

A new Trusts Act – what does this mean for you?

Trusts have been around for centuries and their use over time has varied from protecting land during the English Civil War in the 17th Century to protecting Estates from Estate or Death Duty up until the late 20th Century. The reasons why individuals establish Trusts vary, and the assets held by Trusts range from the family home to complex and substantial financial assets.



**TIME TO
UPDATE!**

Following ten years of reviews, consultation and debate, the new Trusts Act 2019 was passed into law on 30 July 2019. This replaces the old Trustees Act 1956, Trustee Amendment Act 1988 and the Perpetuities Act 1964. The new law will have a major impact on the estimated 300,000 to 500,000 Trusts that operate in New Zealand.

Why were changes needed?

The previous Trust legislation was over 60 years old and since 1956 our society, relationships and the financial world have changed considerably. How Trusts are used and the laws governing them have also changed as case law has built on the old legislation.

The Law Commission found three key issues that needed to be addressed:

1. Lack of understanding about Trusts, how they work, and the obligations and rights of all parties.
2. Trust administration is complex and expensive, and making changes is difficult, often requiring an application to the court.
3. The Trustee Act does not reflect current practice. This makes drafting of Trust Deeds difficult, involving contracting out of the default rules.

Ultimately, a new law was needed to reflect 21st century New Zealand.

What are the key changes?

- Formalising trustee duties, defining both mandatory and default duties.
- **Mandatory Duties** include:
 - knowing the terms of the Trust, and following them,
 - acting honestly and in good faith,
 - acting for the benefit of the beneficiaries, and
 - exercising power for the proper purpose.
- **Default Duties** can be varied (with good reason) and include to invest prudently, keep proper records, not profit, act for no reward and avoid conflicts of interest.
- **Maximum Trust Term** extended from 80 years to 125 years, removing the rule against perpetuities.
- **Trustee Liability** is clarified and restricts the ability for trustees to exclude or limit their liability. Trustee liability cannot be avoided in the case of dishonesty, wilful misconduct or gross negligence.
- **Beneficiary Rights** to information are set out, including rights to:
 - be informed they are a beneficiary, the details of the trustees and any change in trustees.
 - ask for information on the Trust, such as details of assets, income and activities.Potentially this will create a lot of work, with trustees required to provide this to all beneficiaries.
- **Age of Majority** - confirmed as 18 years of age.
- **Legal Proceedings** – introducing new dispute resolution provisions which will enable some matters to be dealt with using alternate dispute resolution (ADR) or the Family Court, rather than the more time consuming and expensive High Court.
- **Delegation** – trustees will be able to delegate certain powers and functions, including investment management. If they do delegate duties, a trustee's responsibility is to follow a proper process.



While the new Trusts Act is law, it will not come into effect until January 2021. The long lead time reflects the work required by trustees comply with the obligations.

How does this affect you?

Trustees will have greater responsibility and more prescriptive obligations under the new Trusts Act. The new law will apply to both existing and new trusts and suggest that trustees take the following steps:

1. Ensure the Trust has a file containing the following:

- Trust Deed, and any variations
- Schedule of Trust Beneficiaries
- Financial Statements and Tax Returns prepared
- Record of Trust assets and liabilities
- Trust Minutes and Resolutions
- Memorandum of Wishes



2. Review the purpose of the Trust, and whether this purpose still exists. If not, you should review whether the Trust should continue or be wound up.

Possible reasons to have a Trust include:

- Business Protection (including guarantees, health & safety risks)
- Holding long term, and sometimes, intergenerational assets
- Estate Planning to ease transfer of assets to next generations
- Income allocation between Trust beneficiaries
- Relationship breakdowns
- Providing for children with special needs, or interesting family dynamics!

3. Review whether the Trust Deed needs to be varied to incorporate the new Act, including possible changes to beneficiaries, trustees, powers of appointment and distributions dates.

4. Ensure that your Trust has a Memorandum of Wishes that records your wishes for the future management and distribution of the Trust assets.

5. Consider the investment strategy for the Trust and ensure it incorporates the:

- objectives of the Trust, including the needs of beneficiaries.
- possible need for distributions.
- likely income and total return.
- risk of capital loss or volatility.
- tax implication of various investment.
- total value of the investment portfolio.
- maintenance of the real value, offsetting the effects of inflation



We are here to help

These changes are on their way and the onus is now on trustees to ensure that Trusts they act for are compliant with the new Trusts Act. Their responsibilities to properly manage Trusts, and the rights of the beneficiaries to information, are now clear. This will lead to greater transparency for all Trusts and how they are used.

The Rede Advisers team has extensive experience in the management of Trusts, and especially in the prudent investment of Trust funds. If you have any questions on how the new Trusts Act impacts your Trust and your responsibilities as a trustee, please contact us.



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