Miscellaneous classes 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 determined to be 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.

# 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*.

# Ministers of religion

Specific ministers of religion are **excluded from coverage** under the Act by regulation 6(1) of the Regulations (this applies irrespective ofwhether the minister is working under a contract of service). They are:

* a minister ministering within The Anglican Church of Australia in South Australia
* a priest or other member of a religious order ministering within the Catholic Church of South Australia
* a pastor ministering within the Lutheran Church of Australia South Australia District Inc
* an ordained minister, deaconess or lay pastor of The Uniting Church in Australia ministering in an approved placement under the “Classification of Ministers” of that Church

All other ministers of religion, priests or other members of a religious order are taken to be workers:

1. as their work is a prescribed class of work for the purpose of the Act – refer to regulation 5(5) of the Regulations, or
2. if they are working under a contract of service.

# Sporting professionals

Regulation 6(2) of the Regulations excludes workers employed to participate as a contestant in a sporting or athletic activityfrom cover under the Act. There are two exceptions to this exclusion. Regulation 6(3) provides that:

1. persons authorised or permitted riders/drivers by a controlling authority within the meaning of the *Authorised Betting Operations Act 2000 to ride or drive in a race within the meaning of that Act* ; or
2. persons employed or engaged for a fee to take part in in a boxing/wrestling match

are not excluded from cover of the Act.

However, persons in these categories would still need to satisfy the contract of service test to be entitled to benefits under the Act. Please contact RTWSA for further clarification.

Information about what constitutes a contract of service is included in the *Who is a worker* brochure available on our website or from ReturnToWorkSA on 13 18 55.

# Prescribed volunteers

Under Schedule 1 of the Act, the Crown (the State) is the presumptive employer of persons of a prescribed class who voluntarily undertake work of a prescribed class which is of benefit to the State.

Schedule 1 of the Act and regulation 69 of the Regulations set out the relevant prescribed class of persons which include:

* volunteer South Australian State Emergency Service members,
* volunteer marine rescue members.
* members of the South Australian Country Fire Servicewho voluntarily perform work.

Refer to Schedule 1 of the Act and regulation 69 of the Regulations which also set out detailed descriptions of the prescribed work

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# Other volunteers

Volunteers of any other organisations not paid remuneration are **not covered** under the Act.

# Work experience

Work experience, where no remuneration is paid, is not a contract of service. A valid contract is generally only created between two separate legal entities, where some consideration (usually money) is involved.

Enquiries from students/employers should be directed to Centrelink officers or insurance companies to establish which insurance schemes cover students who are on work experience.

# Self-employed persons

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

# Partners

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

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

**Note:** Trusts cannot legally employ workers.

If further clarification is needed please contact ReturnToWorkSA on 13 18 55 for assistance.

# 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.*