of service, then he/she would not be excluded from the operation of the Act.

Where the crew member is paid at a ‘fixed rate’ per ton or number of fish, and the crew member is employed under a contract of service, then he/she would not be excluded from the operation of the Act. If both wages and a fixed rate are paid, the person would generally be considered a worker.

Information on a ‘contract of service’ is included in the *Who is a worker* brochure available from ReturnToWorkSA. If further clarification is needed, please phone us on 13 18 55 for assistance to establish if a contract of service exists.

# Disclaimer

The information produced by ReturnToWorkSA in this publication is correct at the time of printing and is provided as general information only and not as legal advice. In utilising general information about workplace health and safety and work injury management, the specific issues relevant to your workplace should always be considered and advice obtained. This publication is not intended as a substitute for the requirements of the *Return to Work Act 2014* or the *Work Health and Safety Act 2012.*