



## Summary

### Objective

Use this guidance when considering a client's claim for cover when they have suffered an injury outside New Zealand.

- 1) Ordinarily resident in New Zealand
- 2) Permanent place of residence in New Zealand
- 3) Exception: permanent place of residence for person during employment, and post-employment, outside New Zealand
- 4) Exception: permanent place of residence for family members during employment, and post-employment, of a family member outside New Zealand
- 5) Retrospective application of amended section for family members
- 6) Links to legislation

### Owner

Name withheld

### Expert

Name withheld

## Policy

### 1.0 Ordinarily resident in New Zealand

- a** If a client has suffered a personal injury outside New Zealand, ACC can consider their claim for cover if the person is ordinarily resident in New Zealand at the date of injury.
- b** The key criterion for a person to be 'ordinarily resident in New Zealand' is for the person to have a 'permanent place of residence' in New Zealand. The following business rules define the general criteria, and criteria for family members to be ordinarily resident in New Zealand:
  - Ordinarily resident in New Zealand - General Criteria
  - Ordinarily resident in New Zealand for family members

### 2.0 Permanent place of residence in New Zealand

- a** The Accident Compensation Act 2001 excludes anyone, with limited exceptions outlined below, from having a permanent place of residence in New Zealand if they have been outside New Zealand for more than 6 months or intend to be outside New Zealand for 6 months or more. The rule below captures this exception:
  - Permanent place of residence – 6-months exclusion
- b** A person who does not meet the 6 month exclusion rule above is considered to have a permanent place of residence in New Zealand if they satisfy the 183 days rule. Essentially, the rule requires them to be present in New Zealand for at 183 in a 12 month period. For the full criteria, refer to the rule below:
  - Permanent place of residence – 183 days rule
- c** The following business rule defines the concept of being 'personally present in New Zealand lawfully'. This rule is applicable to the above criteria, and will help you determine the number of days a client has been in New Zealand:
  - Personally present in New Zealand lawfully definition

- d** For persons who do not meet the 6 month exclusion rule nor meet the 183 day rule, then ACC will consider a combination of various factors in determining whether the person has a permanent place of residence in New Zealand. These factors have been shaped over time by the case law in this area. The factors that need to be considered are whether:
  - The person has a home in New Zealand which the person normally lives in.
  - The person has ongoing employment commitments in New Zealand.
  - The person has a family connection in New Zealand.
  - The person has on-going financial commitments in New Zealand.

### 3.0 Exception: permanent place of residence for person during employment, and post-employment, outside New Zealand

- a** A person is deemed to continue to have permanent place of residence in New Zealand during employment, and post-employment, outside New Zealand. The following business rules provide you with the detailed criteria for each of these exceptions:
  - Permanent place of residence for person during employment outside New Zealand Exception
  - Permanent place of residence for person post-employment outside New Zealand Exception

### 4.0 Exception: permanent place of residence for family members during employment, and post-employment, of a family member outside New Zealand

- a** The Accident Compensation Amendment Act 2019 changed the Accident Compensation Act 2001 to enable spouses/partners and dependants of New Zealand employees to receive cover for injuries suffered while overseas.
- b** The following business rules provide you with the criteria to determine whether a family member of a worker outside of New Zealand is deemed to have a permanent place of residence in New Zealand.
  - Permanent place of residence for family members during employment of family member outside New Zealand
  - Permanent place of residence for family members post employment of family member outside New Zealand
- c** The following business rules provide you with the definition of a spouse or partner:
  - Definition of Spouse (living spouses)
  - Definition of a partner (living)

### 5.0 Exception: Australian Resident Visa travellers

- a** Australian Resident Visa travellers are considered to be holders of a residence class visa at time of injury for the purpose of Section 17 (1)(b)(ii), when they return to New Zealand and apply for injuries occurring during their time overseas. Under the Trans-Tasman Travel Arrangement, Australian citizens do not need a visa before traveling to live or work in New Zealand and a resident visa is issued on arrival.

- b Clients who satisfy the resident class visa requirements, will still be subject to the “permanent place of residence” test within Section 17(1)(a) in order to be considered ‘ordinarily resident’.
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## 6.0 Retrospective application of amended section for family members

- a The family member exception introduced by the Accident Compensation Amendment Act 2019 applies retrospectively from 1 July 1999. Spouses/partners and dependants of New Zealand employees who ACC declined cover for their injuries sustained overseas, or who have not lodged a claim because of the exclusion, may seek cover retrospectively.
- b Prior to 1 July 1999, under the Accident Rehabilitation and Compensation Insurance (Ordinary Residence Definition) Regulations 1992, spouses/partners, children, and dependants could access cover if accompanying a family member overseas for more than six months.
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## 7.0 Links to legislation

-  Accident Compensation Act 2001, section 17 Ordinarily resident in New Zealand  
<http://www.legislation.govt.nz/act/public/2001/0049/lat>
  -  Accident Compensation Amendment Act 2019  
<http://www.legislation.govt.nz/act/public/2019/0010/lat>
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