

ACTUS WORKPLACE LAWYERS

11 April 2023

Independent contractors must be ‘natural persons’ for super purposes

In a [decision](#) of 24 March, the Full Federal Court has confirmed that under the Superannuation Guarantee legislation, a principal does not have to make superannuation contributions for an independent contractor if the contractor is not a natural person.

Under subsection 12(3) of the Superannuation Guarantee (Administration Act) 1992, an expanded meaning of ‘an employee’ applies. Businesses that engage an independent contractor “under a contract that is wholly or principally for the labour of the person” are required to make superannuation contributions on the amounts paid to the contractor.

The Full Federal Court has accepted the Taxation Commissioner’s submission that subsection 12(3) only has application where an identified natural person is a party to the contract in their individual capacity, rather than in any other capacity such as a partner or trustee of a personal service trust.

The Full Federal Court case concerned two truck drivers who had been engaged by ZG Operations and predecessor businesses for many years. Last year, in [Jamsek v ZG Operations](#) [2022] HCA 2, the High Court decided that the two truck drivers were independent contractors but remitted the issue of whether or not they were entitled to superannuation, to the Federal Court.

Actus Workplace Lawyers is available to provide advice on a wide range of superannuation guarantee matters. Please contact Justine Smith, Lawyer of Actus Workplace Lawyers, on 0414 947 651 or Email: justine.smith@actuslawyers.com.au.