Driving or riding a vehicle, other than a commercial vehicle, for a fee or reward
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 provisions of the Act and well-tested common law principles.

The definition of ‘contract of service’ under the Act includes a contract, arrangement or understanding under which 1 person (the worker) works for another (the principal) in certain types of work i.e. prescribed work or work of a prescribed class - and this includes otherwise independent contractors. In these circumstances the principal is taken to be the ‘employer’ of the ‘worker’.

# 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.

A principal should ensure that an otherwise independent contractor who employs a worker(s) is, at all times when performing work for the principal, registered as an employer with RTWSA. If a contractor (who employs a worker(s)) is not registered, then under section 4(4) of the Act the principal is taken to be the employer of workers employed by the contractor. It is therefore in the principal’s best interests to ensure that any contractors who also employ workers are registered with RTWSA by requesting them to provide a copy of a certificate of registration.

Section 4(4) of the Act – states:

*Where in a prescribed industry or in prescribed circumstances a person (the principal) contracts with another person (the contractor) for the performance by the contractor of work undertaken by the principal, the principal will, for the purposes of this Act, be taken to be the employer of workers employed by the contractor.*

Regulation 5(8) of the *Return to Work Regulations 2015* (the Regulations)states:

*For the purposes of section 4(4) of the Act, a prescribed circumstance is where a person (the principal) contracts with another person (the contractor) who is not registered as an employer under the Act.*

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# How the Act relates to driving/riding a vehicle, other than a commercial motor vehicle, for fee or reward

Depending on specific circumstances, a driver or rider for fee or reward of a vehicle, other than a commercial motor vehicle, for the purpose of transporting by road goods or materials may be treated as a worker for the purpose of the Act even if they would otherwise be a contractor.

This work is prescribed work by Regulation 5 of theRegulations.

Such persons will be treated as a worker where the following conditions are **all met.**

**Work performed under a contract, arrangement or understanding where:**

* the work is performed by 1 person (worker) in the course of or for the purposes of a trade or business of another person (employer)
* the worker does not own or operate more than 1 vehicle for work purposes
* the goods or materials being transported are not owned (and have not been previously owned) by the driver or rider, or by the employer
* the vehicle must not be a commercial motor vehicle (see definition of ‘commercial motor vehicle’ below)
* the work is performed personally by the worker
* the worker does not employ any other person to carry out any part of the work, and
* the driver does not supply or was/is not reasonably expected in 2023 to supply more than $146 (indexed) worth of materials under the contract arrangement or understanding (fuel is treatment as material).

# How the Act relates to driving a commercial motor vehicle owned, leased or hired by the driver

Section 4(5) of the Act provides for exclusion, by regulation, of certain classes of workers form the application of the Act. Regulation 6(4) of the Regulationsexcludes a worker from the application of the Act even though the worker is clearly engaged as an employee under a contract of service.

An employee who is the driver of a commercial motor vehicle and satisfies all of the criteria listed below is excluded from the application of the Act.

A driver of a commercial motor vehicle is excluded if:

(a) the driver is employed or engaged by the principal to transport goods or materials (including money) by motor vehicle in the course of or for the purposes of a trade or business of the principal, and

(b) the motor vehicle is a ‘commercial motor vehicle’ (see definition of ‘commercial motor vehicle’ below),and

(c) the motor vehicle is owned, leased or hired by the driver, and

(d) the motor vehicle is not owned by, leased from, hired out by, or otherwise supplied by (directly or indirectly):

1. the principal, or

(ii) a third person who is related to the principal, and

(d) the goods or materials are not owned (and have not been previously owned) by the driver or by the principal.

A principal and another person will be taken to be related if:

* they are employer and employee, or
* the other person is accustomed or under an informal or formal obligation to control the use of the relevant motor vehicle in accordance with the directions or determinations of the principal.

If a worker employed as a driver of a commercial motor vehicle does not satisfy all of the above criteria, then the relationship is likely to be one of employer and employee. For further information on employer/employee (contract of service), refer to *Who is a worker* on the RTWSA website.

## Meaning of ‘commercial motor vehicle’

Regulation 3 of the Regulations, defines ‘commercial motor vehicle’ as a motor vehicle constructed or adapted solely or mainly for the carriage of goods or materials (including money) by road, including a prime mover, truck, panel van, utility and station wagon, but not including a motor cycle.

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# Disclaimer

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