

[3] In January 2017, Mr Parkinson and his family moved to Indonesia for a three-year period. The purpose of moving to Indonesia was to allow Mr Parkinson's children to experience a different culture before returning to New Zealand for their high school education.

[4] When Mr Parkinson moved to Indonesia, it was agreed with Revera that, while he was overseas, he would work as a full-time contractor for the company, rather than as an employee, continuing his role working remotely from Bali. It was also agreed that, on his return to New Zealand, Mr Parkinson would return to work as a full-time employee for Revera.

[5] In February 2017, Mr Parkinson started a full-time contracting role with Revera, which was renewed annually for a three-year period. During that time, Mr Parkinson was categorised as a self-employed New Zealand tax resident. The Inland Revenue Department ("IRD") notified the Corporation of Mr Parkinson's self-employed status and, in turn, the Corporation issued an invoice for its levies.

[6] In January 2020, Mr Parkinson and his family returned to New Zealand.

[7] On 6 October 2020, the Corporation sent Mr Parkinson an invoice for the financial year 1 April 2019 to 31 March 2020, based on his declared earnings to IRD for the financial year ending 31 March 2019.

[8] Mr Parkinson filed an application to review the Corporation's levy decision. The basis for his challenge was that, because his reason for living overseas was not primarily in connection with his employment duties (even though he was working remotely while overseas for a New Zealand based company), he was not covered by the Corporation's scheme for any personal injury that he might sustain while overseas. Because of this, Mr Parkinson argued that it was not right that he should be required to pay the Corporation's levies when he was not eligible for ACC cover.

[9] On 24 March 2021, review proceedings were held. On 19 April 2021, the Reviewer dismissed the review, on the basis that the Corporation's decision was correct in terms of the plain wording of the Act.

[10] On 23 April 2021, a Notice of Appeal was lodged.

Relevant law

[11] Section 20(1)(a) of the Act provides that a person has cover only for a personal injury suffered in New Zealand. However, section 22(1)(c) provides that, where a person suffers a personal injury outside of New Zealand, the person may still be entitled to cover if he or she is “ordinarily resident in New Zealand” when the personal injury is suffered. Section 17(1) provides that a person will be “ordinarily resident in New Zealand” if he or she has New Zealand as the permanent place of residence and is either a New Zealand citizen or is the holder of a residence class visa. A person does not have a permanent place of residence in New Zealand, if he or she has been and remains absent from New Zealand for more than six months (section 17(2)). However, section 17(4)(a) provides that, where a person has been absent from New Zealand for more than six months, he or she must still be treated as having New Zealand as the permanent place of residence if he or she:

- (1) intends to resume a place of residence in New Zealand; and
- (2) is absent from New Zealand primarily in connection with his or her employment duties (the remuneration for which is treated as income derived in New Zealand for New Zealand income tax purposes) or for up to six months following the completion of the period of his or her employment outside of New Zealand.

[12] The Corporation is funded by the Work Account, which is used to finance entitlements for work-related personal injuries, and by the Earners Account, which is used to finance entitlements for non-work-related injuries.

[13] Section 168B provides:

- (1) A self-employed person must pay, in accordance with this Act and regulations made under it, levies to fund the Work Account.

[14] Section 219 provides:

- (1) An earner must pay, in accordance with this Act and regulations made under it, levies to fund the Earners' Account.

[15] Levies in respect of both accounts are calculated based on the level of earnings derived or deemed to have been derived during the relevant prescribed period, which usually coincides with the self-employed person's financial tax year. Section 14 provides that "earnings" as a self-employed person is the amount of income that a person derives in the relevant tax year for the purposes of the Income Tax Act 2007 as a result of his or her personal excursions, less any allowable deductions.

[16] Section 59 of the Act provides:

- (1) The fact that the Corporation accepts a levy does not of itself decide the question of whether or not a person has cover.
- (2) The question of whether or not a person has cover is determined by the provisions of this Act.

[17] Section 5(1) of the Interpretation Act 1999 provides that:

The meaning of an enactment must be ascertained from its text and in the light of its purpose.

[18] Section 3 of the Act provides:

The purpose of this Act is to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has, as its overriding goals, minimising both the overall incidence of injury in the community, and the impact of injury on the community (including economic, social, and personal costs) ...

[19] In *McAlister v Air New Zealand Ltd*,¹ Tipping J commented:

[96] ... The Court can correct a drafting error by addition, omission or substitution of words if three conditions are satisfied: (i) the Court must be sure that there is a drafting error; (ii) the Court must also be sure what Parliament was trying to say; and (iii) the necessary correction must not involve too great a re-writing of the defective language. This last consideration is obviously a matter of degree and will often depend on the Court's assessment of whether, in the light of the overall interests of justice, when balanced against the proper role

¹ *McAlister v Air New Zealand Ltd* [2009] NZSC 78, [2010] 1 NZLR 153, (2009) 8 HRNZ 801, (2009) 9 NZELC 93,242, [2009] ERNZ 410, (2009) 6 NZELR 704

of the Courts, the redrafting exercise should be left to Parliament. Indeed, the more elaborate the necessary redrafting, the less likely it is that the first two conditions will have been fulfilled.

[20] In *Jamieson*,² Judge Sinclair stated:

[34] ... The Act envisages a reciprocal relationship between the payment of levies and eligibility for cover for personal injury in the context of a person who is working overseas. In summary, a person will have cover for a personal injury suffered outside New Zealand where they are “ordinarily resident” in New Zealand when they suffered the injury. This applies, where that person is absent from New Zealand for employment purposes where remuneration received as a consequence of that employment, is income taxable in New Zealand. Under s 14, a self-employed person will be liable to pay levies on their overseas earnings and will be eligible to receive entitlements based on those earnings. I consider that this approach is entirely consistent with the social contract.

[21] In *Richards*,³ Judge Henare noted:

[23] Ms Hollingsworth submitted that as the appellant is self-employed, he pays ACC levies and did so for the period 1 April 2008 to 31 March 2009. Ms Hollingsworth referred to the definition of employment under s 6 of the Act and submitted if the definition is interpreted narrowly the entire class of entrepreneurs who travel overseas will not be eligible for ACC weekly compensation entitlements. I cannot agree. Where the entrepreneur is absent for more than six months and is able to provide evidence that the dominant purpose of the trip overseas is primarily in connection with employment activities, s 17(4) of the Act applies.

Discussion

[22] The issue in this case is whether a self-employed person has a liability to pay ACC levies calculated based on self-employed earnings derived in New Zealand during the relevant tax year where, for that relevant period, that person was not ordinarily resident in New Zealand and therefore not entitled to cover for any personal injury suffered outside of New Zealand during that period.

[23] Mr Miller, for Mr Parkinson, submits that the Corporation’s position represents an unintended statutory outcome so outrageous and fundamentally unfair that it requires immediate correction. Mr Miller refers to the unjust enrichment of the

² *Jamieson v Accident Compensation Corporation* [2020] NZACC 152.

³ *Richards v Accident Compensation Corporation* [2014] NZACC 81.

Corporation by forcibly requiring the appellant to pay ACC levies to fund a scheme for which Mr Parkinson is contemporaneously ineligible. Mr Miller submits that, in interpreting the levy provisions of the Act, the Court should read in additional words of “except where the taxpayer is not ordinarily resident in New Zealand” (that is, ineligible for the scheme), to avoid an absurd result. Mr Miller refers to the overall purpose of the Act and the judgment in *Jamieson* in support.

[24] This Court acknowledges the submissions of Mr Miller. The Court understands Mr Parkinson’s dissatisfaction and sense of unfairness in being required to pay ACC levies to fund an accident compensation scheme for which he is contemporaneously ineligible. However, this Court points to the following considerations.

[25] First, the text of the Act, from which this Court is required to ascertain its meaning, stipulates that a self-employed person/earner, such as Mr Parkinson, must pay levies in accordance with the Act and its regulations.⁴ There is no linkage in the text between payment of levies and eligibility for the accident compensation scheme.

[26] Second, the purpose of the Act, in light of which this Court is also required to derive its meaning, does not clearly indicate an interpretation different from the plain meaning of the text., so as to link payment of levies with eligibility under the Act. In this regard, the Court notes the following:

- (a) The purpose of the Act, as expressed in section 3, is to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury. This Court finds that the balanced terms of this expressed purpose provide no clear basis on which to depart from the text of the Act in this case.
- (b) Section 59(1) of the Act draws a clear distinction between payment of a levy and the question of whether or not a person has cover. This principle was confirmed by this Court in *Richards*.⁵ The observation of

⁴ Sections 168B(1) and 219(1).

⁵ Above, note 3, at [23].

Judge Sinclair in *Jamieson*,⁶ noted above, was provided in the context of an appeal directed towards a different issue from that in the present case.

- (c) Sections 20, 22(1)(c) and 17 of the Act provide a network of provisions which govern the position of those persons who are absent from New Zealand, and which clearly envisage the absence of cover for some persons, without cross-reference to whether they are still required to pay a levy.

[27] Third, in light of the above considerations, this Court does not consider it appropriate or necessary to add words linking eligibility under the Act with payment of a levy. This Court is not satisfied that there is a drafting error in the Act, the Court is not sure what Parliament was trying to say beyond the text of the Act, and the Court considers that the correction suggested on behalf of Mr Parkinson involves too great a re-writing of the Act. In short, this Court considers, in light of the overall interests of justice, when balanced against the proper role of the Courts, that any redrafting exercise should be left to Parliament.

Conclusion

[28] The Court finds that Mr Parkinson, as a self-employed person, has a liability to pay ACC levies calculated, based on self-employed earnings derived in New Zealand during the relevant tax year even where, for that relevant period, he was not ordinarily resident in New Zealand and therefore not entitled to cover for any personal injury suffered outside of New Zealand during that period. The decision of the Reviewer dated 19 April 2021 is therefore upheld. This appeal is dismissed.

[29] I make no order as to costs.



P R Spiller
District Court Judge

Solicitors: John Miller Law for the Appellant
Young Hunter for the Respondent

⁶ Above note 2, at [34].