

## Article

# Government to take the new ball in relation to trusts

In 1956, after 26 years of trying, New Zealand won its first international cricket test. In that same year the Trustee Act was also added to our laws. When we fast forward to today we can see that the Black Caps are picking up test wins a little more frequently, and we also note that trusts are now a common feature on our legal landscape. By some estimates there are as many as 500,000 family trusts in New Zealand.

In the coming months new trust legislation may be introduced to Parliament, possibly becoming law within 12 months. The new law will be the culmination of 5 years of work by the Law Commission. We have reviewed a draft of the proposed law. Its contents should interest not only trustees (including professional trustees), but those who have existing family trusts, and anyone considering forming one, as the new law is likely to largely mirror the draft.

The draft restates many key aspects of New Zealand trust law, including various principles of “judge made” law that have sat outside legislation until now. On the whole we think this will improve the general understanding and operation of trusts in New Zealand, but we note that in some cases it may also lead to increased administration for trustees.

### The key message for the interested parties above are:

Existing trustees can look forward to more guidance from the legislation, efficiencies around some processes, but also more core administration and more engagement with beneficiaries.

In light of these changes, along with the increasing complexity that trusts and trustees face generally, those who “dabble” as professional trustees may want to reconsider their commitment to this work, which is becoming more complex and risky. If you remain committed to providing professional trustee services, then your processes and precedents will need to be updated.

Those considering forming a trust should be confident that the decision whether to form a trust is still based on the same assessments as before, although this is best worked through with a solicitor, and often an accountant, both holding a good understanding of trusts.

The new law will underline the principle that your family trust needs to be well managed if you wish to be able to rely on the protection it affords. We suggest that all interested parties should ensure they are informed about the proposed changes to trust law. If they have queries they should talk to their professional trustee, their solicitor, or the writer. What they should not do is go down to third man and hope the ball doesn't come to them!

We will continue to watch developments closely (in relation to both the Black Caps and trusts). Please let us know if you wish to receive further updates on changes to trust law.

**Date published: June 2017**

**Author: Jeff Stringer**

**Contact: [jstringer@clmlaw.co.nz](mailto:jstringer@clmlaw.co.nz)**

