

## Owner Drivers to be included for premium purposes

WorkSafe has released an Owner Driver premium ruling that takes effect from **1 July 2008**.

The ruling has been developed by WorkSafe in consultation with the Transport Industry Council whose membership includes representatives from the Victorian Transport Association, the Transport Workers Union, VECCL, Ai Group and Victorian Trades Hall Council.

The ruling is intended as a simplified method of evaluating a hirer's entire fleet of owner drivers. It will assist hirers to determine the remuneration that should be declared for their owner drivers for the period 2008/09 onwards. This ruling cannot be used for the certification of remuneration for years prior to 1 July 2008.

The ruling does not impact on coverage in the event of work-related illness or injury.

The FAQ has three parts:

- questions from those who hire owner drivers;
- questions from natural person owner drivers; and
- questions from incorporated owner drivers.

### FAQ – Hirers of Owner Drivers

1. [Am I obliged to follow the public ruling?](#)
2. [Am I required to declare remuneration for the owner drivers that work for me?](#)
3. [What's the difference between a natural person owner driver and an incorporated owner driver?](#)
4. [Is an owner driver required to hold their own WorkCover Insurance Policy?](#)
5. [If my natural person owner driver has a work related injury or illness – are they entitled to compensation?](#)
6. [If my incorporated owner driver has a work related injury or illness – are they entitled to compensation?](#)
7. [What rates do I apply to natural person owner drivers?](#)
8. [What does “gross revenue” mean?](#)
9. [Will WorkSafe use the public ruling to determine an owner driver's pre injury average weekly earnings \(PIAWE\) for compensation purposes?](#)

## 1. Am I obliged to follow the public ruling?

You are not obliged to follow the ruling. The ruling provides you with an alternative to applying all the usual tests required by the law in order to determine which of your owner drivers should be included for premium calculation purposes.

The ruling is an approximation of the law and is intended as a simplified method of evaluating your entire fleet of owner drivers. This ruling may not be used by you for premium purposes in conjunction with any other method including a case by case application of the law.

## 2. Am I required to declare remuneration for the owner drivers that work for me?

Whether you follow the ruling, or you follow the usual tests under the law to determine if the owner drivers you hire are your workers, if the outcome is that they are your workers then you are required to declare remuneration for them.

## 3. What's the difference between a natural person owner driver and an incorporated owner driver?

Incorporated owner drivers operate their businesses under their own proprietary limited companies which are registered under the Corporations Law. Natural person owner drivers do not have their own companies and typically operate their businesses as sole proprietors or partnerships.

## 4. Is an owner driver required to hold their own WorkCover Policy?

Please refer to the information concerning ["Do I need a WorkCover Policy?"](#)

## 5. If my natural person owner driver incurs a work related injury or illness – are they entitled to compensation?

WorkSafe will assess a natural person owner driver's entitlement to compensation in accordance with the *Accident Compensation Act 1985*.

Under the law, if a natural person owner driver works virtually exclusively for you, it is likely that they are covered for compensable injuries by your policy. In these circumstances they are regarded as not conducting their own independent business.

Typical indicators that a natural person owner driver is not conducting their own independent business include:

- they have worked mainly or exclusively for you for several years; or
- their vehicle has your livery or name on it; or
- they wear clothing with insignia or a uniform that identifies your business.

The natural person owner driver may engage employees or sub-contractors to work for them. This will not necessarily prevent the owner driver from being covered for compensable injuries.

## 6. If my incorporated owner driver has a work related injury or illness – are they entitled to compensation?

WorkSafe will assess an incorporated owner driver's entitlement to compensation in accordance with the *Accident Compensation Act 1985*.

Owner drivers that provide their services through their own company usually do so as employees of that company and will be required to take out a policy in the name of that company. In these cases, the owner driver is entitled to be compensated for compensable injuries under their own policy.

If an incorporated owner driver incurs a compensable injury while working for you, they will be entitled to compensation under your policy unless one of the following exemptions applies –

- They provide services to you on less than 90 days in a financial year.
- More than 50% of your contract payments to them are for material and equipment supplied by them.
- Where the type of service that they provide is not usually or normally requested by you (e.g. a one-off type of service such as engaging them to assist shifting to a new premises).
- Where they provide their owner driver services to the public generally in the financial year. (For example WorkSafe will accept that they are rendering transport services to the public generally where, in the financial year in which services were provided to you, they provided services to you for ten days or less on average a month for a financial year - excluding months in which no services were provided by them to you).
- Where their company engages at least two people to perform the work – one of these can be the owner driver.  
(The rules for this exemption require that the persons engaged by the company must perform the work of the contract i.e. transport services. Spouses or partners that perform bookkeeping or other administration work are not considered to be performing the work of the contract.)

It is important to note that an incorporated owner driver is only entitled to be compensated once for each compensable injury or illness.

## 7. What rates do I apply to natural person owner drivers?

Where a natural person owner driver is a worker of a hirer for the purposes of the ruling, the hirer must declare a certain percentage of its gross payments (excluding GST) to the worker as remuneration for WorkSafe premium purposes.

The percentage of gross payments required to be declared as remuneration is detailed in the following table:

<b>Service Supplied - Transport Industry Contractors</b>	<b>Percentage of Contract Payment</b>
Prime Movers	30 per cent
From 10 tonnes to Prime Movers	50 per cent
Motor vehicles from 3 tonnes to less than 10 tonnes	75 per cent
Couriers – motor vehicles less than 3 tonnes	75 per cent
Couriers – motor cycles	90 per cent

## 8. What does “gross revenue” mean?

In certain circumstances under the public ruling, you will qualify for an exemption where your owner driver employs/engages relief drivers or sub contracted drivers (other than a member of a family) who perform at least 20% or more (by gross revenue) of the transport services that the owner driver has agreed to perform for you.

“Gross revenue” means the total value (monetary or non-monetary value) of the contract between you and an owner driver for a policy period. This also includes what the owner driver would charge you for the transport services performed by a replacement driver or the sub-contracted driver.

**Example:**

- **David works exclusively for ABC Pty Ltd in 2008/09. Under the contract:**

- > ABC pays David \$50 per delivery
- > David receives \$60,000 for 1,200 deliveries for ABC Pty Ltd
- > David appoints a replacement driver Peter (not a family member) who performs 300 of the deliveries. He receives \$35 per delivery from David. Peter received \$10,500 from David.

- **Determining the gross revenue percentage**

- > David 900 deliveries x \$50 = \$45,000      **75% gross revenue**
- > Peter 300 deliveries x \$50 = \$15,000      **25% gross revenue**

**Accordingly, ABC is not required to declare the \$60,000 paid to David as remuneration for premium purposes.**

## 9. Will WorkSafe use the public ruling to determine an owner driver’s pre injury average weekly earnings (PIAWE) for compensation purposes?

No. If an owner driver has an injury and is incapacitated for employment, the weekly compensation entitlement is calculated as a percentage of the worker’s PIAWE. In the case of an owner driver, it must first be ascertained if there is a component of the amount you pay to cover motor vehicle expenses. In most cases this should be around 20% of the amount. If no specific allowance is nominated, it is common to deduct 20% to determine the labour component. A higher percentage can be deducted if it can be substantiated.

## FAQ – Natural Person Owner Drivers

1. **Am I a natural person owner driver for the purposes of the public ruling?**
2. **Is a business that hires my services required to pay WorkSafe Injury Insurance premium for me?**
3. **If I have a work related injury or illness – am I entitled to compensation?**
4. **Am I required to hold my own Workcover Insurance policy?**
5. **If I incur a compensable injury, will WorkSafe use the public ruling to determine my pre injury average weekly earnings (PIAWE)?**

1. Am I a natural person owner driver for the purposes of the ruling?

You will qualify as a natural person owner driver if you operate your business as a sole proprietor or partnership rather than via your own proprietary limited company.

2. Is a business that hires my services required to pay WorkSafe Injury Insurance premium for me?

Whether your hirer chooses to follow the ruling, or they follow the usual tests under the law, if the outcome is that you are their worker, then they are required to declare remuneration for you under their policy.

3. If I have a work related injury or illness – am I entitled to compensation?

WorkSafe will assess your entitlement to compensation in accordance with the *Accident Compensation Act 1985*.

Under the law, if you work virtually exclusively for a hirer, it is likely that you will be covered for compensable injuries incurred while working for them. In these circumstances you are regarded as not conducting your own independent business.

Typical indicators that you are not conducting your own independent business include:

- you have worked mainly or exclusively for a hirer for several years; or
- your vehicle has the hirer's livery or name on it; or
- you wear clothing with insignia or a uniform that identifies your hirer's business.

If you engage others to work for you, this will not necessarily prevent you from being covered for compensable injuries while working for a hirer.

4. Am I required to hold my own Workcover Insurance policy?

Please refer to the information concerning [“Do I need a WorkCover Policy?”](#)

5. If I incur a compensable injury, will WorkSafe use the public ruling to determine my pre-injury average weekly earnings (PIAWE)?

No. If you have an injury and are incapacitated for employment, the weekly compensation entitlement is calculated as a % of your PIAWE. In your circumstances, it must first be ascertained if there is a component of the amount your hirer pays you to cover motor vehicle expenses. In most cases this should be around 20% of the amount. If no specific allowance is nominated, it is common to deduct 20% to determine the labour component. A higher percentage can be deducted if it can be substantiated.

## FAQ – Incorporated Owner Drivers

1. **Am I an incorporated owner driver for the purposes of the ruling?**

2. **If my hirer chooses to apply the Public Ruling, are they required to pay WorkSafe Injury Insurance premium for me?**

3. **If I have a work related injury or illness – am I entitled to compensation?**

**4. Is my company required to hold a Workcover Insurance policy?**

**5. If I incur a compensable injury, will WorkSafe use the public ruling to determine my pre injury average weekly earnings (PIAWE)?**

**1. Am I an incorporated owner driver for the purposes of the ruling?**

You will qualify as an incorporated owner driver if you operate your business under your own proprietary limited company which is registered under the Corporations Law.

**2. If my hirer chooses to apply the Public Ruling, are they required to pay WorkSafe Injury Insurance premium for me?**

WorkSafe's Public Ruling relating to owner drivers provides hirers with an alternative to applying all the usual tests required by the law in order to determine which of their owner drivers should be included for premium calculation purposes.

If you are an incorporated owner driver and your hirer chooses to apply the Public Ruling then they are not required to pay WorkSafe injury insurance premium for you.

**3. If I have a work related injury or illness – am I entitled to compensation?**

WorkSafe will assess your entitlement to compensation in accordance with the *Accident Compensation Act 1985*.

If you are an employee of your own company, you are required to take out a policy in the name of that company and you will be entitled to be compensated for compensable injuries under that policy.

If you incur a compensable injury while working for a hirer, you will be entitled to compensation under the hirer's policy unless one of the following exemptions applies –

- You provide services to you on less than 90 days in a financial year.
- More than 50% of the hirer's contract payments to you are for material and equipment supplied by you.
- Where the type of service that you provide is not usually or normally requested by the hirer (e.g. a one-off type of service such as engaging you to assist shifting to their new premises).
- Where you provide your owner driver services to the public generally in the financial year. (For example WorkSafe will accept that you are rendering transport services to the public generally where, in the financial year in which services were provided to the hirer, you provided services to the hirer for ten days or less on average a month for a financial year - excluding months in which no services were provided by you to the hirer).
- Your company engages at least two people to perform the work – one of these can be you. (The rules for this exemption require that the persons engaged by you must perform the work of the contract i.e. driving. Spouses or partners that perform bookkeeping or other administration work are not considered to be performing the work of the contract.)

It is important to note that you are only entitled to be compensated once for each compensable injury or illness.

4. Is my company required to hold a Workcover Insurance policy?

Please refer to the information concerning [“Do I need a WorkCover Policy?”](#)

5. If I incur a compensable injury, will WorkSafe use the public ruling to determine my pre injury average weekly earnings(PIAWE)?

No. If you have an injury and are incapacitated for employment, the weekly compensation entitlement is calculated as a % of your PIAWE. In your circumstances, it must first be ascertained if there is a component of the amount your hirer pays you to cover motor vehicle expenses. In most cases this should be around 20% of the amount. If no specific allowance is nominated, it is common to deduct 20% to determine the labour component. A higher percentage can be deducted if it can be substantiated.