

Govett Quilliam

THE LAWYERS

TRUSTS ACT 2019 | IMPORTANT LEGAL UPDATE

The Trusts Act 2019 (**the Trusts Act**) comes into force on 30 January 2021. As a firm with many trust clients, we are eager to ensure that all relevant clients are aware of the new legislation, and importantly, its implications for trustees & trust beneficiaries.

The purpose of the Trusts Act is to clarify, codify and consolidate the law of trusts. Some of the provisions have a direct impact on the obligations and duties of trustees, and therefore it is important they are addressed and considered to ensure ongoing trust compliance. Some of the significant provisions of the Act are set out below.

TRUSTEES DUTIES

The Trusts Act clearly sets out trustee duties, which are split into the two categories. These are called **mandatory duties** and **default duties**.

MANDATORY DUTIES	<i>Mandatory duties <u>must</u> be performed by trustees and can <u>never</u> be modified or excluded by the terms of the trust deed</i>
Knowledge	To know the terms of the trust deed
Compliance	To act in accordance with the terms of the trust deed
Good faith	To act honestly and in good faith
Use of Powers	To act for the benefit of the beneficiaries or to further the permitted purpose of the trust (each, in accordance with the terms of the trust deed)
Proper Purpose	To exercise powers for a proper purpose
DEFAULT DUTIES	<i>Default duties <u>must</u> be performed by trustees <u>unless</u> they are modified or excluded by the terms of the trust deed</i>
Reasonable care and skill	To exercise the care and skill that is reasonable in the circumstances, taking into account any special knowledge / experience of trustees
Prudent investment	To exercise the power to invest with care and skill that a prudent person of business would exercise in managing the affairs of others, taking into account any special knowledge / experience of trustees
No benefit	To not exercise powers for any trustee's benefit (whether directly or indirectly)
Active involvement	To consider actively and regularly whether trustees should be exercising one or more of the trustees powers
Non-restrictive	To not bind or commit trustees to future exercise or non-exercise of a discretion.
No conflict	To avoid a conflict between the interests of the trustee and the interests of the beneficiaries
Impartiality	To act impartially in relation to the beneficiaries and not to the detriment of others
No profit	To not make a profit from the trusteeship
No reward	To not take any reward for acting as a trustee
Unanimity	To act unanimously (if more than one trustee)

RECORD RETENTION

The Trusts Act requires that all trustees hold a copy of the **trust deed** and any **deeds of variation** to the trust deed. All trustees must also be aware of the terms contained in these documents. All **other trust information and documents** must be held by at least one trustee of the trust.

DISCLOSURE OF INFORMATION TO BENEFICIARIES

The Trusts Act has introduced a presumption of information disclosure. Specifically, that:

- **Basic trust information:** trustees must make available to all beneficiaries **basic trust information**; and

- **Requested trust information:** trustees must, within a reasonable period of time, make available to a requesting beneficiary such **trust information** that is requested.

Basic trust information is:

- with respect to each beneficiary, the fact they are a beneficiary of the trust
- the names of current trustees and each of their contact details
- the occurrence of, and details of, each trustee appointment, removal and retirement as they occur
- that as a beneficiary they have a right to request a copy of the trust deed or other trust information

Trust information is a broader concept than **basic trust information**. It can include any information regarding the terms of the trust, the administration of the trust and trust property, to the extent that such information is reasonably necessary for the beneficiary to have, to enable the trust to be enforced by the beneficiary.

However, before providing any **basic trust information or trust information** to beneficiaries, the trustees must determine whether the presumption to disclose such information applies in the circumstances. The Trusts Act sets out a list of considerations that trustees must consider when making such assessment. These considerations include, but are not limited to:

- with respect to each beneficiary:
 - their age and circumstances
 - their likelihood of receiving trust property in the future
 - the impact that receiving the information might have on them
- the impact that disclosing the information might have on the trustees and other beneficiaries
- whether the information is subject to personal or commercial confidentiality

FURTHER INFORMATION

For more information on the Trusts Act please refer to our list of **Frequently Asked Questions** enclosed, or visit our website (www.thelawyers.nz/trusts-act-2019-frequently-asked-questions) for further resources. If you have any queries or would like specific advice in relation to the Trusts Act or the law of trusts in general, please call (06 768-3700) or email (email@gqlaw.nz) us directly.