

The arrival of the Trusts Act 2019

After much anticipation, the Trusts Bill obtained Royal assent on 30 July 2019, the final stage in becoming an Act of parliament, and is now the Trusts Act 2019 (the Act). The Act makes important changes to trust law in New Zealand and replaces the Trustee Act 1956 and the Perpetuities Act 1964. The Act will come into force in 18 months' time on 30 January 2021.¹

It is important that trustees and beneficiaries are aware of the changes and the impacts on their rights and obligations and that trustees use this 18 month transition period to ensure their practices align with the provisions of the Act.

Changes to Trust Law

The Act is intended to modernise and clarify trust law, codify the mandatory and default duties on trustees, simplify the core principles of a trust and provide mechanisms to resolve trust-related disputes. Some of the most notable changes include:

- The codification of mandatory and default trustee duties:
 - The five mandatory duties cannot be excluded or modified by the trust deed and impose on all trustees a duty to know the terms of the trust, a duty to act in accordance with those terms, a duty to act honestly and in good faith, a duty to act for the benefit of beneficiaries, and a duty to

exercise the trustee's powers for proper purposes.

- The ten default duties apply unless expressly excluded by the trust deed and include a duty to invest prudently, a duty not to exercise power for their own benefit, a duty to avoid a conflict of interest and a duty to act unanimously.
- The length of a Trust's life has been extended from a maximum of 80 years to a maximum of 125 years.
- Requirements for management and disclosure of trust information to beneficiaries. The Act sets out what information trustees must keep and how long documents must be kept.

The Act favours keeping beneficiaries informed and clearly outlines the basic trust information that is to be provided to every beneficiary. The process of disclosing information also includes a requirement on trustees to notify all those who are qualifying beneficiaries.

Trustees may only refuse to provide information to beneficiaries after considering both their general obligation to provide information and a series of factors as to the nature of the information and the practicalities of restricting that information.

- The introduction of mechanisms to resolve trust disputes. In the interest of keeping trust related disputes out of Court where possible, the Act provides for alternative dispute resolution mechanisms such as mediation or arbitration.
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¹ Except Subpart 5 – Amendments to the Financial Services Legislation Amendment Act 2019 which came into force the day after the Act received Royal assent.

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(Continued)

Want to know more?

The Act is going to impact existing trusts and new trusts will need to ensure they comply with the provisions of the Act. For further information about how the Trusts Act 2019 may impact you, please contact our specialist [Private client and trusts](#) team.