

# Cross-border arrangements for workers compensation

**State Insurance  
Regulatory  
Authority**

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# 1. Introduction

The six states and two mainland territories of Australia have each enacted 'State of connection' legislative provisions. Where a worker undertakes work across more than one State or Territory (ie where they are a cross-border worker), the 'State of connection' provisions determine the jurisdiction in which an employer is required to obtain workers' compensation insurance for that worker.

In New South Wales the test for determining workers' compensation cover for cross-border workers (the 'State of Connection' test) is set out at section 9AA of the Workers Compensation Act 1987 (the 1987 Act).

This document provides some basic guiding principles to assist employers, workers, claims agents and insurers understand the cross-border provisions. It is intended to provide guidance as to how the cross-border model may apply in particular cases.

Employers seeking to obtain workers' compensation insurance in respect of cross-border workers should contact their respective Workers Compensation Authority to discuss their specific circumstances and requirements.

## 2. Employers' obligations

### 2.1 Requirement to insure individuals who work in NSW

All employers who employ workers in NSW are required to maintain a workers compensation insurance policy for those workers. Cross border legislation determines in which jurisdiction employers are to obtain insurance cover for their workers.

Under section 9AA of the 1987 Act, compensation is only payable where a worker's employment is connected with NSW. This is referred to as the 'State of Connection'. If it is determined that a worker's 'State of Connection' is NSW, the employer must be insured in this State in accordance with the requirements of section 155 of the 1987 Act.

Authorities may take legal action against the employer and/or pursue penalty premiums if it is determined that an employer does not have appropriate insurance coverage for their workers in their 'State of Connection'. An employer may have a defence if a court determines that a current workers compensation policy was held for the worker in the State to which the employer reasonably believed the worker was connected (sections 155 (3A) and 156 (8)).

In the event of a successful claim for compensation from a NSW worker arising on and from 1 January 2006, SIRA may seek recovery of the claim costs against an uninsured employer.

### 2.2 Employers' obligations in other jurisdictions

If you employ workers, you must have a workers compensation insurance policy. As all States and Territories have enacted complementary cross border legislation, workers undertaking work in these jurisdictions are only required to be insured in the State to which they are connected.

There may also be differences between States regarding who is a worker and under what circumstances benefits are payable. Employers should contact their Insurer

and/or the Workers Compensation Authorities in every jurisdiction where they engage individuals to work to ensure that the insurance arrangements in place are appropriate. Contact details for the various States' Workers Compensation Authorities are contained at the end of this guide.

## 2.3 Work Health and Safety (WHS) obligations – Notification of injuries

Notify SafeWork immediately on 13 10 50 for serious incidents involving a fatality or a serious injury or illness that takes place in NSW even if you have workers compensation insurance cover in another State or Territory. You must also notify your Workers Compensation Insurer/Scheme Agent within 48 hours.

For other incidents involving an injury or illness to workers, notify your Workers Compensation Insurer/Scheme Agent within 48 hours. They will advise SafeWork. In the event that the relevant insurer is not a NSW workers compensation insurer, you must advise SafeWork.

For further information on notifying work related incidents please refer to the SIRA website at [sira.nsw.gov.au](http://sira.nsw.gov.au) or call 13 10 50.

## 3. State of Connection

### 3.1 How to determine 'State of Connection'

The legislative provisions provide a hierarchical series of tests to determine whether for workers compensation purposes a worker's employment is connected with a particular State or Territory. It is only necessary to proceed to the next test if the earlier test does not result in establishing a workers connection with a particular State or Territory.

Employers need only declare wages for workers compensation insurance in NSW for workers with a 'State of Connection' in NSW. You should determine whether a worker's employment is connected with NSW under section 9AA of the 1987 Act.

The following cascading series of tests is to be applied to determine a worker's 'State of Connection'. It is important to note that these tests apply to a particular contract or term of employment for a worker. If employment circumstances change, the tests should be revisited. If Test A identifies a single State there is no need to consider the remaining tests. It is only when the 'State of Connection' cannot be determined that the test moves onto the next level until a single State can be identified.

#### State of Connection – Five step test

A worker's employment is connected with:

- Test A: the State/Territory in which the worker usually works in that employment, or
- Test B: if no single State/Territory is identified by Test A, the State/Territory in which the worker is usually based for the purposes of that employment, or
- Test C: if no single State/Territory is identified by Test A or Test B, the State/Territory in which the employer's principal place of business in Australia is located, or

- Test D: in the case of a worker working on a ship, if no single State/Territory is identified by Test A, Test B or Test C, a worker's employment is, while working on a ship, connected with the State/Territory in which the ship is registered or (if the ship is registered in more than one jurisdiction) the State/Territory in which the ship most recently became registered, or
- Test E: If no single State/Territory is identified by Test A, B, C or D (if applicable), a worker's employment is connected with a State/Territory if the worker is in that State/Territory when an injury happens to that worker and there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.

### 3.2 Test A: Where does the worker usually work

This test focuses on the State/Territory in which an individual usually works. For these purposes, usually works means the State/Territory in which the worker works in his or her employment with their employer<sup>1</sup>.

The word 'usually' means 'habitual or customary' or 'in a regular manner'<sup>2</sup>.

The test does not involve an assessment of the proportion of time that a worker spends in each State or Territory – the test is not time based. The State/Territory in which a worker 'usually works' for their employer is not necessarily the State or Territory where the worker spends the majority or greatest proportion of their working time for that employer.

#### Relevant factors

In determining where a worker usually works, the following factors should be considered:

- the worker's history of employment with the employer
- the worker's proposed future working arrangements with that employer and the intentions of the parties
- any period during which the worker worked in another Territory or State for the employer
- regard must not be had to any temporary arrangement under which the worker works in a Territory or State for a period of not longer than six months
- other relevant factors that may be considered include the terms of any contract of employment and where the work is actually performed rather than where it is required to be performed<sup>3</sup>.

#### Past work and future intentions

When considering a worker's history, regard should be had to the 12 month period immediately prior to commencement of the relevant policy period.

Similarly, when considering the future working arrangements and intentions of the parties regard should be had to the 12 month period following the commencement of the relevant policy period, where there is objective evidence documenting the

<sup>1</sup> Avon Products Pty Ltd v Magrit Falls [2010] ACTA 21.

<sup>2</sup> Michael Hanns v Greyhound Pioneer Australia Ltd [2006] ACTSC 5 (8 February 2006).

<sup>3</sup> See note 1 above.

intentions or agreement between the parties in relation to the worker's employment for this period.

Regard must not be had to any temporary arrangement under which the worker works in a Territory or State for a period of not longer than six months.

### 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 by the relevant project manager on sites in the ACT.

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

### Example 2: Worker usually works in more than one State/Territory<sup>4</sup>

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 carries out his employment in ACT, NSW and VIC. Therefore, Test A is not capable of connecting Ray to a single State or Territory and consideration should be given to Test B.

#### In summary:

If...	Then...
there is one single State/Territory in which a worker usually works for an employer...	the worker is connected to that State/Territory for workers compensation purposes under Test A.
there is no single State/Territory in which a worker usually works for an employer...	the worker's State of connection cannot be determined under Test A. Therefore Test B must be considered.

## 3.3 Test B: Where is the worker usually based

Test B must be considered where a worker usually works in more than one State or Territory for an employer.

The test requires consideration of where the individual worker is usually based for the purposes of their employment, focusing on the worker's subjective employment circumstances rather than the employer's business activities and the organisation of those activities<sup>5</sup>.

<sup>4</sup> Michael Hanns v Greyhound Pioneer Australia Ltd [2006] ACTSC 5 (8 February 2006).

<sup>5</sup> See note 1 above.

In determining where a worker is usually based, consideration should be given to:

- provision by the employer of a place from which the worker is expected to operate or as specified in the worker's contract of employment, or
- the location where the worker routinely receives day-to-day instructions/directions, or
- the location where the worker attends to collect materials for the purposes of their employment, or
- the location where the worker reports for administrative, human resources and other non-specific related employment issues.

A camp site or accommodation provided by an employer may fall within one of the above considerations<sup>6</sup>. However, something more than a convenient place for part of the employee's duties to be carried out is required before it can be said that his/her residence was his/her base in an employment sense<sup>7</sup>.

### **Example: 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.

The employer's NSW warehouse is the location that Jenny routinely attends to collect her employer's products and return any unsold merchandise. Jenny completes all of the necessary documentation and carries out all other administrative tasks in NSW and her employer uses this as the base to send new invoice books.

In this example it is likely that Jenny is usually based in NSW for the purposes of her employment with XYZ.

### **Example: 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.

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<sup>6</sup> *Tamboritha Consultants Pty Ltd v Knight* [2008] WADC 78, *Martin v RJ Hibbens Pty Ltd* [2010] NSWCCPD 83, Dawes, note 3 above.

<sup>7</sup> *Avon Products Pty Ltd v Magrit Falls* [2010] ACTCA 21.

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. Test C would need to be considered to determine the jurisdiction to which the worker is connected for insurance purposes.

### In summary

If...	Then...
a worker’s state of connection is not determined under Test A but there is a State/Territory in which the worker is usually based for the purposes of their employment with an employer...	the worker is connected to that State/Territory for workers compensation purposes under Test B.
a worker’s state of connection is not determined under Test A and there is no single State/Territory in which the worker is usually based for the purposes of their employment with an employer...	the worker’s State of connection cannot be determined under Test B therefore Test C must be considered.

## 3.4 Test C: Where is the employer’s principal place of business

If Tests A and B fail to identify a single State/Territory, Test C must be considered. Under Test C a worker’s ‘State of Connection’ is the State/Territory where the employer’s principal place of business in Australia is located.

For this purpose the following should be considered when assessing the State in which the employer’s principal place of business in Australia is located:

- The most important or main place where the employer conducts the main part or majority of its business.
- The address registered on the Australian Business Register in connection with the employer’s Australian Business Number (ABN).
- If the employer is 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 the employer’s business or trade is carried out.
- If the employer is not registered for an ABN or on the National Names Index, the employer’s business mailing address.

## 3.5 Tests D & E: What if a ‘State of Connection’ can not be determined by the above tests

If a State of Connection cannot be determined under Tests A, B or C, a worker’s State of Connection may then be determined by Test D (if applicable) or Test E.



### 3.5.1 Test D: Workers on ships

For the purpose of Tests A, B and C a worker on a ship is treated like any other worker. However, if the State/Territory of connection can not be identified under Tests A, B or C, a worker's State/Territory of connection is identified by the State or Territory in which the ship is registered or, if the ship is registered in more than one State/Territory, the State/ Territory in which the ship most recently became registered.

For these purposes, 'ship' means any kind of vessel used in navigation by water, however propelled or moved and includes a barge, lighter, or other floating vessel, and an air-cushion vehicle, or other similar craft used wholly or primarily in navigation by water.

It should be noted compensation under the 1987 Act will not be available if the Seafarers Act, administered by the Seacare Authority, applies to the employment. An employer may apply to the Seacare Authority for an exemption from the application of the Seafarers Act. For further information contact the Seacare Authority.

### 3.5.2 Test E: No State or Territory is identified

If no one State/Territory is identified by the preceding Tests, a worker's employment is considered to be connected with, the State/Territory which the worker was in when the injury happened. However this will not apply if the worker is entitled to compensation for the same injury under the laws of a place outside Australia – see 9AA (5) of the 1987 Act.

## 3.6 Diseases of gradual onset

The following procedure is to be applied to determine the 'State of Connection' of a worker where the injury suffered is of such a nature as to be contracted by a gradual process.

- a) Apply the series of tests to determine the worker's 'State of Connection'.
- b) The laws of that worker's 'State of Connection' will determine the employer responsible for the payment of compensation in respect of the injured worker.
- c) Should it be established that the injury is attributed to a previous employer of the worker, the tests to determine the worker's 'State of Connection' at that time should be applied.
- d) Compensation/potential cost sharing will then be sought from the employer(s) in the 'State(s) of Connection' considered liable.

## 4. Temporary arrangements

Cross border provisions allow a worker to work temporarily for the same employer under the same term or contract of employment, outside their 'State of Connection' for up to six months without the need to reconsider where the worker 'usually works'.

Simply put, temporary arrangements in place for a period of not longer than six months are not relevant to determining where a worker usually works.

When a temporary interstate work arrangement of six months has elapsed, the employer must review workers compensation insurance arrangements relating to the worker. At this point in time, the employer and worker may agree that:

- the arrangement remains temporary (the employer should keep copies of documentation supporting the temporary status of the arrangement), or
- the arrangement is no longer temporary and the worker has a new 'State of Connection' (the employer must take out insurance coverage for that worker in the new 'State of Connection').

The worker's history of employment with other employers and intention to work in a particular State with other employers are not relevant.

### Example: Temporary arrangements of less than six months duration

- A company operates from a principal place of business in NSW and has a workers compensation insurance policy in NSW.
- The company wins a four month contract in Queensland.
- The company sends a number of its key permanent NSW personnel to oversee work on the four month contract. They will return to NSW to work at the completion of the contract.
- The company also recruits additional staff specifically to work in Queensland on this contract.
- The company has made no commitment to employ these additional workers once the contract in Queensland is completed.

In this example, we must consider each group of workers separately as their contracts of employment are different. Test A establishes the company's existing permanent workers usually work in NSW and are only working temporarily in the other State for the duration of the contract. Their 'State of Connection' continues to be NSW and these workers should continue to be included in the employer's NSW workers compensation policy. As this case has been decided by the application of Test A, Tests B and C do not require consideration.

By applying Test A to the additional staff located in Queensland who have been employed solely to work on the contract in Queensland and have no other relevant employment connection with NSW, it establishes these temporary workers usually work in Queensland in that employment and as such Queensland is their 'State of Connection'. This group of temporary workers is only required to have workers compensation coverage in Queensland and the employer needs to take out a workers compensation policy in that State to cover them. As this case has been decided by the application of Test A, the other tests do not require consideration.

## 5. Workers compensation insurance

### 5.1 Wages declaration

From 1 January 2006, employers need only declare wages for NSW workers compensation insurance premiums for workers with a NSW 'State of Connection'.

### 5.2 Supporting documentation

To ensure that a worker's 'State of Connection' can be readily determined, contracts of employment or other forms of documentation should be clear and specific. Employers

should clearly state where, and for how long, workers will be working in a particular State.

Employers should keep accurate records of any arrangements to send workers temporarily to other States, these records could include:

- contracts of employment and letters of offer and acceptance
- occupational licences and accreditation
- timesheets and site agreements
- travel/lodging records
- industrial award information
- union membership
- other documentation that might confirm that the employment arrangement is at least six months duration. If the worker's 'State of Connection' is a State or Territory other than NSW you will also need to provide evidence of insurance cover in the other State or Territory.

### Example: Contracts of Employment

- A theatre company is registered in NSW and tours Australia with performances running for up to two months in each State.
- A performer resigns halfway through the tour in NSW.
- The employer engages another performer in NSW with the intention that this worker will complete the tour around the country.
- This intention is clearly specified in the worker's contract of employment, however, the new worker is injured after a couple of weeks whilst the show is still in NSW.

In this example, the worker's contract provides evidence that the worker was going to be working in several States. When Test A is applied it can be established there is no one State in which the worker usually would have worked in that employment. Even though the worker had worked only in NSW prior to the injury, the intent was that employment would be in the various States over the term of the contract and the worker would not usually work in any one State.

Test B establishes that due to the transient nature of this employment there is no one State in which the worker is usually based, any base the worker had, was therefore of a temporary nature.

As Test A and B have not identified a 'State of Connection', Test C is applied which asks for the employer's principal place of business in Australia. As the employer's principal place of business is in NSW, the 'State of Connection' is NSW.

## 5.3 Changes to wages declared

As workers compensation insurance policies are for a 12 month duration employers may wish to maintain their current level of coverage. Any fluctuation over the period of coverage would be accounted for in the hindsight premium calculation undertaken at the end of the policy period. However, should there be significant change in the number of workers and associated wages, employers should contact their Scheme Agent for further information.

A list of Scheme Agents can be found at [sira.nsw.gov.au](http://sira.nsw.gov.au)

## 6. Workers employed on ships

Except where workers are covered by the Commonwealth Seafarers Rehabilitation and Compensation Act 1992, (the Seafarers Act) the 'State of Connection' of workers on ships is determined in the same way as other workers. However, in the case of a worker working on a ship, if no State or no single State is identified by the tests, a worker's employment is, while working on the ship, connected with the State in which the ship is registered or (if the ship is registered in more than one State) the State in which the ship most recently became registered.

Compensation under the 1987 Act will not be available if the Seafarers Act, administered by the Seacare Authority, applies to the employment. An employer may apply to the Seacare Authority for an exemption from the application of the Seafarers Act. For further information contact the Seacare Authority.

### Example: Fishing Vessels usually based in NSW

- A vessel voyages between Queensland and NSW and vice versa, and is subject to a section 20A exemption under the Seafarers Act.
- A trawling business has its principal place of business in Queensland.
- The boat is moored, maintained and operated out of a NSW port.
- Fishing is conducted equally in both Queensland and NSW waters.
- The catch is always off loaded at the same port in NSW.
- The ship is manned by workers from both Queensland and NSW who travel to NSW to embark and disembark for each voyage.

In this scenario, Test A does not identify a State in which the workers usually work in that employment, as the trawler conducts its fishing equally across Queensland and NSW waters.

As the trawler is based at, and operates out of NSW and this is where the workers attend to embark and disembark, the workers would be considered to be usually based in NSW. By applying Test B it can be established NSW is the workers' 'State of Connection'.

The provisions contained in section 9AA (4) (Working on a ship) are not required to be applied as the 'State of Connection' has been identified under Test B.

### Example: Charter Vessel with no usual base

- A vessel voyages between Queensland, NSW and Victoria and is subject to a section 20A exemption under the Seafarers Act (SA Act).
- A company operates a charter vessel and has its principal place of business in Queensland.
- The vessel is registered in Queensland.
- The vessel normally operates out of a port in Queensland.
- The charter vessel undertakes a six month return voyage from Queensland calling at ports in NSW and Victoria.
- A replacement worker is hired to work on the vessel in Victoria for the remainder of the voyage back to Queensland.

- When the voyage was completed, that worker would be flown back to Victoria and their contract of service would be terminated.

The new worker would not be considered to 'usually work in that employment' in any one State under Test A. When we apply Test B it establishes the new worker is based for the purposes of their employment on the vessel, however this 'base' is moving across States.

Test C identifies the State in which the employer's principal place of business in Australia is located. In this example, the company operating the charter vessel has its principal place of business in Queensland. As such, Queensland is the replacement worker's 'State of Connection'.

### **Alternative consideration**

Should the replacement worker have been engaged only for the Victorian leg of the voyage and not to continue through to Queensland, Test A would have established the State in which the worker usually works in that employment as being Victoria.

## **7. Other scenarios**

The following are further examples of the operation of the series of tests. The particular circumstances of each work arrangement an employer enters into would need to be addressed by the 'State of Connection' tests.

### **Example: A Shearer working in a contract team**

- A contract shearer employs several full time workers who work as a single team and report directly to the shearing sheds as required.
- The shearer has his business records and seeks new contracts from his principal place of business in NSW.
- He secures contracts across two States that require equal days work.

In this example, Test A does not identify a 'State of Connection' as there is no State in which the worker usually works in that employment. Consideration must then be given to Test B. As the workers move to the various worksites rather than report to a base each morning we cannot identify that the worker's are usually based in any one State.

By applying Test C we can establish the employer's principal place of business is in NSW where he has his business records and secures contracts. Therefore the worker's 'State of Connection' would be NSW.

### **Example: Farmhands working across the border**

- A grazier has a property on the border between Queensland and NSW.
- The homestead from which the grazier runs the business is on the NSW side of the border.
- The grazier employs several farmhands who work across the property.
- The workers do not usually work in either Queensland or NSW but the workers report to the homestead in NSW at the start of each working day to receive instructions/directions and collect equipment.

Test A does not identify a 'State of Connection', as the workers do not usually work in that employment in any one State. The farmhands' work is spread across the property.

Consideration must then be given to Test B. The workers report every morning to the homestead in NSW to be assigned work and collect equipment. Based on this information, when we apply Test B it can be established that NSW is the State in which the workers are usually based for the purposes of that employment and as such, NSW is the workers' 'State of Connection'.

If the workers did not have such a base in NSW we would need to consider Test C to decide the 'State of Connection' and this would be the State in which the grazier's principal place of business was located, which in this example, as the business is based in the homestead, would be NSW.

### **Example: A Manager moving to another site with the same employer**

- A mining company has its principal place of business in NSW. It operates mines in Queensland, NSW and Victoria.
- A Quarry Manager who has previously worked at the NSW mine is sent to Victoria to take up a new position of mine manager. He works full time in the Victorian mine.

In this example, it is clear from the application of Test A, the intent of the employment relationship is that the worker now usually works in Victoria as the quarry manager has taken up a new contract of employment with the same employer. The employer would need to obtain workers compensation coverage for the worker in Victoria.

As this case has been decided by the application of Test A, the remaining tests are not required.

### **Example: Workers are flown home on rostered rest days**

- A mining company has its principal place of business in NSW.
- The company operates mines in Queensland, NSW and Victoria.
- Workers are employed to work full time in a NSW mine but are flown home for rostered rest days on a regular basis.

For the purposes of identifying the worker's 'State of Connection', consideration must be given to the location where they actually work. Test A identifies the State in which the workers usually work in that employment. In this example, the mineworkers usually work in the NSW mine. Therefore this group of workers' 'State of Connection' would be NSW. The fact that these workers are flown home on a regular basis is immaterial.

As the issue is decided by the application of Test A, the remaining tests are not required.

### **Example: A Mining Engineer working from a home office**

- An Engineer is engaged by a mining company with its principal place of business in Queensland.
- The company operates mines in Queensland, NSW and Victoria.
- The Engineer has a home office in NSW where he prepares/finalises reports and receives regular and ongoing instructions from his employer to that office in relation to the site he is required to go to and the work he is to perform.
- The Engineer is sent from mine to mine throughout Australia and periodically to Asia as required, for periods ranging from a few weeks to several months. He cannot be regarded as usually working in any one State.

In this example, Test A does not establish in what State the worker usually works in that employment. However, by applying Test B we can establish that the worker is usually



based in his home office in NSW for the purposes of that employment, as it is here that instructions are received on work to be carried out. Therefore NSW is the worker's 'State of Connection'. The worker's employer would be required to effect workers compensation cover in NSW for this worker.

### **Example: A Courier crossing the border numerous times on a daily basis**

- A Courier Service has its office in Tweed Heads, NSW and employs workers from both Queensland and NSW.
- Workers report daily to the NSW office to collect the courier vans and initial deliveries.
- Directions are received via radio throughout the day.
- The workers cross the border regularly and do not 'usually work' in either Queensland or NSW.

Test A does not identify a State in which the workers usually work in that employment as the workers are working in Queensland and NSW as part of their daily duties.

Test B is the State in which the workers are usually based for the purposes of that employment. In this scenario the workers report to the NSW office on a daily basis to collect their vans and pickup initial deliveries. As such, NSW is their 'State of Connection'.

### **Example: An IT Consultant working at numerous sites as a 'Troubleshooter'**

- An IT consulting company has its principal place of business in NSW. It operates computer data warehousing facilities in the ACT, Queensland, NSW and Victoria.
- Full time troubleshooters are employed by the company and are flown to various sites where they remain until the issue is resolved. This can be anything from a few weeks to several months. Following a short break, the troubleshooters are then directed and flown to the next location.
- These workers are not designated to work in any one State, nor do they usually report to any one location or base to collect equipment or materials.

Under Test A, these workers do not usually work in any one State, nor do they report to any one location or base to collect equipment or materials as would be required to satisfy Test B.

As Tests A and B have not identified the troubleshooters' 'State of Connection', Test C should be applied. NSW would be the 'State of Connection' as this is where the employer has its principal place of business.

### **Example: A Sales Representative using accommodation in NSW as a base**

- A sales representative is employed by a company in the ACT to cover NSW and Queensland sales territories.
- The company has only one office in the ACT.
- The worker spends his time equally across NSW and Queensland with occasional visits to head office in the ACT.

- The worker is using accommodation in NSW as his base for the purposes of carrying out his 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 NSW. He uses accommodation in NSW as his base for the purposes of carrying out his work. The worker's 'State of Connection' is NSW.

As the issue is decided by the application of Test B, Test C is not considered.

### **Example: A Truck Driver working from a home base**

- A driver works for a large company with a head office in Queensland and takes his orders over his home phone in NSW.
- Using a home-garaged rig, the driver picks up goods at a designated location, travels through Queensland, NSW and Victoria to the destination, picks up further goods and offloads at the new destination in Queensland and returns home to NSW.
- His wages are paid by way of electronic payments each month into his bank account by the head office in Queensland.
- This worker cannot be said to usually work in any one State as his duties take him equally across three States. In this scenario, Test A fails to establish the State in which the worker usually works in that employment as the driver works equally across three States.

When Test B is applied we can establish the location where the worker keeps his rig would be considered his base for the purposes of his employment, therefore the 'State of Connection' would be NSW.

Should this driver be expected to attend a depot to collect a rig, then the location of such a depot would indicate the 'State of Connection'.

### **Example: An entertainer employed to complete a number of sections of a tour**

- A theatre company is registered in Queensland.
- It employs a core troupe of performers from all over the world and tours Australia with performances running for up to two months in each State.
- Additional performers and ancillary workers may be engaged at any time throughout the tour.

This example is dependent on the workers contract of employment. Each worker's circumstances must be assessed on a worker by worker basis to establish their 'State of Connection'.

By applying Test A it is clear that the core troupe of workers employed to tour throughout Australia would not usually work in any one State for this employment.

Test B fails to identify any one State the workers would usually be based in.

As Tests A and B have failed to identify this group of workers' 'State of Connection' we apply Test C. Test C identifies the company's principal place of business as Queensland, which would therefore be this group of workers' 'State of Connection'.

Should any workers be employed under contract solely to perform work in a particular State, for example NSW, Test A would establish that NSW was the State in which the



worker usually worked in this employment and as such, NSW would be their 'State of Connection'.

### Example: Labour hire workers

- A worker is registered with the NSW office of a labour hire agency. The worker has had continuous employment through the labour hire agency with various employers in NSW for two years.
- The worker is offered a fixed period of employment contract in Victoria by the ACT office of the labour hire agency. The worker is paid wages by the ACT office for the period of the contract.
- The worker intends to return to NSW at the end of the contract and resume work through the NSW office as and when work comes available.

The worker's contract of employment has been arranged through the NSW office of the labour hire agency and the ACT office is paying the worker's wages. However, under Test A, Victoria is the State where the worker will usually work for the period of the contract of employment with the ACT office of the labour hire agency.

The ACT office of the labour hire agency will need to effect cover in Victoria for this worker.

## 8. Workers Compensation Authority contacts

- Your workers compensation insurer/scheme agent
- State Insurance Regulatory Authority [sira.nsw.gov.au](http://sira.nsw.gov.au)
- SafeWork NSW [safework.nsw.gov.au](http://safework.nsw.gov.au)
- WorkCover Queensland [workcover.qld.gov.au](http://workcover.qld.gov.au)
- WorkSafe Victoria [worksafe.vic.gov.au](http://worksafe.vic.gov.au)
- Access Canberra [accesscanberra.act.gov.au](http://accesscanberra.act.gov.au)
- ReturntoWorkSA [rtwsa.com](http://rtwsa.com)
- WorkSafe Tasmania [worksafe.tas.gov.au](http://worksafe.tas.gov.au)
- WorkCover Western Australia [workcover.wa.gov.au](http://workcover.wa.gov.au)
- NT Worksafe [worksafe.nt.gov.au](http://worksafe.nt.gov.au)
- Comcare [comcare.gov.au](http://comcare.gov.au)
- Seacare Authority [seacare.gov.au](http://seacare.gov.au)
- Australian Defence Force [defence.gov.au](http://defence.gov.au)
- icare [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au)

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website [legislation.nsw.gov.au](http://legislation.nsw.gov.au)

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals, or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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