

The Trusts Act 2019

The Trusts Act 2019 (the Act) comes into effect on 30 January 2021. The Act replaces the existing Trustee Act 1956 and the Perpetuities Act 1964. The Act will become the primary source of law relating to trusts in New Zealand.

Purpose of the Act

The Act is intended to:

- make the law relating to trusts in New Zealand more accessible to people who are not legally trained; and
- clarify core trust principles and essential obligations for trustees.

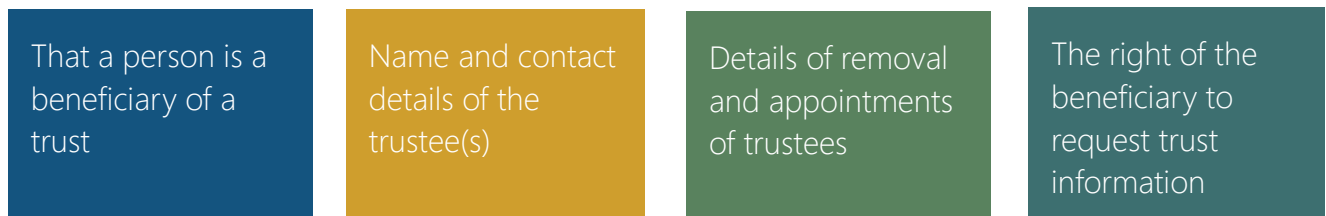
The changes made to the law by the Act are important to all settlors, trustees and beneficiaries of trusts in New Zealand.

Trustee's obligations to give information to beneficiaries

The Act creates two rebuttable presumptions in relation to the provision of information to beneficiaries as follows:

- every beneficiary of a trust will be given certain basic trust information; and
- other information will be made available on request.

The basic trust information is:



The presumption changes the current position, which is that information is provided at the trustee's discretion to a positive obligation on the trustees.

The new presumptions regarding disclosure are grounded in the view that beneficiaries are required to have knowledge of trusts and trust information in order to enforce the due and proper administration of trusts.

The presumptions can be rebutted in certain circumstances. Unless rebutted, the disclosure obligations extend to all beneficiaries of the trust. Many trust deeds contain a broad class of discretionary beneficiaries. In many cases it is likely that it will not be appropriate for all such beneficiaries to receive information about a trust from which they are unlikely to receive future distributions.

Trustees can consider the grounds on which the presumption of disclosure can be rebutted and could also consider the possibility of resettling a trust on a narrower class of beneficiaries.

Core Trust Documents

The Act sets out the following core trust documents that must be held and who must hold these:

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| Trust deed | Variations to trust deed | Records of trustee decisions | Written contracts entered into by trustees |
| Accounting records | Trust administration documents | Letter of wishes | Appointments, retirements, and removal of trustees |

At least one trustee must hold the core trust documents and all trustees must hold the trust deed and any variations of trust.

The trustee responsible for retention of the core documents must be clearly determined.

Review of trustee decisions

- The Act give beneficiaries of a trust a clearer pathway to ask a court to review the decisions and actions of trustees.
- Trustees will need to be careful about following due process when making decisions and ensuring that they fulfil their duties under the Act.

Restatement of trustee duties

The Act specifies two type of trustee duties – mandatory duties and default trustee duties.

The mandatory duties are to:

- know the terms of the trust;
- act in accordance with the terms of the trust;
- act honestly and in good faith;
- act for the benefit of beneficiaries or to further the permitted purpose of the trust; and
- exercise power for proper purposes.

Checklist for trustees

Have you considered whether:

- you are willing and able to provide information about the trust to all beneficiaries?
- the people named as beneficiaries are actually intended to receive benefit from and information about the trust?
- the context and objectives of the trust are clear?
- the trust deed deals adequately with the mandatory and default duties set out in the Act?
- the trustees are all aware of their rights, interests, powers and duties under the trust and prepared for greater scrutiny by and engagement with beneficiaries?
- the trust is still fulfilling the purposes for which it was established?

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