

Guideline – Where do I insure my worker if they work in more than one State or Territory?

Like other employers around Australia, if you employ a worker who works for you in more than one State or Territory, you will only need to have workers compensation insurance for that worker in one State or Territory (the State of connection).

The State of connection for your worker is decided by a common test which applies around Australia.

The purpose of this guideline is to outline the test to assist you to decide the State of connection for your worker.

What is the test and how does it operate?

The test is made up of five steps which need to be considered in order. It is important that you always start with step 1. After that, it is only necessary to consider the next step if the previous step does not decide your worker's State of Connection.

- Step 1** Where does your worker usually work?
- Step 2** Where is your worker usually based?
- Step 3** Is there a State or Territory in which your principal place of business in Australia is located?
- Step 4** What if steps 1, 2 and 3 don't decide the State of connection and your worker works on a ship?
- Step 5** What if steps 1, 2, 3 and 4 don't decide the State of connection and my worker is injured?

Step 1 – Where does your worker usually work?

If...	then...
your worker usually works within a single State or Territory,	that State or Territory is your worker's State of connection because the worker usually works in that State or Territory.
step 1 does not decide the State of connection,	you need to consider step 2.

You should consider the following factors and examples in deciding where your worker usually works:

- The terms of any contract of employment between you and the worker.
- Where your worker actually performs work rather than where the work is required to be performed.
- Your worker's history of employment with you over the previous 12 months (if applicable) and the proposed future working arrangements between you and your worker.
- The location or locations in which your worker works in a habitual or regular manner. Your worker's State of connection is not simply the State or Territory where your worker spends the majority or greatest proportion of their working time for you.

You are not required to take into account any temporary working arrangement of six months or less that may arise under the contract between you and your worker.

Example 1: Worker usually works in a Single State/Territory

Emma is employed as an Electrical Trade’s Assistant with NSW based employer ‘B’. Emma performs all of her employment duties on worksites in the ACT, taking her own vehicle to work and providing her own tools and equipment. She does not attend her employer’s premises in NSW in the course of her day-to-day duties and receives all of her instructions from the relevant project manager on sites in the ACT.

In this case, Emma performs work for her employer in the ACT and under step 1 her State of connection is the ACT.

Example 2: Worker usually works in more than one State/Territory

An employer carries on business as an interstate bus operator from premises in Canberra, ACT. Ray is engaged by the employer as a bus driver, mainly driving buses between Canberra and Sydney but also on the Canberra/Melbourne and Canberra/Thredbo routes. Occasionally Ray drives charter buses entirely within the ACT for the employer.

In this example Ray usually works in ACT, NSW and VIC. Therefore, step 1 does not decide the State of connection and step 2 must be considered.

Step 2 – Where is your worker usually based?

You only need to consider this step if step 1 does not identify a single State or Territory in which your worker usually works.

If...	then...
Step 2.1 your worker usually works for you in more than one State or Territory but is provided with a place which you expect the worker to operate from,	your worker is usually based at that place and the State or Territory in which the base is located is the State of connection.
Step 2.2 step 2.1 does not decide the State of Connection, but there is a place from which your worker routinely receives day to day work instructions or directions,	your worker is usually based at that place and the State or Territory in which it is located is the State of connection.
Step 2.3 step 2.2 does not decide the State of Connection, but there is a place the worker attends to collect materials for the purposes of their employment,	your worker is usually based at that place and the State or Territory in which it is located is the State of connection.
Step 2.4 step 2.3 does not decide the State of Connection, but there is a place where the worker reports for administrative, human resources and other non-specific related employment issues,	your worker is usually based at that place and the State or Territory in which it is located is the State of connection.
Step 2.5 neither of steps 2.1 to 2.4 decides the State of connection,	you must consider step 3.

Example 3: The worker is usually based in a Single State/Territory

Jenny is a sales representative for XYZ. Each morning Jenny is required to attend a warehouse in NSW to collect her employer's products, which she is then required to distribute at various retail outlets in NSW and ACT. Jenny uses a vehicle supplied by her employer, which she garages at her home in NSW. At the end of each day Jenny is required to return any unsold merchandise to the warehouse in NSW.

Jenny works without day-to-day supervision. Her immediate manager is located in XYZ's ACT office and is the person to whom she is required to send reports and time sheets and to whom she reports verbally by telephone from time to time.

Jenny sends all written correspondence to her manager via a facsimile located at her home in NSW. All invoice books which Jenny needs to carry out her duties are mailed to her home in NSW from where she prepares all documentation related to her employment.

In this example it is likely that Jenny is usually based in NSW for the purposes of her employment with XYZ. The employer's NSW warehouse is a place provided by XYZ that Jenny is expected to operate from.

Example 4: The worker has no Single State/Territory from which they are usually based

Paul is employed by an interstate trucking company that transports textiles across Australia. Paul is supplied with a truck for the purposes of his employment and is permitted to garage it at his home in NSW while not in use.

Paul transports goods between NSW, QLD and WA. His contract of employment specifies that he is employed to undertake transporting services across each of these States.

Paul routinely receives instructions from each of the depots he stops at in NSW, QLD and WA, receiving ad hoc instructions via radio while in transit.

In this example, it is unlikely that Paul's employment would be usually based in any single State or Territory. Step 3 would need to be considered.

Step 3 – Is there a State or Territory in which your principal place of business in Australia is located?

You only need to consider step 3 if your worker's State of Connection is not decided by step 1 or step 2.

If...	then...
neither step 1 nor step 2 decides the State of connection and there is a State or Territory in which your principal place of business in Australia is located,	that State or Territory in which your principal place of business is located is your worker's State of Connection.
step 3 does not decide the State of connection,	you need to consider step 4 if your worker works on a ship or step 5 for all other types of workers.

You should consider the following factors and example in deciding your principal place of business in Australia:

- Your principal place of business is the most important or main place where you conduct the main part or majority of your business in Australia.
- The address registered on the Australian Business Register in connection with your Australian Business Number (ABN).

- If you are not registered for an ABN, the State registered on the Australian Securities and Investments Commission’s National Names Index, as being the jurisdiction in which your business or trade is carried out.
- If you are not registered for an ABN or on the National Names Index, your business mailing address.

Example 5

An employer operates an interstate transport business. The three trucks required for the conduct of that business are registered in Queensland and serviced at the employer’s depot in Brisbane, Queensland. When not in use, all of the vehicles are parked at the depot.

Two of the trucks operated by the business are involved almost exclusively in delivery work within Queensland on a daily basis. The third vehicle is used to transport loads between Brisbane and Port Kembla, New South Wales.

The employer also maintains an office at Kiama, NSW. All administrative activities for the business are carried out at this office including the payment of wages.

In this example, the employer’s principal place of business in Australia is located in Queensland.

Step 4 – What if steps 1, 2 and 3 don’t decide the State of connection and your worker works on a ship?

You only need to consider step 4 if your worker’s State of Connection is not decided by Steps 1, 2 or 3 and your worker works on a ship.

If...	then...
your worker’s State of Connection is not decided by steps 1, 2 or 3 and your worker works on a ship,	your worker’s State of connection, while working on a ship, is the State or Territory in which the ship is, or most recently became registered.
your worker’s State of connection is not decided by steps 1,2,3 or 4,	you need to consider step 5.

Step 5 – What if steps 1, 2, 3 and 4 don’t decide the State of connection and my worker is injured?

You only need to consider step 5 if your worker’s State of Connection is not decided by Steps 1, 2, 3 or 4.

If...	then...
Steps 1 to 4 do not decide the State of connection and your worker has suffered a workplace injury or illness in a State or Territory,	unless the worker is entitled to compensation for the same injury under the laws of a place outside Australia, then the State of connection is the State or Territory in which the injury or illness was suffered.

Where can I get further information?

State/Territory	Contact details	Legislation
Worksafe ACT	www.worksafety.act.gov.au 1300 302 502	Section 36B of the <i>Workers Compensation Act 1951</i>
WorkCover New South Wales	www.workcover.nsw.gov.au WorkCover Assistance Service 13 10 50	Section 9AA of the <i>Workers Compensation Act 1987</i>
Worksafe Northern Territory	www.nt.gov.au 1800 250 713	Section 53AA of the <i>Work Health Act</i>
WorkCover Queensland	www.workcover.qld.gov.au 1300 362 128	Section 113 of the <i>Workers' Compensation and Rehabilitation Act 2003</i>
WorkCover South Australia	www.workcover.com 13 18 55	Section 6 of the <i>Workers Rehabilitation and Compensation Act 1986</i>
WorkCover Tasmania	www.tas.gov.au 1300 776 572	Section 31A of the <i>Workers Rehabilitation and Compensation Act 1988</i>
WorkSafe Victoria	www.worksafe.vic.gov.au WorkSafe Advisory Service 1800 136 089	Section 80 of the <i>Accident Compensation Act 1985</i>
WorkCover Western Australia	www.wa.gov.au 1300 794 744	Section 20 of the <i>Workers Compensation and Injury Management Act 1981</i>

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