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Factsheet | Workers Compensation

Cross Border Provisions – A National Model

In 1995, truck driver, John Keating, was killed in an accident at Pinaroo, South Australia. He was employed by a South Australia based company and did much of his work in South Australia, but lived in NSW.

His partner was not entitled to compensation as Mr Keating was found not to be covered by either South Australia or NSW workers compensation laws. The Supreme Court of South Australia reached its verdict reluctantly acknowledging the decision was unjust, but that the Court had no choice given the legislation's drafting.

This situation prompted the States and Territories, in collaboration with the Workers Compensation Authorities and the Workplace Relations Minister's Council, to develop a national model on cross border provisions.

Current Status of States and Territories

Parliaments of ACT, New South Wales, Queensland, Tasmania, Victoria, Western Australia and South Australia and most recently Northen Territory have all passed legislation consistent with a national model. The Northern Territory Government passed a Bill to incorporate the national model into their legislation effective from 26 April 2007. Employers should be encouraged to contact their insurers in the Northern Territory to ensure a worker engaged in these jurisdictions continues to be covered.

The national model requires an employer to obtain workers compensation insurance for a worker in the worker's State[1] of connection. The State or Territory in which workers compensation insurance and benefits relating to a particular worker are payable is referred to as a worker's State of connection.

The State of connection is determined by the following tests:

Test A	The State in which a worker usually works in that employment.
Test B	If no State is identified by test A, the State in which a worker is usually based for the purposes of that employment.
Test C	If no State is identified by test A or B, the State in which a principal place of business in Australia is located.

If no State of connection can be determined for a worker and a worker is not entitled to compensation for the same matter under the laws of a place outside Australia, a worker's employment is connected with the State where the injury occurred.

States / Territories Legislation

As cross border provisions have been actioned with national collaboration, the applicable sections of each legislation read with minimal variance. The following table provides a reference for each state.

[1] State includes Territories

A National Model

The fundamental aims of the national model are to:

- ensure an employer only needs to register a worker in one scheme, irrespective of temporary movements interstate
- ensure that a worker is connected to one jurisdiction
- ensure a worker temporarily working in another State has access to workers compensation entitlements available in their "home" jurisdiction (including arrangements applying in relation to common law)
- ensure a worker has certainty about their workers compensation entitlements
- eliminate 'forum shopping' by a worker potentially covered in multiple jurisdictions.

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State	Act Reference
ACT	Employment connection test implemented June 2004, section 36B of the *Workers Compensation Act 1951*.
Northern Territory	Worker's employment connected with State implemented 26 April 2007, Section 53AA of the *Work Health Act*.
New South Wales	Liability for compensation implemented 1 January 2006, section 9AA of the *Workers Compensation Act 1987*.
Queensland	Employment must be connected with State implemented July 2003, section 113 of the *Workers Compensation and Rehabilitation Act 2003*.
South Australia	Territorial Application of Act implemented 1 January 2007, section 6 of the *Workers Rehabilitation and Compensation Act 1986*.
Tasmania	Implemented December 2004, section 31A of the *Workers Rehabilitation and Compensation Act 1988* is the Employment connection test.
Victoria	Implemented September 2004, section 80 of the *Accident Compensation Act 1985* is the entitlement to compensation only if employment connected with Victoria.
Western Australia	Compensation not payable unless worker's employment connected with this State. This was implemented December 2004, section 20 (Part 111, Division 1) of the *Workers Compensation and Injury Management Act 1981*.

Like To Know More?

For detailed information visit *www.austlii.edu.au* and select the legislative State applicable to you.

For Cross Border Guides visit

NSW: *www.workcover.nsw.gov.au*
Queensland: *www.workcover.qld.gov.au*
South Australia: *www.workcover.com*
Victoria: *www.workcover.vic.gov.au*

or alternatively contact your local QBE Branch.

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