

2006

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

MINISTER FOR EDUCATION, EMPLOYMENT AND TRAINING

**WORK HEALTH AMENDMENT BILL (CROSS BORDER)**  
**SERIAL NO. 85**

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

This Bill proposes amendments to the *Work Health Act*.

The purpose of this Bill is to amend the *Work Health Act* to enable the Northern Territory to comply with nationally agreed workers' compensation cross border provisions.

The new provisions mean that employers would need to obtain workers' compensation insurance to cover a particular worker in only one state or territory. Under the new provisions, the state or territory in which workers' compensation premiums relating to a particular worker are payable is referred to as the worker's 'state of connection.' The state of connection of a worker is determined by a series of 'tests' which are provided at Clause 53AA.

The benefits to which an injured worker is entitled to are also determined by their state of connection.

All Australian states and the Australian Capital Territory have now introduced cross border provisions for the purposes of workers'

compensation.

## **NOTES ON CLAUSES**

### **Clause 1.                    Short title**

This is a formal clause which provides for the citation of the Bill. The Bill when passed may be cited as the *Work Health (Cross Border) Act 2006*.

### **Clause 2.                    Commencement**

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

### **Clause 3.                    Act amended**

The Act amends the *Work Health Act*.

### **Clause 4.                    Amendment of section 3 (Interpretation)**

Includes the definition of “ship” and “Territory worker.”

### **Clause 5.                    Amendment of section 51 (Application to sailors)**

Repeals sub sections of the current Act and replaces them with nationally consistent definitions pertaining to sailors and the loss of a ship.

### **Clause 6.                    Amendment of section 53 (Compensation in respect of injuries)**

Sub-clause (1)            Housekeeping matter

Sub-clause (2) Provides that compensation is only payable under this Act if the injured worker's employment is connected with the Territory. The fact that they were injured outside of the Territory will not prevent compensation being paid.

Further, it provides that compensation under this Act does not apply if the *Seafarers Rehabilitation and Compensation Act 1992* (Cth) applies to them.

**Clause 7. New sections 53AA, 53AB and 53AC**

**New sub-section 53AA Worker's employment connected with a State**

Provides direction on how to determine a worker's 'state of connection.' This employment connection test is the central test for the new cross-border provisions.

**New sub-section 53AA(1)** establishes the three-part employment connection test that examines the history of and intentions of the parties to the employment relationship. The test is progressive, in that if a state of connection is not ascertained from the first limb of the test (53AA (1)(a)), the second limb of the test is examined (53AA(1)(b)). If the second limb of the test does not identify a single state of connection, then the third limb is examined (53AA(1)(c)).

There may be some limited cases where the three-limbed test will still not determine a single state of connection – further provision is made for these situations in subsections 53AA (2) – (6).

**New sub-section 53AA(2)** deals with workers on ships who have no state of connection determined under sub-section 53AA(1). In the case of these workers the state of connection is the jurisdiction in which the ship is or most recently became registered.

**New sub-section 53AA(3)** provides that in a situation where no state of connection can be determined under section

53AA(1) or (2) a worker's state of connection is the Northern Territory if they were in the Territory when injured and they can establish that no compensation may be payable to them under the law of another country.

**New sub-section 53AA(4)** provides that when considering which state the worker usually works (for the purposes of sub-section 53AA(1)(a)) regard must be given to their work history during the past 12 months and what the employer's and the worker's intentions are for the future of that worker. They need to consider where they have worked and where it is planned for them to work, and for how long. Temporary arrangements of less than six months duration are not to be regarded as significant.

**New sub-section 53AA(5)** provides factors to which reference might be made when considering whether or not a worker is usually based in a particular state.

**New sub-section 53AA(6)** provides factors to which reference might be made when considering whether or not an employer's principal place of business is in a particular state.

**New sub-section 53AA(7)** provides that when deciding if a worker usually works in a particular state for the purpose of sub-section 53AA(1)(a), it does not matter if they meet the definition of 'worker' for the purpose of workers' compensation in that particular jurisdiction when calculating how long they worked there. What matter is the measurement of time.

**New sub-section 53AA(8)** consequential to sub-clause 53AA(2) as ships in the Northern Territory are not 'registered' but instead they are 'surveyed.'

**New sub-section 53AA(9)** provides that the term 'jurisdiction' means a state or territory of the Commonwealth and if used in a geographical sense it includes the adjacent areas of Australia's states and territories as set out in the new Schedule 1A.

**New sub-section 53AB Determination of State with which worker's employment is connected**

This provision provides that if a Territory court is asked to decide if a worker's employment is connected with the Territory it must use the test described in 53AA and then record its ruling.

This sub-section does not apply if there has been a determination which must be recognized pursuant to the proposed sub-section 53AC.

**New sub-section 53AC Recognition of previous determination**

If a ruling on a worker's state of connection has already been made by a state or territory court (including the Northern Territory) then the ruling of that court must be recognized for the application of this Act.

This sub-section does not prevent an appeal in relation to a determination.

**Clause 8                      Amendment to section 57 (Compensation not payable in certain circumstances)**

Omits current sections in the Work Health Act pertaining to state of connection.

**Clause 9                      Amendment of section 126 (Compulsory insurance)**

**New sub-section 126 (2A)** provides a defence to a prosecution for an employer accused of not having a valid worker's compensation policy for a particular worker. The defence being that they believed on reasonable grounds that they did not need a Northern Territory policy for that worker and that they had a valid policy for them in the state they believed the worker was connected to.

**New sub-section 126 (2B)** instructs that s 31 of the Criminal

Code, which provides for a person being excused for criminal responsibility for an act unless they could foresee the negative consequence, is not to apply in relation to s126 (2A). This avoids the necessity for the prosecution to prove that failure to hold the required insurance was intentional. An oversight in such an important issue remains an offence, but a specific defence is introduced by s126(7). This is the only circumstance in which a prosecution would not be warranted.

**Amendment to sub-section 126(7)** removes s126(1) as a regulatory defence because the addition of s126(2A) and s126(B) provides a specific defence for s126(1): the issue being that of deliberate intent by an employer to avoid his/her workers' compensation insurance responsibilities.

**Clause 10**

**New Schedule 1A**

Provides for definitions and descriptions of adjacent areas when the geographical entity of states is being considered.

**Clause 11**

**Amendment of the Work Health Amendment Act 1995**

Repeals sections 10, 11 and 15 of the *Work Health Amendment Act 1995*. In 1995 the Territory introduced and passed cross border legislation but since then it has not commenced as the Territory waited for the other states to introduce their legislation.

**Clause 12**

**Amendment of the Work Health Amendment Act 1998**

Repeals section 41 of the *Work Health Amendment Act 1998* which also was passed but not commenced as the Territory waited for the other states to introduce their legislation.

**Clause 13**

**Expiry of Part**

Repeals Part 3 which pertained to clauses 12 and 13 the day

after the the amendments commence, so that this activity does not need to be recorded forever in the Act.