

Trusts Act 2019 impacts on trusts

Effective from 30 January 2021

In July 2019, the Government passed the Trusts Act 2019 (replacing the Trustee Act 1956). This new Act sets out the core principles and default rules for trusts, including trusts created under Te Ture Whenua Māori Act 1993.

The aim is to make the law easier to understand.

What has changed?

The new Trusts Act 2019 represents the first major reform of trust law in New Zealand for 70 years. The changes affect all trusts, including Māori land trusts created through the Māori Land Court (such as ahu whenua, kaitiaki, and whānau trusts) and existing trusts established before the law came into force.

The Trusts Act does not contain all the law relating to trusts. Parts of common law and the law of equity continue to be relevant to trusts. Trusts still need to have regard to provisions for trusts in Te Ture Whenua Māori Act 1993.

Why make this change?

The new Trusts Act makes the law around trusts more accessible and easier to understand. The changes also support good practices, and stronger accountability by trusts by enabling greater transparency for beneficiaries.

What are the duties of a trustee?

The Act sets out two kinds of trustee duty. These are not new duties – they were already part of the law but were not spelled out clearly in the previous legislation.

‘Mandatory’ duties must be performed by the trustee and cannot be changed or avoided by the terms of the trust (the trust order). These include the duties to know the terms of the trust, to act in accordance with the terms of the trust, to act honestly and in good faith, and to act for the benefit of beneficiaries of the trust.

‘Default’ duties must be performed by the trustee unless they have been changed or excluded in the terms of the trust (the trust order). These include the general duty of care, the duty not to exercise power for the trustee’s own benefit, and the duty to avoid conflicts of interest.

Trustees must also have regard to two overarching principles when carrying out their duties under the Act. These principles are:

- a trust should be administered in a way that is consistent with its terms and objectives, and
- a trust should be administered in a way that avoids unnecessary cost and complexity.

What do trustees need to do differently?

There are new requirements on trustees to keep and share certain information.

Every trustee must keep a copy of the trust deed (trust order) and any variations made to it.

At least one trustee must hold other core trust documents such as records of the trust’s property, records of trustee decisions, and accounting records and financial statements.

Trustees must make basic trust information available to every beneficiary. This includes who are beneficiaries of the trust, the name and contact details of the trustees, and information about the appointment or removal of trustees.

Trustees must also provide other information about the trust to a beneficiary if they request it. This includes information about the administration of the trust, the trust’s property, or other important information. However, the trustees can decline such an information request in some cases (for example, if the information is subject to personal or commercial confidentiality).

Can Māori land trusts still apply to the Māori Land Court for direction

Yes. Two sections of the Trustee Act 1956 that were used from time to time by Māori land trusts have been carried over to the new Trusts Act:

- Trustees may apply to the Māori Land Court for directions about the trust property or the use of their powers or functions.¹
- The Māori Land Court may relieve a trustee from personal liability if they have acted honestly and reasonably and ought to be excused for a breach.²

Do trusts need a new trust order?

Probably not. While it is unlikely your trust order will conflict with the provisions of the new Trusts Act, you may wish to seek advice on this point. This is also a good opportunity to review the way your trust keeps and provides information.

How can I find out more?

If you have further questions, contact a Māori Land Court office.

For office contact details, go to

www.maorilandcourt.govt.nz/contact-us.

The Māori Land Court offers training for trustees.