

## Extension of trust duration under the Trusts Act 2019

### The Trusts Act 2019 has extended the maximum potential 'lifetime' of trusts from 80 years to 125 years.

The Trusts Act 2019 (**Act**) came into force in 2021 and introduced a number of changes to trust law in New Zealand. Under the Act it is now possible to extend the maximum lifetime of trusts to 125 years in certain circumstances.

#### Trust Maximum Lifetime and the Rule against Perpetuities

Prior to the introduction of the Act, trusts had to comply with the 'Rule against Perpetuities', meaning property could only be held in a trust for a maximum of 80 years. This meant that older trusts had to have an expiry date no later than 80 years following their establishment date. The Act abolished the 'Rule against Perpetuities' and extended the maximum lifetime of a trust to 125 years.

#### What happens when a Trust reaches its 'expiry date'?

Most trusts in New Zealand are 'discretionary trusts' meaning the trustees have the power to decide who receives trust funds or other benefits.

Once a trust's expiry date has passed, the trustees lose all power to decide and must distribute all trust assets

and wind up the trust in accordance with the provisions in the trust deed.

This can have unintended consequences for example, resulting in children receiving trust assets before the death of their parents.

#### Ability to extend Trust Lifetime

The Act allows for the maximum lifetime of trusts established before 2021 to be extended to 125 years in certain circumstances. In summary, this is possible where:

- the trust deed specifies an expiry date or maximum lifetime; and
- the expiry date or maximum lifetime is extended by:
  - using an express power contained in the trust deed – e.g. power of variation; or
  - varying the trust deed in accordance with section 122 (variation by unanimous consent of beneficiaries) or 124 (court approved variation) of the Act.

#### Recommendation

The lifetime of a Trust will vary depending on the trust deed and it is important that clients are aware of the expiry date of their trust to avoid a situation where trust assets pass to the next generation unexpectedly.

As part of their succession planning, clients may want their assets to be held in trust for as long as possible following their death. Benefits of this may include minimising the risk of creditor and relationship property

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## Extension of trust duration under the Trusts Act 2019 (Continued)

claims and helping ensure trust assets are held for and transferred appropriately to the next generation.

We recommend:

- checking the expiry date of your trust;
- contacting your lawyer if you have any questions regarding your trust's expiry date, including to review whether or not it can be extended; and
- confirming with your accountant that any extension of the trust expiry date will not have unintended tax consequences.

### Want to know more?

If you have any questions about the expiry date of your trust, please contact our specialist private client team.