



July 2023

Workers compensation arrangements  
for interstate and overseas workers:

**A guide for NSW government agencies**

## Introduction



Since the onset of COVID-19, ways of working have changed. Remote working arrangements are common and have opened up opportunities for workers to carry out their work outside NSW, either in another state or overseas.

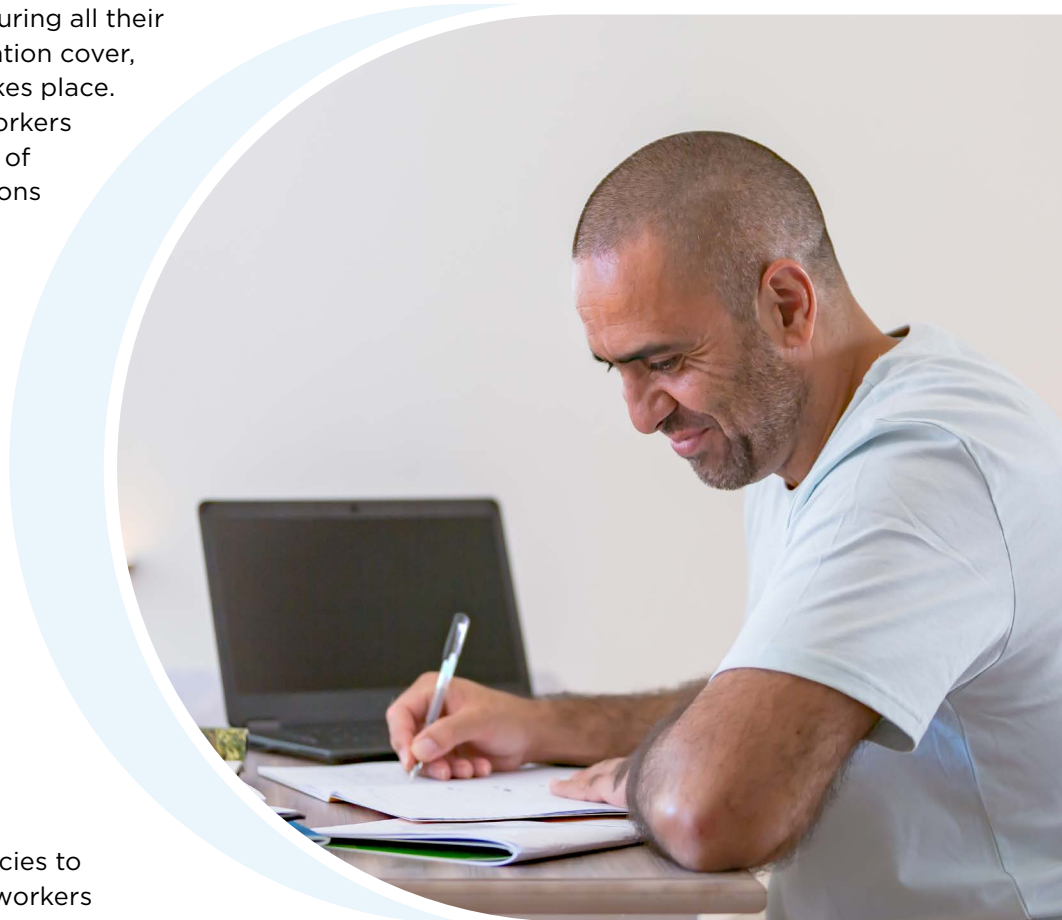
This requires special consideration of cross-border working arrangements by NSW agencies.

As members of the Treasury Managed Fund (TMF), NSW agencies can insure against almost any liability, injury, loss or damage that may be suffered. When it comes to insuring agency employees against injury or illness in the workplace, the NSW Workers Compensation & Injury Management legislation covers NSW workers only. This means, when an agency has employees working outside of NSW or between states or territories, they may not necessarily be covered under the TMF.

Under the *Workers Compensation Act 1987*, all NSW agencies are responsible for ensuring all their workers have workers compensation cover, regardless of where the work takes place. With an increasing number of workers seeking to live and work outside of NSW there are more considerations for agencies when determining where and how to take out appropriate cover.

Cross-border working arrangements vary in terms of the length and location of the appointment. In addition, each jurisdiction has its own unique provisions and legislation when it comes to workers compensation. It is therefore important for agencies to consider a number of factors to ensure their people are covered, wherever they may be located.

The following guide highlights important factors for NSW agencies to consider in the event they have workers working outside of NSW, and answers key questions to help them effectively manage this risk.



## Key considerations

### Are they a worker?



The first thing to consider is whether they are a worker. Under NSW workers compensation legislation an agency is required to ensure workers compensation cover for its employees, 'deemed workers' and some contractors, regardless of whether they are working in or outside of NSW. If you engage independent contractors, it is the contractor's responsibility to obtain appropriate cover.

For more information on how to classify your workers, speak with your Client Engagement Manager (CEM) in the first instance, then seek further information on the [icare website](#). The State Insurance Regulatory Authority (SIRA) also provides an online tool to assist NSW employers with determining who is a worker vs who is a contractor. Agencies can also contact the SIRA Worker Status Service on [13 10 50](tel:131050) or email [contact@sira.nsw.gov.au](mailto:contact@sira.nsw.gov.au) for further guidance.

### Length of cross-border appointment

**The next thing to consider is how long your workers will work outside of NSW.**

If the appointment is intended to be temporary, that is, six months or less, then your worker is covered under the TMF. If the length of their cross-border appointment exceeds six months and/or is expected to be on a permanent basis, your agency will need to consider applying SIRA's 'State of Connection' test.

#### Example

A NSW TMF Agency worker is required to stay in South Australia as this is the state they were in when COVID-19 restrictions were imposed. The agency continues to employ the worker as they can perform their duties remotely. These conditions will need to remain in place indefinitely until restrictions are relaxed.

#### State of connection

As the worker is temporarily based in South Australia it is not necessary to consider cover in South Australia. Whilst it is not known if the arrangement will last longer than 6 months, the intention is that the worker will return to NSW as soon as restrictions are relaxed which still deems the arrangement as temporary.

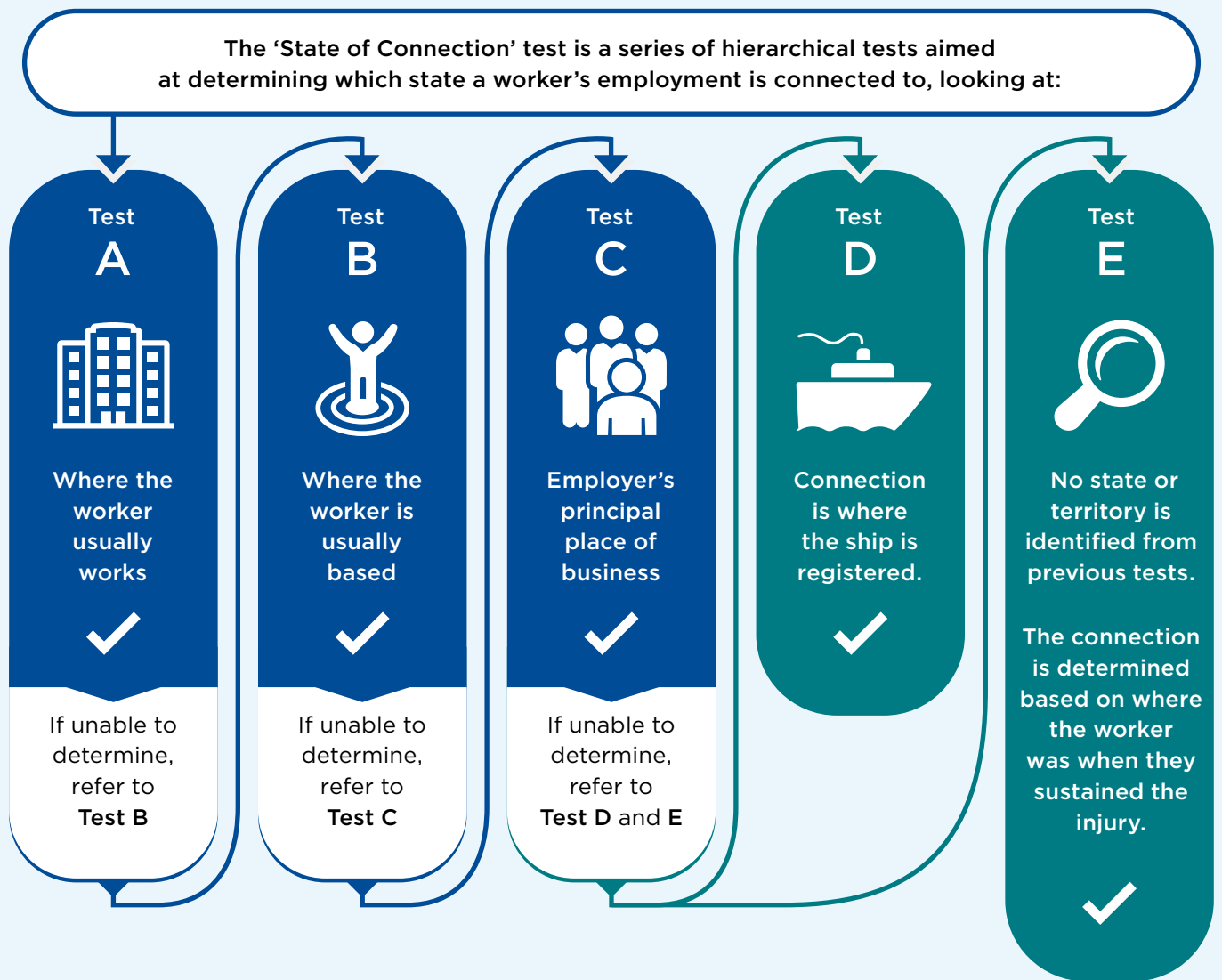
## Hiring someone based outside NSW

If you employ someone already residing in another state or territory you will need to apply SIRA's State of Connection test from the commencement of their employment. This may result in seeking cover in the state in which they reside.

### State of Connection

SIRA provides guiding principles and a 'state of connection' test to help agencies determine whether a cross-border worker's employment is connected with NSW. This in turn determines whether that worker is covered under the TMF, or, whether your agency is required to take out a policy for your cross-border worker in the jurisdiction in which they are working.

It is important to note that a worker is only required to be insured in the state to which they are connected. This eliminates the need to hold policies across multiple states for a single worker.



### Example

Due to labour market skills shortages, a NSW TMF Agency has employed a worker who will work from their home in South Australia five days a week. The employee will be required to visit NSW approximately once a month where possible to attend meetings.

### State of connection

**Test A** establishes that the worker usually works in South Australia and the agency must seek appropriate cover in that state. The interstate travel is considered a temporary departure from the usual circumstances which connects them to South Australia.

### Example

A NSW TMF Agency decides to support an employee who relocates with her family to Brisbane on a permanent basis. The agency continues to employ her as she is able to perform her duties remotely.

### State of connection

As the person is now permanently based in Queensland, **Test A** is satisfied and the agency must seek appropriate cover in that state.

### Example

A NSW TMF Agency employs a health administration worker who spends two days a week working in a NSW hospital and three days a week working from home just over the Victorian border.

### State of connection

**Test A** and **Test B** do not identify a State of Connection as the worker is routinely working and based across two states. By applying **Test C** it is established that the Agency's principal place of business is in NSW as this is the location of the hospital. Therefore, the Agency's TMF policy will cover them.

### Example

A NSW TMF Agency establishes a health facility in the ACT where they have employed a worker who resides in and performs all of their day to day duties from the ACT premises.

### State of connection

**Test A** establishes that the worker usually works in the ACT and the agency must seek appropriate cover in that state.



## Employees working overseas

TMF Agencies who send their NSW-based workers overseas on a temporary basis are covered under the Agency's NSW TMF Workers Insurance policy for the duration of the placement, provided the length of time spent out of the country is less than six months at any one time. However, in addition to your NSW obligations, you should also check any requirements of the jurisdiction to which you are sending workers.

If the length of time spent overseas exceeds 6 months and/or is expected to be on a permanent basis you should seek coverage for your employees in that jurisdiction. You may need to seek advice from a broker on the requirements of the local jurisdiction.

### Example

A NSW TMF Agency sends a project team to Singapore for a three month project. It sends several existing NSW employees to oversee the work who will return to work in NSW at the completion of the project. The agency also recruits a local worker in Singapore to specifically work on the project. Their employment will end at the conclusion of the three-month project.

### State of connection

**Test A** establishes that the agency's existing workers usually work in NSW and are only temporarily working in Singapore. Their state of connection continues to be NSW and the agency's TMF workers compensation policy will cover them. However, you should also check the requirements of the country to which you are sending workers to.

Applying **Test A** to the additional local worker employed establishes that the worker usually works in Singapore for the purposes of their employment. As such the agency's TMF workers compensation policy will not cover them. The agency may need to incept a policy in accordance with the requirements of that country.

## Other Considerations

A work trip or temporary interstate/overseas placement may be considered as an overall period or episode of work.

This means that a NSW TMF Agency worker who is temporarily sent interstate or overseas for the purposes of their employment may be entitled to workers compensation for an injury even where the worker is not performing work at the time of the injury.

It is important that you notify your claims service provider of any incidents when an employee is working interstate or overseas.

## Travel Insurance

The TMF provides Travel Insurance to agencies who require personnel to travel for their work. Agency employees may be covered in the event of an injury sustained whilst travelling that is not covered by workers compensation legislation. Please refer to icare's Travel Insurance information sheet for further detail.

# Checklist

## Check

1. Determine that your cross-border employee is a 'deemed worker' (not contractor)
2. Consider the length of the cross-border/overseas appointment - is it > 6 months and/or permanent?
3. Apply the 'State of Connection' test to determine if cover needs to be obtained outside NSW

## Action

1. Contact the Workers Compensation Authority in each jurisdiction you employ workers
2. Take out appropriate workers insurance cover for your workers in each jurisdiction
3. Inform icare of your interstate/overseas workers insurance policy
4. Exclude these workers from your NSW Workers Compensation wage declaration

## Need more information?

To clarify anything you're unsure of, contact your icare Client Engagement Manager (CEM).

### Key contacts

#### Workers compensation authorities and insurers (Australia)

Jurisdiction	Workers compensation authority	Insurer/s
VIC	<p><b>WorkSafe Victoria</b></p> <p>1800 136 089</p> <p><a href="http://www.worksafe.vic.gov.au">www.worksafe.vic.gov.au</a></p>	<p>Allianz Australia Workers' Compensation (Victoria) Limited 1800 240 335 <a href="http://www.allianz.com.au">www.allianz.com.au</a></p> <p>EML VIC Pty Ltd 1800 365 842 <a href="http://www.eml.com.au">www.eml.com.au</a></p> <p>Gallagher Bassett Services Workers Compensation Vic Pty Ltd 1800 774 377 <a href="http://www.gallagherbassett.com.au">www.gallagherbassett.com.au</a></p> <p>DXC Claims Management Services 1800 801 070 <a href="https://dxc.com/au/en/cp/claims-management-services/victoria">https://dxc.com/au/en/cp/claims-management-services/victoria</a></p>
WA	<p><b>WorkCover Western Australia</b></p> <p>1300 794 744</p> <p><a href="http://www.workcover.wa.gov.au">www.workcover.wa.gov.au</a></p>	<p>Allianz Australia Insurance Ltd 1300 130 664 <a href="http://www.allianz.com.au">www.allianz.com.au</a></p> <p>AAI LIMITED T/A GIO 13 10 10 <a href="http://www.gio.com.au">www.gio.com.au</a></p> <p>Guild Insurance Ltd (08) 9368 8600 <a href="http://www.guildinsurance.com.au">www.guildinsurance.com.au</a></p> <p>Insurance Aust. Ltd T/A CGU Workers Compensation 1300 307 952 <a href="http://www.cgu.com.au">www.cgu.com.au</a></p> <p>Insurance Aust. Ltd T/a WFI 1300 934 934 <a href="http://www.wfi.com.au">www.wfi.com.au</a></p>
WA		<p>QBE Insurance Australia Ltd (08) 9213 6100 <a href="http://www.qbe.com.au">www.qbe.com.au</a></p> <p>Zurich Australian Insurance Ltd 132 687 <a href="https://www.zurich.com.au">https://www.zurich.com.au</a></p>



Jurisdiction	Workers compensation authority	Insurer/s
NT	<b>NT Worksafe</b> <a href="http://www.worksafe.nt.gov.au">www.worksafe.nt.gov.au</a>	Allianz Australia Ltd (08) 8982 8333 <a href="http://www.allianz.com.au">www.allianz.com.au</a>  GIO General Ltd (08) 6188 0990 <a href="http://www.gio.com.au">www.gio.com.au</a>  Insurance Aust. Ltd T/A CGU Workers Compensation (08) 8924 0300 <a href="http://www.cgu.com.au">www.cgu.com.au</a>  QBE Workers Compensation (08) 8982 3877 <a href="http://www.qbe.com.au">www.qbe.com.au</a>  Territory Insurance Office (TIO) 131 846 <a href="http://www.tiofi.com.au">www.tiofi.com.au</a>
TAS	<b>WorkSafe Tasmania</b> <a href="http://www.worksafe.tas.gov.au">www.worksafe.tas.gov.au</a>	Allianz Insurance Australia Ltd (03) 6332 3113 <a href="http://www.allianz.com.au">www.allianz.com.au</a>  AAI LIMITED T/A GIO 13 10 10 <a href="http://www.gio.com.au">www.gio.com.au</a>  Guild Insurance Ltd (03) 6220 7900 <a href="http://www.guildinsurance.com.au">www.guildinsurance.com.au</a>  Insurance Aust. Ltd T/A CGU Workers Compensation (03) 6270 4700 <a href="http://www.cgu.com.au">www.cgu.com.au</a>  QBE Insurance (Australia) Ltd (03) 6237 3833 <a href="http://www.qbe.com.au">www.qbe.com.au</a>  Zurich Australian Insurance Ltd (02) 6247 3766 <a href="https://www.zurich.com.au">https://www.zurich.com.au</a>

Jurisdiction	Insurer/s
NSW	Insurance and Care NSW (icare) 13 44 22 <a href="http://www.icare.nsw.gov.au">www.icare.nsw.gov.au</a>
	State Insurance Regulatory Authority (SIRA) 13 10 50 <a href="http://www.sira.nsw.gov.au">www.sira.nsw.gov.au</a>
	SafeWork NSW 13 10 50 <a href="http://www.safework.nsw.gov.au">www.safework.nsw.gov.au</a>
QLD	WorkSafe Queensland 1300 362 128 <a href="http://www.worksafe.qld.gov.au">www.worksafe.qld.gov.au</a>
ACT	WorkSafe ACT 13 22 81 <a href="http://www.worksafe.act.gov.au">www.worksafe.act.gov.au</a>
SA	ReturntoWorkSA 13 18 55 <a href="http://www.rtwsa.com">www.rtwsa.com</a>

## Useful resources

### SIRA Guidelines on Cross-border arrangements for Workers Compensation

[www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-compensation-policies/cross\\_border\\_arrangements\\_for\\_workers\\_comp.pdf](http://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-compensation-policies/cross_border_arrangements_for_workers_comp.pdf)

### SIRA guide for determining 'deemed workers'

<http://workerstatus.workcover.nsw.gov.au>

## Frequently asked questions

### **Why aren't cross-border workers automatically covered under the TMF provisions?**

Whilst the TMF is designed to cover all insurable risks, the workers compensation stream of cover is governed by NSW workers compensation and injury management legislation, which excludes some cross-border arrangements dependent on the length of appointment (above/below six months). There are also practical reasons, given the potential complexities of managing a claim and a safe return to work for a worker in an interstate or overseas location.

### **If workers compensation cover needs to be obtained outside of NSW, whose responsibility is it to obtain this cover?**

If the employee is determined to be a 'deemed worker' for workers compensation purposes, then it is the responsibility of the agency to obtain appropriate cover for the employee in the relevant jurisdiction.

If, however, the employee is determined to be a 'contractor' it is their responsibility, not that of the NSW agency, to obtain appropriate workers compensation cover.

### **How does an agency obtain a workers compensation policy for its 'deemed workers' working outside of NSW?**

Agencies are advised to contact their Client Engagement Manager (CEM) in the first instance for support. Your CEM will provide guidance on who to contact in the location your worker is working and what steps you need to take to obtain a workers insurance policy from the relevant workers compensation authority.

### **How does an agency obtain a workers compensation policy for its 'deemed workers' working overseas?**

Speak with your CEM to assist you in guiding you through the process of obtaining a policy in the overseas location.

### **How do I ensure my contractor working outside of NSW has workers insurance cover?**

It is the contractor's responsibility to obtain insurance, however, under the Workers Compensation Act 1987, all NSW agencies are responsible for ensuring all workers have workers compensation.

With the support of their CEM, agencies can provide guidance to their contractors on how to obtain workers insurance cover in the location in which they are working. This is to ensure the correct cover is in place.

### **What if the duration of my worker's overseas or interstate appointment was intended to be less than six months but has had to be extended due to COVID-19 travel restrictions?**

Under these circumstances an extension of the worker's cover under the TMF would be granted. Please contact your CEM as soon as possible if this occurs.