



Trusts Act 2019 – What you need to know

The Trusts Act 2019 (the Act) came into force on 30 January 2021. The Act replaces the Trustee Act 1956 with the purpose of making the law more accessible to both trustees and beneficiaries of trusts. Below is a summary of the key changes to existing trust law:

Disclosure Obligations

The Act introduces a positive obligation on trustees in most cases to notify someone that they are a beneficiary of a trust and that they have a right to request further information about the trust. This is a significant change and could be one many settlors of trusts may not have anticipated when settling their trust.

The Act details the factors that trustees must consider when deciding whether to notify someone that they are a beneficiary of a trust, and whether to provide any information about the trust to a beneficiary on request. While the factors that the trustees must consider are largely a reflection of existing law, trustees will need to take careful note of their obligations around disclosure and consider how disclosure should be managed and the impact that beneficiaries being aware of a trust may have on family dynamics and likely requests for further information about a trust and scrutiny of trustee actions by beneficiaries.

Retaining Core Documents.

The Act requires trustees (or at least one of them) to keep copies of the core documents of the trust, including the trust deed and variations, details of trust assets and liabilities and financial statements, contracts entered into by the trust (including agreements for sale and purchase, bank loan documents and the like), records of trustee decisions and settlor memorandum of wishes.

These core documents of a trust must be kept for the lifetime of the trust, which will require financial statements to be held for longer than the law otherwise requires them to be. This obligation on trustees is likely to result in changes in how professionals both hold and manage trust documentation on behalf of their trust clients. If Duncan Cotterill is a trustee of your Trust we would expect to hold the core documents on behalf of the Trust.



Trustee Duties

Whilst the law has always imposed duties on trustees, the new Act actually defines both mandatory and default duties of trustees. The mandatory duties, which cannot be avoided by the terms of the trust, set out the basic obligations of trustees to know the terms of the trust and follow them, act honestly and for the benefit of the beneficiaries and according to a proper purpose. The default duties can be modified or excluded by the terms of the trust deed. They cover such matters as trustees' investment obligations, conflicts of interest and a requirement to act unanimously. We would expect

trustees would need to consider the terms of their trust in light of these new duties, and determine whether any variations should be made to the trust deed as a result.

Trust Duration

The Act extends the maximum duration of a trust from (effectively) 80 years to 125 years.

Trustee Liability

There are changes to the rules that apply to trustees' ability to exclude or limit their liability and trustees' rights to be indemnified from trust property. These changes are likely to change how professional trustees manage those trusteeships.

Delegation

There are changes to trustees' ability to delegate their powers and functions, which increase the circumstances in which the powers can be delegated but restrict the timeframe during which the delegation is effective. If trustee delegation powers have previously been used regularly for your Trust, we may need to discuss with you whether changing the trustees of the Trust would be preferable.

Dispute Resolution

The Act provides that a trust deed may permit a trust dispute to be determined by alternative dispute resolution (ADR). The Act provides that the ADR process could be used to resolve issues between the trustees themselves, or between the trustees and one or more beneficiary of the trust. As part of submitting to an ADR process, trustees may also give undertakings in settling the dispute that will be binding on their future actions as trustees.

Duncan Cotterill

Our team of specialist lawyers is at the forefront of New Zealand Trust law, with expertise and capability across a broad spectrum of Trust issues.

Please contact your Duncan Cotterill lawyer for further assistance with your Trust matters.