



Victorian WorkCover  
Authority

## PREMIUM PUBLIC RULING

### Owner Drivers to be included for premium purposes

**Date issued: 6<sup>th</sup> May 2008**  
**Effective date: 1<sup>st</sup> July 2008**

#### **Preamble**

This ruling applies to hirers of owner drivers who use motorcycles, cars or trucks to convey goods. It is for the express purpose of providing hirers with an alternative to applying all the usual tests required by the law to determine which owner drivers should be included for premium calculation purposes.

It does not apply to pushbike couriers because WorkSafe considers that such persons are employees of the courier business.

#### **Interpretation**

These definitions apply under this ruling:

**“Hirer”** means a principal who enters into a contract with an owner driver for the performance of transport services. This includes but is not limited to any person who is a member of the same group as the hirer within the meaning of section 66 of the *Accident Compensation (WorkCover Insurance) Act 1993*. Accordingly, the ruling is to be applied as if the group is the hirer.

**“Owner Driver”** means a contractor who provides a motorcycle, car or truck (“the vehicle”). The main purpose of the contractor’s work must be the transportation and delivery of goods and any other services must be ancillary or secondary to that main purpose (“transport services”).

The vehicle provided by the owner driver may be made available through direct ownership, or through hiring, leasing or borrowing. However, the vehicle must not be owned or leased by the hirer and the hirer must make no contribution, whether directly or indirectly, to the capital or running expenses of the vehicle.

**“Policy period”** means the period of 12 months, or a lesser period in accordance with the *Accident Compensation (WorkCover Insurance) Act 1993*, ending on 30 June in any year.

**“Gross revenue”** means the total value (monetary or non-monetary value) of the contract between a hirer and an owner driver for a policy period. This also includes what the owner driver would charge the hirer for the transport services performed by the replacement driver or the sub-contracted driver. See attachment 1 for an example.

**“Member of a family”** means the partner, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister and any person who stands in the place of a parent in relation to another person or that other person in accordance with the *Accident Compensation Act 1985*.

## **Ruling**

Where a hirer chooses to use this ruling to determine if the owner driver is a worker for premium purposes, they must apply it to all of their owner drivers. The ruling can not be used together with any other method, including a case by case application of the *Accident Compensation Act 1985* to determine if the owner driver is a worker.

### **Incorporated Owner Drivers**

Where an incorporated owner driver agrees to perform transport services for a hirer, WorkSafe considers that the hirer's payments to the owner driver's company for the performance of the transport services are not required to be declared as remuneration under the hirer's WorkSafe injury insurance policy.

**Note:** An owner driver's company will need to hold its own WorkSafe insurance policy if it pays remuneration to workers including the company's directors.

### **Natural Person Owner Drivers (individuals & partnerships)**

#### *1. An owner driver performs transport services exclusively for a hirer during a policy period.*

A natural person owner driver is deemed to be a worker of a hirer for a policy period where the owner driver performs their transport services exclusively for that hirer during that period. However, this will not apply where the owner driver engages relief drivers or sub contracted drivers (other than a member of a family) who perform at least 20% (by gross revenue) of the transport services that the owner driver has agreed to perform for the hirer.

#### *2. An owner driver performs transport services on more than 3 days a week for a hirer.*

A natural person owner driver will be deemed to be a worker of a hirer for a policy period where the owner driver has performed transport services for that hirer on more than three days a week for at least 26 weeks during that period. However, this will not apply where one of the following exceptions applies:

- I. Where the owner driver has performed transport services for at least 3 hirers during that period and has not earned more than 80% of their total transport services income from any one hirer for that period.
- II. Where the owner driver has provided transport services to the hirer on less than 180 days in that period and has also provided those services to that hirer on less than 180 days in the previous policy period.
- III. Where the 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 the hirer.

#### *3. An owner driver performs transport services for more than one hirer during a policy period and performs transport services on less than 3 days a week for a given hirer.*

A natural person owner driver will not be deemed to be a worker of a hirer ("the relevant hirer") for a policy period where:

- a) the owner driver has performed transport services for the relevant hirer and at least one other hirer during that period; and
- b) the owner driver has performed transport services for the relevant hirer on less than 3 days a week for at least 26 weeks during that period.

## Rateable Remuneration

Where a natural person owner driver is deemed to be a worker of a hirer for a policy period for the purposes of this ruling, the hirer must declare a certain percentage of its gross payments (excluding GST) to the worker as remuneration under the hirer's WorkSafe injury insurance policy.

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

| Vehicle Supplied                                    | Percentage of Contract Payment |
|---|--------------------------------|
| 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                    |

|                                     |   |                               |     |
|-------------------------------------|---|-------------------------------|-----|
| <b>Date of Ruling</b>               | 6 <sup>th</sup> May 2008  | <b>Date Ruling Superseded</b> | N/A |
| <b>Replacement Ruling Reference</b> | This ruling replaces the Owner Drivers notice placed on the WorkSafe website in March 2007. |                               |     |

## Disclaimer

***Unless otherwise specified within this ruling, this ruling is WorkSafe's interpretation of the Law as it has operated to date and continues to operate. Rulings do not have the force of law. Each decision is made on the merits of each individual case having regard to any relevant ruling. It is an employer's responsibility to ensure that they are using the current version of a ruling.***

## **Attachment 1**

### **“Gross Revenue”**

In certain circumstances under this public ruling, a hirer will qualify for an exemption where their 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 the hirer.

### **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.**