

Work of a domestic or private nature

93. Subsection 12(11) of the SGAA provides that a person who is paid to do work wholly or principally of a domestic or private nature for not more than 30 hours per week is not an employee in relation to that work. A person who is paid to do work of this nature for more than 30 hours per week may or may not be an employee depending on whether they fall within the other provisions of section 12, as discussed above.

94. The terms 'private' and 'domestic' are not defined in the SGAA so it is necessary to refer to the ordinary meaning of the words.

95. The *Macquarie Dictionary* (third edition) defines 'domestic' to mean 'of or relating to the home, the household or household affairs' and 'private' to mean 'belonging to oneself', 'being one's own', 'individual or personal'.

96. In (1955) 5 CTBR (NS) Case 50 at 332, the Board of Review defined 'private or domestic' expenditure (under subsection 51(1) of the ITAA 1936) as:

... losses or outgoings of a private nature we take to mean here losses or outgoings relating solely to the person incurring them ... e.g., travelling expenses incurred by a person to and from his place of employment.... Losses or outgoings of a domestic nature we take to mean here losses or outgoings which relate solely to the house, home or family organisation, of the person incurring them....

97. Although this case was about losses or outgoings of a private nature we think it also illustrates the similar concept of work of a domestic or private nature. In our view, work of a domestic or private nature ordinarily means work relating personally to the individual making payment for the work or to the person's home, household affairs or family organisation.

98. For example, people employed by someone to clean their home, to mind their children, to effect repairs or maintenance of their home, or to tend their home garden would be engaged in domestic or private work. If they worked for that person for not more than 30 hours a week, they would not be that person's employee under the SGAA.

Partnerships

99. A partner in a partnership cannot be an employee of the partnership. It is impossible for a person to meet the common law definition of employee as discussed above and still have the powers and responsibilities of a partner. In particular, the degree of control over an individual required for the individual to be an employee at common law is incompatible with the degree of independence that a partner has in relation to the conduct of the partnership enterprise. It is also impossible in our view for a partner to enter into a contract with the partnership 'wholly or principally for the partner's labour' within the meaning of subsection 12(3).