

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Supplementary Budget Estimates 2012-2013**

Outcome 4 – Workplace Relations and Economic Strategy

DEEWR Question No. EW0657_13

Senator Xenophon asked on 17 October 2012 , Hansard page 97

Question

Workers compensation for flight attendants

Senator XENOPHON: And there is that issue of workers compensation. Assuming that they are on an overseas based contract, not covered by the Fair Work Act, does that mean that, if they are injured in the course of their employment, on a flight from Melbourne to Sydney, for instance, they would not be covered by workers compensation under Australian law? Mr Kovacic: I will take that on notice. Can I just clarify the circumstances of your scenario, Senator Marshall, because potentially there is a range of scenarios. It is an individual who is engaged overseas— CHAIR: One of the first questions you have taken on notice is to ascertain some facts about the employment arrangements, so therefore the other questions that have been asked will not be based on a hypothetical. Mr Kovacic: What I am getting at is, in the scenario that you have painted, where there is somebody engaged overseas who may be working in Australia, is it somebody who is in Australia on a 457 visa, in which case the answer would be quite different to the scenario that Senator Xenophon has outlined, where it is part of an inward or outward bound journey, which is incidental, arguably, to their work as a— CHAIR: I think you could answer both scenarios, because I am very interested in the prospect of the ability for an Australian citizen to be engaged overseas, on an overseas employment arrangement, but actually work in Australia. Mr Kovacic: So it is an Australian citizen? CHAIR: There are two propositions we are putting to you. I am interested in the answer to both of those things. Ms Paul: We will do our best. I finish by noting that the actual proposition, the actual case about which there must be facts, is sub judice, and we have talked about that before. It is being tested by the Fair Work Ombudsman.

Answer

In Australia there are 11 main workers' compensation systems. Each of the eight Australian states and territories have their own workers' compensation schemes (there are also three Commonwealth schemes).

All state and territory workers' compensation jurisdictions have implemented cross-border provisions to determine workers' compensation liability. The provisions are based on the National Cross-Border Model developed by the Heads of Workers' Compensation Authorities.

Cross-border provisions provide coverage for workers who travel to, or work temporarily, in different jurisdictions, as long as workers meet a 'state of connection' test.

An injured worker's state or territory connection is determined by the following tests:

Test A - The territory or state in which the worker usually works in that employment, or

Test B - If not identified through (A) – the territory or state in which the worker is usually based for the purposes of that employment, or

Test C - If not identified through (A) or (B) – the territory or state in which the employer's principal place of business in Australia is located.

If no state connection can be determined for a worker and a worker is not entitled to compensation for the same matter under the laws of a place outside Australia, a worker's employment is connected with the State where the injury occurred.

These tests are hierarchical, so if the first test does not provide an answer, the next test is applied until the worker's status is determined. Special arrangements apply for workers on ships.

Workers' Compensation for workers engaged overseas

- Worker engaged overseas but working in Australia:

The worker would be covered for injuries sustained in Australia. The overseas employer would be required to have workers' compensation insurance in accordance with Australian law. In the event that the overseas employer has no insurance, the worker would be covered by the Australian jurisdiction in which he or she is injured. There is provision in each jurisdiction for uninsured workers to make claims and have eligible claims paid.

- 457 Visa Holder working in Australia:

These workers would have the same coverage as any Australian citizen working in Australia.

- Foreign nationals working in Australia (such as flight attendant in transit through Australia):

The worker would be covered for injuries sustained in Australia. The overseas employer would have workers' compensation insurance in accordance with the law of the overseas country. The worker in this case would be compensated in accordance with the overseas insurance scheme. In the event that the overseas employer has no insurance, the worker would be covered by the Australian jurisdiction in which he or she is injured. There is provision in each jurisdiction for uninsured workers to make claims and have eligible claims paid.

Having regard to the state connection principles, the practical effect is that there is no gap in coverage. If a worker (Australian or otherwise), employed on an overseas employment arrangement, was injured undertaking work in Australia they would be covered for workers' compensation either:

- a. under the laws of a place outside Australia; or
- b. if the worker is not entitled to compensation for the same matter under the laws of a place outside Australia in the state or territory where the injury occurred.