IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2026] NZERA 138
3368843

	BETWEEN	ROBBIE JOHNSON Applicant
	AND	ACRIS SALES TRAINING PTY LIMITED T/A ASSOCIATION OF PROFESSIONAL BUILDERS Respondent
Member of Authority:	Antoinette Baker	
Representatives:	Applicant in person Russ Stephens, for Respondent	
Investigation Meeting:	On the papers	
Submissions received:	8 December 2025 from Respondent 20 January, 26 January 2026 from Applicant	
Determination:	5 March 2026	

DETERMINATION OF THE AUTHORITY

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[1] The applicant, Ms Johnson performed work solely based in New Zealand for the respondent ('Acris') until Acris terminated the relationship. Acris is an entity registered in Australia. Its 'co-founder and director'[1] is Russ Stephens who is based in Melbourne. The business operation is run out of Melbourne and provides training and education services to residential building companies inside and outside of Australia as well in New Zealand. Part of

[1] Affidavit of Russ Stephens affirmed 8 December 2025, at paragraph 1.

Ms Johnson's work tasks included obtaining new clients and up selling Acris services to them.

[2] Ms Johnson says she was employed by Acris. She says the termination of that employment by Acris was an unjustified dismissal substantively and procedurally. She seeks grievance remedies.

[3] Acris says Ms Johnson was not an employee and that a signed written contract called a 'Contractor Services Agreement' (the contract) supports this. In any event, Acris says Ms Johnson cannot bring her claims in the Authority because the contract included that the parties were subject to the jurisdiction of New South Wales, Australia. To that end Acris asks the Authority to decline to hear Ms Johnson's claim under regulation 19B ('reg 19B'), Employment Relations Authority Regulations 2000 ('the regulations') which includes that the Authority has discretion (based on being satisfied as to a number of factors) to decline jurisdiction in favour of a forum outside of New Zealand.

[4] This determination only deals with the threshold issues of whether to decline jurisdiction under reg 19B.

Authority process to determine this matter

[5] Having received the allocation of this file with the claim and a response I held a phone conference call with Ms Johnson and Mr Stephens. I discussed a process to consider the preliminary threshold issue. I emphasised that reg 19B included things I would have to consider. I repeated this provision in full in my subsequent written directions so that the effectively unrepresented parties could choose to follow the relevant aspects of the regulation in their submissions and affidavits.

[6] I timetabled for the respondent to provide its application, submissions and any affidavit evidence first in time. A response in kind from Ms Johnson was timetabled. Documents were received. I now consider the matter on the papers as to whether I should

decline jurisdiction under reg. 19B the outcome of which will then determine whether Ms Johnson's grievance claim continues to be investigated in the Authority.

Regulation 19B

[7] To determine this matter I need to consider reg 19B which is as follows::

> **19B Authority may decline jurisdiction**
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> (1) The Authority may decline to hear and determine proceedings in which there is an overseas party if it is satisfied that—
>
> (a) it is more appropriate for the matter to be resolved in a place outside New Zealand; and
>
> (b) the applicant will have a fair opportunity in the place to make the applicant's case; and
>
> (c) the applicant will receive proper justice in the place; and
>
> (d) the respondent will suffer unfair disadvantage if the proceedings are heard in New Zealand.
>
> (2) This regulation does not limit any rule of law.

[8] Thie above means that the Authority has the discretion to decline jurisdiction if satisfied that *all* of the factors between 19B(1)(a) and (d) (and not just some of them) point to the Authority being satisfied that a forum outside of New Zealand, in this case, the jurisdiction of New South Wales, Australia is the more appropriate forum. The exercise has been described as deciding whether in some other available forum, having competent jurisdiction which is the natural forum, having the most real and substantial connection.[2]

Is it more appropriate to resolve the employment relationship problem before the Authority in Australia (NSW)?

[9] For Acris, Mr Stephens says that the jurisdiction would be more appropriate to be in Australia because the 'Contractor Services Agreement' (the contract) that Ms Johnson signed when agreeing to work for Acris included that it was governed by Australian law.

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[2] *Oilseed Products (NZ) Ltd v H E Burton (1987)* 1 PRNZ 313 and *Beal v Jardine Risk Consultant Ltd* [1999] 2 ERNZ 54 as referenced at [155] of *Rolland v Acciona Construction Australia Pty Ltd* [2024] NZERA 388 when considering the issue of jurisdiction under regulation 19 B.

[10] Clause 13.1 of the contract that Ms Johnson signed included:

> This Agreement is governed by the laws of New South Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.

[11] Mr Stephens confirms that Acris is a company registered in the State of Victoria, Australia and its managerial systems are all based in Victoria. The Regulations provide for the situation where an overseas entity can be served outside of New Zealand with Authority Proceedings.[3] Acris has already been so served. There is also a process for enforcing New Zealand civil judgments including those of the Authority against an Australian entity.[4] In other words the fact of an entity not being registered in New Zealand or operating its headquarters in Australia does not in itself support that Australia would be the more appropriate forum.

[12] There is no explanation from Mr Stephens as to how the contract includes it will be governed by the law of New South Wales or why that is a more appropriate forum other than saying that this was contractually agreed to and that all aspects of the business operation are managed out of Australia, namely Melbourne, Victoria.

[13] I note the contract includes under a heading 'hours of work' that in relation to a working day not a weekend day or a 'Canadian national public holiday [sic] listed below' there is a list of the twelve days which are the twelve public holidays that by New Zealand legislation are protected as to payment and leave entitlements to employees under New Zealand's Holidays Act 2003. This seems a curious reference to a contract to be governed for enforcement by the law of New South Wales not to mention the apparent curiosity that the business is not based in New South Wales.

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[3] Employment Regulations Authority regulations 2000, reg 19A.
[4] This includes a process governed by Trans-Tasman Proceedings Act 2010 (Cth), s 66; Employment Relations Act 2000, s 141;Trans-Tasman Proceedings Regulation 2012 (Cth) the latter of which is usually dealt with on the papers with an end result of the New Zealand judgment having the same force and effect as an Australian judgment.

[14] Ms Johnson notes she was the first person working for Acris in New Zealand. She does not specifically address the point about signing the above contract with the NSW jurisdiction clause. Her submissions focus on factors that relate to her claim that she was in reality an employee and not a self-employed contractor which on the face of it are not disputed: she worked exclusively based in New Zealand, she is a New Zealander, she was paid in New Zealand dollars for work performed here and paid tax to the New Zealand Government on her earnings.

[15] The above does not satisfy me that the reference to jurisdiction in the contract is a persuasive reason on its own to decline jurisdiction. Even if I am wrong, reg 19B contains a list of four factors *all of which* need to be things that satisfy the Authority. As will be seen below, the other factors do not satisfy me that I should decline jurisdiction.

Would Ms Johnson have a fair opportunity in Australia (NSW) to make her case in relation to the employment relationship problem?

[16] Mr Stephens has not provided details as to how Ms Johnson's claim would be dealt with under New South Wales jurisdiction other than casual reference to 'Fair Work Australia.' Ms Johnson includes that she has been afforded leave against Acris's policy, that she has been only working in New Zealand, that she has been paid in New Zealand dollars and has paid tax in New Zealand and has never been to Australia to work for Acris. She includes that she has had no connection to the employment jurisdiction in Australia. The claim she brings falls under (firstly) whether she was an employee despite what the parties included in the contract, a not wholly unusual claim in New Zealand and one that falls under developed legal principals in New Zealand centred on s 6 of the Employment Relations Act 2000. I have no comparison before me from Mr Stephens to show how Ms Johnson would have a fair opportunity within the jurisdiction of New South Wales to argue this type of case even if the relevant law may sit at federal level. In these circumstances and that Ms Johnson's work was entirely in New Zealand, I am not satisfied I have sufficient to show she would receive a fair opportunity to present her case outside of New Zealand.

Would Ms Johnson receive proper justice in Australia (NSW)?

[17] On the same reasoning as above, and while I am not to be taken to consider justice could not be relied on in Australia, I have nothing to go on here other than an understanding of the New Zealand process in the Authority's jurisdiction which I am satisfied can provide a fair process to both parties in the investigation of the employment relationship problem that Ms Johnson has presented. Again, I am not satisfied this factor support declining jurisdiction.

Would Acris suffer unfair disadvantage if the matter was heard in New Zealand?

[18] Mr Stephens appears to rely mostly on this factor in that the whole business operation is in Melbourne, that Acris is not registered in New Zealand, that its clients are all in Australia (disputed by Ms Johnson) and there would difficulties having witnesses attend New Zealand proceedings. None of these things satisfy me I should decline jurisdiction. I consider Acris would not suffer an unfair disadvantage in being able to present a response to Ms Johnson's claims in the investigation process of her claims.

[19] Overseas entities can be parties to matters in the Authority as shown in provisions to service such entities as has been done here. It is also not uncommon for parties and or witnesses in the Authority, where they may reside or be unable to be present physically in New Zealand to appear by reliable Audi Visual Link (AVL) with some accounting for time differences. The time difference to Australia (Melbourne where the head office of Acris is) is not as stark as the northern hemisphere. The Authority still conducts proceedings accommodating the latter in a fair process. The Authority is well used to using the AVL medium to ensure a fair process when hearing from witnesses and parties in relation to their claims or defence to claims.

Outcome and next steps

[20] All factors under reg 19B do not satisfy me that I should decline jurisdiction under Employment Regulations Authority Regulations 2000, regulation 19B and Robbie Johnson's claims may proceed in this jurisdiction.

[21] An Authority Officer will contact the parties to arrange a further phone conference to timetable for continuance of Ms Johnson's claims in this jurisdiction.

Antoinette Baker
Member of the Employment Relations Authority