



INTRODUCTION TO TRUSTS ACT 2019— SUMMARY OF TRUST LAW CHANGES

INTRODUCTION

The Trust Act 2019 (**Act**) comes into force on 30 January 2021. It is the first major trust law reform in New Zealand in 65 years.

Many of the key changes in the Act are intended to make trust law more accessible and are intended to strengthen the ability of beneficiaries to hold the trustees to account.

If you are a trust settlor or trustee you need to start administering your trust in line with the new law from 30 January 2021 and we recommend that you consider the following:

- ◆ Are you willing and able to undertake the increased obligations?
- ◆ Are you comfortable with the increased information that must be provided to beneficiaries?
- ◆ Are the reasons for setting up the trust still relevant?
- ◆ Will the trust still be cost-effective with the additional trust compliance requirements?

We are recommending to all our trust clients that they review, firstly, the need for their trust and secondly, if they wish to continue to operate the trust and, if so, whether any changes need to be made to the trust deed before the Act comes into law.

Please feel free to contact us to discuss any of this information and how it relates to your trust.

SUMMARY OF TRUST LAW CHANGES

The Law

1. The Act replaces the previous Trustee Act 1956 and this comes into force on 30 January 2021.
2. The rule against perpetuity and remoteness of vesting is also abolished (the Perpetuities Act 1964). The Act increases the maximum permitted term of a trust to 125 years.
3. The age of majority is reduced from 20 to 18 years.
4. Codification and extension of the rule in *Saunders v Vautier* (1841) – that means that adult beneficiaries may unanimously bring a trust to an end.
5. Changes to the grounds on which the Court may review trustee decisions.
6. New alternative dispute resolution procedures are provided for.

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Key Changes

7. The Act applies to all express trusts governed by New Zealand law, and that includes those that were created before the commencement of the Act. It also applies to all statutory trusts, such as intestate estates, and to other trusts recognised at common law or in equity.
8. The Act says that trustees must notify beneficiaries of the fact that they are a beneficiary and what the contact details of the trustees are. They also must tell beneficiaries they can request core trust information.
9. This core information includes a copy of the trust deed (and any other documents that modify the trust deed - such as change of trustees and deeds of variation). They can request further trust information, and there is a presumption that they will receive it when asked for. However, there are some criteria for the trustees (or the Court, if there is a dispute) to take into consideration when such a request is made.
10. Trustees will be legally obligated to hold all of the core trust documents.
11. The new Act sets out the *Mandatory Duties* of a trustee - these cannot be modified by the trust deed.

The *Mandatory Duties* are:

- ◆ Know the terms of the trust
- ◆ Act in accordance with terms of the trust
- ◆ Act honestly and in good faith
- ◆ Act for the benefit of the beneficiaries

12. It also sets out *Default Duties* of a trustee - these can be modified by the trust deed. The *Default Duties* are:

- ◆ To invest prudently
- ◆ To exert care and skill
- ◆ Not to exercise their power for their own benefit
- ◆ To avoid a conflict of interest
- ◆ To act impartially
- ◆ To avoid conflict
- ◆ Trustees cannot be bound to future exercises of discretion
- ◆ To regularly and actively consider the exercise of their power
- ◆ To act unanimously when making decisions

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Exemption & Indemnity Clauses

13. The Act makes it clear that trust deeds must not limit a trustee's liability or provide an indemnity for dishonesty, willful misconduct or gross negligence. Any terms in a trust deed that purport to limit the liability of the trustee or to indemnify them in breach of these provisions will be invalid.
14. This means that trustees can no longer rely on broad indemnity clauses that purport to protect them against gross negligence. They may still be protected in relation to ordinary negligence if there is an appropriately drafted limitation of liability and indemnity clause.

Appointment & Removal of Trustees

15. The statutory powers for appointment and removal of trustees have been modernised and broadened to minimise the need to apply to the Court. Any such power must be exercised honestly and in good faith and for proper purposes.
16. This includes the compulsory removal of a trustee who loses capacity and optional removal, if a trustee repeatedly refuses or fails to act as a trustee, becomes bankrupt or becomes insolvent.
17. Retiring as a trustee is to become slightly more difficult in so far as a discharge must be given in writing.

Special Trust Advisers/ Delegates & Nominees

18. Another option opened by the Act is an ability to appoint a *special trust adviser* to advise the trustee(s). Any *special trustee adviser* will not have the power of the trustee(s) and the trustee(s) will not be bound to follow their advice.
19. The new rules on exercise of trustee powers by others (ss 67-73) enable the trustee(s) to go further and delegate certain powers or functions to another person.

Retention of Information

20. The Act requires trustees to keep core trust documents, including documents setting out the terms of the trust or those varying those terms; records of the trust property; records of trustee decisions; contracts; accounting and financial statements; letters of wishes; and other documents necessary for the administration of the trust.
21. All trustees do not need to hold all of this information, but they must know where it is kept, and it must be kept for the life of the trust.

Conclusion

This is a brief introduction to the Act, and we can provide additional information if required.

In the first instance, we suggest that you review and consider the following:

- ◆ Is your trust appropriate to continue with, or should it be wound up?
- ◆ What information will you need to provide to the beneficiaries?
- ◆ Are there any changes that need to be made to your trust now before the Act comes into force?
- ◆ Do you need to review any other documents, such as your wills, powers of attorney and enduring powers of attorney?

MORE INFORMATION

If you need some advice, or have any questions, on the Trusts Act 2019 or on trusts in general, give us a call or send us an email for more information.

Wellington Office:

Level 2, Zephyr House, Te Aro, Wellington 6011 | PO Box 8091, Wellington 6143

Kapiti Office:

116 Rimu Road, Paraparaumu 5032 | PO Box 352, Paraparaumu 5254

Otaki Office:

208 Main Highway, Otaki 5512 | PO Box 99, Otaki 5542

Foxton Office:

74 Main Street, Foxton 4814 | PO Box 22, Foxton 4848

Phone: 04 970 3600 **Email:** info@wakefieldslaw.com **Website:** www.wakefieldslaw.com