

CROSS BORDER PROVISIONS FACT SHEET

The *Workers' Compensation and Rehabilitation Amendment (Cross Border) Act 2004* was passed by the Western Australian Parliament on 28 October 2004. This Amendment Act will apply for all injuries and determinations of a worker's State of connection from 22 December 2004.

The amendments introduced by the cross border legislation reflect nationally agreed principles which have been developed and adopted by all workers' compensation jurisdictions to clarify which State or Territory individual worker's are connected to.

Employers' Obligation to Insure Workers

Employers must obtain workers' compensation insurance for all of their workers as defined in legislation. Under the legislation employers are only required to obtain workers' compensation insurance to cover a particular worker in one State or Territory, and clarifies which State or Territory a particular worker has a connection with. The workers' compensation premium payable and entitlements for each injured worker is applicable to the worker's "State of connection".

Worker's State of Connection

A worker's "State of connection" is determined by applying the following sequential tests:

- A. The State in which the worker usually works in that employment.
- B. If no State is identified by test (A) the State in which the worker is usually based for the purposes of that employment.
- C. If no State is identified by test (A) or (B), the State in which the employer's principal place of business in Australia is located.

Evidence of a Worker's State of Connection

Supporting evidence can be used to determine a worker's State of connection. This evidence may include documentation, work history or future work plans. The table below summarises the evidence that may be used to determine the worker's State of connection using tests A, B and C.

| TEST A STATE IN WHICH THE WORKER USUALLY WORKS. | TEST B STATE IN WHICH THE WORKER IS USUALLY BASED FOR THE PURPOSES OF EMPLOYMENT. | TEST C STATE IN WHICH THE EMPLOYERS' PRINCIPAL PLACE OF BUSINESS IS LOCATED. |
|--|---|---|
| 1) Which State does the worker spend the greatest proportion of time working in? | 1) What is the State specified on the worker's contract of employment? | 1) In which State is the employer's address registered on the Australian Business Register in connection with their ABN? |
| 2) Which State does the worker's contract of employment conditions indicate they are connected to? | 2) Which State is the location the worker will attend routinely to receive directions or collect materials? | 2) If not registered for ABN, in which State is the business registered on ANSIC names index? |
| 3) What is the worker's history of work in each State in that employment? | 3) Which State is the location the worker usually reports for work? | 3) In which State is the employer's business mailing address? |
| 4) Which State will future work be in based on future work plans? | 4) Which State is the location from which the worker's wages are paid? | 4) For workers on ships, in which State is the ship registered, or if registered in more than one, which State was the ship most recently registered? |

If a State of connection cannot be determined for an injured worker and the worker is not entitled to compensation under the laws of a place outside Australia, a State of connection exists in the State the worker is in when their injury occurred.

Temporary Work Arrangements

In deciding whether a worker usually works in a particular State, an employer must have regard for any temporary working arrangements. Periods of not more than six months working interstate may be considered temporary. This removes the need for employers to have two workers' compensation policies for workers temporarily working interstate. Should an interstate working arrangement be planned for or continue beyond six months, the State of connection will need to be reconsidered to determine if it remains temporary, or is a permanent arrangement.

Diseases of Gradual Onset

The same series of tests to determine a worker's State of connection will be applied for a worker sustaining a disease of gradual onset, for example asbestos related disease. If it is established the injury is attributable to a previous employer of the worker, the tests to determine the worker's State of connection at that time should be applied. Potential compensation costs sharing may then be sought from the employer(s) in the State(s) of connection.

STATE OF CONNECTION INDUSTRY EXAMPLES

Example one: Building and Construction

- *A building company operates from a principal place of business in South Australia and has a workers' compensation insurance policy in SA.*
- *The company wins a four-month contract in Western Australia.*
- *The company sends a number of its key permanent SA based workers to WA to oversee the work on the four-month contract.*
- *The company also recruits additional staff from WA to specifically work in WA in respect of this contract.*
- *The company has made no commitment to employ these additional workers once the contract in WA is completed.*

In this example, we must consider each group of employees separately as their contracts of employment are different.

Test A establishes the company's existing permanent employees are usually based in SA and are only working in WA for the duration of the WA contract. Their State of connection continues to be SA and the workers continue to be covered by SA workers' compensation laws.

By applying test A to the additional staff who have been employed solely to work on the WA contract, it establishes the workers usually work in WA in that employment and as such, have a WA State of connection. This group of workers is required only to have workers' compensation coverage in WA and the SA based employer needs to take out a WA workers' compensation policy to cover them.

Example two: Sales Representative

- *A sales representative is employed by a company in Western Australia to cover NSW and Queensland sales territories.*
- *The company has only one office in Western Australia.*
- *The worker spends their time equally across NSW and Queensland with occasional visits to head office in Western Australia.*
- *The worker is using accommodation in Queensland as their base for the purpose of carrying out work, as the worker does not usually work in any one State.*

Test A does not identify a State of connection, as the worker does not usually work in that employment in any one State.

Test B determines the State in which the worker is usually based. The evidence in this example indicates the worker is based in Queensland. They use accommodation in Queensland as their base for the purposes of carrying out their work. The worker's State of connection is Queensland.

Further Information

Further information, including additional industry examples may be obtained by contacting the WorkCover WA Infoline on 1300 794 744.

Employers who have workers with a State of connection to another State or Territory, should obtain information about the scheme from the relevant State Authority.

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| ACT WorkCover | (02) 6205 0200 | Tasmania WorkCover | (03) 6233 7657 |
| Northern Territory WorkSafe | (08) 8999 5585 | Queensland WorkCover | 1300 362 127 |
| NSW WorkCover | 13 10 50 | Victoria WorkCover | (03) 9641 1444 |
| South Australia WorkCover | 13 18 55 | | |

Please note: This fact sheet has been prepared to provide information only. You should not act or omit to act on the basis of anything contained herein. In relation to a particular matter you should seek appropriate legal/professional advice.

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