

Premium Guideline Interstate Workers

August 2016

Background

Each State¹ in Australia is a different jurisdiction for workers' compensation purposes. If a worker performs work for their employer in more than one State (the employment), there may be some uncertainty as to which jurisdiction determines workers' compensation rights and responsibilities for the employment.

The purpose of these guidelines is to assist employers, workers and their representatives to identify the applicable workers' compensation jurisdiction for their employment. This will be the jurisdiction that determines the employer's obligation to obtain, or register, for workers' compensation insurance. It will also determine the workers' compensation entitlements for the worker if the worker sustains a work related injury in the employment.

Employers and workers are encouraged to contact the jurisdictions as part of the process of determining which jurisdiction applies to their particular employment (jurisdiction contact details are included in the Attachment).

Guidelines

If under a contract between a worker and an employer the worker performs work in more than one State² in Australia (the employment), there will be only one jurisdiction in Australia that determines the applicable workers' compensation rights and responsibilities for the employment (the applicable jurisdiction).

The applicable jurisdiction for the employment can be identified through a test which is applied in each State, based on the five steps described below.

Starting with Step 1, it is only necessary to consider the next step if the previous step does not identify the applicable jurisdiction for the employment.

Step 1:	"Usually Works" test.
Step 2:	"Usually Based" test.
Step 3:	"Business Management or Control" test.
Step 4:	"Ship Worker" test.
Step 5:	"Place of Injury" test.

¹ Reference to a 'State' includes a Territory.

² See Note 1

Step 1: “Usually Works” Test

Under Step 1, if the worker usually works (i.e. habitually, customarily or in a regular manner) in only one State for the purposes of the employment, then that State is the applicable jurisdiction for the employment.

Under Step 1, consideration must be given to the worker’s work history with the employer over the preceding 12 months and the intentions of the worker and employer. This includes any period during which the worker works in a State, or is in a State, for the purposes of the employment. However, consideration must not be given to any temporary arrangement under which the worker works in a State for a period of up to 6 months. Step 1 does not identify the applicable jurisdiction for the employment if there is no State, or more than one State, in which the worker usually works for that employment. In this case, Step 2 must be considered.

Example - Worker usually works in one State

A worker is employed as an Electrical Trade’s Assistant with a South Australian based employer.

Over the last 12 months, the worker performed all of their employment duties on worksites in Victoria, taking their own vehicle to work and providing their own tools and equipment. The worker received day-to-day instructions from the relevant project manager on sites in Victoria. However, the worker did attend her employer’s premises in South Australia to participate in a one day training course.

This employment is expected to continue for at least the next 12 months.

In this case, the worker usually works for her employer in Victoria. Therefore, Victoria is the applicable jurisdiction.

Victoria would determine the employer’s obligation to obtain or register for workers’ compensation insurance for the employment. It would also determine the workers’ compensation entitlements for the worker if the worker incurs a work related injury in that employment.

Example - Worker usually works in more than one State

An employer conducts business as an interstate bus operator from premises in Adelaide, South Australia. Over the last 12 months, a worker is engaged by the employer as a bus driver, mainly driving buses between Adelaide and Sydney but also on the Adelaide/Melbourne and Adelaide/Geelong routes. Occasionally the worker drives charter buses entirely within South Australia for the employer. This employment is expected to continue over the next 12 months.

In this example the worker usually works for their employer in South Australia, New South Wales and Victoria. Therefore Step 1 does not identify the applicable jurisdiction for this employment and consideration would need to be given to Step 2.

Step 2: “Usually Based” Test

Step 2 must be considered where the applicable jurisdiction for the employment is not identified in Test 1.

Under Step 2, if the worker is usually based (i.e. habitually, customarily or in a regular manner) in only one State for the purposes of the employment, then that State is the applicable jurisdiction for the employment.

Under Step 2, consideration must be given to any period during which the worker works in a State or is in a State for the purposes of the employment. The following factors should be considered, though no one factor is decisive:

- Any place included in the contract of employment.
- Any provision by the employer of a place from which the worker is expected to operate.
- Any place provided by the employer at which the required equipment or materials for the employment are stored.
- Any camp site or accommodation provided by the employer.

Step 2 does not identify the applicable jurisdiction if there is no State, or more than one State, in which the worker is usually based for the purposes of that employment. If this is the case, Step 3 must be considered.

Example - Worker usually based in one State

Over the last 12 months a worker is employed as a sales representative. Each morning they are required to attend a refrigerated storeroom in a warehouse near the border in South Australia to collect their employer's products, which they are then required to distribute at various retail outlets in South Australia and Victoria. They use a refrigerated van supplied by their employer, which the worker garages at their home in South Australia. At the end of each day the worker is required to return any unsold merchandise to the warehouse in South Australia.

The worker operates without day-to-day supervision. Their immediate manager is located in the employer's Victoria office and is the person to whom they are required to send reports and time sheets, and to whom they report verbally by telephone from time to time.

The worker sends all written correspondence to their manager via a facsimile located at their home in South Australia. All invoice books, which the worker needs to carry out their duties are mailed to their home in South Australia from where they prepare all documentation related to their employment. The employer does not provide facilities elsewhere for this purpose.

This employment is expected to continue in this way for at least the next 12 months.

In this example the worker usually works in Victoria and South Australia which means that Step 1 does not identify the applicable jurisdiction for the employment.

Under Step 2, the worker would be usually based in South Australia and that would be the applicable jurisdiction for the employment. This is because the employer expects the worker to operate from the warehouse and the worker usually attends the warehouse for the purposes of the employment.

South Australia would determine the employer's obligation to obtain or register for workers' compensation insurance for each individual employment. It would also determine the workers' compensation entitlements for the workers if they incurred a work related injury in those employments.

Example - Worker not usually based in one State

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

The worker transports goods between Victoria, New South Wales and Queensland. Their contract of employment specifies that they are employed to undertake transporting services across each of these States.

The worker routinely receives instructions from each of the depots they stop at in Victoria, New South Wales and Queensland, receiving ad hoc instructions via radio while in transit.

Step 1 does not identify the applicable jurisdiction for the employment because the worker usually works in more than one State (i.e. Victoria, New South Wales and Queensland) in the employment. Step 2 does not identify the applicable jurisdiction for the employment because the worker is not usually based in any State for the purposes of the employment. In view of this, consideration would need to be given to Step 3.

Step 3: “Business Management or Control” Test

Step 3 must be considered where the applicable jurisdiction for the employment is not identified in Test 1 and Test 2.

Under Step 3, if there is a principal (i.e. main, primary, or most important) place in Australia from which the employer's business activities are managed or controlled, then the applicable jurisdiction is the State in which that place is located.

Test 3 must be considered in relation to all of the circumstances of the employer and the business it operates. This may include consideration of the following factors, though no one factor is decisive:

- Any place from which the employer's high-level officers direct, control and co-ordinate its business activities.
- Any centre from which instructions are given, and from which control is exercised, on behalf of the employer, over the workers and business of the employer.
- Any place that is held out as the 'head office' of the employer.
- Any place where the employer's books and records are maintained.
- Australian Securities & Investments Commission (ASIC) or Australian Business Register records in relation to the employer.

Example - Business Management or Control Test

An employer carries on business providing interpreting and translating services. The 'head office', at which the sole director is personally based is located in Sydney, New South Wales. The employer also has an office located in Melbourne, Victoria. The employer has eleven workers usually working from the office in Sydney and two workers usually working from the office in Melbourne.

The sole director makes all ultimate decisions in relation to the business operations and the workers usually working in the office in Victoria are responsible to that director.

The employer is registered for workers' compensation insurance in Victoria and New South Wales as appropriate.

The employer enters into a contract with a worker for the performance of interpreting and translating services. Under the contract, the employer and the worker intend that the worker will usually work in Queensland and the Northern Territory for the employer's clients in those States. The worker will not be based at any particular place. The worker is required to be 'in the field' and carry out duties in remote locations. The worker is to communicate with the employer by telephone and email.

Step 1 does not identify the applicable jurisdiction for the employment because the worker usually works in more than one State (i.e. Queensland and Northern Territory) in the employment. Step 2 does not identify the applicable jurisdiction for the employment because the worker is not usually based in any State for the purposes of the employment.

Under Step 3, the principal place in Australia from which the employer's business activities are managed or controlled is in New South Wales (i.e. the Sydney office). Therefore, the applicable jurisdiction for the employment is New South Wales.

Step 4: “Ship Worker” Test

In the case of a worker working on a ship for the purposes of an employment, if Step 1, Step 2, and Step 3 do not identify the applicable jurisdiction for the employment then the applicable jurisdiction, while the worker is working in a ship, is the State in which the ship most recently became registered.

“Ship” means any kind of vessel used in navigation by water, however propelled or moved, and includes:

- (a) a barge, lighter, or other floating vessel; and
- (b) an air-cushion vehicle, or other similar craft - used wholly or primarily in navigation by water.

It should be noted that Step 4 does not apply to an employment if the Seafarers Rehabilitation and Compensation Act 1992 of the Commonwealth applies to the worker in the employment.

Step 5: “Place of Injury” Test

If Step 1, Step 2, Step 3 and, if applicable, Test 4 does not identify the applicable jurisdiction for the employment, then Step 5 must be considered.

Under Step 5, the applicable jurisdiction for the employment is the State the worker is in when a work injury happens. However that State will not be the applicable jurisdiction if there is a place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.

This WorkSafe Guideline replaces the previous “State of Connection Guideline” published in July 2014, effective 1 August 2016

ATTACHMENT – JURISDICTION CONTACT DETAILS

WorkSafe Victoria	www.worksafe.vic.gov.au
iCare NSW	www.icare.nsw.gov.au
WorkCover Queensland	www.workcover.qld.gov.au
ReturnToWorkSA	www.rtwsa.com
WorkSafe ACT	www.worksafe.act.gov.au
WorkCover Tasmania	www.workcover.tas.gov.au
WorkCover WA	www.workcover.wa.gov.au
NTWorkSafe	www.worksafe.nt.gov.au
Comcare	www.comcare.gov.au
Seacare Authority	www.seacare.gov.au