

## BULLETIN

# New Definition of Worker

This information has been prepared to assist in understanding the planned change to definition of worker under Northern Territory workers compensation legislation. The amendment is currently before our Parliament and is not yet law.

If you currently hold an ABN or you employ a person with an ABN this change may affect you. The change will mean more individuals will be covered for workers compensation.

## Background

The Northern Territory has been using notification of a person's Australian Business Number (ABN) to determine if the person is a worker under the *Workers Rehabilitation and Compensation Act*. The result has been that if a person supplied an ABN in writing to the person they were working for, they were not considered to be a worker for workers compensation purposes. No other jurisdiction in Australia uses this approach and a change has been considered for a number of years. Some of the reasons for deciding to change from the ABN method are:

- A number of workers have missed out on being covered for workers compensation that would be covered in other jurisdictions.
- The costs of these injuries is falling to tax payer funded systems.
- These injured workers have not been able to access or afford proper support systems for rehabilitation and an early return to work.
- Some people have been asked to supply ABN's as a precondition for employment even though the person had no intention to operate under an independent business arrangement.

Instead of using the supply of an ABN to determine if a person is, or is not a worker, the Northern Territory will be using the results test.

## The Results Test

A person performing work for another person will be a worker **unless**, in relation to the work, the following tests apply:

- (i) The person is paid to achieve a stated outcome; and
- (ii) The person has to supply the plant and equipment or tools of trade needed to carry out the work; and
- (iii) The person is, or would be, liable for the cost of rectifying any defect in the work carried out, or
- (iv) There is a personal services business determination in effect for the person performing the work under the *Income Tax Assessment Act 1997* (Cwlth).

## Key Points

- Contractors who do not meet the results test for the work in which they are injured will be treated as a worker for workers compensation purposes.
- A contractor may meet the results test for one contract but not for another.
- Although the “results test” is similar to the test used by the Australian Taxation Office for taxation purposes, a change in workers compensation eligibility does not affect an individual's taxation status.
- A failure to meet the results test simply means some individuals will be covered for workers compensation if they are injured at work. The “results test” does not determine if a person is an employee and therefore eligible for any other employment benefits.

## Information for Employers:

If you employ another person under a contract or agreement of any kind (in writing or otherwise) you will need to consider the contractual arrangements in relation to the work you have arranged to be carried out. Each case is individual and must be assessed having regard to the worker's circumstances and the details of the contract involved.

You will need to decide if the results test applies to the contract and find out if the person holds a personal services business determination under the *Income Tax Assessment Act*. The onus rests with the employer to prove that an agreement satisfies the results test. To satisfy the results test, there must be some form of written contract or quote that specifies, among other things:

- a reference to the plant, equipment or tools necessary to perform the work
- reference to the defects liability
- task to be completed, and
- agreed total price for the task

In the absence of proof, the agreement will not meet the results test. If the contract does not meet the results test then you will need to cover the person for workers compensation. You do not need to arrange cover for any person who is the employer of another person on the particular works in question.

To obtain cover is a simple matter. If you do not have existing workers compensation insurance contact an insurance broker to arrange cover or contact NT WorkSafe for details of approved insurance companies. If you already have an insurance policy all you need to do is inform your insurance broker or insurer that you require workers compensation cover for contractors that you employ. You will need to tell the insurer how much you expect to pay during the period of your insurance policy and provide a declaration of actual costs at the end of the insurance period. The payment you make to a contractor may include payments for materials, tools, equipment, or plant. These components and any GST component should be excluded when making the declaration to the insurer.

To be able to make these declarations to the insurer you will need to keep records of payments you make to these workers and how those payments are made up. If there are components that relate to materials, tools, equipment or plant you need to identify these components so that they are able to be excluded.

You do not need to declare remuneration where:

- the individual holds a personal services business determination under the Income Tax assessment Act.
- the individual is excluded because the work being done for you meets the results test.
- the individual is a person who is the employer of another person for the particular works.

The new legislation will contain wording that the *Workers Rehabilitation and Compensation Act* it will not be relevant for determining whether a person is or is not a worker or employee under another Act. This will provide some confidence that covering a person for workers compensation does not make the person a worker under other legislation, for example payroll tax.

It is important to be aware there is a substantial penalty under the *Workers Rehabilitation and Compensation Act* if a person induces another person to enter into a contract or agreement to waive or limit a person's rights or entitlements. This might apply for example, if a contract is created artificially to meet the results test to avoid a person being a worker.

## Information for Workers

If you work for someone else and the results test does not apply to the work you are performing, then the person you are working for is responsible for covering you for workers compensation. If you are injured you will be able to make a workers compensation claim.

Workers compensation eligibility does not affect your taxation status or in any other way change other aspects of the employment relationship. It just means you will be covered by workers compensation legislation if you are injured whilst engaged in that work.

If the results test applies to your work or you have a personal services business determination under the Income Tax assessment Act, then you are not a worker for that contract and you should ensure you have arranged other income replacement insurance.

## Check List for the Results Test

Personal Services Business Determination	Yes	No
Is there a personal services business determination in effect for the person performing the work under the <i>Income Tax Assessment Act 1997</i>		

If the answer is "Yes" the person is **not a worker** under any circumstance. It is not necessary to consider the results test.

If the answer is "No", the following tests should be applied:

Results Test	Yes	No
1. Prior to any work commencing was a contract negotiated requiring the completion of a stated outcome or task, e.g. paint a house?		
2. Does the person doing the work provide all the necessary plant and equipment <b>or</b> tools to undertake and complete the contract?		
3. Does the person doing the work personally bear the cost of the complete rectification of any defects in the set task or for any damages that might result from the work?		

If the answer is "Yes" to all of the tests 1 to 3, the results test has been met and the person is **not a worker** for workers compensation purposes.

If the answer is "No" to **any** of the tests 1 to 3, the **person is a worker** and must be covered for workers compensation by the employer.

## Understanding the tests:

### 1. The person performing the work is paid to achieve a specified result or outcome.

In order to satisfy this test:

- A person's contract or quote would require him or her to complete a set task; and payment would need to be for an agreed price, based on completing the set task.
- The contract or quote should specify the result or outcome which is required. Generally, payment would not be made until the work is completed, although progress payments may be paid at agreed intervals. For example:

*A builder has engaged an owner-driver of a truck to move 100 cubic metres of fill to another site. The owner-driver would be considered to be contracted to complete a set task. Furthermore, if the builder and the owner-driver negotiated a price for the delivery of the fill and this is to be paid for on completion of the work, the owner-driver would be considered to be receiving payment for an agreed contract price, based on completing the set task.*

In this situation the owner-driver would be working for a specified result and the first of the results test would be satisfied. A failure to meet this test means that for workers compensation purposes of this clause the person is a "worker".

### 2. The person performing the work has to supply the plant and equipment or tools of trade needed to perform the work.

To satisfy this test the person would be required to provide the tools of trade, or plant and equipment actually needed for the person to carry out the work under the contract, taking into account the particular circumstances of the work situation involved.

However, a failure to meet this test means that for the purposes of this clause the person is a "worker". For example:

*A painter contracted to paint the outside of a newly constructed building is required under a contract to complete the work, including provision of all necessary tools, plant and equipment (e.g. brushes, paint, trestles, etc.). In some instances the painter may also have to supply scaffolding if the work is to be performed above a certain height. However, if the scaffolding is already set up or is still in place from previous construction activity (as is often the case), then the painter does not actually need to supply the scaffolding. Provided the painter supplies all the other equipment actually required to perform the work, part 2 of the results test would be satisfied."*

### 3. The person performing the work is, or would be, liable for the cost of rectifying any defect in the work carried out.

To satisfy this test with regard to defects, the person must be legally liable for the cost of rectification of any defects in their work. Rectification would normally involve being responsible for the supply of the labour required to rectify the faulty work. Materials do not have to be provided by the individual.

It does not matter if the individual does not rectify the defect personally, as long as the individual incurs the cost of rectifying the work. The individual may be required to rectify the defect for no payment or have an amount deducted from retention monies.

For additional information contact NT WorkSafe on 1800 250 713 or go to [www.worksafe.nt.gov.au](http://www.worksafe.nt.gov.au)