

Overseas Workers

The tests for determining a worker's 'state of connection' are the same as the 1981 Act. However, the *WCIMA23* provides for an exclusion of liability for compensation in respect of an injury suffered by a worker outside Australia if the worker has never resided in Australia or has been continuously resident outside Australia for more than 24 months when the injury occurs.

Key Points

Act ref: s. 19, Part 12

- The *WCIMA23* provides for a legislative method for determining which state or territory jurisdiction a worker is connected to for liability and compensation purposes (known as state of connection). The provisions affect workers who may work across state and national borders.
- The state of connection tests remain unchanged from the 1981 Act.
- The status of workers injured overseas is unclear in the 1981 Act. The *WCIMA23* implements an express period of cover of 24 months for persons working outside Australia. This was the legislative position that existed prior to 2004 when the state of connection legislation was implemented.
- The *WCIMA23* does not apply the 24-month limitation to a dust disease or firefighter disease to accommodate latent onset injuries where the exposure or entire qualifying period may have occurred outside this timeframe.

Questions & Answers

Q. Do the state of connection tests still apply to persons working overseas?

A. Yes. The worker must be connected to Western Australia based on the state of connection tests in Part 12 of the *WCIMA23*. The new provision has the effect of excluding liability for a worker whose employment is connected to Western Australia because the person has been continuously resident outside Australia for at least 24 months (with the exception of a dust disease or firefighter disease).

Q. Will there be an insurance policy exclusion for common law liabilities arising in respect of injuries or claims brought outside Australia?

A. Yes. It is intended the exclusion will be in regulations (as under the 1981 Act). Section 237 enables regulations to limit, modify or exclude any requirement to have a workers compensation policy in respect of liabilities arising in specified circumstances or out of specified events.