

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Re The Jubilee Crippled Children Foundation Trust Board [2023] NZHC 2318

High Court of New Zealand, Grice J, 24 August 2023

Application to alter a trust deed as to the appointor of new trustees.

Key words: Charitable Trust, New Zealand, Appointment of New Trustees, Charitable Trusts Act 1957, Trusts Act 2019

1. The Jubilee Crippled Children Foundation Trust Board (the Board) was governed by the Jubilee Crippled Children Foundation Trust (the trust), which was charitable.
2. There were strong links between the trust and The Auckland Branch of the New Zealand Crippled Children Society (now known as CCS Disability Action Auckland) when the trust was established on 11 September 1985. CCS Auckland was the appointor of new trustees under the trust deed. However, while the trust still has links to CCS Auckland, the trust now operates independently.
3. The settlor of the trust, Lionel Brierly, died in 2003, leaving the residue of his estate to the trust. The trust's purpose is to benefit people with a physical disability living in the Auckland area. The trust now has funds totalling approximately \$42 million and is administered by a board of trustees incorporated under the [Charitable Trusts Act 1957](#) (the Trusts Act).
4. The Board sought an order of the Court pursuant to s 130 of the [Trusts Act 2019](#) for the power of appointment to vest in the majority vote of the trustees.
5. The trustees were of the view that it was no longer appropriate for the trustee appointment process to be overseen and decided by CCS Auckland because the trustees were in a better position to choose new trustees, and could do so in a more timely fashion.
6. CCS Auckland consented to the variation.
7. As it was a charitable trust, the Attorney General was involved and did not oppose the application, but suggested to the Court that the matter be advertised publicly. The Court ordered this via the trust's website.
8. The Court granted the order as the variation was desirable to ensure the proper and efficient management and administration of the trust, and therefore was in the public interest.



Applications to vary the administration of a charitable trust in New Zealand are usually brought under section 33 of the Charitable Trusts Act, which provides for an extension of powers or an alteration of the mode of administration of a trust as follows:

In any case where it is made to appear that any property or income is given or held upon trust, or is to be applied, for any charitable purpose, and the administration of the property or income or the carrying out of the trust could be facilitated by extending or varying the powers of the trustees or by prescribing or varying the mode of administering the trust, the powers of the trustees may be extended or varied, and the mode of administering the trust may be prescribed or varied, in the manner and subject to the provisions hereafter contained in this Part: provided that nothing in this section shall restrict the powers that are or may be conferred on the court or the trustees by or under the Trusts Act 2019 or any other Act or by law.

The Court was of the view that the proviso to the section permitted the Court to deal with the variation in this case under s 130 of the Trusts Act rather than s 33 of the Charitable Trusts Act (at [18]).

A feature of the Charitable Trusts Act variation process that is missing from the Trusts Act processes is the requirement that the proposed variation be publicly advertised before it is considered by the Court. Therefore, the Court ordered a suitable advertisement to be made on the trust's website, commenting (at [16]-[17]):

It was suggested that the only person interested was the present appointor. While it is not clear what basis upon which someone might object to the application, it is not possible to rule that out. The trust is substantial. No doubt there are many people interested in its administration including those who are recipients of its grants.

Therefore, it is important that persons who might be interested in the application be given an opportunity to make submissions. For that reason, following the suggestion of counsel for the Attorney-General, this Court directed the advertisement of this application by placing it on the trust's website, as that appeared an appropriate method to ensure that the persons who might be interested in the organisation had an opportunity to make submissions in this application. No-one expressed interest in making a submission, nor were there any objections.

VIEW THE CASE



This case may be viewed at: <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZHC/2023/2318.html>

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