



PLAIN ENGLISH GUIDE

BEWARE OF WORKCOVER DEEMING PREMIUMS WHERE YOU HAVE A FAMILY TRUST WITH CORPORATE TRUSTEES

Family Trusts with Corporate Trustees face huge WorkCover accounts in relation to Deemed Premiums.

Recently a client was audited by CGU Insurance and they have received an account on the basis that they had a Corporate Trustee and the family members involved in the business were deemed to be employees. The account was for:

- i. Additional premiums resulting from wage audit \$19,835.04
- ii. Auditor's fee 1,252.85
- iii. Penalties \$13,752.47
- iv. Total \$34,850.36

WorkCover has advised Kim Cull, President of The Law Society of NSW, as follows:

"Where the trustees are individuals, the trustees themselves would, generally, not be entitled to workers' compensation coverage. If the trustee is a proprietary limited company, workers' compensation insurance would be necessary to cover any working directors. (This situation is no different to the position of working directors of other proprietary limited companies where the directors are considered to be employees of the corporation).

All workers employed by the trustees must be insured for workers compensation. This includes any beneficiaries of the trust who are not trustees, but who are employed by the trustees.

Family members working for the trustee, who receive trust distributions but no other form of reasonable remuneration, would be likely to be considered workers. Where employed beneficiaries are not paid a reasonable wage for the work performed but are instead paid through trust distributions, these distributions may be considered wages. The wages component assessed for premium calculation purposes is based on the hours and type of work performed."

If desired, you can contact us for copies of the following correspondence:

1. Letter from The Law Society to WorkCover of 20 March 2002.
2. Letter to The Law Society.

Bill Thompson of Commins Hendriks recommends that if you are involved in a Family Trust with a Corporate Trustee it is crucial that you review the following:

- i. Whether you replace the Corporate Trustee with individual Trustees. You must carefully examine the advantages and disadvantages including the Stamp Duty consequences, Capital Gains consequences, tax consequences and the limited liability issue.



- ii. Whether you retain the Corporate Trustee and arrange for the family members who are directly involved in the business to be paid a salary upon which Workers' Compensation is paid at the rate of approximately 11-12 cents per dollar. A question that you need to clarify is whether the salary actually has to be paid which would give rise to Pay As You Earn Tax and Superannuation or is it sufficient for WorkCover purposes that a premium is paid on the basis of a deemed salary without the salary being paid?
- iii. Whether you should retain the Trust with Corporate Trustee but have a Partnership Agreement between the Trust and individual family members working in the business. This would mean that the individuals as partners would be employing themselves and therefore not be entitled to Workers' Compensation coverage. (Please refer to paragraph one of the quote from the WorkCover letter).
- iv. Arrange to see your Accountant and have your Accountant liaise with your Solicitor to review the above.

Accountants throughout the Riverina are concerned that in some areas where farming trusts have distributed profits of hundreds of thousands in the last few years, families could face huge WorkCover bills if they are audited.

Our firm is attempting to coordinate a test case in conjunction with the NSW Farmers Association, The Law Society of NSW, The Institute of Chartered Accountants and the CPA's. We are working in conjunction with Rodney Parsons who is a representative of The Institute of Chartered Accountants Rural Issues Committee.