

A GUIDE TO CROSS-BORDER WORKERS' COMPENSATION ARRANGEMENTS

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Queensland the Smart State



**Queensland
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Department of
Industrial Relations

PURPOSE OF THIS GUIDE

The purpose of this document is to provide guidance to employers, insurers, and workers on workers' compensation insurance arrangements where an employee works in more than one State.

NOTE: The information in this document is provided as a guide only. You should seek independent legal advice if you have a specific problem or query.

It is essential that employers check with the workers' compensation insurer or Authority in each State/Territory to ensure that appropriate insurance arrangements are in place.

Workers who are required to work interstate should check their workers' compensation entitlements with their employer or relevant workers' compensation authority.

INTRODUCTION

In the past, employers who had a worker working in more than one State or Territory were often required to take out workers' compensation insurance for that worker in several jurisdictions.

In July 2003, Queensland passed legislation to simplify workers' compensation insurance arrangements in circumstances where workers work across State and Territory boundaries. Other Australian States and Territories have progressively introduced complementary legislation with the exception of the Northern Territory which is expected to pass cross-border workers' compensation legislation in the near future.

The effect of the 'cross-border laws' (where States/Territories have passed complementary legislation to Queensland) is to:

- Eliminate the need for employers to obtain workers' compensation coverage for a worker or deemed worker in more than one State and enable employers to readily determine the State in which to obtain that insurance;
- Ensure that workers and deemed workers temporarily working in another State only have access to the workers' compensation entitlements available in their "home" jurisdiction (including arrangements applying in relation to common law);
- Provide certainty for workers about their workers' compensation entitlements;
- Eliminate forum shopping; and
- Ensure that each worker is connected to one State jurisdiction or another.

KEY ASPECTS OF CROSS-BORDER WORKERS' COMPENSATION LEGISLATION

Under the cross-border workers' compensation legislation, a worker is only entitled to the benefits available in the home jurisdiction regardless of where an injury occurs. This includes any benefits available under common law.

A worker's home jurisdiction is:

- (a) the State in which the worker usually works in their employment; or
- (b) if no State or no one State is identified by paragraph (a), the State in which the worker is usually based for the purposes of that employment; or
- (c) if no State or no one State is identified by paragraphs (a) or (b), the State in which the employer's principal place of business in Australia is located.

If no State is identified by these tests, a worker's employment is then connected with the State that their injury occurred in and the worker is not entitled to compensation for the same matter under the laws of a place outside Australia.

The tests for determining a worker's 'state of connection' are hierarchical, not alternative. This means that if the worker's employment situation satisfies the first test, there is no need to progress or satisfy the next test (see the section on "Determining a worker's home jurisdiction" or the industry-based scenarios in Attachment 1 for further guidance on applying the 'state of connection' test).

For employers these new arrangements will eliminate the need for employers to insure a particular worker in more than one State provided that the other State has also passed cross-border workers' compensation legislation (that is, the employer will not need to declare and pay premium on more than 100% of that worker's wages).

The determination of the home jurisdiction will not be affected by the worker undertaking a temporary period of work for the same employer for a period up to and including six months in another State/Territory. Likewise, the benefits of the home jurisdiction will apply to a worker temporarily working in another State or Territory for the period of work up to and including six months. When six months has expired, the intention of the employer and the worker as to the temporary nature of the work in the other jurisdiction must be reviewed.

Workers on ships are treated the same as other workers. However, if the home jurisdiction cannot be determined under the tests above, then section 113(4) of the *Workers' Compensation and Rehabilitation Act 2003* provides that the home jurisdiction is the State in which the ship is registered (or if registered in more than 1 State, the State where last registered).

Individual jurisdictions will determine the extent to which employment overseas would be covered by their legislation.

In relation to common law access:

- (i) a claim in tort in respect of a work related personal injury suffered by a worker is to be determined in accordance with the substantive law of the

- State with which the worker's employment is connected (as determined by the tests above) at the time of the injury;
- (ii) "substantive" law includes any procedural provisions applying under the workers' compensation legislation and any other relevant legislation of the home jurisdiction;
 - (iii) courts apply the substantive law of the home jurisdiction; and
 - (iv) the relevant rules apply to actions taken against an employer.

The arrangements agreed to by Australian States and Territories have also introduced a defence to the employer's general obligation to insure. For workers employed on or after 1 July 2003, it is a defence for an employer to prove that, at the time of the alleged offence -

- The employer believed, on reasonable grounds, that they could not be liable under the *Workers' Compensation and Rehabilitation Act 2003* in relation to the worker because the worker's employment was not connected with this State; and
- The employer had workers' compensation insurance cover in relation to the worker's employment under the law of the State with which the employer believed, on reasonable grounds, the worker's employment was connected.

The introduction of this defence into the *Workers' Compensation and Rehabilitation Act 2003* is intended to assist employers to meet their general obligation to insure in this State or another State.

These new arrangements do not mean that an employer will only require one policy of insurance in one state for all their workers.

It is essential that employers check with the workers' compensation insurer or Authority in each State/Territory to ensure that appropriate insurance arrangements are in place.

The cross border rules may be subject to the commencement date of cross-border legislation in other jurisdictions.

DETERMINING A WORKER'S HOME JURISDICTION

Following are some examples of how each of the criteria in the 'state of connection' test will be applied:

Test (a) *A worker's employment is connected with the state in which the worker usually works in that employment*

This first test is likely to determine the "State of Connection" in the majority of instances where workers usually work in one particular State for an employer. These workers may be required to travel temporarily to other States in the course of their

duties. But, if a worker usually spends the greater proportion of their time working in only one State, they would be considered to 'usually work' in that State.

Example:

*A worker employed by a Queensland employer usually works in Brisbane, Queensland, but is required to attend meetings over a period of three days in Melbourne, Victoria. The State of Connection is Queensland through the application of **test (a)**, as Queensland is the state in which the worker usually works. If the worker is injured whilst in Melbourne, the worker would be covered under the employer's Queensland policy and entitled only to the compensation benefits of the Queensland workers' compensation legislation. As **test (a)** determines the State of Connection, **tests (b) and (c)** are not considered.*

In deciding whether a worker usually works in a State, regard must be had to the worker's work history with the employer and the intention of the worker and employer. However, regard must not be had to any temporary arrangement under which the worker works in another State for a period of not longer than 6 months.

If the worker's temporary period of work in another State is up to, and including, 6 months, coverage (insurance) for that period is automatically extended under the employer's policy in the State in which they usually work. If the temporary period of work continues past 6 months, the worker is not automatically excluded from being considered a worker who usually works in that State. The intent of the extended temporary arrangement will need to be considered.

In determining whether the arrangement is still of a temporary nature after 6 months has elapsed, attention should be given to issues including:

- Does the contract of service continue to exist between the employer and the worker whilst the worker is outside the State?;
- Does the worker remain a 'worker' within the definition of the State's Act?;
- Is the intent of both the worker and the employer that any arrangement that requires the worker to work outside the State is of a temporary nature? Will the worker be required to return to the State at the end of the period and continue duties specified in their contract of service?;
- The worker's employment history with the employer, including length of service.

Clear justification would be required if the nature of any arrangement extending past 12 months were to be considered temporary as opposed to the worker now 'usually working' in the other jurisdiction.

Example:

*A building company operates from a principal place of business in Queensland and therefore has an insurance policy in Queensland. It is the successful tenderer for a 4 month contract in New South Wales. The workers of the Queensland based employer are sent to work in New South Wales for that period. In this scenario, **test (a)** will apply as the workers usually work in Queensland and are only working in New South Wales for the duration of the 4 month contract.*

*This employer may also employ several workers from New South Wales for the duration of the contract as well as the existing Queensland workers. **Test (a)** will apply to the Queensland workers and they will be covered under the employer's Queensland workers' compensation policy. In the case of those workers engaged from New South Wales, again **test (a)** will apply but the State in which they usually work would be New South Wales. The employer would therefore have to take out a policy in New South Wales to cover those workers.*

*As **test (a)** determines the State of Connection, **tests (b) and (c)** are not considered.*

It is important to remember that the tests apply to a worker's movements whilst they continue to perform work under the same contract of service/employment. If a new contract commences, the State of Connection must be reconsidered, even if the new contract is with the same employer.

Example:

*A quarry manager who usually worked in Queensland is sent to South Australia to take up a new position of mine manager. He works full time in the South Australian Mine, returning home only on rostered periods off. It is clear that the intent of the employment relationship is that the worker usually works in South Australia. The state of connection is determined by **test (a)** as being South Australia. The employer will need to obtain coverage for the worker in South Australia. The worker will be entitled only to the benefits under the South Australian workers' compensation legislation. As **test (a)** decides the issue, **tests (b) and (c)** are not considered.*

In cases where a worker has only recently commenced employment with the employer, the intention of the employment arrangement must be considered to determine whether it was intended that the worker would 'usually work' in one particular state or not. (Refer to **Attachment 1 – Performers, Examples 2 and 3.**)

Test (b) *If no State or no one State is identified by test (a), a worker's employment is connected with the State in which the worker is usually based for the purposes of that employment.*

If it is not reasonably clear where a worker 'usually works' and the State of Connection cannot readily be determined using **test (a)**, it will be necessary to proceed to **test (b)**.

An assessment of the worker's duties may usefully determine that the worker is 'usually based for the purposes of that employment' in one State over the other/s. That is, there is a place in one particular State that is most closely connected with the worker's work, or a place that serves as a base for that worker's operations.

Factors to consider in determining where the worker is based for the purposes of employment include, but are not limited to:

- The place where the worker regularly attends to collect or use materials, equipment or other items associated with the performance of the work;
- The place to which the worker reports in connection with the performance of the work; and
- The place where the employer keeps any records or other information in connection with the worker's work.

Example:

*A courier service has its office in Coolangatta, Queensland. Workers conduct courier duties from Brisbane, Queensland to Coffs Harbour, New South Wales. Workers (who come from Queensland and New South Wales) report to the office to collect the courier vans and initial deliveries. Directions are received via radio throughout the day. The workers cross the border regularly and cannot be said to 'usually work' in either Queensland or NSW. Therefore, **test (a)** does not decide the State of Connection. Considering **test (b)**, Queensland is the state of connection for these workers as they are based for the purposes of their employment from the office in Queensland.*

*As **test (b)** determines the state of connection, **test (c)** is not considered.*

There are many complex situations existing across industries that will require consideration under this test. Please refer to the scenarios in **Attachment 1**.

Test (c) *If no State or no 1 State is identified by test (a) or (b), the worker's employment is connected with the State in which the employer's principal place of business in Australia is located.*

There may be instances where a worker works equally across States, and is also not usually based in any particular State for the purposes of employment.

Example:

A mining company has its principal place of business in Queensland. It operates mines in Queensland, New South Wales and South Australia.

Troubleshooters are employed full time by the mine and are flown between different sites where they remain for a period ranging from a few weeks to a few months until the issue is resolved. They are then directed and flown to the next location following a short break over which time they return to their homes. The workers use equipment and materials at the mine sites.

*Under **test (a)** these workers do not usually work in any one State, nor do they usually report to any one location or 'base' to collect equipment or materials as would be required to do to satisfy **test (b)**. Under **test (c)**, Queensland would be the State of Connection as this is where the employer has its principal place of business.*

Evidence to establish the employer's principal place of business will include:

- 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; and
- if the employer is not registered for an ABN or on the National Names Index, the employer's business mailing address.

SOME CONSEQUENCES OF THE NEW ARRANGEMENTS

Damages Claims – Access linked to State of Connection Injuries from 1 July 2003

One of the key objectives of the amendments to be effective from 1 July 2003 is to limit access to damages claims to the legislation of the State of Connection. A claim in tort (that is, a civil wrong) in respect of a work related personal injury suffered by a worker is to be determined in accordance with the substantive law of the State with which the worker's employment is connected at the time of the injury.

Contracts of Employment

The need for clear and specific clauses within contracts of employment with workers is readily apparent given the nature of the tests to determine the State of Connection. Employers should clearly indicate to workers where, and for how long, they will be working in a particular State. Employers should also advise workers of the State's law that will determine any workers' compensation entitlements should they sustain a work related injury.

Example

*An employer has an office in Coolangatta, Queensland, at which a worker (who also lives in Queensland) is engaged. However, the worker will be expected to perform all their duties in Tweed Heads, New South Wales and will not be required to report to a location in Queensland in connection with the performance of their duties (to collect equipment, materials etc). The state of connection for this worker will be determined by **test (a)** as the worker will 'usually work' in New South Wales. This may be contrary to what the worker may have expected and should be clarified. The employer would need to obtain coverage for that worker in New South Wales.*

Advice on workers' compensation insurance arrangements

Workers are advised to check with their employer or the relevant authority before commencing work in another state to clarify entitlements.

Employers are advised to check with their State workers' compensation insurer to clarify whether their legal liabilities are indemnified under the legislation of the state in which they have taken out insurance.

Should an employer send an employee to work in another State, the employer ought to check with the workers' compensation authority in that other State regarding any legal liability which the employer may have under that State's workers' compensation legislation.

Employers should consider obtaining independent legal advice regarding their legal liability for compensation and damages claims.

Attachment 2 provides contact details for workers' compensation authorities across Australia.

INDUSTRY EXAMPLES OF THE APPLICATION OF THE STATE OF CONNECTION TESTS

This section of the Guide describes the likely State of Connection in a number of scenarios. These scenarios are for guidance only and should not be taken as being authoritative or binding upon insurers.

Agriculture/Pastoral

Example 1 - Grazier

- A grazier has a property that spans the border between Queensland and New South Wales.
- The homestead from which the grazier runs the business is on the Queensland side of the border.
- The shearing sheds and shearers' accommodation are located some distance from the homestead on the New South Wales side of the border.
- The grazier engages shearers for a fixed contract to shear the sheep on the property.
- The shearers only work in the shearing sheds and reside in the accommodation for the period of the contract and at no time visit the homestead.
- Applying **test (a)**, New South Wales would be the state of connection as that is the state in which the workers (*the shearers*) will be working for the period of the contract of employment.
- As the issue is decided by the application of **test (a)**, **tests (b) and (c)** are not considered.

Example 2

- A grazier has a property that spans the border between Queensland and New South Wales.
- The homestead from which the grazier runs the business is on the Queensland side of the border.
- The grazier employs several farmhands who work across the property. **Test (a)** would not determine the state of connection of these workers as they do not usually work in either Queensland or New South Wales (unless they are specifically engaged to usually work on only one area of the property which is in only one of the states).
- Consideration must then be given to **test (b)**. If the workers usually arrive and depart from a particular area of the property and pick up other vehicles, machinery or equipment from that point, then that point would be where they are usually based for the purposes of their employment. The state in which this point is located would be the state of connection.

- If there were no such point and they were not usually based from any point on the property, then **test (c)** would decide the state of connection and this would be the state in which the grazier's principal place of business was located.

Example 3

- A contract shearer employs several full time workers. The contract shearer secures contracts across two states and the workers cannot be said to usually work in any one state under **test (a)**. They also do not have a usual base for the purposes of their employment when considering **test (b)**. In this case **test (c)** would be considered and the state in which the shearer's principal place of business was located would be the state of connection using **test (c)**.

The shearer would, it is assumed, have a principal place of business. If not, the State in which the injury occurred would be taken to be the State of Connection..

Building and construction

Example 1

- A building company operates from a principal place of business in Queensland and therefore has an insurance policy in Queensland. It is the successful tenderer for a 4 month contract in New South Wales. The workers of the Queensland based employer are sent to work in New South Wales for that period. In this scenario **test (a)** will apply as the workers usually work in Queensland and are only working in New South Wales for the duration of the 4 month contract.
- This employer may also employ several workers from New South Wales for the duration of the contract as well as the existing Queensland workers. **Test (a)** will apply to the Queensland workers and they will be covered under the employer's Queensland workers' compensation policy. In the case of those workers engaged from New South Wales, again **test (a)** will apply but the state in which they usually work would be New South Wales and the employer would therefore have to take out a policy in New South Wales to cover those workers.
- As the issue is decided by the application of **test (a)**, **tests (b) and (c)** are not considered.

Example 2

- A construction company with its office in Coolangatta employs workers (who reside in both Queensland and New South Wales). The workers work in both states from time to time depending on where the employer gains a contract.
- **Test (a)** does not apply as the workers work both in Queensland and New South Wales and cannot be said to 'usually work' in either state. **Test (b)** does not apply, as the workers are not based in any one state as they travel straight to the current work site.

- In this case the workers' state of connection would be Queensland under **test (c)** as the employer's principal place of business is in Queensland.

Education

Example 1

- A teacher who is employed by the Queensland Education Department participates in an interstate teacher exchange program for 12 months. Prior to going on the exchange, she worked for the Education Department for several years. The Education Department continues to pay her wages during this period and at the end of the exchange the teacher is to return to her duties in Queensland.
- Under **test (a)** the teacher usually works in Queensland. Given the facts and the intention of both the employer and worker as prescribed in **sections (6) and (7)** of the new legislative provisions, the period of 12 months is considered a temporary period and she will still qualify for compensation under the employer's Queensland insurance if she is injured.
- As the issue is decided by the application of **test (a)**, **tests (b) and (c)** are not considered.

Labour Hire

Example 1

- A worker is registered with the Queensland office of a labour hire agency. The worker has had continuous employment with the labour hire agency in Queensland for a period of 2 years.
- The worker is offered a fixed period of employment contract in Western Australia by the South Australian office of the labour hire agency and the worker is paid his/her wages by the South Australian office for the period of the contract.
- The worker will return to Queensland at the end of the contract and continue work through the Queensland office of the labour hire agency as work becomes available.
- The worker's contract of employment may have been arranged through the Queensland office of the labour hire agency and the South Australian office is paying the worker's wages. However, under **test (a)**, Western Australia is the state where the worker will usually work for the period of the contract of employment with the South Australian office of the labour hire agency.
- The South Australian office of the labour hire agency will need to effect cover in Western Australia for this worker.

- As the issue is decided by the application of **test (a)**, **tests (b) and (c)** are not considered.

Mining

Example 1

- A mining company has its principal place of business in Queensland. It operates mines in Queensland, New South Wales and South Australia. Workers are employed to work full time in a South Australian mine but are flown home for the breaks in their 2 weeks on, 2 weeks off rosters. The fact that the workers are flown home to their state of residence at the end 2 weeks is irrelevant as the 2 weeks they have off is not considered to be work.
- For the purposes of identifying the worker's state of connection, consideration must be given to the location where they actually work. In this case, **test (a)** would identify South Australia as the state of connection for these workers as that is where the workers 'usually work'.
- As the issue is decided by the application of **test (a)**, **tests (b) and (c)** are not considered.

Example 2

- An engineer is engaged by the above mining firm. He resides in New South Wales and has a home office. He is sent from mine to mine as required for a period ranging from a few weeks to a few months and cannot be regarded under **test (a)** as usually working in any one state. Under **test (b)**, his home office in New South Wales would be considered where he is usually based for the purposes of his employment as he keeps equipment, receives orders and completes reports from that office. The employer would need to effect cover in New South Wales for this worker. (NB: It would be important to clarify that this employee satisfied the definition of 'worker'.)
- However, if this employee would usually collect equipment from, and fly back to, the employer's office in Queensland to complete reports then, under the same **test (b)**, he would be considered to be usually based for the purposes of his employment in Queensland and therefore would need to be covered by a policy in Queensland.
- As the issue is decided by the application of **test (b)**, **test (c)** is not considered.

Example 3

- A mining company has its principal place of business in Queensland. It operates mines in Queensland, New South Wales and South Australia.
- Troubleshooters are employed full time by the mine and are flown between different sites where they remain for a period ranging from a few weeks to a few months until the issue is resolved. They are then directed and flown to the next

location following a short break over which time they return to their homes. The workers use equipment and materials at the mine sites.

- Under **test (a)** these workers do not usually work in any one state, nor do they usually report to any one location or base to collect equipment or materials as would be required to do to satisfy **test (b)**. Under **test (c)** Queensland would be the state of connection as this is where the employer has its principal place of business.

Example 4

- A mining company has its principal place of business in Queensland. It operates mines in Queensland, New South Wales and South Australia.
- A quarry manager who usually worked in Queensland is sent to South Australia to take up a new position of mine manager. He works full time in the South Australian mine, returning home only on rostered periods off. It is clear, from the application of **test (a)**, the intent of the employment relationship is that the worker usually works in South Australia. The employer will need to obtain coverage for the worker in South Australia.
- As the issue is decided by the application of **test (a)**, **tests (b) and (c)** are not considered.

Performers

Example 1

- A company that produces shows (eg. stage shows, circus type shows etc) is registered in Brisbane. It employs performers from all over Australia. The shows are staged in all states and territories running for 1-3 months in a State before moving onto the next. At times performers may be engaged halfway through a tour.
- Assuming that the performers satisfy the definition of 'worker' and are clearly engaged for the period of the show's staging, it can be seen that these workers would not 'usually work' in any state, therefore **test (a)** does not decide the state of connection.
- Although the performers are 'based' in a state for varying amounts of time, this base is not permanent, changing every 1 to 3 months. **Test (b)** does not decide the state of connection.
- Considering **test (c)**, it would appear that Queensland would be the state of connection as the employer's principal place of business is in Brisbane.

Example 2

- A performer resigns halfway through the above employer's stage tour. Whilst the show is staging in New South Wales, the employer engages another performer (who resides in New South Wales) with the intention that they will complete the

tour around the country. This intention is clearly specified in the worker's contract of employment.

- The new worker is injured after a couple of weeks whilst the show is still staging in New South Wales. (He has not worked in Queensland at all to date.)
- In considering **test (a)** the above worker was not engaged in Queensland and had not worked in Queensland under this contract of employment, or at all, previously.
- From the work history he would 'usually' have worked in New South Wales. It could be said that the state of connection was therefore determined as New South Wales at this point and progression to the other tests could not be made.
- However, s.113(6) of the *Workers' Compensation and Rehabilitation Act 2003* states:

*In deciding whether a worker usually works in this state, regard **must** be had to the worker's work history **and** the intention of the worker and the employer.*

If the worker's contract of employment clearly establishes the intention that the worker was going to be working in several states and not 'usually' in any one state, this would allow the progression to **test (b)**. Under **test (b)**, the worker's base for the purposes of their employment would have been constantly moving and therefore **test (c)** would decide the state of connection for this worker.

Example 3

- Unlike example 2, where the intention was for the new worker to continue on with the tour around the country until the show's end, the employer engaged a new worker only for the duration of the show in New South Wales.
- In this case, **test (a)** would decide the state of connection as, for that worker's contract of employment, they would have 'usually' worked in New South Wales. The employer would be required to obtain coverage for that worker with a New South Wales insurer.
- As the issue is decided by the application of **test (a)**, **tests (b) and (c)** are not considered.

Sales

Example 1

- A sales representative is employed by a company in Western Australia to cover New South Wales, Victoria and Queensland sales territories. The company has only one office in Western Australia. The worker spends his time equally across the three states. The worker resides in Queensland.

- The worker does not usually work in any one state under **test (a)**.
- Whilst the worker's place of residence is not a factor that is to be taken into account in determining the state of connection, the sales representative is using his residence as his base for the purposes of carrying out their work. Under **test (b)**, Queensland would be the state of connection.
- As the issue is decided by the application of **test (b)**, **test (c)** is not considered.

Example 2

- Alternately, in the above example, if the worker performed the majority of his work in New South Wales, then under **test (a)** he would be considered to 'usually work' in New South Wales and the Western Australian employer would need to effect cover for him in New South Wales.
- As the issue is decided by the application of **test (a)**, **tests (b) and (c)** are not considered.

Seafaring

Example 1: Fishing Vessel

- A trawling business has its principal place of business in Balinga, Queensland. The boat is moored, maintained and operated out of Murwillumbah, New South Wales. Fishing is conducted equally off the coasts of Queensland and New South Wales. The catch is always offloaded at Tweed Heads, New South Wales. Workers come from both Queensland and New South Wales but travel to Murwillumbah to embark and disembark for each fishing voyage.
- As the trawler conducts its fishing equally in both Queensland and New South Wales waters, **test (a)** does not determine the state of connection.
- As the trawler is based at, and operates out of, Murwillumbah, New South Wales and this is where the workers attend to embark and disembark, the workers would be considered to be usually based at Murwillumbah and **test (b)** would apply in identifying the state of connection.
- **Test (c)** need not be applied as the state of connection has been identified under **test (b)**.

Example 2: Charter vessel

- 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 Cairns, Queensland. The charter vessel undertakes a 6-month return voyage from Queensland calling at ports in the Northern Territory and Western Australia.

ATTACHMENT 1

- Whilst the vessel is operating in Queensland waters, the state of connection would be Queensland by virtue of **test (a)**, as the workers usually work in Queensland.
- Whilst the vessel is on the voyage to Northern Territory and Western Australia, the state of connection would still be Queensland by virtue of **test (a)** as the workers are usually based in Queensland (Cairns) for the purposes of their employment. There is no need to apply **tests (b)** or **(c)** as the state of connection has already been identified under **test (a)**.

Additional consideration:

- A crew member on the above vessel falls ill in the Western Australian port. A new worker is hired with the intent of working on the vessel for the remainder of the voyage back to Queensland. When the voyage was complete, that worker would be flown back to Western Australia and their contract of service would be terminated.
- The new employee would not be considered to 'usually work' in any 1 state under **test (a)**. They are based for the purposes of their employment on the vessel using **test (b)**, however this 'base' is moving across states.
- The state of connection would be Queensland as provided under **test (c)** as the employer's principal place of business is in Queensland.

Alternate consideration

- The above worker was engaged only for the Western Australian leg of the voyage and was not expected to complete the voyage back through the other states. In this instance, for the period of their contract of employment, this worker usually works in Western Australia. Under **test (a)**, the state of connection is Western Australia. The employer would be required to obtain cover for that worker from a Western Australian insurer. As the issue is decided by the application of **test (a)**, **tests (b) and (c)** are not considered.

Transport

Example 1: Courier delivery

- A Courier service has its office in Coolangatta, Queensland. Workers conduct courier duties from Brisbane to Coffs Harbour, New South Wales. Workers (who come from Queensland and New South Wales) report to the office to collect the courier vans and initial deliveries. Directions are received via radio throughout the day. The workers cross the border regularly and cannot be said to 'usually work' in either Queensland or New South Wales so **test (a)** does not determine the state of connection. However, under **test (b)**, Queensland is the state of connection for these workers as they are based for the purposes of that

employment at the office in Queensland. As the issue is decided by the application of **test (b)**, **test (c)** is not considered.

Example 2: Long Distance Haulage

Depots in each State

- A company has a head office in New South Wales. The company has offices/depots in Queensland, New South Wales and Victoria. Each driver is usually connected to one of these depots.
- The drivers spend equal amounts of time driving through the three states, therefore **test (a)** does not determine the state of connection.
- If each driver were based at the office/depot from which he/she operates, then the state of connection would be the state in which that driver's office/depot is situated. That is, the state in which the worker is usually based for the purposes of their employment by virtue of **test (b)**. A policy would be required in each state for those workers associated with the respective depots.
- As the issue is decided by the application of **test (b)**, **test (c)** is not considered.

Home garaged rigs

- A driver works for a large company with a head office in New South Wales and takes his orders over his home phone in Queensland. Using a home garaged rig, the driver picks up goods at the designated location, travels through Queensland, New South Wales and South Australia to the destination, picks up further goods and offloads at the new destination in New South Wales and then returns home to Queensland. His wages are paid by way of EFT payments each month into his bank account by the head office in NSW.
- This worker cannot be said under **test (a)** to usually work in any one state as his duties take him equally across three states.
- The state of connection would be Queensland as, under **test (b)**, his home would be considered his base for the purposes of his employment.
- **NB:** It would be important to clarify that such a driver was in fact a 'worker'.
- As the issue is decided by the application of **test (b)**, **test (c)** is not considered.

Alternate consideration:

- If the above driver were expected to attend a depot to collect a rig, then the location of such a depot would indicate the state of connection under **test (b)**.

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