Australian Capital Territory

Workers Compensation (Cross-border Workers) Amendment Act 2014

A2014-46

An Act to amend the *Workers Compensation Act 1951*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1	Name of Act

This Act is the *Workers Compensation (Cross-border Workers) Amendment Act 2014*.

2	Commencement

This Act commences on the day after its notification day.

Note   The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3	Legislation amended

This Act amends the *Workers Compensation Act 1951*.

4	Employment connection test Section 36B (6), new examples

insert

Example—worker usually works in a single jurisdiction

Emma is employed as an electrical trades assistant with a NSW-based employer. 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. Emma does not attend her employer's premises in NSW in the course of her day-to-day duties and receives all of her instructions from the relevant project manager on sites in the ACT.

For s (3) (a), Emma usually performs work for her employer in the ACT and her Territory or State of connection is the ACT.

Example—worker usually works in more than one jurisdiction

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

For s (3) (a), Ray usually works in the ACT, NSW and VIC. As s (3) (a) does not decide Ray's Territory or State of connection, s (3) (b) needs to be considered.

Note   An example is part of the Act is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

5   New section 36B (6A) and (6B)

insert

(6A)   In deciding whether a worker is usually based in a Territory or State regard must be had to the following:

(a)   if the employer provides a place from which the worker is expected to operate—that place;

(b)   if a place is stated in the worker's contract of employment with the employer—that place;

(c)   the place from which the worker routinely receives day-to-day instructions from the employer;

(d)   the place where the worker attends to collect material for the purposes of their employment;

(e) the place where the worker reports for administrative, human resource and other issues related to the workers' employment with the employer.

Example—worker usually based in a single jurisdiction

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 to various retail outlets in NSW and the 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. Jenny's 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 prepared all documentation related to her employment.

For s (3) (b), Jenny is usually based in NSW for the purposes of her employment with XYZ. The employer's NSW warehouse is the place provided by XYZ that Jenny is expected to operate from.

Example—worker is usually based in more than one jurisdiction

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 the ACT while not in use.

Paul transports goods between the ACT, NSW and QLD. His contract of employment states that he is employed to undertake transporting services across each of these jurisdictions.

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

For s (3) (b), Paul is not usually based in any single Territory or State. As s (3) (b) does not decide Paul's Territory or State of connection, s (3) (c) needs to be considered.

Workers Compensation (Cross-border Workers) Amendment Act 2014

(6B) In deciding where the employer's principle place of business in Australia is located regard must be had to the following:

(a) the place where the employer conducts the main part or majority of its business;

(b) the address registered on the Australian Business Register in connection with the employer's ABN;

(c) if the employer is not registered for an ABN—the Territory or State registered by ASIC as the jurisdiction in which the employer's business or trade is carried out;

(d) if the employer is not registered for an ABN or with ASIC— the employer's business mailing address.

6 Section 36B (8), new definitions

insert

ABN—see the *A New Tax System (Australian Business Number) Act 1999* (Cwlth), section 41.

ASIC means the Australian Securities and Investments Commission under the *Australian Securities and Investments Commission Act 2001* (Cwlth).

Australian Business Register—see the *A New Tax System (Australian Business Number) Act 1999* (Cwlth), section 41.

Endnotes

1   Presentation speech

Presentation speech made in the Legislative Assembly on 25 September 2014.

2   Notification

Notified under the Legislation Act on 5 November 2014.

3   Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Workers Compensation (Cross-border Workers) Amendment Bill 2014, which was passed by the Legislative Assembly on 21 October 2014.

Clerk of the Legislative Assembly