

Trust liability under the Health and Safety at Work Act 2015

Businesses need to be aware of both independent and collective trustee liability under the Health and Safety at Work Act 2015

It is a widely known and accepted legal principle that a trust is not a legal entity, but rather a legal relationship between the trustees and the trust property, which is held and controlled on behalf of the beneficiaries. Therefore, at least in civil litigation, liability accrues to the trustees individually.

However, a recent High Court ruling has considered the liability of a trust under the Health and Safety Work Act 2015 (**HSWA**) for the first time, with implications for trusts and trustees throughout New Zealand. In *WorkSafe New Zealand v RH & Jury Trust and others*¹ the High Court determined that the trustees collectively amount to a "body of persons... unincorporate" and therefore a trust entity falls within the definition of "person", and subsequently a "Person Conducting a Business or Undertaking" (**PCBU**), for the purpose of being charged under the HSWA.

District Court decision – trust not a 'person'

WorkSafe charged RH & Jury Trust and alternatively its trustees (who carried out farming operations) for its failure to comply with the HSWA that led to the tragic death of a young boy on its dairy farm. The Trust disputed it was a "person" and able to be charged under the HSWA.

The District Court found the Trust was not a "person", because it would be contrary to common law principles and equity to collectively charge trustees for liability.

High Court appeal

When overturning the District Court decision, the High Court considered the orthodox position that a trust is not a separate legal entity. However, it found that specific legislation could displace that orthodox principle. It

therefore went on to determine the position in light of the HSWA's scheme, text and purpose.

As a matter of policy, the Court noted it would likely be an inconsistent and "perverse outcome" if a PCBU could include a body of persons carrying out business with an informal internal structure where there was no legal entity in existence, yet if those same people were trustees, they would collectively no longer be a trustee but instead be three separate PCBUs.

The Court noted that although the HSWA was silent on the inclusion of trusts, the definition of "person" included a "body of persons... unincorporate" and that a wide definition of PBCU was needed to give effect to the HSWA's purposes. It distinguished the position in New South Wales, which has found that a trust cannot be prosecuted under equivalent legislation, as it did not include the same definition of "person". The High Court considered that if there is a case of structural fault it will be the trustees' collective actions that are responsible, so criminal liability is appropriately apportioned jointly. It is important to bear in mind that while the Court found a trust ultimately meets the definition of "person", that was because it was a "body of persons... unincorporate."

Finally, the Court found that s 29 of the HWSA does not prohibit an indemnity for the trustees from trust assets under the trust deed as that indemnity did not amount to an "insurance policy" or "contract of insurance" and a trust was not a "person" giving an indemnity under s 29. This broad interpretation could have wider implications for the scope of s 29, but the Court noted that if s 29 was intended to override a fundamental trust principle it would be worded more broadly.

While the Court was cautious, bearing in mind the importance of conceptual consistency in trust law, its decision is ultimately one which could have wider implications on trust law, trust structures and arrangements. It is important to note that the Court was careful to emphasize that a trustee will not always be indemnified from trust assets if fined under the HSWA. It will depend on the specific facts, the trust deed and general trust law. The Trusts Act 2019 provides limitations on the indemnity of trustees, prohibiting

¹ [2023] NZHC 3871.

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(Continued)

indemnities for any breach of trust arising from a trustee's dishonesty, wilful misconduct or gross negligence.

This decision will be relevant to all trustees operating trusts that carry out operations with potential HSWA implications. Trustees should be aware of their obligations under the HSWA and their indemnity position.

Want to know more?

If you have any questions, please contact our specialist [health and safety team](#) or [trusts specialists](#).