

WAGES

DEFINITION MANUAL



OCTOBER 2003

Disclaimer

This publication contains information regarding occupational health, safety, injury management or workers compensation. It includes some of your obligations under the various workers compensation and occupational health and safety legislation that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate Acts.

This publication may refer to WorkCover NSW administered legislation that has been amended or repealed. When reading this publication you should always refer to the latest laws. Information on the latest laws can be checked at www.nsw.gov.au or contact (02) 9238 0950 or 1800 463 955 (NSW country only).

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Introduction

The purpose of this manual is to provide a guide to employers, accountants, licensed insurers, auditors and other interested parties, on remuneration taken into account for the purposes of assessing an employer's workers compensation premiums.

WorkCover's policy is that where a payment to a worker is made in lieu of wages (regardless of the terminology used to describe that payment) then the payment is counted as remuneration for the purposes of calculating workers compensation premiums.

Many of the payments covered by the Act's definition of 'wages' are not of the type that might be generally thought of as wages – for example, the definition includes '*any other consideration in money or money's worth given to the worker*' under a contract of service or apprenticeship. For this reason, WorkCover uses the term 'remuneration'.

The aim of this manual is to help ensure that there is a consistent approach to the declaration of remuneration. This consistency will help make sure that each employer, covered for workers compensation through the WorkCover Scheme, pays their fair share of the cost of the Scheme.

The NSW Parliament passed major changes to the definition of wages for workers compensation policy purposes in December 2002. These changes, identified throughout this document, are effective for new or renewed policies commencing on or after 4.00pm 30 June 2003.

This edition supersedes the May 2003 edition and includes changes to the formal definition of wages with regard to certain work related motor vehicle and accommodation allowances. These changes were gazetted on Friday 12 September 2003 in the *Insurance Premiums Order 2003-2004 Amendment (Wages) Order 2003*. These changes apply to new or renewed policies from 4.00pm 30 June 2003. See 'Car allowances and expenses' and 'Travel allowance'.

Refer to the end of this manual for a summary of what is counted as remuneration.

How the system works

Insurers collect workers compensation premiums from employers to fund the costs associated with work-related injuries and diseases. Including payment of benefits to an injured worker, to cover them for the loss of wages, treatments, rehabilitation and lump sums for permanent disabilities.

What can you use this manual for?

1. Employers and insurers can use this manual to help determine whether a particular payment is to be counted as 'remuneration' for the purposes of assessing the employer's premium. See Chapter C, which sets out WorkCover's interpretation in relation to many different types of payments.
2. The law governing whether a payment is remuneration for the purposes of workers compensation is set out in the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*. The purpose of this manual is to provide general information about the law and how WorkCover interprets the law. If you want specific legal advice you will need to consult a solicitor.

Why is this manual needed?

3. It is important that all NSW employers apply a consistent, clear and precise approach to the declaration of remuneration.

This manual helps to ensure that all employers are treated fairly and consistently, and that premium-avoidance behaviour is discouraged.

The manual deals with the definitions of 'remuneration' and 'worker' (and some related administrative matters eg. records and disputes).

What is an employer's premium based on?

4. Each employer's workers compensation premium is based on various things, including:
 - the industry in which the employer operates;
 - the amount of remuneration the employer pays to its workers; and
 - the cost of any claims made by their workers (for employers with a base tariff premium greater than \$3,000).

For further information on how premiums are calculated, refer to the *Outline of the NSW Workers Compensation Premium Scheme* (catalogue no. 48.2). (For information on industry classifications and rates, refer to the *Insurance Premiums Order* (catalogue no. 91.1). Both publications are issued annually and are available on the WorkCover website (www.workcover.nsw.gov.au).

Why is the level of weekly compensation benefits different to what an employer declares as remuneration?

5. Payments of weekly compensation benefits to an injured worker are calculated in accordance with the *Workers Compensation Act 1987*.

Weekly benefits form only one element of workers compensation benefits that an injured worker may be entitled to receive. Depending on the nature and severity of their injury they may receive: medical and other health-related treatments, rehabilitation, medication for their injury, or be entitled to a lump-sum payment for a permanent impairment or pain and suffering.

How to use this manual?

A guide to using this manual can be found on page 5.

The relevant law

6. This manual sets out the criteria WorkCover applies in determining the amount of remuneration an employer must declare to their insurer. WorkCover also uses the same criteria for the purposes of:
 - determining an employer's appeal regarding the payments included in the worker's remuneration. See section 170 of the *Workers Compensation Act 1987*;
 - considering an employer's understatement of wages. See section 174 of the *Workers Compensation Act 1987*; and

- considering an employer's possible evasion of correct premiums. See sections 175 and 175A of the *Workers Compensation Act 1987*. For penalties for non-payment of premiums see sections 155 and 156 of the *Workers Compensation Act 1987*.

Recent change to legislation has broadened the interpretation of remuneration to include:

- Employer superannuation contributions (see Chapter H).
- Grossed-up value of fringe benefits.
- Long service leave payments.
- Termination payments (including any lump sum paid before or after retirement or termination in respect of unused annual leave, bonuses and loadings and unused sick leave).
- Payments to working directors, including directors' fees.

These changes are effective for new or renewed policies commencing on or after 4.00pm 30 June 2003.

In addition, the law also provides that distributions to workers, where the distribution is in lieu of wages for work done for the trust, are counted as remuneration (see Chapter G).

For policy periods commenced prior to 4.00pm 30 June 2003 employers should declare remuneration under the definition of wages that applied at that time. Employers should use this definition for the entire term of the policy. Chapter C outlines the payments that have been changed by the expanded definition of wages.

Improving this manual

7. WorkCover welcomes your comments on this manual and any suggestions as to how it might be improved. The manual will be updated as required.

Any questions?

8. If you have any questions about this manual, please contact the Insurer Performance Evaluation & Appeals Branch at the address below. If you are an employer wishing to dispute your insurer's assessment of your premium, check the information on disputes in Chapter K.

Insurer Performance Evaluation & Appeals Branch
 WorkCover Authority of New South Wales
 92–100 Donnison Street
 Gosford NSW 2250

or

Locked Bag 2906
 Lisarow NSW 2250
 Phone (02) 4321 5502
 Fax (02) 4325 4145
 Email contact@workcover.nsw.gov.au

Note: you should always refer to the latest laws. Information on the latest workers compensation laws can be checked at www.workcover.nsw.gov.au or contact the WorkCover Assistance Service on 13 10 50.

Using this manual

Definition of 'worker' and 'remuneration'

9. Because each employer's premium is based on the amount of 'remuneration' the employer pays to its 'workers', it is important to be careful about determining who is a 'worker' and what constitutes 'remuneration'.

Each of those words is defined broadly. For example:

- **worker** includes many contractors (see Chapter B); and
- **remuneration** includes many kinds of payments. Recent changes to workers compensation law have broadened the interpretation of 'remuneration'. The general rules about what is included as remuneration are set out in Chapter A. In addition, WorkCover has prepared a list covering many types of payments that employers make to workers. In the list, WorkCover sets out its interpretation as to which of those payments are to be counted as 'remuneration' (see Chapter C).

These broad definitions help to ensure that employers are treated fairly and consistently.

What records must employers keep?

10. Employers are required to keep records of:

- the remuneration they pay their workers (and contractors who are deemed to be workers); and
- all information that may form the basis for calculating their workers compensation premium.

The employer must keep those records in good order and condition for at least **seven (7) years**, as outlined in section 174 of the *Workers Compensation Act 1987*.

See Chapter I for the rules about the records employers must keep.

Does an insurer's interpretation bind WorkCover?

11. The insurer is required to comply with this manual when deciding what is to be counted as remuneration for workers compensation purposes. This manual provides general information about the law and how WorkCover interprets the law. If an employer disputes what is included as remuneration, WorkCover will assess the matter consistent with the law and the principles in this manual.

What if an employer disputes the amount of its premium?

12. Any employer who queries or disputes the premium calculation made by their insurer should discuss the matter with the insurer.

If, after those discussions, the employer still believes the premium calculation does not comply with the law or the principles outlined in this manual, the employer may contact WorkCover to discuss a review of the issue. A formal review may be conducted under section 170 of the *Workers Compensation Act 1987*.

See Chapter K for the rules about applying to WorkCover for a review.

Chapter A – Meaning of ‘remuneration’

Many of the payments covered by the Act’s definition of ‘wages’ are not of the type that might be generally thought of as wages – for example, the definition includes ‘*any other consideration in money or money’s worth given to the worker*’ under a contract of service or apprenticeship. For this reason WorkCover uses the term ‘remuneration’.

What is this chapter for?

13. An employer’s premium is calculated on the basis of ‘remuneration’ paid to ‘workers’. So the meaning of each of those terms is crucial. This chapter deals with ‘remuneration’. (‘Worker’ is explained in Chapter B.)

This chapter covers the general principles in relation to ‘remuneration’. The detailed list of WorkCover’s interpretation in relation to particular types of payments is in Chapter C. However, because of the complexity involved in each of the following areas, there is a separate chapter for:

- Deemed workers – see Chapter D.
- Contractors – see Chapter E.
- Directors – see Chapter F.
- Trusts – see Chapter G.
- Superannuation – see Chapter H.

What payments are counted as remuneration?

14. The Act defines ‘wages’ broadly. (The definition is set out below.)

To give employers and insurers guidance on WorkCover’s interpretation of the definition of ‘remuneration’, WorkCover has prepared a detailed list in Chapter C. In that list, WorkCover sets out its interpretation in relation to many particular types of payments.

Generally, a payment to a worker is ‘remuneration’ if it is made to, or for the benefit of, the worker. (‘Worker’ is explained in Chapter B.)

What is the Act’s definition of ‘wages’?

For policies commenced prior to 4.00pm 30 June 2003

15. Section 174 (9) of the *Workers Compensation Act 1987* defines wages as follows:

‘wages’, in relation to a worker:

- (a) includes salary, overtime, shift and other allowances, over-award payments, bonuses, commissions, payments to working directors, payments for public and annual holidays (including loadings), payments for sick leave, value of board and lodging provided by the employer for the worker, and any other consideration in money or money’s worth given to the worker under a contract of service or apprenticeship;

- (b) includes payment (whether by way of commission, fee, reward or otherwise) under a contract (whether referred to as a contract, agreement, arrangement or engagement) by reason of which the person paid is deemed by Schedule 1 to be a worker, after deducting such amount for costs necessarily incurred by that person in performing that contract as may be agreed on or, in default of agreement, as may be determined by WorkCover; and
- (c) does not include –
 - (i) any sum that the employer has been accustomed to pay to the worker to cover any special expenses incurred by the worker because of the nature of the employment;
 - (ii) any allowance to reimburse costs arising out of an obligation incurred under a contract;
 - (iii) any amount expended on behalf of the worker;
 - (iv) directors' fees;
 - (v) compensation under this Act;
 - (vi) any payment for long service leave, a lump sum payment instead of long service leave or any payment under the *Building and Construction Industry Long Service Payments Act 1986*; or
 - (vii) any GST component in a payment to a worker.

For new or renewed policies commencing on or after 4.00pm 30 June 2003, the law has changed. From that date section 174 (9) of the *Workers Compensation Act 1987* defines wages as follows (the new provisions are in bold):

'wages', in relation to a worker:

- (a) includes salary, overtime, shift and other allowances, over-award payments, bonuses, commissions, payments to working directors (including payments as directors' fees), payments for public and annual holidays (including loadings), payments for sick leave, value of board and lodging provided by the employer for the worker and any other consideration in money or money's worth given to the worker under a contract of service or apprenticeship;
- (b) includes payment (whether by way of commission, fee, reward or otherwise) under a contract (whether referred to as a contract, agreement, arrangement or engagement) by reason of which the person paid is deemed by Schedule 1 to be a worker, after deducting such amount for costs necessarily incurred by that person in performing that contract as may be agreed on or, in default of agreement, as may be determined by WorkCover; and:
 - (b1) includes payments for long service leave (including a lump sum payment instead of long service leave and any payment under the *Building and Construction Industry Long Service Payments Act 1986*), and**
 - (b2) includes a payment made in consequence of the retirement from, or termination of, any office or employment of a worker, being:**
 - (i) a lump sum payment paid before or after that retirement or termination in respect of unused annual leave, or unused annual leave and a bonus, loading or other additional payment relating to that leave; or**
 - (ii) an amount paid in respect of unused long service leave; or**
 - (iii) an amount paid in respect of unused sick leave; and**
 - (b3) includes the amount that is the employer's fringe benefits taxable amount (within the meaning of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth) in respect of fringe benefits payable to the worker, and**

- (b4) includes a superannuation benefit, being money paid or payable by the employer in respect of the worker:
 - (i) to or as a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or
 - (ii) as a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth; or
 - (iii) to or as any other form of superannuation, provident or retirement fund or scheme, including a wholly or partly unfunded fund or scheme; and
- (b5) includes a distribution to a worker as beneficiary under a trust that is required to be included as wages by Section 174AA and;
- (c) does not include:
 - (i) directors' fees (except to the extent that these fees are payable to working directors and are included as wages under paragraph (a));
 - (ii) compensation under this Act; or
 - (iii) any GST component in a payment to a worker.

For information on how WorkCover interprets this definition, see this chapter for the general principles, and see Chapter C for the detailed list of WorkCover's interpretation in relation to particular types of payments.

Inclusion of trust distributions as wages

Section 174AA Workers Compensation Act 1987

- (1) A distribution to a worker as beneficiary under a trust constitutes wages for the purposes of Section 174 to the extent that the distribution is in lieu of wages for work done for the trust by the worker.
- (2) Work that constitutes the provision of services to the trustee of a trust, or for the purposes of a business conducted by the trustee of a trust, is work done for the trust.
- (3) This section applies in respect of distribution to a worker only if:
 - (a) there is a wages shortfall in respect of work done for the trust by the worker; and
 - (b) the distribution is made in the financial year in which the work is done or in the following financial year.
- (4) There is a wages shortfall in respect of work done for the trust by the worker if the total wages (if any) paid or payable to the worker during the financial year in which the work is done is less than the wages that would be payable to the worker for that work if wages were payable at the market rate for that work (with the difference constituting the wages shortfall for the purposes of subsection (5)).
- (5) If the distribution does not exceed the wages shortfall in respect of the work, the whole of the distribution is in lieu of wages for work done for the trust by the worker. Alternatively, if the distribution exceeds the wages shortfall in respect of the work, the distribution is in lieu of wages to the extent of the shortfall.

- (6) For the purpose of determining whether a particular distribution is in lieu of wages for work done for the trust, the total wages (if any) paid or payable to the worker during a financial year for the work is taken to include any previous distribution (whether made during that financial year or the following financial year) that, by application of this section, is a distribution in lieu of wages for the same work.
- (7) The market rate for work is the minimum wage rate applicable in respect of the work (or work that is comparable to the work):
 - (a) pursuant to an industrial instrument in force under a law of the State; or
 - (b) if paragraph (a) does not apply, pursuant to an industrial instrument in force under a law of the Commonwealth; or
 - (c) if neither paragraph (a) nor (b) applies, as provided by the WorkCover Guidelines or as determined and notified by the Authority in the particular case.

Chapter B – Meaning of ‘worker’

What is this chapter for?

16. An employer’s premium is calculated on the basis of ‘remuneration’ paid to ‘workers’. So the meaning of each of those terms is crucial. This chapter deals with the meaning of ‘worker’. (‘Remuneration’ is explained in Chapter A.)

Does the tax law definition of ‘worker’ apply?

17. A person may be a worker for the WorkCover system, but not for the taxation law system. For this reason you need to consider each person under the laws applying to workers compensation. See Chapters D and E.

What does the term ‘worker’ include?

18. ‘Worker’ means:
- Any person who has entered into, or who works under, a contract of service or apprenticeship with an employer – this includes some contractors, see Chapter E. Whether by way of manual labour, clerical work, or otherwise. Whether the contract is expressed or implied, is verbal or in writing.

The definition of ‘worker’ is in section 4 (1) of the *Workplace Injury Management and Workers Compensation Act 1998*. The definition is outlined at the end of this chapter (see rule 23).

As a general rule, if a person is entitled to receive workers compensation benefits if they have a work-related injury, then that person is counted as a ‘worker’ for the purposes of calculating the employer’s workers compensation premium.

Which contractors are treated as ‘workers’?

19. WorkCover’s interpretation of the contractors who are workers for the purposes of the law is set out in Chapter E. As is WorkCover’s interpretation of the payments (or percentages of payments) to contractors that are to be treated as remuneration.

What about workers employed under government employment and training programs?

20. The following people who might be regarded as employees may not be counted as ‘workers’ for the purpose of calculating the employer’s premium:

(a) *JobCover Placement Program*

Remuneration paid to workers engaged under the JobCover Placement Program (in which employers employ previously injured workers) is not counted for the purposes of calculating an employer’s premium. This exemption applies only in the first 12 months of the worker’s employment under the Program.

(b) *Australian Traineeship System*

Remuneration paid to new entrant trainee workers employed under the Australian Traineeship System is not counted for the purposes of calculating an employer's premium. Instead, the worker is regarded as an employee of the Traineeship System and covered for workers compensation through that System. See section 158 of the *Workers Compensation Act 1987*. The definition of a new entrant trainee is outlined in the publication *Your Guide to Apprenticeships and Traineeships in NSW* on the Department of Education and Training website, www.det.nsw.gov.au.

(c) *Apprentices*

Remuneration paid to apprentices employed under an approved Group Apprenticeship Scheme (registered with the Department of Commerce Office of Industrial Relations) is not counted for the purposes of calculating an employer's premium. Instead, the apprentice is regarded as the employee of the Group Apprenticeship Scheme.

(d) *Community Development Employment Project (CDEP)*

Remuneration an employer pays to workers in the Community Development Employment Project is counted as remuneration for the purposes of calculating an employer's premium. However, the other costs funded by the Project are excluded (for example, costs for equipment and rental).

(e) *Work for the Dole Program*

Unemployment allowance paid to participants in the Work for the Dole Program is not counted for the purposes of calculating an employer's premium. Participants are regarded as Social Security beneficiaries, as they only receive unemployment payment and a participation supplement. However, workers who are contracted by a government agency to provide participants with work experience placements in Work for the Dole activities are counted as workers and their remuneration is counted for the purposes of calculating an employer's premium.

How are interstate and overseas workers treated?

21. There are special rules relating to interstate and overseas workers. For further information see the list in Chapter C. The rules apply whether the worker spends all, or only some, of their time outside New South Wales.

Legislative amendments to cross-border arrangements were made in 2002 but are not in force at the time this manual was published. Employers should consult their insurer about these agreements and refer to the WorkCover website for information.

How is directors' remuneration treated?

22. If directors receive payments (eg. wages, salary, allowances, fringe benefits), that if paid to a worker would be counted as remuneration for premium assessment purposes, those payments will be counted as remuneration. Recent legislation has changed the definition of remuneration to directors (see Chapter F).

How does the Act define 'worker'?

23. The Act defines 'worker' as follows (see section 4 (1) of the *Workplace Injury Management and Workers Compensation Act 1998*):

'worker' means a person who has entered into or works under a contract of service or apprenticeship with an employer (whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, and whether the contract is oral or in writing). However, it does not include:

- (a) a member of the Police Service who is a contributor to the Police Superannuation Fund under the *Police Regulation (Superannuation) Act 1906*; or
- (b) a person whose employment is casual (that is for one period only of not more than five working days) and who is employed otherwise than for the purposes of the employer's trade or business; or
- (c) an officer of a religious or other voluntary association who is employed upon duties for the association outside the officer's ordinary working hours, so far as the employment on those duties is concerned, if the officer's remuneration from the association does not exceed \$700 per year; or
- (d) except as provided by Schedule 1, a registered player of a sporting organisation (within the meaning of the *Sporting Injuries Insurance Act 1978*) while:
 - (i) participating in an authorised activity (within the meaning of that Act) of that organisation; or
 - (ii) engaged in training or preparing himself or herself with a view to so participating; or
 - (iii) engaged on any daily or periodic journey or other journey in connection with the registered player so participating or the registered player being so engaged,if, under the contract pursuant to which the registered player does any of the things referred to above in this paragraph, the registered player is not entitled to remuneration other than for the doing of those things.

See also Chapter D for information on deemed workers and Chapter E for information about contractors.

Chapter C – WorkCover’s interpretation in relation to particular payments

(Supplement to section 174 (9) of the *Workers Compensation Act 1987*)

How do you use this list?

24. The list in this chapter sets out WorkCover’s interpretation as to what is remuneration (and what is not) as applied to many particular types of payments.

In the list, you can look up the type of payment about which you need guidance and then apply WorkCover’s interpretation to your situation.

You need to bear in mind that it is impractical for this manual to deal with every particular type of payment an employer might ever make to, or in relation to, a worker or a deemed worker.

In unusual cases, not covered by these guidelines:

- employers should contact their insurer for advice;
- if an insurer is not sure, they may contact WorkCover to clarify whether the payment should be counted as remuneration; and
- if an employer disputes what is included as remuneration, WorkCover will assess the matter consistent with law and the principles outlined in this manual. This manual provides guidance about WorkCover’s interpretation of the law.

Allowances and expenses (see details under the headings about various types of allowances and expenses)

Although the terms ‘allowances’ and ‘expenses’ are sometimes interchangeable the following principles generally apply regardless of the terminology applied to the payment.

- Any ordinary amount paid as part of wages under an award (such as shift allowance, skill allowance, etc) is counted as remuneration.
- Any consideration subject to fringe benefits tax is counted as remuneration.
- Other allowances may be counted – depending on the payment.

Award means any industrial instrument within the meaning of the *Industrial Relations Act 1996*, any agreement with respect to salaries or wages entered into between an employer and a union under any other NSW law, and any other award, agreement or other instrument under a Commonwealth, State or Territory law.

Annual and public holiday payments (including loadings)

Annual leave and public holiday payments are counted as remuneration.

Lump sum payments on termination for annual leave are counted as remuneration.

Australian Construction Industry Trust (ACIRT)

Payments to the Australian Construction Industry Trust (ACIRT), known previously as the Construction Employees Redundancy Trust (CERT), are not counted as remuneration. See 'Termination payments'.

Board and lodging

If the employer provides free or subsidised board and lodging to the worker as part of their conditions of employment (whether expressed or implied) and the benefit is subject to fringe benefits tax or identified on the worker's group certificate, then the benefit is counted as remuneration. The value to be given to the remuneration is the relevant market value of the total value of the board and lodging.

See 'Fringe benefits'.

Bonuses

Bonuses are counted as remuneration.

Book expenses

If the employer pays book expenses to the worker and the payment is subject to fringe benefits tax or identified on the worker's group certificate, then the payment is counted as remuneration.

See 'Fringe benefits'.

Camping allowance

See 'Living-away-from-home allowance'.

Car allowances and expenses

If the employer pays car allowances or expenses to the worker and the payment is subject to fringe benefits tax or identified on the worker's group certificate, then the payment is counted as remuneration.

However, if the employer pays car allowances or expenses to the worker and the payment is paid under an award at a rate specified by the award, the payment is not counted as remuneration. Any payment greater than the award rate is counted as remuneration.

If the employer pays car allowances or expenses to the worker and the payment is not paid under an award, any payment up to 53.5 cents per kilometre is not counted as remuneration. If the payment is not under an award, any payment greater than 53.5 cents per kilometre is counted as remuneration.

See 'Company car' and 'Fringe benefits'.

Charities, churches and public benevolent institutions

For policies commenced prior to 4.00pm 30 June 2003

All fringe benefits provided to workers are counted as remuneration. The benefit should be declared at the net value. That is, the full monetary value of the benefit.

For new or renewed policies commencing on or after 4.00pm 30 June 2003

All fringe benefits provided to workers are counted as remuneration.

Worker benefits that aren't subject to fringe benefits tax should be counted at the net value. Once the worker benefits exceed the Australian Tax Office (ATO) fringe benefit threshold then the employer must declare the benefit at the grossed-up value. That is, the portion of the benefit that exceeds the ATO threshold (called the non-exempt amount by the ATO) must be declared at the grossed-up value and the portion of the benefit that is below the threshold should be declared at the net value (ie. actual value of the benefit).

Certain employers are deemed 'rebatable employers' by the ATO. These employers should declare the 'rebatable amount' of the worker benefits at the net value and 'non-rebatable amount' at the grossed-up value.

See 'Fringe benefits'.

Childcare expenses

If the employer pays the worker's childcare expenses and that benefit is subject to fringe benefits tax, then the payment is counted as remuneration.

Clothing

If the employer reimburses the worker and the payment is subject to fringe benefits tax or identified on the worker's group certificate, then the payment is counted as remuneration.

If the employer provides free clothing (or otherwise directly funds clothing) as a benefit to a worker and the benefit is subject to fringe benefits tax or identified on the worker's group certificate, then the benefit is counted as remuneration.

See 'Uniform allowance' and 'Fringe benefits'.

Commission(s)

Commissions are counted as remuneration.

Company car – private use of

If an employer provides a worker with a car (including a worker's private use of a car or through any type of leasing arrangements for private use), the benefit is counted as remuneration.

See also 'Car allowances and expenses' and 'Fringe benefits'.

Company house (market value of rental)

See 'Housing'.

Compensation payments

Any workers compensation benefits an employer pays to a worker (including the excess on the claim – which the employer pays) are not counted as remuneration.

Payments by an employer to an injured worker over and above the workers compensation benefits paid to workers by the workers compensation insurer or reimbursement of workers compensation benefits by the workers compensation insurer to the employer are counted as remuneration.

Construction allowances

Construction allowances are counted as remuneration. This includes productivity, height, dirty work, heat and cold and site allowances.

Any allowances that are paid as part of wages under an award (such as shift allowance, skill allowance, etc) are counted as remuneration.

Construction Employees Redundancy Trust (CERT)

See 'Australian Construction Industry Trust (ACIRT)' and 'Termination payments'.

Contractors – deemed to be workers

See Chapter E.

Directors' fees

All payments to directors are dealt with in Chapter F. However, dividends are dealt with below in this list.

Dirt money

Dirt money is counted as remuneration.

Distant work allowance

See 'Living-away-from-home allowance'.

Dividends

Where the company's constitution provides for dividend payments to members, including directors, then the payments are not usually counted as remuneration. However, where a dividend is paid in lieu of wages, the payment is counted as remuneration for the purposes of calculating workers compensation premiums.

See also Chapter F.

Early retirement benefits

See 'Termination payments'.

Employee share schemes

Shares provided under employee share schemes are usually not counted as remuneration. However, where these benefits are provided in lieu of wages, then the benefit is counted as remuneration for the purposes of calculating workers compensation premiums.

See 'Share Options'.

Entertainment expenses

If the employer reimburses the worker for entertainment-related costs and the payment is subject to fringe benefits tax or identified on the worker's group certificate, then the payment is counted as remuneration.

See also 'Fringe benefits'.

Fares

See 'Travel allowance'.

First aid allowances

First aid allowances are counted as remuneration.

Free housing

See 'Housing'.

Fringe benefits

Generally, if a non-cash component of a worker's remuneration is considered taxable under the *Fringe Benefits Tax Assessment Act 1986* then, for the purpose of calculating the employer's premium, it is counted as remuneration.

For more information about specific items attracting fringe benefits, see relevant headings in this list.

At what value?

For policies commenced prior to 4.00pm 30 June 2003

For any fringe benefit, the amount that is to be counted as remuneration is the actual value of the benefit provided ie. **the net amount**.

For example, if the value of the benefit (say gym membership) was \$2,000, then an employer would declare \$2,000 as **the net amount**.

When a policy is cancelled mid-term the benefit declared should be calculated on a pro-rata basis having regard to the period elapsed. When a business ceases to operate the employer should declare the value of the benefit up to the date of ceasing the business.

For new or renewed policies commencing on or after 4.00pm 30 June 2003

For any fringe benefit, the amount that is to be counted as remuneration is the value of the benefits calculated using the 'taxable value of fringe benefits' ending 31 March in the particular premium policy year, as specified in the *Fringe Benefits Tax Assessment Act 1986*. It is the actual value of the benefit provided (as determined by the *Fringe Benefits Tax Assessment Act 1986*) ie. **the grossed-up amount**.

For example, the same gym membership identified above would be valued at the grossed-up taxable amount which is \$2,000 x the relevant FBT gross-up formula amount (available from the Australian Tax Office website).

When a policy is cancelled mid-term the benefit declared should be calculated on a pro-rata basis having regard to the period elapsed.

When a business ceases to operate the employer should declare the value of the benefit up to the date of ceasing the business as per the employer's FBT return.

What if the benefit is available to all of an employer's workers?

Any fringe benefits that are available to workers as an incidental benefit of employment are counted as remuneration.

See 'Charities, churches and public benevolent institutions'.

Gifts

Gifts and *ex gratia* payments that are not part of the employment contract, are not counted as remuneration.

Bonuses and incentive awards are counted as remuneration.

Government training schemes

If Centrelink (or some other Government Department) directly pays an amount to a worker as part of a government-funded training scheme, then that amount is not counted as remuneration for the purpose of assessing the employer's premium.

If an employer pays any amount to a worker for work experience or training as part of a government-sponsored training scheme and that payment is subsidised (wholly or partly) under the training scheme, then the total amount the employer pays to the worker is counted as remuneration.

Payments to new entrant trainees under the Australian Traineeship System are not counted as remuneration for the employer. The worker is covered for workers compensation under the Australian Traineeship System.

Government training subsidies

If the Government pays an employer a subsidy to encourage the employer to employ or develop staff, then any amount the employer pays to the worker from that subsidy is counted as remuneration.

Group apprenticeship schemes

Apprentices employed under an approved Apprenticeship Scheme that is registered by the NSW Department of Commerce, Office of Industrial Relations are workers of the Scheme and not the 'host employer'. Therefore, remuneration the 'host employer' pays to the apprentice under one of these schemes, or that the Scheme reimburses to the employer, is not counted as remuneration for the 'host employer'. Instead, that payment is counted as remuneration when the premium for the Group Apprenticeship Scheme is calculated.

GST

The GST component of any payment paid to a worker (or a contractor who is a 'deemed worker') is not counted as remuneration.

Height money

Height money is counted as remuneration.

Honorariums

Honorariums to volunteers or non-workers are not counted as remuneration. Volunteer workers are generally not covered for workers compensation, however, employers may still be liable for any injuries to volunteers. Employers should check with their insurers to ensure they have the appropriate coverage.

Housing

Generally, housing payments (including company house, free housing and housing loans) are counted as remuneration.

Remote housing allowances are not counted as remuneration.

The following payments are counted as remuneration:

- the current market rental value of a company house (less any amount the worker pays for the right to occupy the premises);
- the amount of temporary accommodation (associated with relocation) that is assessable for fringe benefits tax; and
- the taxable value of a housing loan that is offered to a particular worker as part of their 'salary package' and is subject to fringe benefits tax.

Housing loans (interest free or reduced interest)

See 'Housing'.

Interstate employer

An interstate employer who has workers who work in NSW must have a NSW workers compensation policy.

If an interstate employer engages a worker who works both within NSW and interstate:

- and the worker is engaged to work solely or predominantly in NSW, then the total amount paid to the worker is counted as remuneration.
- and the worker works mainly elsewhere but works on an occasional or temporary basis in NSW, the remuneration is counted. The amount to be counted corresponds to the proportion of the wages that can be attributed to the time the worker is in NSW.

Remember:

Workers compensation insurance requirements vary throughout Australia. Employers must verify with the relevant state or territory authority the legislative requirements of that state or territory.

Legislative amendments to cross-border arrangements were made in 2002 but are not in force at the time this manual was published. Employers should consult their insurer about these agreements and refer to the WorkCover website for information.

Interstate workers

If a NSW based employer pays a worker who works both within NSW and interstate:

- and the employer does not have a workers compensation policy applying in the other state or territory, then the worker's total remuneration is counted as remuneration in NSW.
- and the employer has a workers compensation policy applying in the other state or territory, then the amount to be counted corresponds to the proportion of the wages that can be attributed to the time the worker is in NSW. If not declared elsewhere, all remuneration paid should be declared in NSW.

Remember:

Workers compensation insurance requirements vary throughout Australia. Employers must verify with the relevant state or territory authority the legislative requirements of that state or territory.

Legislative amendments to cross-border arrangements were made in 2002 but are not in force at the time this manual was published. Employers should consult their insurer about these agreements and refer to the WorkCover website for information.

JobCover placement

If an employer engages a previously injured worker under the JobCover Placement Program, then the wages the employer pays that worker are not counted as remuneration for the first 12 months of that person's employment.

See the JobCover Placement Program booklet (catalogue no. 534) issued by WorkCover for further detail.

Laundry allowance

If the employer pays laundry expenses to the worker and the payment is subject to fringe benefits tax or is identified on the worker's group certificate, then the payment is counted as remuneration.

See 'Fringe benefits'.

Leave loadings

Leave loadings and lump sum payments of leave loadings are counted as remuneration.

Living-away-from-home allowance

If the employer reimburses the worker or provides a 'living away from home allowance, (for items such as accommodation or meals and incidental expenses, such as telephone costs) and the payment is subject to fringe benefits tax or is identified on the worker's group certificate, then the payment is counted as remuneration.

The 'living away from home allowance' is usually paid where the worker has relocated for work purposes. For the treatment of allowances paid to a worker where the worker is temporarily away from their principal place of residence see 'Travel Allowance'.

See 'Travel allowance' and 'Fringe benefits'.

Long service leave

For policies commenced prior to 4.00pm 30 June 2003

Long service leave is not counted as remuneration.

For new or renewed policies commencing on or after 4.00pm 30 June 2003

Payments for long service leave, including lump sum payments are counted as remuneration. Payments made under the *Building and Construction Industry Long Service Payments Act 1986* are not counted as remuneration.

Long service leave payments made directly to workers in the building and construction industry by their employers are counted as remuneration. The amount to be counted is the payment to the worker less the reimbursement receivable from the Building and Construction Industry Long Service Leave Corporation in respect of those payments.

Payments made on benefits accrued before 30 June 2003 and paid after that date are counted as remuneration.

Lump sum payments in lieu of holiday, sick leave (and the like)

Lump sum payments in lieu of holidays, sick leave (and the like) including leave loadings and bonuses, are counted as remuneration.

Maternity leave payments

Maternity leave payments are counted as remuneration.

Meal allowance

If the employer pays meal costs to the worker and the payment is subject to fringe benefits tax or is identified on the worker's group certificate, then the payment is counted as remuneration.

However, meal allowances as provided in industrial instruments to reimburse direct costs, are not counted as remuneration.

Mechanical and Electrical Redundancy Trust (MERT)

MERT payments are not counted as remuneration. See 'Termination payments'.

Ordinary time earnings

Ordinary time earnings are counted as remuneration.

Options

Share options are not counted as remuneration.

See 'Employee share schemes'.

Over-award payments

Any payment over the award rate is counted as remuneration.

Overseas employers

An overseas employer who engages workers in NSW must have a NSW workers compensation policy.

If an overseas employer engages a worker who works both within NSW and overseas:

- and the worker is engaged to work solely or predominantly in NSW, then the total amount paid to the worker is counted as remuneration.
- and the worker works mainly elsewhere but works on an occasional or temporary basis in NSW, the remuneration is counted. The amount to be counted corresponds to the proportion of the wages that can be attributed to the time the worker is in NSW.

Overseas workers (from overseas, working in NSW)

Wages, salary, fringe benefits and/or other consideration an employer provides an overseas-based worker, working temporarily in NSW, is counted as remuneration.

This applies whether the payments are made within or outside Australia.

Overseas workers (from NSW, working overseas)

Wages, salary, fringe benefits and/or other consideration provided by an employer to any worker who is normally based in NSW while that worker is temporarily employed or working overseas, is counted as remuneration. This is to apply whether the payments are made within or outside Australia. Employers should also verify with the relevant overseas authority the legislative requirements of that country.

Overtime payments

Overtime payments are counted as remuneration.

Parental leave payments

Parental leave payments are counted as remuneration.

Paternity leave payments

Paternity leave payments are counted as remuneration.

Payments in lieu of notice

Payments in lieu of notice are not counted as remuneration.

See 'Termination payments'.

Payments made on behalf of the worker

If the employment contract requires the worker be put to additional expense (eg. while living away from his or her normal place of residence) and the employer reimburses these expenses and the payment is subject to fringe benefits tax or is identified on the worker's group certificate, then the payment is counted as remuneration.

If the employer spends money on behalf of the worker to the direct benefit of the employment of the worker (eg. a computer course, training in relation to employment) then the payment is not counted as remuneration.

In any other case, the payment is counted as remuneration.

Penalty rates

Penalty rates are counted as remuneration.

Personal services income

Any personal services income attributed to an individual and not otherwise taken as salary or wages or other non-exempt form of remuneration is counted as remuneration.

Productivity allowance

Productivity allowances (including those paid in the construction industry) are counted as remuneration.

Profit sharing schemes

Benefits workers receive from profit sharing agreements are not usually counted as remuneration.

However, when these benefits are provided in lieu of wages, then the benefit is counted as remuneration for the purposes of calculating workers compensation premiums.

Private use of company car

If an employer provides a worker with the private use of a company car and the benefit is subject to fringe benefits tax or is identified on the worker's group certificate, then the benefit is counted as remuneration.

See 'Fringe benefits' and 'Company car'.

Public and annual holiday payments (including loadings)

Public and annual holiday payments (including loadings) are counted as remuneration.

Redundancy payments

See 'Termination payments'.

Retrenchment payments

See 'Termination payments'.

Reward – payment by way of

Payment by way of a reward is counted as remuneration.

See 'Commission(s)'.

Royalties

Royalty payments are not counted as remuneration.

Salary

Salary is counted as remuneration.

Salary package/sacrifice

Generally, any wages, salary and the value of fringe benefits and other consideration in money or money's worth the employer provides to workers as part of a 'salary package' or 'salary sacrifice arrangement', are counted as remuneration. In the case of fringe benefits, the amount counted is the taxable value of the benefits according to the *Fringe Benefits Tax Assessment Act 1986*. See specific entries for details of particular benefits.

For policies commenced prior to 4.00pm 30 June 2003

If the employer contributes to the worker's superannuation fund or pays any amounts of fringe benefits tax and those contributions or payments are debited to the worker's salary package, then they are not counted as remuneration.

For new or renewed policies commencing on or after 4.00pm 30 June 2003

If the employer contributes to the worker's superannuation fund or pays any amounts of fringe benefits and those contributions or payments are debited to the worker's salary package, then they are counted as remuneration.

Severance payments

See 'Termination payments'.

Share of catch

Where a skipper or crew of a fishing vessel is paid by way of 'share of catch' then the market value of the share of catch is counted as remuneration. The value of remuneration is calculated by multiplying the agreed percentage (share of the catch) by the sale price of the catch.

Share options

Share options are not counted as remuneration.

See 'Employee share schemes'.

Shift allowance

A shift allowance is counted as remuneration.

Sick leave

Sick leave is counted as remuneration.

Lump sum payments (on termination) for sick leave are counted as remuneration.

Site allowance

Site allowances are counted as remuneration.

Staff discounts and benefits

If a staff discount is available to all workers as an incidental benefit of being employed by that employer, then the value of the discount is not counted as remuneration.

Any fringe benefits that are available to workers as an incidental benefit of employment are counted as remuneration.

Strike-breaking allowance

A strike-breaking allowance is counted as remuneration.

Superannuation contributions and benefits

Superannuation contributions and entitlements are dealt within in Chapter H.

Telephone allowance

If the employer reimburses the worker for telephone-related expenses or provides telephone services as a benefit to a worker and that benefit is subject to fringe benefits tax or is identified on the worker's group certificate, then the benefit is counted as remuneration.

Termination payments

For policies commenced prior to 4.00pm 30 June 2003

Payments that represent a lump sum payment of accrued sick leave, annual leave, including leave loadings or bonuses, made on termination or retirement are counted as remuneration.

Redundancy, severance, retrenchment, early retirement benefits or termination payments and payments made in lieu of notice on termination are not counted as remuneration.

Contributions to the Australian Construction Industry Trust or the Mechanical and Electrical Redundancy Trust are not counted as remuneration.

For new or renewed policies commencing on or after 4.00pm 30 June 2003

Payments that represent a lump sum payment of accrued sick leave, annual leave, including leave loadings or bonuses, and long service leave, made on termination or retirement are counted as remuneration.

Payments made in lieu of notice on termination arising from redundancy, severance, retrenchment or early retirement are not counted as remuneration.

Redundancy, severance, retrenchment, early retirement benefits or termination payments and payments made in lieu of notice on termination are not counted as remuneration.

Contributions to the Australian Construction Industry Trust (ACIRT) or the Mechanical and Electrical Redundancy Trust (MERT) are not counted as remuneration.

Ex gratia payments to workers on termination are not counted as remuneration.

Tips and gratuities

Tips and gratuities are counted as remuneration.

Tool allowance

If an employer reimburses the worker for tool-related expenses that the worker incurs as part of their employment, then the reimbursement is not counted as remuneration.

In any other case, the payment is counted as remuneration.

Trainees – payments to

Any payment an employer pays to a new entrant trainee under the Australian Traineeship Scheme (as defined under section 158 of the *Workers Compensation Act 1987*) is not counted as remuneration.

Payments to all other trainees are counted as remuneration. However, see rule 20 for more detailed information.

Travel allowance

If an employer provides a worker with a travel allowance and that allowance is subject to fringe benefits tax or is identified on the worker's group certificate, then the allowance is counted as remuneration.

However, if the employer provides a worker with a travel allowance and the payment is paid under an award at a rate specified by the award, the payment is not counted as remuneration. Any payment greater than the award rate is counted as remuneration.

If the employer provides a worker with a travel allowance and the payment is not paid under an award then any payment up to \$130.00 per night is not counted as remuneration. If the payment is not under an award then any payment greater than \$130.00 per night is counted as remuneration.

Any payments to workers that directly reimburse work-related travel costs (eg. where the costs relate to duties performed away from their usual place of work) that are not subject to fringe benefits tax and are not identified on the worker's group certificate, are not counted as remuneration.

If the employer pays the travel expense for another reason (eg. as a form of additional remuneration or bonus for 'services' rendered under a contract of employment) then the payment is counted as remuneration.

See 'Fringe benefits'.

Travelling time

Any payment to a worker for work-related travel time is counted as remuneration.

Trust distributions

Trust distributions are dealt with in Chapter G.

Uniform allowance

If the employer pays uniform expenses to the worker and the payment is subject to fringe benefits tax or is identified on the worker's group certificate, then the payment is counted as remuneration.

See 'Clothing' and 'Fringe benefits'.

Workers' compensation payments

Any workers compensation benefits an employer pays to a worker (including the excess on the claim – which the employer pays) are not counted as remuneration.

Payments by an employer to an injured worker over and above the workers compensation benefits paid to workers by the workers compensation insurer or reimbursement of workers compensation benefits by the workers compensation insurer to the employer are counted as remuneration.

Working directors' payments

All payments to directors are dealt with in Chapter F.

Chapter D – ‘Deemed workers’

25. The *Workplace Injury Management and Workers Compensation Act 1998* lists different types of workers who are deemed to be workers for the purposes of workers compensation in NSW. They include:

- workers lent or on hire
- rural workers
- tributers
- mines rescue personnel
- shearers' cooks and others
- workers at place of pick-up
- voluntary ambulance workers
- ministers of religion covered by policies
- participants in training programs
- salespersons, canvassers, collectors and others
- drivers of hire-vehicles and hire-vessels (contract of bailment)
- caddies and others employed through a club
- contractors (see Chapter E)
- outworkers and other contractors
- timbergetters
- mine employees
- jockeys and harness racing drivers
- fire fighters in fire districts
- boxers, wrestlers, referees and entertainers
- ministers of religion

If someone is ‘deemed’ to be a worker, then they will be entitled to receive workers compensation for a work-related injury. For this reason, their employer (or principal) must cover them for workers compensation and include the remuneration paid to the ‘deemed’ worker in the employer’s wages declaration.

Chapter E – Contractors

Why can contractor payments be treated as remuneration?

26. Many people working as contractors are treated as workers for workers compensation purposes. The Act refers to them as ‘deemed workers’ (see Chapter D). In those cases, the employer is treated as a ‘principal’, responsible for declaring remuneration for the purposes of workers compensation.

A contractor with an ABN or a Department of Commerce Office of Fair Trading licence is not necessarily an independent contractor – they may still be a ‘deemed worker’ for the purposes of NSW workers compensation. The issue is whether the person is a worker in a particular case and must be determined on a case-by-case basis.

The final arbiter of whether a contractor is a deemed worker is the Compensation Court of NSW and, more recently, the Workers Compensation Commission and these are decided on the individual facts of each case. Cases decided in other courts are also relevant. WorkCover applies tests determined by the courts.

Workers compensation legislation does not rely on the tax status of the person carrying out the work to determine whether that person is a worker, deemed worker or contractor.

Some of the indicators examined by the courts in determining if a contractor is a deemed worker are whether the:

- arrangement is in writing;
- contractor/deemed worker can employ other people to perform the work;
- contractor/deemed worker works at stated hours on usual days and the contract specifies the hours and/or days;
- contractor/deemed worker measures and inspects the site and provides a fixed price quotation inclusive of labour and material;
- contractor/deemed worker deals directly with the client requesting the work or the principal contractor for whose benefit the work is to be done;
- contractor/deemed worker can make a profit or loss over the market rate for a tradesman working in the industry;
- contractor/deemed worker supplies the materials, plant and equipment used in completion of the job;
- contractor/deemed worker could be liable for bad quality of work.

For this reason, it is important for employers to include records about contractors in the declarations and other records they make and present to WorkCover and/or insurers. See Chapter I. See rule 45 for information about record keeping.

Note: A proprietary limited company (‘Pty Ltd’) must have a workers compensation policy to cover all its workers, including directors undertaking employee-type duties.

The amounts an employer pays to its contractors who are ‘deemed workers’:

- as **remuneration** are to be included in the total remuneration the employer declares when calculating the employer’s premium;
- as **payments for materials, tools, equipment, or plant** are excluded when calculating the employer’s remuneration and premium. See rule 27.

What costs are deducted from remuneration paid to ‘contractors’?

27. In relation to contractors, the law provides that ‘costs necessarily incurred by that person in performing that contract’ (see section 174 (9)(b) of the *Workers Compensation Act 1987*) are not remuneration and are not used to calculate the employer’s premium. However, the Act does not define those costs. Nor does it set a process for how the value of a particular cost is to be determined.

The employer and the insurer should consider the estimated amount of ‘overhead costs’ that the contractor would be required to expend (or has expended) in providing services other than labour. Those costs might include, tools, equipment, materials and plant.

If the employer and insurer are unable to come to a reasonable assessment (through examining invoices, receipts or other documentary evidence) of the amount the contractor will be required to spend (or has spent), then they may use the standard ‘default’ percentages shown in the table below. The percentages shown in the table reflect the average situation for the average employer and the average type of contractor.

All GST paid to a contractor is not counted.

Service Supplied	Percentage of Contract Payment
Labour only	100 per cent
Supply of labour and tools Including hand-held tools, power tools, chainsaws, staple guns, and incidental materials such as, screws, pop rivets, glue and masking tape.	90 per cent
Supply of labour and plant Such as cement mixers, conveyors, ladders, trestles and the like.	80 per cent
Supply of labour, plant and materials Bricklayers supplying bricks Carpenters supplying timber Plasterboard fixers supplying plasterboard Tilers supplying tiles Electricians supplying conduit, wire and switchgear Plumbers supplying pipes and fittings Painters and Decorators supplying paint and wallpaper Carpet layers supplying underlay	30 per cent 30 per cent 30 per cent 30 per cent 50 per cent 50 per cent 60 per cent 70 per cent
Transport Industry Contractors Prime Movers From 10 tonnes to Prime Movers Motor vehicles from 3 tonnes to less than 10 tonnes Couriers – motor vehicles less than 3 tonnes Couriers – motor cycles Couriers – bicycles Cranes	30 per cent 50 per cent 75 per cent 75 per cent 90 per cent 90 per cent 50 per cent
Timber/Sawmilling (snigging, felling)	50 per cent
Earthmoving/Bobcat Up to 3 tonnes 3 tonnes and over	75 per cent 50 per cent

Chapter F – Fees and payments to directors

How are fees to a ‘non-working’ director treated?

28. Any fees the employer pays to a ‘non-working’ director for performing their duties, as a director are not counted as remuneration. Non-working director’s duties include attending board meetings, setting strategic goals and overseeing and reviewing the company’s progress towards those goals.

How are fees to a ‘working’ director treated?

For policies commenced prior to 4.00pm 30 June 2003

29. If a working director receives a fee:

- And the fee is in addition to that person’s reasonable remuneration for their work, then the payment is not counted as remuneration.
- And the fee is a substitute, in whole or in part, for wages (and there is no other form of reasonable remuneration given to the worker for the work they perform) then the payment is counted as remuneration.

If directors receive payments (wages, salary, allowances, fringe benefits, etc), that if paid to an employee would be counted as remuneration for premium assessment purposes, those payments to directors will be counted as remuneration for premium assessment purposes.

The amount of the payment to be included is based on the hours worked and the type of work performed. The amount is limited to the current market value of the remuneration that would be paid to a worker undertaking the same mix of duties and hours of work, and with the same skills, together with any allowances or other remuneration paid to the director for employee-related duties.

To determine the current market value of the remuneration, the employer and insurer may consider various sources, including: industrial awards, position vacant advertisements relevant to the general location of the director, salary surveys, or evidence supplied by recruitment firms or employment agencies. The amount may be more than in an industrial award, if activities undertaken exceed those duties that would be required of an employee under that award. For example, making decisions that relate to financial strategy/management decisions.

For new or renewed policies commencing on or after 4.00pm 30 June 2003

- All payments to a working director (including fees, wages, salary, allowances, fringe benefits, etc) are counted as remuneration.

See ‘Fringe benefits’ for information on the calculation of the value of the benefits.

How are dividends treated?

30. Where the company’s constitution provides for dividend payments to members, including directors, then the payments are not usually counted as remuneration.

However, where a dividend is paid in lieu of wages, the payment is counted as remuneration for the purposes of calculating workers compensation premiums.

Chapter G – Trust distributions

When considering payments to trustees and beneficiaries of trusts, WorkCover looks at the nature of the trust arrangement and the reality of the payment.

Recent legislative changes explain that distributions to beneficiaries for work performed for the trust are counted as wages.

Are distributions to a ‘non-working’ beneficiary counted?

31. Any distribution that an employer/trustee pays to a ‘non-working’ beneficiary of a trust is not counted as remuneration.

Are distributions to a ‘working’ beneficiary counted?

32. A distribution to a worker as beneficiary under a trust constitutes wages to the extent that:

- The distribution is remuneration for their work.
- The distribution is a substitute, in whole or in part, for wages (and there is no other form of reasonable remuneration given to the worker for the work they perform).

The amount of the distribution to be included is based on the hours worked and the type of work performed. The amount is limited to the current market value of the remuneration that would be paid to a worker with the same or similar duties and skills, as those carried out by the beneficiary, together with any allowances or other remuneration paid to the trustee for employee-related duties.

To determine the current market value of the remuneration, the employer and insurer may consider various sources, including: industrial awards, position vacant advertisements relevant to the general location of the employed beneficiary, salary surveys, or evidence supplied by recruitment firms or employment agencies. The amount may be more than in an industrial award if activities undertaken exceed those duties that would be required of an employee under that award. For example, making decisions that relate to financial/ strategy/management decisions.

Who in relation to a trust is a worker?

33. The general position is that if a person is entitled to claim workers compensation benefits for a work-related injury or illness, then any remuneration paid to that worker is counted when calculating the employer’s premium.

Trustees

Whether remuneration paid to the trustee is to be counted depends on whether the trustee(s):

- **are individuals (including partnerships and sole traders).** In these cases, they are generally not entitled to workers compensation coverage, so any amounts the trust pays to them are not counted as remuneration.
- **is a proprietary limited company.** In which case, any directors or beneficiaries employed by the trustee will generally be workers for workers compensation purposes, so any amounts the trust pays to them are counted as remuneration.

Individuals employed by the trustees

Any individuals who the trustee(s) employs are covered by workers compensation and trustees are required to obtain workers compensation insurance covering those workers. This is so even if the trustee employs beneficiaries (who are not themselves trustees).

Directors

Directors of a trustee company are able to claim workers compensation benefits if they have a work-related injury, therefore any distribution paid to them for the work they do may be counted as remuneration (see rule 32 for further details). This situation is no different to the position of directors of other proprietary limited companies where the directors are considered to be employees of the corporation (which is the employer). See Chapter F for further details.

Employed beneficiaries

An employed beneficiary is able to claim workers compensation benefits if they have a work-related injury, therefore any distribution paid to them for the work they do may be counted as remuneration. See rule 32 for further details.

How are payments from a trust to a worker ‘through another trust’ treated?

34. Payments to workers (including trust distributions) for work done for a trust are counted as remuneration. This applies whether the payment is made from the trust directly to a worker or made through another entity or trust on behalf of the original trust.

Who do the WorkCover obligations apply to: the trustee or the trust?

35. The obligation to make declarations and ensure that the Act is complied with apply to the trustee or trustees. A workers compensation policy that covers all workers of the trust must be in the legal name of the trustee. For example:

- AB Smith as trustee for the Smith Family Trust, or
- A & B Smith as trustee for the Smith Family Trust, or
- AB Smith Pty Ltd as trustee for the Smith Family Trust.

Inclusion of trust distributions as wages

Section 174AA *Workers Compensation Act 1987*

- (1) A distribution to a worker as beneficiary under a trust constitutes **wages** for the purposes of Section 174 to the extent that the distribution is in lieu of wages for work done for the trust by the worker.
- (2) Work that constitutes the provision of services to the trustee of a trust or for the purposes of a business conducted by the trustee of a trust is **work done for the trust**.
- (3) This section applies in respect of distribution to a worker only if:
 - (a) there is a wages shortfall in respect of work done for the trust by the worker, and
 - (b) the distribution is made in the financial year in which the work is done or in the following financial year.

- (4) There is a **wages shortfall** in respect of work done for the trust by the worker if the total wages (if any) paid or payable to the worker during the financial year in which the work is done is less than the wages that would be payable to the worker for that work if wages were payable at the market rate for that work (with the difference constituting the **wages shortfall** for the purposes of subsection (5)).
- (5) If the distribution does not exceed the wages shortfall in respect of the work, the whole of the distribution is in lieu of wages for work done for the trust by the worker. Alternatively, if the distribution exceeds the wages shortfall in respect of the work, the distribution is in lieu of wages to the extent of the shortfall.
- (6) For the purpose of determining whether a particular distribution is in lieu of wages for work done for the trust, the total wages (if any) paid or payable to the worker during a financial year for the work is taken to include any previous distribution (whether made during that financial year or the following financial year) that, by application of this section, is a distribution in lieu of wages for the same work.
- (7) The **market rate** for work is the minimum wage rate applicable in respect of the work (or work that is comparable to the work):
 - (a) pursuant to an industrial instrument in force under a law of the State; or
 - (b) if paragraph (a) does not apply, pursuant to an industrial instrument in force under a law of the Commonwealth; or
 - (c) if neither paragraph (a) nor (b) applies, as provided by the WorkCover Guidelines or as determined and notified by the Authority in the particular case.

Chapter H – Superannuation contributions and benefits

36. Are employer's extra contributions counted as remuneration?

For policies commenced prior to 4.00pm 30 June 2003

Generally, if an employer pays a superannuation contribution for a worker in addition to the worker's reasonable remuneration, then that contribution is not counted as remuneration.

For new or renewed policies commencing on or after 4.00pm 30 June 2003

All employer contributions to superannuation schemes paid for a worker are counted as remuneration.

37. Is superannuation paid under an award or enterprise agreement counted?

For policies commenced prior to 4.00pm 30 June 2003

Employer contributions to superannuation schemes as part of an award or enterprise agreement are not counted as remuneration.

For new or renewed policies commencing on or after 4.00pm 30 June 2003

Any employer contributions to superannuation schemes as part of an award or enterprise agreement are counted as remuneration.

38. Are Superannuation Guarantee Levy payments counted?

For policies commenced prior to 4.00pm 30 June 2003

The employer's contributions in accordance with the Superannuation Guarantee Levy are not counted as remuneration.

For new or renewed policies commencing on or after 4.00pm 30 June 2003

All employer contributions to superannuation schemes in accordance with the superannuation guarantee charge, or those parts of an award or enterprise agreement, are counted as remuneration.

39. Are additional contributions the employer pays on the worker's behalf counted?

For policies commenced prior to 4.00pm 30 June 2003

If the employer contributes to the worker's superannuation fund and these contributions are debited to the worker's salary package, then they are not counted as remuneration.

For new or renewed policies commencing on or after 4.00pm 30 June 2003

If the employer contributes to the worker's superannuation fund and these contributions are debited to the worker's salary package, then they are counted as remuneration.

Are a worker's contributions counted?

40. Worker's contributions to superannuation schemes are counted as remuneration. However, these contributions form part of the worker's gross wages and are generally deducted from these wages. The amount the employer needs to declare is the gross wages before the worker's contribution has been deducted.

Are benefits paid to workers counted?

41. Benefits paid to workers from superannuation schemes are not counted as remuneration.

What happens if the only remuneration paid to the worker is superannuation contributions?

42. If the employer makes contributions to a worker's superannuation scheme or fund but does not pay the worker any other remuneration for the work the worker performed, the contribution is counted as remuneration.

Chapter I – Employers required to keep records

What records are employers required to keep?

43. Employers are required to keep:

- detailed records of all payments made to their workers;
 - copies of any other documents relevant to those payments; and
- to provide access to them when required.

What are the legislative requirements about records for workers?

44. The employer's records about remuneration paid or payable to workers must:

- (a) Be in writing in English (or readily accessible and readily convertible into writing in English).
- (b) Record full details of each individual payment made to a worker including:
 - the worker's name, occupation, and address;
 - the date the payment was made;
 - the period covered by the payment;
 - the gross amount paid; and
 - details of all deductions including the amount of each deduction.
- (c) Record all wage payments made in the date order in which they were paid.
- (d) Be supported by confirming documents including copies of all payslips, cheque butts, bank statements, cashbooks, profit and loss statements, business activity statements, PAYG summaries or group certificates, fringe benefit tax returns, sub contractor workers compensation statements (section 175B *Workers Compensation Act 1987* statement), and any other relevant documents, including computer records.
- (e) Be kept in a secure place and not subject to damage or loss. See rules 47 and 48.
- (f) Be kept for at least seven years.

What are the requirements about records for contractors who may be 'deemed workers'?

45. The employer's records about contractors must comply with all the requirements about records for workers, and they must also:

- (a) Record a description of the services the contractor provided.
- (b) Record full details of component parts of each payment made to the contractor – eg. labour only, labour and materials, labour, materials and plant, or labour and plant.
- (c) Contain documents that support the claim for contractor status such as evidence of questions, letterhead, business cards, contractor invoices, Certificates of Currency, ABN, and Department of Commerce Office of Fair Trading licences.
- (d) Record payments to contractors, including full details of each payment made including the dates of payment and the amounts.
- (e) Record details of Certificates of Currency for period of the contract.

For further information on contractors, see Chapter E.

What records should employers keep about contractors who aren't 'deemed workers'?

46. Employers who determine that a 'contractor' is not a 'deemed worker' should keep the same detailed records about those contractors and any details of the contractor's workers compensation policies. The employer may find those records useful if they later need to justify to the insurer, or to WorkCover, that a contractor was not a 'deemed worker'.

The employer's records about contractors must comply with all the requirements about records for workers, and they must also:

- contain documents that support the claim for contractor status such as evidence of questions, letterhead, business cards, contractor invoices, Certificates of Currency, ABN and ACN;
- record payments to contractors, including full details of each payment made including the dates of payment and the amounts;
- record details of Certificates of Currency for period of the contract; and
- maintain written statements by subcontractors that all workers compensation insurance premiums payable in respect of the work done in connection with the contract have been paid.

How long should employers keep the records?

47. Employers should keep the records in good order and condition for at least seven years after the last entry was made in the record.

What if an employer's records are stolen or destroyed?

48. If an employer claims that its records have been stolen or destroyed, it must provide written evidence to support the claim – including a Police Report, Fire Brigade Report or Insurance Claim that specifically mentions the loss or theft of the records, computer, briefcase, etc.

What are the penalties for not keeping proper records?

49. The penalty for an employer who doesn't keep records properly is up to 500 penalty units (that is, \$55,000 at the time of printing).

When must the employer provide information to their WorkCover insurer?

50. The employer must use their records to provide the following information to the insurer within two months:

- **after the start** of a policy period, an employer must provide an estimate of the remuneration which it will pay during the policy year; and
- **after the end** of a policy period, an employer must provide a declaration of the actual remuneration it paid during that period.

The employer must make these declarations:

- even if either the estimated amount or the actual amount is zero; and
- even if the employer has no employees during the relevant period.

Failure to provide a wage estimate or declaration may incur a fine of \$500, or prosecution and a penalty of up to 20 penalty units (that is, \$2,200 at the time of printing).

What are the penalties for employers who make or provide false records?

51. Each employer must make sure that the information it provides to its insurer in these declarations is correct. The penalty for providing false or misleading information to an insurer to obtain or renew a workers compensation policy is up to 100 penalty units (currently \$11,000 at the time of printing).

If an employer's declarations are found to be incorrect, then various penalties may apply – for example, insurers may charge employers a late payment fee at the rate of 1.2 per cent per month compounded monthly on the balance outstanding at the end of each month. These fees are charged on any premium that the employer has not paid because it under-declared the remuneration it paid. If the employer is a company, the directors of the company may be personally liable for this debt.

Chapter J – Inspection of employer’s records

What rights do WorkCover and the insurer have to examine an employer’s records?

52. WorkCover and its licensed insurers have a legal right to audit an employer’s records. They use this right to make sure that employers are paying the appropriate premium.

WorkCover and its licensed insurers have a legislative right to access an employer’s wages records under section 174 of the *Workers Compensation Act 1987*.

Section 174 stipulates that employers shall keep and maintain in good order records of all wages paid to workers employed by them and can be further required to provide these records to WorkCover or an authorised person under section 174 of the *Workers Compensation Act 1987*.

Details of the right to access wages record details are also outlined in policy documents issued by WorkCover’s licensed insurers. See policy condition 22, contained in the policy document issued to employers by their insurer.

It should be noted that even though certain payroll records contain sensitive information, such as tax file numbers these records must still be made available to the wage auditor.

How does WorkCover select which employers will be audited?

53. WorkCover utilises advanced computer software to review employers’ policy details, develop risk profiles for identifying areas of high-risk for non-compliance and target wage audits. In addition, insurers select their own wage audits, independently of WorkCover’s requested audits.

What notice of an inspection must an insurer give an employer?

54. Insurers are to notify an employer in writing that the employer has been selected for inspection. The notice must provide details of the auditor. That auditor is to contact the employer to make arrangements for the audit to take place.

To what extent must the employer cooperate with an inspection?

55. An employer must cooperate in relation to an inspection. In particular, they must cooperate in making arrangements for the inspection to take place within a reasonable time after the initial request.

If the employer does not comply with the insurer’s request to audit the employer’s wage records, then the insurer may request that WorkCover issue an order requiring the employer to provide access to the requested records. WorkCover has the power to make those orders under section 174 of the *Workers Compensation Act 1987*. If an employer does not comply with the Order, the employer may be prosecuted and fined up to 500 penalty units (that is, \$55,000 at the time of printing).

How often may an insurer inspect a particular employer?

56. An employer may be inspected more than once. There is no limit on the number of times an insurer may audit an employer's records.

What powers does WorkCover have to request information in an inspection?

57. An employer must comply with WorkCover's direction to provide information. If the employer does not comply with the auditor's requests, then WorkCover may make various orders directing the employer to provide information. WorkCover's powers to require this are set out in section 174 (5) of the *Workers Compensation Act 1987*.

Those powers include the power to do any one or more of the following:

- require an employer to supply information to WorkCover;
- require an employer to make information available for inspection by someone authorised by WorkCover; and
- set the time in which the information must be supplied or made available for inspection.

What information may WorkCover request?

58. WorkCover may request:

- (a) information that the employer is required to record in relation to remuneration. See section 174 (1) of the *Workers Compensation Act 1987*. The record requirements are set out in rules 44 to 46 in this manual;
- (b) information of a specified kind that is in the employer's possession and is relevant to calculating premiums payable under policies of insurance; and
- (c) information of a specified kind that is in the employer's possession and is relevant to determining whether the employer (or another employer) is required to obtain a policy of insurance or has paid the correct premium for a policy of insurance.

The records WorkCover may require include:

- (a) financial statements;
- (b) minutes of Board meetings;
- (c) documents relating to contractual arrangements with other parties;
- (d) profit and loss statements, cashbooks, cheque butts, etc;
- (e) details of long service leave and superannuation payments by employers,
- (f) details of all contracts of employment (see Chapter E); and
- (g) any other relevant documents.

Chapter K – Disputes

What if an employer disputes the amount of the premium?

59. Any employer who queries or disputes the premium calculation made by their insurer should discuss the matter with the insurer.

If, after those discussions, the employer still believes the premium calculation does not comply with the law or the principles outlined in this manual, the employer may contact WorkCover to discuss a review of the issue. A formal review may be conducted under section 170 of the *Workers Compensation Act 1987*.

How may an employer apply to WorkCover in relation to a dispute?

60. If you are an employer wishing to dispute your insurer's assessment of your premium, you may apply to WorkCover to make a determination in relation to the disputed aspects.

For your application to be considered:

- WorkCover must receive it within one month after the date on which the insurer issues the notice of the premium to you. (However, WorkCover may agree to extend that period.); and
- it must be in the form approved by WorkCover and must contain all the information needed to consider your application. You can get a copy of the relevant form from the WorkCover website.

Your application is made under section 170 of the *Workers Compensation Act 1987*.

For assistance please call WorkCover's Insurer Performance Evaluation & Appeals Branch on (02) 4321 5502.

When will WorkCover allow a time extension?

61. WorkCover will only allow an extension of time in special circumstances, relating to issues to do with the employer's ability to attend to normal business activities. WorkCover will not allow a time extension merely because of negotiations with an insurer, corporate governance issues, or the employer not knowing the law.

Can an employer withhold premium payment if they disagree with the calculation?

62. The employer must pay the premium to the insurer:

- even if the employer disputes the assessment of the premium; and
- even if the employer has lodged an application with WorkCover for a review of the insurer's decision about the premium assessment.

If your appeal is successful, your premium will be adjusted accordingly. See section 172 (4) of the *Workers Compensation Act 1987*.

Summary of common remuneration payments

DESCRIPTION	Policies commenced prior to 4.00pm 30 June 2003	Policies new or renewed commencing on or after 4.00pm 30 June 2003
Annual & public holiday	Y	Y
Board & lodging	Y	Y
Bonuses	Y	Y
Car allowances and expenses	◆	◆
Clothing allowance	◆	◆
Commission	Y	Y
Company car	Y	Y
Company house	Y	Y
Construction allowances	Y	Y
Directors' fees for non-working directors	N	N
Directors' fees for working directors	◆	Y
Directors – payment to working directors	Y	Y
Dirt money	Y	Y
Distant work money	Y	Y
Early retirement benefits	N	Y
Entertainment expenses	◆	◆
Fares & travelling time	◆	◆
Fringe benefits	Y	Y
Height money	Y	Y
Laundry allowance	◆	◆
Living-away-from-home allowance	◆	◆
Long service leave	N	◆
Lump sum, in lieu of holiday/sick leave	Y	Y
Meal allowance	◆	◆
Over award payments	Y	Y
Overtime payments	Y	Y
Payments in lieu of notice	N	N
Penalty rates	Y	Y
Redundancy payments	N	◆
Retrenchment payments	N	◆
Salary	Y	Y
Shift allowance	Y	Y
Sick leave	Y	Y
Site allowance	Y	Y
Superannuation contributions (employer)	N	Y
Third party remuneration (school fees, health care costs etc – see fringe benefits)	◆	◆
Tips and gratuities	Y	Y
Tool allowance	◆	◆
Travelling allowance	◆	◆
Trust distributions	◆	◆
Termination payments	◆	Y
Workers compensation payments	N	N

◆ refer to the relevant section in this manual

ADDENDUM

WAGES DEFINITION MANUAL - OCTOBER 2003 EDITION

This addendum supersedes some information included in the *Wages definition manual – October 2003* edition.

TRAINEES

From 1 January 2004 employers will be required to meet workers compensation premium costs for new entrant trainees employed on or after 1 January 2004. Employers already meet the workers compensation costs of other trainees and apprentices.

The Government will continue to meet the cost of workers compensation premiums of new entrant trainees, who commenced their traineeship prior to 1 January 2004, for a period up to 31 December 2004 or the completion of the traineeship whichever occurs first.

MOTOR VEHICLE ALLOWANCES

The Insurance Premiums Order 2003/04 was amended by the Insurance Premiums Order 2003-2004 Amendment (Motor Vehicle Allowances) Order 2004 on 24 June 2004. This order details the record keeping requirements needed for motor vehicle allowance payments.

These provisions are effective for new or renewed policies from 4pm 30 June 2003.

There are two ways employers can keep records of motor vehicle use for business purposes.

- *Continuous Recording* method: where the odometer reading is recorded at the beginning and end of each journey and the purpose of the journey documented.
- *Average Calculation* method: by calculating the average percentage of business use by an individual worker during a 12 week period by recording the odometer readings at the beginning and end of the period.

In general, the figure determined by the *Average Calculation* method can also be applied to workers compensation calculations for four successive policy periods. The 12-week period may overlap at the start or end of the policy period, providing it includes part of the period. In 2003/04 and 2004/05 the odometer reading of the workers vehicle at the start of the policy period can be estimated.

Where an employee receives an allowance that includes a lump sum component, then whichever amount is less between the rate per kilometre calculation and the actual lump sum payment made will be the value excluded from wages.

The definition of a business journey is the same as the income tax definition. For workers compensation purposes this may also include other journeys such as from the worker's home to the employer's premises, but only if an award specifies that this travel is applicable to the allowance.

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