ACT WAGES & EARNINGS GUIDE
DECEMBER 2016

FOR DEFINING AMOUNTS PAYABLE AS PREMIUM AND PROVIDING GUIDANCE WHEN CALCULATING INJURED WORKERS’ ENTITLEMENTS
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AS PREMIUM AND
PROVIDING GUIDANCE
WHEN CALCULATING
INJURED WORKERS’
ENTITLEMENTS

Disclaimer

These materials do not represent a comprehensive statement of the law as it applies to particular situations or to individuals, and are not a substitute for legal advice. Although all care is taken to ensure that the information is correct at the time of publication, laws change over time and you should check the current legislation to ensure that the information is up to date.

Independent legal advice should be sought for assistance on the application of the law.

Acknowledgement

This document is based upon the WorkCover NSW Wages Definition Manual originally published in 2005 and updated in June 2009. The ACT Government thanks WorkCover NSW for permission to use their Manual as a basis for the ACT Wages and Earnings Guide.

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INTRODUCTION

This guide has been developed to assist insurers, employers and workers operating within the ACT private sector workers’ compensation scheme. This Guide is prescribed by the *Workers Compensation Act 1951*, and should be used as the primary guide for determining wages for the purposes of workers’ compensation premiums.

The first edition of the Guide was published in September 2005 and has been updated to reflect the June 2009 edition of the WorkCover NSW Wages Definition Manual. Insurers, employers, Unions ACT and the Office of Industrial Relations were consulted regarding the use of the NSW Wages Definition Manual as a basis for the first edition of this Guide.

A summary of what is considered to be wages is provided at the end of this guide.

OBJECTIVES OF THIS GUIDE

The objectives of this guide are to:

> Provide guidance on what payments are considered wages under s7A of the *Workers Compensation Act 1951* (the WC Act) and s8A of the Workers Compensation Regulation 2002 (the Regulation) for the purposes of assessing the employer’s premium; and

> Promote consistency in the calculation of wages and earnings.

Chapter C sets out the WC Act’s interpretation of the status of various types of payments. Chapter I sets out the WC Act’s interpretation of “earnings”.

WHAT IS AN EMPLOYER’S PREMIUM BASED ON?

A number of complex factors determine the calculation of an individual employer’s premium. The principal elements in the calculation of premium rates are:

- the industry rate (a measure of the risk of injuries inherent in a particular industry);
- the individual business’ claims history (the actual and estimated cost of past and current workers’ compensation claims against a business); and
- the business’ wages and salaries (i.e. payroll).

WHAT IS THE DIFFERENCE BETWEEN EARNINGS AND WAGES?

The concept of “earnings” is relevant to the amount the employee is entitled to be paid while incapacitated as a result of a work related injury.

The concept of “wages” refers to the total amount of wages paid by an employer to their workers, which is used by insurers to calculate appropriate premiums.

When a worker is incapacitated for work due to a work related injury, the weekly compensation payable for lost wages is based on the Average Pre-Incapacity Weekly Earnings of the worker over the previous 12 months (sections 21-25 of the WC Act).
Weekly benefits form only one element of the workers’ compensation benefits that an injured worker may be entitled to receive. Depending on the nature and severity of the injury, an injured worker may receive compensation for: medical and other health-related treatments, rehabilitation, medication for their injury, or be entitled to a lump-sum payment for a permanent impairment.

**RELEVANT LAW**

Employers are subject to several obligations regarding disclosure of wages (both estimated and actual), the occupation or trade of each worker and the number of workers working for the employer.

The basic principle for determining whether payments made to workers during employment are considered to be wages is as follows: where a payment is made to, or for, the benefit of a worker, the payment will normally constitute “wages” for the purposes of calculating an employer’s insurance premium. Exceptions to this principle occur where:

- there are specific exclusions under the WC Act;
- there is a work-related reason for the expenditure being incurred on behalf of the worker; or
- the benefit is incidental to the workers’ employment.

These obligations operate cumulatively and prescribe the level of disclosure required by employers at the following times: on application for the issue or renewal of a compulsory insurance policy; on obtaining a compulsory insurance policy with a new insurer; and at 6 monthly intervals where the employer’s policy is for a period of longer than 6 months (see ss 155-160, the WC Act).

Employers face significant penalties for failing to comply with the disclosure requirements set out in s 155-162 of the WC Act, including penalties arising for the provision of false or misleading information (including that which leads to the imposition of a reduced premium) in any statement required under s 155-159 of the WC Act.

**REVIEWS AND QUERIES**

This guide may, from time to time, be varied or expanded.

All enquiries regarding workers’ compensation or the contents of this guide should, in the first instance, be directed to Access Canberra, GPO Box 158 Canberra City, ACT 2601, or phone 6207 3000.
USING THIS GUIDE

DEFINITION OF “WORKER” AND “WAGES”

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

Each of those words is defined broadly. For example:

> worker includes many contractors (see Chapter B); and
> wages includes many kinds of payments.

The general rules about what are included as wages are set out in Chapter A. A list covering the types of payments that employers make to workers is at the back of this guide. The list indicates which of those payments are to be counted as “wages” (see Chapter C).

These broad definitions help to ensure that employers are treated consistently when insurers determine premiums.

WHAT RECORDS MUST EMPLOYERS KEEP?

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

ARE INSURERS OBLIGED TO COMPLY WITH THIS GUIDE?

This guide is established in accordance with s8A of the Regulation and applies to the determination of wages for the purposes of calculating an employer’s workers’ compensation insurance premium.

The guide has been developed in consultation with employers and insurers. Its objective is to ensure that:

> insurers and employers will be able to calculate injured workers entitlements consistently;  
> employers and workers will be discouraged from making unreasonable claims about the level of earnings; and
> a wages guide will inform employers about which items are required to be included as wages for the calculation of premiums and reporting under the WC Act.

The ACT Government has purposely adopted the definitions contained in the Wages Definition Manual, June 2009 (NSW) to remove anomalies between the way wages are calculated in the ACT and NSW and reduce unnecessary costs to businesses. The key differences between the NSW and the ACT are the treatment of employer superannuation contributions and the treatment of parental/maternity leave.
WHAT IF AN EMPLOYER DISPUTES THE AMOUNT OF ITS PREMIUM?

The Regulation requires that in working out premiums, insurers must collect sufficient income to fully fund liabilities arising from policies of insurance to which the premiums relate.

Insurers are also required under the Regulation to ensure that premiums are structured to minimise the cross-subsidisation of premiums as far as reasonably possible (cross subsidisation occurs when businesses are required to pay higher premiums to reflect high workers’ compensation costs incurred by other businesses or industries).

Every insurer assesses the risk involved in insuring a business and sets rates according to their own expectation of the risk. There can be significant differences in the premiums quoted by different insurers, and one of the main benefits of having a privately underwritten scheme is that it encourages competition between private sector insurers.

For this reason, it is in the interests of ACT employers to seek quotes from a number of different insurers. There are currently seven insurance companies approved to offer workers’ compensation insurance in the ACT. Access Canberra’s web site (www.act.gov.au/accesscbr) provides a full list of the approved insurers in the ACT.

Any employer who queries or disputes the premium calculation made by their insurer should always, in the first instance, discuss the matter with the insurer.
CHAPTER A –
MEANING OF “WAGES”

Sections 155 - 160 of the WC Act stipulate that an employer shall supply an insurer with the total of all wages to be paid to workers in the proposed period or which was paid to workers during the period of the policy. Generally, a payment to a worker is ‘wages’ if it is made to, or for the benefit of, the worker.

This guide is the prescribed statutory instrument for the determination of wages for the purposes of premium calculations. The guide also includes information to assist calculate earnings for the purposes of workers’ compensation weekly benefit calculations.

WHAT IS THIS CHAPTER FOR?
An employer’s premium is partially calculated on the basis of “wages” paid to “workers”. To understand the process by which an employer’s premium is calculated, it is therefore necessary to understand the meaning of “wages” and “workers”. This chapter deals with the meaning of “wages”. (“Worker” is explained in Chapter B.)

This chapter covers the general principles in relation to “wages”. There is a detailed list of particular types of payments in Chapter C. However, because of the complexity involved in each of the following areas, there is a separate chapter for:

> Particular types of workers see Chapter D.
> Contractors see Chapter E.
> Directors see Chapter F.
> Superannuation see Chapter H.

WHAT PAYMENTS ARE COUNTED AS WAGES?
Wages may include:

> Salary, overtime, shift and other allowances, over-award payment bonuses, commissions, payments to working directors (see Chapter F), 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.

> Payment (whether by way of commission, fee, reward or otherwise) under a contract (whether referred to as a contract, agreement, arrangement or engagement) where the person paid is a worker for the purposes of chapter 3 of the WC Act – meaning of worker.

Wages does not include:

> any sum that the employer is accustomed to pay to the worker to cover special expenses incurred by the worker because of the nature of the employment;
> any allowance to reimburse costs arising out of an obligation incurred under a contract;
> any amount expended on behalf of the worker by the employer;
> non-working directors fees;
> compensation under the WC Act; or
> any GST component in a payment to a worker.
CHAPTER B – MEANING OF “WORKER”

WHAT IS THIS CHAPTER FOR?
An employer’s premium is in part calculated on the basis of wages paid to “workers”. Integral then to the calculation of an employer’s premium is the definition of “worker”. This chapter deals with the meaning of “worker” for the purposes of workers’ compensation insurance policies and premium calculations. (“Wages” is explained in Chapter A.)

DOES THE TAX LAW DEFINITION OF “WORKER” APPLY?
No. Chapter 3 of the WC Act contains specific provisions that apply in determining whether an individual is regarded as a “worker” for the purposes of the ACT workers’ compensation system. These provisions must be considered and applied in each individual case to determine whether a particular person is a “worker” and their wages relevant for the purposes of calculating premium payable. See Chapters D and E.

WHAT DOES THE TERM “WORKER” INCLUDE?
The WC Act defines “worker” by reference to a broad, gateway definition, which is supplemented by subsequent provisions that deal expressly with specific categories of relationships, ranging from independent contractors, volunteers, labour hire arrangements and outworkers.

At a broad level, s 8 of the WC Act defines the term ‘worker’ to mean an individual who:

(a) works under a contract of service, whether the contract is express or implied, oral or written; or

(b) works under a contract, or at piecework rates, for labour only or substantially for labour only; or

(c) works for another person under a contract (whether or not a contract of service) unless—

   (i) the individual—

      (A) is paid to achieve a stated outcome; and

      (B) has to supply the plant and equipment or tools of trade needed to carry out the work; and

      (C) is, or would be, liable for the cost of rectifying any defect in the work carried out; or

   (ii) a personal services business determination is in effect for the person carrying out the work under the Income Tax Assessment Act 1997 (Cth), section 87-60.

In determining whether an individual is a “worker” employers and insurers must first consider this gateway provision (see s 8(1)) and, where relevant, continue to consider the specific provisions set out at s 9-19 of the WC Act.

See also Chapter D for information on particular types of workers and Chapter E for information about contractors.
WHICH CONTRACTORS ARE TREATED AS "WORKERS"?

See Chapter E.

WHAT ABOUT WORKERS EMPLOYED UNDER GOVERNMENT EMPLOYMENT AND TRAINING PROGRAMS?

Apprentices employed under an approved Apprenticeship Scheme that is registered by the ACT Vocational Education and Training Authority are workers of the Scheme and not the ‘host employer’. Therefore, wages the ‘host employer’ pays to the apprentice under one of these schemes, or that the Scheme reimburses to the employer, is not counted as wages for the ‘host employer’. Instead, that payment is counted as wages when the premium for the Group Apprenticeship Scheme is calculated.

HOW ARE INTERSTATE AND OVERSEAS WORKERS TREATED?

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 the ACT.

HOW ARE DIRECTORS’ WAGES TREATED?

If directors receive payments (e.g. wages, salary, allowances, fringe benefits) that if paid to a worker would be counted as wages for premium assessment purposes, those payments will be counted as wages - see Chapter F.
HOW DO YOU USE THIS LIST?

The list in this chapter sets out particular types of payments and whether they may be included as wages to be recorded under ss 155 -160 of the WC Act. In the list, you can look up the type of payment about which you need guidance and then apply the statutory provisions to your situation.

You need to bear in mind that it is impractical for this guide 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 Access Canberra to clarify whether the payment should be counted as remuneration; or
> unless stated otherwise (e.g. Fringe benefits) the gross amount is counted as wages.

ADOPTION LEAVE

Adoption leave payments are not counted as wages.

ADVANCEMENT OF SALARY PAYMENTS

Payment in advance of salary or any other entitlements is counted as wages.

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 wages.
> Any consideration subject to fringe benefits tax is counted as wages.
> Other allowances may be counted, refer to specific headings for different types of allowances.

‘Award’ means any industrial instrument within the meaning of the Commonwealth Fair Work Act 2009, and any agreement with respect to salaries or wages entered into between an employer and a union or 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 wages.

Lump sum payments on termination for annual leave are counted as wages.
APPRENTICESHIP SCHEMES
Apprentices employed under an approved Apprenticeship Scheme that is registered by the ACT Vocational Education and Training Authority are workers of the Scheme and not the ‘host employer’. Therefore, wages the ‘host employer’ pays to the apprentice under one of these schemes, or that the Scheme reimburses to the employer, is not counted as wages for the ‘host employer’. Instead, that payment is counted as wages when the premium for the Group Apprenticeship Scheme is calculated.

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 wages. The value to be given to the wages is the relevant market value of the total value of the board and lodging.

See ‘Fringe benefits’.

BONUSES
Bonuses are counted as wages.

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 wages.

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 wages.

If the employer pays car allowances or expenses to the worker and the payment is not paid under an award, any payment that exceeds the rate allowed by the Australian Tax Office for vehicle expenses is counted as wages.

See ‘Company car’ and ‘Fringe benefits’. 
CHARITIES, CHURCHES AND PUBLIC BENEVOLENT INSTITUTIONS

All fringe benefits provided to workers are counted as wages.

Worker benefits that are not 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 (i.e. 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 ‘nonrebatable 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 wages.

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 wages.

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 wages.

See ‘Uniform allowance’ and ‘Fringe benefits’.

COMMISSION(S)

Commissions are counted as wages.

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 wages.

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

CONSTRUCTION ALLOWANCES
Construction allowances are counted as wages. This includes productivity, height, dirty work, heat and cold and site allowances.
Any allowances that are paid as part of salary or wages under an award (such as shift allowance, skill allowance, etc) are counted as wages.

CONTRACTORS – DEEMED TO BE WORKERS
See Chapter E.

CREDIT CARD EXPENSES
Payment of personal expenses with an employer supplied credit card that are not subject to reimbursement by the worker but subject to fringe benefits tax is counted as wages.
See ‘Fringe benefits’.

DIRECTORS’ FEES AND PAYMENTS
All payments to directors are dealt with in Chapter F. However, dividends are dealt with below in this list.

DIRT MONEY
Dirt money (for working in harsh or unpleasant conditions) is counted as wages.

DISTANT WORK ALLOWANCE
See ‘Living-away-from-home allowance’.

DIVIDENDS
Where the company’s constitution provides for dividend payments to members, including working directors, then the payments are not counted as wages. However, where a dividend is paid in lieu of wages, the payment is counted as wages 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 wages. However, where these benefits are provided in lieu of wages, then the benefit is counted as wages 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 payment summary, then the payment is counted as wages.

Payment of expenses with an employer supplied credit card that are subject to fringe benefits tax is counted as wages.

See also ‘Fringe benefits’.

FARES
See ‘Travel allowance’.

FIRST AID ALLOWANCES
First aid allowances are counted as wages.

FLEXIBLE WORK PACKAGE PAYMENTS
Any wages, salary and any other consideration in money, or money’s worth, the employer provides to a worker as part of a ‘flexible work package arrangement’ are counted as wages.

Payments made to a worker whilst on a flexible work leave arrangement are not counted as wages.

For example, five year package, first four years employee works and receives 80 per cent of salary and 20 per cent is held by employer, 100 per cent of salary is counted. The fifth year employee does not work but receives the 20 per cent that has been put aside throughout the previous four years, this payment is not counted as wages.

FREE HOUSING
See ‘Housing’.
FRINGE BENEFITS

Generally, if a non-cash component of a worker’s wages 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 wages.

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

At what value?

For any fringe benefit, the amount that is to be counted as wages 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) i.e. **the grossed-up amount**.

For example, for a benefit valued at $2,000 then the employer would declare the grossed-up taxable amount which is $2,000 multiplied by 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 prorata 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 wages.

See also ‘Charities, churches and public benevolent institutions’.

GIFTS

Gifts and *ex gratia* payments that are not part of the employment contract, are not counted as wages. Bonuses and incentive awards are counted as wages.

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 wages 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 wages.

Payments to new entrant trainees under the Australian Traineeship System are not counted as wages 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 wages.

GROUP APPRENTICESHIP SCHEMES
See Apprenticeship schemes.

GOODS AND SERVICES TAX (GST)
The GST component of any payment paid to a 'worker' is not counted as wages.

HEIGHT MONEY
Height money is counted as wages.

HONORARIUMS
Honorariums to volunteers or non-workers are not counted as wages. Volunteer workers are generally not covered for workers’ compensation purposes (noting exceptions in relation to commercial and public interest volunteers). 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 wages.

The following payments are counted as wages:
> 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’.

INCOME SPLITTING
Wages, salary, fringe benefits and/or any other consideration provided by an employer for a worker as a result of an income splitting arrangement is counted as wages.
INTERSTATE EMPLOYER

Employers of workers who habitually or regularly work in two jurisdictions must have a workers’ compensation policy in both jurisdictions to ensure that the workers are protected in the event of a workplace injury (contact your insurer for more information).

If an interstate employer engages a worker who works both within the ACT and interstate, and the worker:

> is engaged to work solely or predominantly in the ACT, then the total amount paid to the worker is counted as wages.

> works mainly elsewhere but works on an occasional or temporary basis in the ACT, then the amount to be counted corresponds to the proportion of the wages that can be attributed to the time the worker is in the ACT.

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.

Cross border arrangements may apply to ACT workers who perform work for their ACT employer in another Australian jurisdiction. Employers must verify if these arrangements apply by contacting their insurer.

LOAN PAYMENTS

Repayment of loans to working directors/working beneficiaries/workers which are commercially based, legally documented and subject to taxation are not counted as wages. Otherwise payment of loan amounts to working directors/working beneficiaries/workers is counted as wages.

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 wages.

See ‘Fringe benefits’.

LEASE PAYMENTS

Payment of lease/rent (in whatever form or name) for the provision of premises, equipment etc to working directors/working beneficiaries/workers which are commercially based, legally documented and subject to taxation are not counted as wages. Otherwise payment of rent to working directors/working beneficiaries/workers is counted as wages.

LEAVE LOADINGS

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

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

Payments for long service leave, including lump sum payments are counted as wages.


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 wages.

MANAGEMENT FEES

Management fees paid to working directors, working beneficiaries and employees for employment related activities are counted as wages.

MATERNITY LEAVE PAYMENTS

Maternity leave payments are not counted as wages.

Payments made under the Commonwealth Government’s paid parental leave scheme are not counted as wages.

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 wages.

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

ORDINARY TIME EARNINGS

Ordinary time earnings are counted as wages.
OPTIONS
Share options are not counted as wages. See ‘Employee share schemes’.

OVER-AWARD PAYMENTS
Any payment over the award rate is counted as wages.

OVERSEAS EMPLOYERS
An overseas employer who engages workers in ACT must have a current ACT workers’ compensation policy.

If an overseas employer engages a worker who works both within ACT and overseas:
> and the worker is engaged to work solely or predominantly in ACT, then the total amount paid to the worker is counted as wages.
> and the worker works mainly elsewhere but works on an occasional or temporary basis in ACT, then the amount to be counted corresponds to the proportion of the wages that can be attributed to the time the worker is in ACT.

OVERSEAS WORKERS
(FROM OVERSEAS, WORKING IN ACT)
Wages, salary, fringe benefits and/or other consideration an employer provides an overseas-based worker, working temporarily in ACT, are counted as wages.

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

OVERSEAS WORKERS
(FROM ACT, WORKING OVERSEAS)
Wages, salary, fringe benefits and/or other consideration provided by an employer to any worker who is normally based in ACT while that worker is temporarily employed or working overseas, are counted as wages. 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 wages.

See s 25 of the WC Act for information on the treatment of overtime for the calculation of worker earnings in the event of a workplace injury.

PARENTAL LEAVE PAYMENTS
Parental leave payments are not counted as wages.

PATERNITY LEAVE PAYMENTS
Paternity leave payments are not counted as wages.
PAYMENTS IN LIEU OF NOTICE
Payments in lieu of notice are not counted as wages. See ‘Termination payments’.

PAYMENTS MADE ON BEHALF OF THE WORKER
If the employment contract requires the worker be put to additional expense (e.g. 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 wages.

If the employer spends money on behalf of the worker to the direct benefit of the employment of the worker (e.g. a computer course, training in relation to employment) then the payment is not counted as wages. In any other case, the payment is counted as wages.

PENALTY RATES
Penalty rates are counted as wages.

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 wages.

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 wages.

PRODUCTIVITY ALLOWANCE
Productivity allowances (including those paid in the construction industry) are counted as wages.

PROFIT SHARING SCHEMES
Benefits workers receive from profit sharing agreements are not usually counted as wages. However, when these benefits are provided in lieu of wages, then the benefit is counted as wages for the purposes of calculating workers’ compensation premiums.

See ‘Fringe benefits’ and ‘Company car’.

PUBLIC AND ANNUAL HOLIDAY PAYMENTS (INCLUDING LOADINGS)
Public and annual holiday payments (including loadings) are counted as wages.

REDUNDANCY PAYMENTS
See ‘Termination payments’.
RETRENCHMENT PAYMENTS
See ‘Termination payments’.

REWARD – PAYMENT BY WAY OF
Payment by way of a reward is counted as wages. See ‘Commission(s)’.

ROLLOVERS AND OPTIONS
Payments made for rollovers and options in the broadcasting and/or publishing industry where no additional work activities are undertaken are not counted as wages.

ROYALTIES
Royalty payments are not counted as wages.

SALARY
Salary is counted as wages.

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 wages. 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.

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 wages.

SEVERANCE PAYMENTS
See ‘Termination payments’.

SHARE OPTIONS
Share options are not counted as wages. See ‘Employee share schemes’.

SHIFT ALLOWANCE
A shift allowance is counted as wages.

SICK LEAVE
Sick leave is counted as wages in that entitlements continue to accrue while a person is incapacitated due to a work related injury. Lump sum payments (on termination) for sick leave are counted as wages.
SITE ALLOWANCE
Site allowances are counted as wages.

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

STRIKE-BREAKING ALLOWANCE
A strikebreaking allowance is counted as wages.

STUDY LEAVE
Study leave is counted as wages.

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 wages.

TERMINATION PAYMENTS
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 wages.
Payments made in lieu of notice on termination arising from redundancy, severance, retrenchment or early retirement are not counted as wages.
Redundancy, severance, retrenchment, early retirement benefits or termination payments and payments made in lieu of notice on termination are not counted as wages.
Ex gratia payments to workers on termination are not counted as wages.

TIPS AND GRATUITIES
Tips and gratuities are counted as wages.

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 wages.
In any other case, the payment is counted as wages.
TRAINNEES – PAYMENTS TO
Payments to trainees, who are determined to be workers by section 14 of the WC Act, are considered wages.

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 wages.

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 wages. Any payment greater than the award rate is counted as wages.

Any payments to workers that directly reimburse work-related travel costs (e.g. 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 wages.

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

See ‘Fringe benefits’.

TRAVELLING TIME
Any payment to a worker for work-related travel time is counted as wages.

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 wages.

See ‘Clothing’ and ‘Fringe benefits’.

WORKERS’ COMPENSATION PAYMENTS
Any workers’ compensation benefits an employer pays to a worker are not counted as wages.

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 wages.

WORKING DIRECTORS’ PAYMENTS
Payments to directors are dealt with in Chapter F.
The broad definition of “worker” set down in s 8 of the WC Act is added to by ss 9-19, which expressly exclude some individuals from falling within that definition and deem others to fall within the definition of “worker”.

The categories of individuals covered by ss 10-19 include:

- casual employees section 10
- regular contractors and casuals section 11 - see Chapter E
- individuals employed under labour hire arrangements section 12
- sub-contracting section 13 see Chapter E
- trainees section 14
- outworkers section 15
- timber contractors section 16
- religious workers section 17
- commercial voluntary workers section 18, and
- public interest voluntary workers section 19

If someone is a “worker” under these provisions, then they will be eligible to claim workers’ compensation in respect of a personal injury that arises out of or in the course of their employment. For this reason, their employer (or principal) must cover them for workers’ compensation and include the wages paid to these ‘workers’ in the employer’s wages declarations under ss 156 -160.

See also Chapter E.
WHY CAN CONTRACTOR PAYMENTS BE TREATED AS WAGES?

In particular cases, individuals that are prima facie engaged as contractors will fall within the definition of “worker” for the purposes of the WC Act and where they do, employers must include the wages paid in the total wages the employer declares when calculating the employer’s premium;

Under s 8(1) the term “worker” includes an individual who works under a contract of service, whether the contract is express or implied, written or oral and an individual who works under a contract, or at piecework rates, for labour or substantially labour only.

These provisions are enhanced by the express terms of s 11, which deems an individual to be a worker if:

a) the individual has been engaged by the principal—
   (i) under a contract for services to work for the principal (whether or not on a casual basis); or
   (ii) on a casual basis under a contract of service to perform work for the principal other than work that is for (or incidental to) the principal’s trade or business (unless section 10 (2) applies, which deals with casual employment found through employment agencies); and

b) the individual personally does part or all of the work; and

c) if the principal is a corporation—the individual is not an executive officer of the corporation.

In these cases, the employer is treated as a ‘principal’, responsible for declaring remuneration for the purposes of workers’ compensation.

Whether an individual has an Australian Business Number (ABN) is irrelevant in determining whether the provisions set out in s 8(1) or s 11 apply in a particular case. The issue of whether a contractor is a ‘worker’ in a particular case must be determined on a case-by-case basis with reference to the WC Act.

Under section 11 (2) an individual is taken to be a worker if—

(a) the engagement, under the contract or similar contracts, has been on a regular and systematic basis; or

(b) the individual has (or, apart from any injury, would have had) a reasonable expectation of the engagement continuing on a regular and systematic basis (under the contract or similar contracts), even if the engagement has not been on a regular or systematic basis.

Section 11(3) in turn sets parameters around ascertaining whether an engagement has been on a regular and systematic basis.

The final arbiter of whether a contractor is a “worker” is the ACT Magistrate’s Court, which evaluates the individual facts of each case in applying the relevant provisions of the WC Act. Cases decided in other courts may be referred to as guidance material in this process and WorkCover applies tests determined by the courts in the conduct of its functions.

Payments for materials, tools, equipment, or plant an employer pays to its contractors, who are ‘workers’ under s 11, are excluded when calculating the employer’s wages and premium.

All payments made to ‘contractors’ who are deemed to be workers are to be included in the total wages the employer declares for the purposes of calculating its premium, except:
> payments to the contractor for materials, tools, equipment, or plant; and
> the costs necessarily incurred by the contractor in performing that contract,
  such as ‘overhead costs’ that the individual would be required to expend (or has 
  expended) in providing services other than labour. These costs might include tools, 
  equipment, materials and plant.

The employer and the Insurer should consider the estimated amount of ‘overhead costs’ in relation to the deemed worker. 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 and are the same percentages used by WorkCover NSW.

All GST paid to a contractor is not counted.

<table>
<thead>
<tr>
<th>Service Supplied</th>
<th>Percentage of Contract Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labour only</td>
<td>100 per cent</td>
</tr>
<tr>
<td>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</td>
<td>90 per cent</td>
</tr>
<tr>
<td>Supply of labour and plant such as cement mixers, conveyors, ladders, trestles and the like</td>
<td>80 per cent</td>
</tr>
<tr>
<td>Supply of labour, plant and materials such as cement mixers, conveyors, ladders, trestles and the like</td>
<td>80 per cent</td>
</tr>
<tr>
<td>Supply of labour, plant and materials such as cement mixers, conveyors, ladders, trestles and the like</td>
<td>80 per cent</td>
</tr>
<tr>
<td>Bricklayers supplying bricks, Carpenters supplying timber, Plasterboard fixers supplying plasterboard, Tilers supplying tiles, Electricians supplying conduit, wire and switchgear</td>
<td>30 per cent 30 per cent 30 per cent 50 per cent</td>
</tr>
<tr>
<td>Plumbers supplying pipes and fittings, Painters and decorators supplying paint and wallpaper</td>
<td>50 per cent</td>
</tr>
<tr>
<td>Carpet layers supplying underlay</td>
<td>70 per cent</td>
</tr>
<tr>
<td>Transport Industry Contractors</td>
<td></td>
</tr>
<tr>
<td>Prime movers</td>
<td>30 per cent</td>
</tr>
<tr>
<td>From 10 tonnes to Prime Movers</td>
<td>50 per cent</td>
</tr>
<tr>
<td>Motor vehicles to 10 tonnes (including couriers)</td>
<td>75 per cent</td>
</tr>
<tr>
<td>Couriers – motorcycles</td>
<td>90 per cent</td>
</tr>
<tr>
<td>Couriers – bicycles</td>
<td>90 per cent</td>
</tr>
<tr>
<td>Cranes</td>
<td>50 per cent</td>
</tr>
<tr>
<td>Timber/Sawmilling (snigging, felling), Earthmoving/Bobcat</td>
<td>50 per cent</td>
</tr>
<tr>
<td>Up to 3 tonnes</td>
<td>75 per cent</td>
</tr>
<tr>
<td>3 tonnes and over</td>
<td>50 per cent</td>
</tr>
</tbody>
</table>
CHAPTER F –
FEES AND PAYMENTS TO DIRECTORS

HOW ARE FEES TO A
‘NON-WORKING’ DIRECTOR TREATED?
Any fees the employer pays to a ‘non-working’ director for performing their duties, as a director are not counted as wages. 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?
All payments to a working director (including fees, wages, salary, allowances, fringe benefits, etc) are counted as wages. See ‘Fringe benefits’ for information on the calculation of the value of the benefits.

HOW ARE DIVIDENDS TREATED?
Where the company’s constitution provides for dividend payments to members, including working directors, then the payments are not counted as wages.
However, where a dividend is paid in lieu of wages, the payment is counted as wages for the purposes of calculating workers’ compensation premiums.
When considering payments to trustees and beneficiaries of trusts, the nature of the trust arrangement and the reality of the payment determine whether it should be counted as wages.

**ARE DISTRIBUTIONS TO A ‘NON-WORKING’ BENEFICIARY COUNTED?**

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

**ARE DISTRIBUTIONS TO A ‘WORKING’ BENEFICIARY COUNTED?**

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?**

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 wages.

> 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 wages.
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 wages. 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 wages.

HOW ARE PAYMENTS FROM A TRUST TO A WORKER ‘THROUGH ANOTHER TRUST’ TREATED?

Payments to workers (including trust distributions) for work done for a trust are counted as wages. 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 obligations apply to: the trustee or the trust?

The obligation to make declarations and ensure that the WC Act is complied with applies 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.
CHAPTER H – SUPERANNUATION CONTRIBUTIONS AND BENEFITS

ARE SUPERANNUATION GUARANTEE LEVY PAYMENTS COUNTED?
Employer contributions to superannuation schemes in accordance with the superannuation guarantee charge are not counted as wages.

However, employers should be aware that most superannuation funds, Awards and Industrial Agreements require the continuation of superannuation contributions for injured workers while they remain employees of the employer.

Employers should check with their insurer, their superannuation funds and/or the Awards and Industrial Agreements that apply to their workers’ before altering or changing superannuation payments for their workers.

ARE ADDITIONAL CONTRIBUTIONS THE EMPLOYER PAYS ON THE WORKER’S BEHALF COUNTED?
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 wages.

ARE A WORKER’S CONTRIBUTIONS COUNTED?
Worker’s contributions to superannuation schemes are counted as wages. 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?
Benefits paid to workers from superannuation schemes are not counted as wages.

WHAT HAPPENS IF THE ONLY WAGES PAID TO THE WORKER IS SUPERANNUATION CONTRIBUTIONS?
If the employer makes contributions to a worker’s superannuation scheme or fund but does not pay the worker any other wages for the work the worker performed, the contribution is counted as wages. See chapter I for treatment of superannuation in relation to earnings.
CHAPTER I – EARNINGS

This guide is the prescribed statutory instrument for the determination of wages for the purposes of premium calculations only.

The guide also includes information to assist calculate earnings for the purposes of workers’ compensation weekly benefit calculations.

The purpose of this chapter is to provide guidance to employers, insurers, auditors, accountants, workers, WorkSafe ACT and other interested parties to assist in assessing appropriate weekly compensation payable to injured workers.

WHAT CAN AN INJURED WORKER EXPECT TO RECEIVE AS EARNINGS WHILST ON WORKERS’ COMPENSATION BENEFITS?

In accordance with legislative amendments introduced by the Workers Compensation Amendment Act 2001 an injured worker can expect that their weekly benefits will include all payments that they would receive in their normal wages for the first 26 weeks of incapacity. If an injured worker remains totally or partially incapacitated for their employment after the first 26-week period, s/he is entitled to continue to receive a discounted rate of compensation calculated in accordance with ss 41-42 of the WC Act.

The list of payments that are counted as wages and that may be considered earnings are listed in Chapter C.

However earnings do not include:

any sum that the employer is accustomed to pay to the worker to cover special expenses incurred by the worker because of the nature of the employment;

> any allowance to reimburse costs arising out of an obligation incurred under a contract;

> any amount expended on behalf of the worker by the employer;

> non-working directors fees (see Chapter F);

> compensation under the WC Act.

For instance, Superannuation contributions (salary sacrifice, salary packaging) that an employer pays into a worker’s superannuation fund should continue to be paid as the contributions are considered to be a part of a worker’s earnings.

Superannuation payments made pursuant to the Superannuation Guarantee Act, and Award or Industrial Agreement are not considered to be a part of a workers earnings.

However, employers should be aware that most superannuation funds, Awards and Industrial Agreements require the continuation of superannuation contributions for injured workers while they remain employees of the employer.

Employers should check with their insurer, their superannuation funds and/or the Awards and Industrial Agreements that apply to their workers’ before altering or changing superannuation payments.

Should a dispute arise between an employer and the insurer regarding the payment of earnings, the parties may seek to resolve the dispute through Conciliation. If conciliation fails, the ACT Courts are responsible for arbitrating the dispute and determining the correct amount payable to the worker.
Sections 155 -160 of the WC Act require employers to provide detailed information to insurers in connection with obtaining and renewing a compulsory workers compensation insurance policy. For this reason employers should keep records (documents or items relating to the employment of workers by the employer) to support the information set out in the statements required by ss 155-160 of the WC Act, including:

- detailed records of all payments made to their workers both paid and non-paid; this includes the number of workers, the time each worker worked etc
- copies of any other documents relevant to those payments; and to provide access to them when required.

Under s 200A of the WC Act employers are required to keep records of the following for five years after the day the relevant record is made:

- an injury notice under section 93;
- a statement of the employers estimate under section 155;
- a statement of total wages under section 156;
- a statement of total wages under section 157;
- a statement of total wages under section 158;
- a statement under section 159;
- a certificate of currency issued by an insurer to the employer;
- wages and earnings paid by the employer;
- invoices and related information given to the employer by a sub-contractor;
- a certificate of currency in relation to a contractor;
- material used by the employer to work out the wages for a statement of total wages;
- any record the employer is required to maintain under the WC Act.

Civil penalties apply to any employer who does not comply with these record keeping requirements.

**HOW LONG SHOULD EMPLOYERS KEEP THE RECORDS?**

Under the WC Act, employers may be prosecuted for offences against ss 155 to 160 of the WC Act within five years after the day, or the last day, the offence is committed. Under s 200A employers are required to keep the specified records for a period of five years from the date they are created.

Employers should further note that federal and territory tax laws may require business records to be kept for minimum periods of time. It is generally five years for tax laws of the Territory.
WHEN MUST THE EMPLOYER PROVIDE INFORMATION TO THEIR INSURER?

An employer must provide a statement to their insurer:

> on application for issue or renewal of a policy, stating the employers estimate of the wages to be paid to its workers during the proposed insurance period ss 155-156;

  • within 30 days after the policy ends or is cancelled, stating the total wages paid by the employer to Territory workers during the previous policy period s 157

  • within 30 days of a change of insurer, stating the total wages paid by the employer to Territory workers during the previous policy period s 158

> if an employer has a compulsory insurance policy for a period of longer than six months, the employer must, within 30 days after the end of each reporting period, give the insurer a statement setting out the number of workers and total wages paid by the employer to workers during the reporting period s 159.

WHAT ARE THE PENALTIES FOR FAILING TO PROVIDE EITHER A WAGES ESTIMATES AND OR PROVIDING FALSE OR MISLEADING INFORMATION IN A STATUTORY DECLARATION?

An employer may be liable for a range of penalties up to a maximum of 250 penalty units and or imprisonment for two years for failing to provide a relevant statement under s 155-159 of the WC Act.

Each employer must also ensure that the information provided to its insurer is correct. The maximum penalty for knowingly providing false or misleading information to an insurer is 100 penalty units.

In addition to the penalties outlined above, s149 and 162A of the WC Act provides for civil penalties for non-insurance and under-insurance up to a maximum of double the avoided premium for the period of non-compliance (able to be applied retrospectively for up to five years).
WHAT INFORMATION MAY AN INSPECTOR REQUEST FROM THE EMPLOYER?

Under s 190 of the WC Act an inspector may request in writing the employer to produce:

> a statement of the total wages paid, in the period stated in the notice, by the employer to Territory workers employed by the employer;
> a statement setting out the number of Territory workers in each determined category employed by the employer in the period; and the total wages paid to Territory workers in each determined category in the reporting period;
> any compulsory insurance policy to which the employer is a party; and
> related information (if any) that the inspector requires.

These obligations are added to by s 200A of the WC Act, which requires that an employer provide access to the records specified in that provision upon request by a person under the WC Act.

CAN AN INSPECTOR ENTER AND INSPECT COMMERCIAL PREMISES?

An inspector can enter commercial premises, if he or she believes on reasonable grounds that the premises are being used by an employer in connection with the employment of a worker by the employer, to exercise the powers of an inspector and ensure that the Workers Compensation Act is complied with.

Once an inspector has entered the premise, he or she has the power to -

> require any person on the premises to produce for inspection any documents or things relating to the employment of workers by the employer using the premises; and
> make copies of, or taking extracts from, any such documents; and
> require any person on the premises to produce information relating to such documents or things, or information relating generally to the employment of workers by the employer using the premises; and
> require the occupier or an employer who is on the premises or a person whom the inspector believes on reasonable grounds is an employer and who is on the premises to supply his or her address and the name under which the business carried on the premises operates.

The inspector must show the occupier of the premises their identity card.

Full details concerning inspection powers and the rights of an employer or occupier of premises are contained in Chapter 10 of the WC Act.
## SUMMARY OF COMMON WAGES PAYMENTS

<table>
<thead>
<tr>
<th>Payment</th>
<th>Counted as wages?</th>
<th>Payment</th>
<th>Counted as wages?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual &amp; public holiday</td>
<td>Y</td>
<td>Long service leave</td>
<td>Y/N</td>
</tr>
<tr>
<td>Board &amp; lodging</td>
<td>Y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>if fringe benefit</td>
<td></td>
<td>Lump sum, in lieu of holiday/ sick leave</td>
<td>Y</td>
</tr>
<tr>
<td>Bonuses</td>
<td>Y</td>
<td>Meal allowance</td>
<td>Y</td>
</tr>
<tr>
<td>if fringe benefit</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Car allowances and expenses</td>
<td>Y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>if fringe benefit</td>
<td></td>
<td>Over award payments</td>
<td>Y</td>
</tr>
<tr>
<td>Clothing allowance</td>
<td>Y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>if fringe benefit</td>
<td></td>
<td>Overtime payments</td>
<td>see s25</td>
</tr>
<tr>
<td>Commission</td>
<td>Y</td>
<td>Payments in lieu of notice</td>
<td>N</td>
</tr>
<tr>
<td>Company car</td>
<td>Y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>if fringe benefit</td>
<td></td>
<td>Penalty rates</td>
<td>Y</td>
</tr>
<tr>
<td>Company house</td>
<td>Y</td>
<td>Redundancy payments</td>
<td>N</td>
</tr>
<tr>
<td>Construction allowances</td>
<td>Y</td>
<td>Retrenchment payments</td>
<td>Y</td>
</tr>
<tr>
<td>Directors’ fees for non-working directors</td>
<td>N</td>
<td>Salary</td>
<td></td>
</tr>
<tr>
<td>Directors’ fees for working directors</td>
<td>Y</td>
<td>Shift allowance</td>
<td>Y</td>
</tr>
<tr>
<td>Dividends – payment to working directors</td>
<td>N unless in lieu of wages</td>
<td>Sick leave</td>
<td>Y</td>
</tr>
<tr>
<td>Dirt money</td>
<td>Y</td>
<td>Site allowance</td>
<td>Y</td>
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<tr>
<td>Distant work money</td>
<td>Y</td>
<td>Superannuation employer contributions</td>
<td>Y/N</td>
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<td></td>
<td></td>
<td>Superannuation employee salary packaging</td>
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<tr>
<td>Early retirement benefits</td>
<td>Y</td>
<td>Third party wages (school fees, health care costs etc – see fringe benefits)</td>
<td>Y</td>
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<tr>
<td>Entertainment expenses</td>
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<td>Tips and gratuities</td>
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<tr>
<td>if fringe benefit</td>
<td></td>
<td></td>
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<tr>
<td>Fares &amp; travelling time</td>
<td>Y</td>
<td>Tool allowance</td>
<td>Y</td>
</tr>
<tr>
<td>if fringe benefit</td>
<td></td>
<td></td>
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<tr>
<td>Fringe benefits</td>
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<td>Travelling allowance</td>
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<td>if fringe benefit</td>
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<tr>
<td>Height money</td>
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<td>Trust distributions</td>
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<td>unless no other wage</td>
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<td>Laundry allowance</td>
<td>Y</td>
<td>Termination payments</td>
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<tr>
<td>Living-away-from-home allowance</td>
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<td>Workers’ compensation payments</td>
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<td>if fringe benefit</td>
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See Chap H Y unless over & above entitlement