



Trusts Act 2019.

Your guide to what the
New Zealand Trusts Act
2019 means for you.

The Trusts Act is now law.

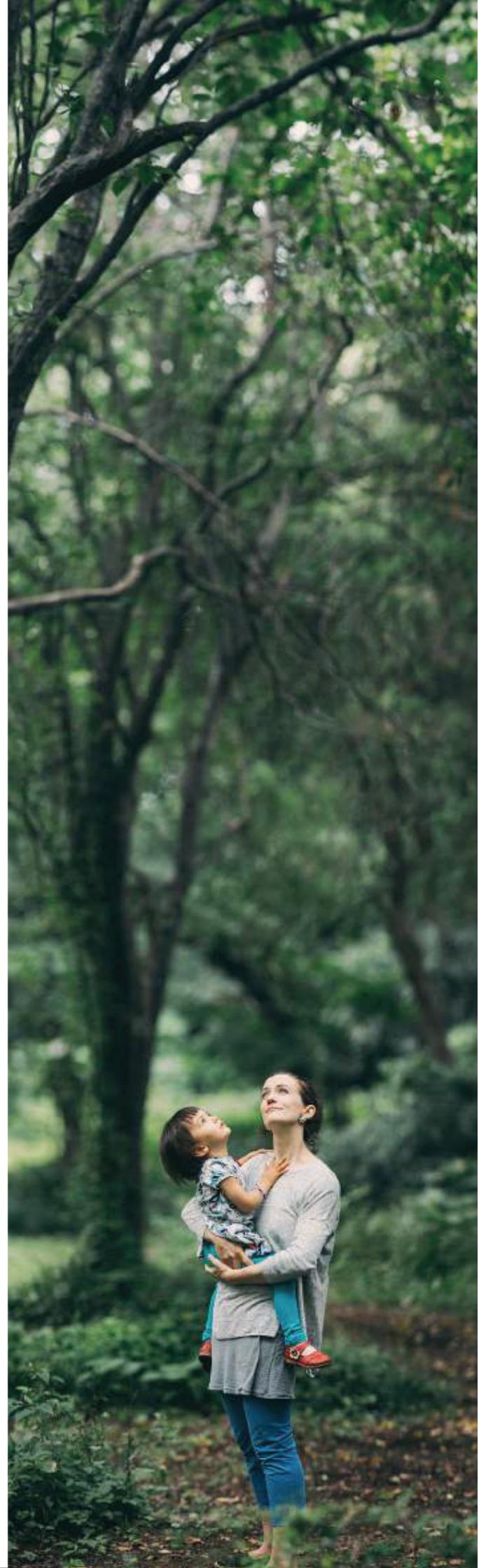
The terms of the Act are now enforceable and replaces the Trustee Act 1956.

Introduction

The Act redefines the purpose of trusts and the management of trust assets. It focuses on trustee obligations and making trust information available to beneficiaries.

What you'll learn about in this guide:

- reasons for having a trust
- beneficiaries' rights to information
- common questions
- who to contact for advice
- trustee obligations including regular reviews



What do you need to consider?

If you currently have a trust, it will be important to discuss the following with your professional adviser:

- reasons for having a trust
- rights to information for beneficiaries
- clearly defined default and mandatory duties on trustees
- reviewing your trust and whether it is still the right option for you

Previous reasons you may have had a trust

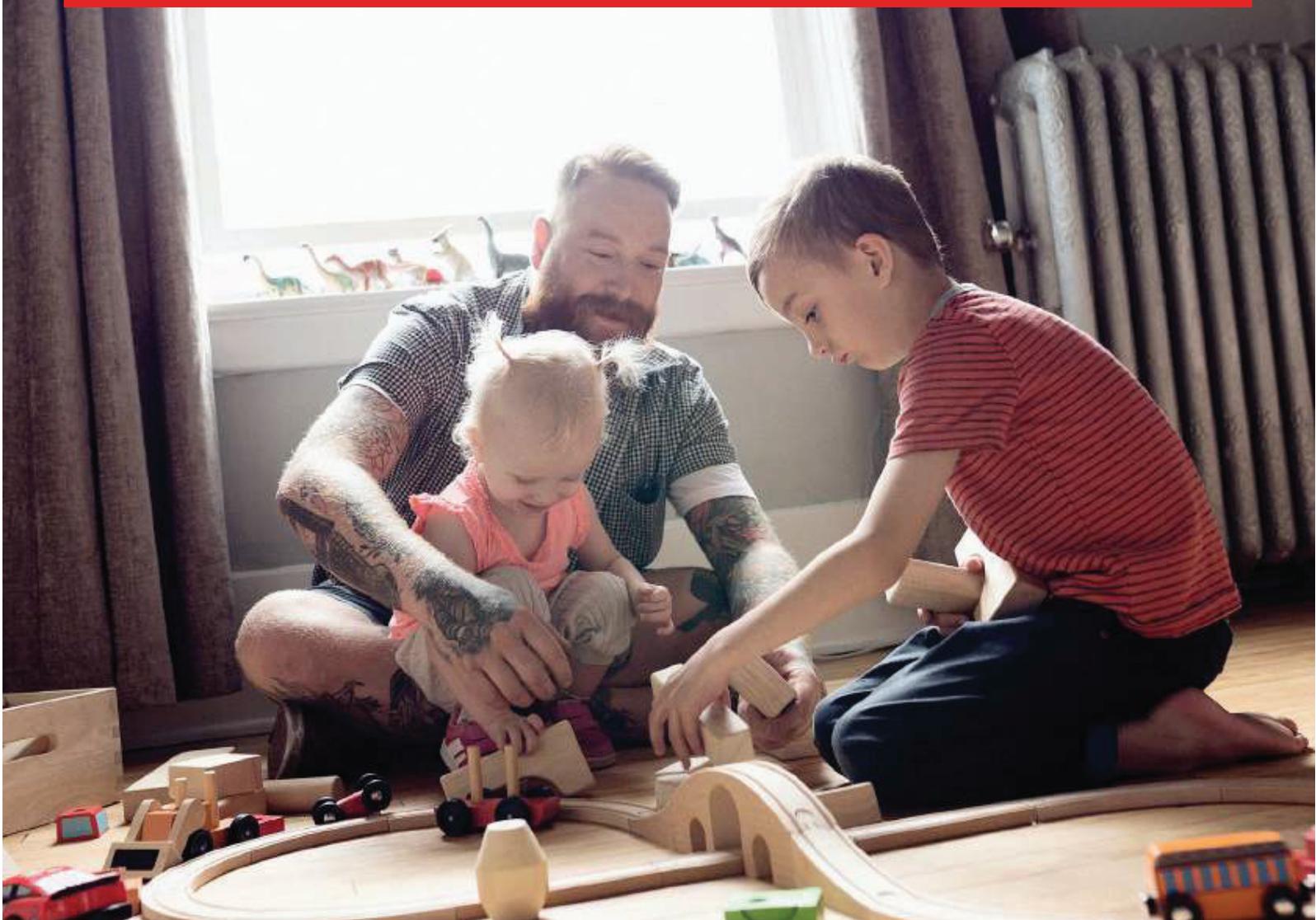
Previously, a trust may have been set up to:

- provide for family and protect assets
- protect family assets from unexpected business or professional claims
- keep property or assets in the family for the benefit of future generations
- structure your affairs effectively for tax
- reduce the chance of relationship property claims by future partners
- maintain confidentiality of financial affairs
- provide for children from previous relationships
- prepare for a time when you might need residential care
- protect assets from unwanted claims against your estate
- provide for beneficiaries with special needs

Reasons for having a trust now

With the development of case law, and the courts' approach to trusts, trusts are now viewed as not providing the same level of protection of assets as they once did. There are now four key reasons for having a trust:

- proactive estate planning - to formally protect and minimise the risk of unwanted claims against your estate, provide for or exclude children, and for beneficiaries who are vulnerable or have special needs.
- protection from relationship property claims, alongside a contracting out (pre-nup) agreement.
- creditor protection in particular situations
- keeping property or assets within the family for future generations.



Trustee duties

Trustee duties are set out in the Act. It is important all trustees understand their duties and the terms of the trust.

There are mandatory duties and default duties. The mandatory duties cannot be modified or excluded under the Trusts Act.

The **mandatory duties** are:

- know the terms of the trust
- act in accordance with the terms of the trust
- act honestly and in good faith
- act in the best interests of the beneficiaries or to further the intended purpose of the trust
- exercise trustee powers for their proper purpose and not act fraudulently or against the terms of the Trust Deed or legislation

The **default duties** for trustees are to:

- ensure the Trust assets are invested prudently
- ensure trustee powers are not exercised for own benefit
- to not act for any personal reward or profit
- actively and regularly review the trust, its assets, liabilities, beneficiaries and their obligations to same.
- avoid conflicts of interest
- be impartial in all trustee decision making
- not do anything that binds, restricts or commits future trustees for discretionary decisions
- act unanimously with co-trustees

Trustees will continue to have the right to determine which beneficiaries benefit from a trust and to what extent, as well as how the trust is managed. This simply means there are increased obligations to ensure that the trustee is accountable to the beneficiaries.

Increased beneficiaries' rights to information

Trustees have a requirement to provide beneficiaries with basic trust information (unless exceptional circumstances apply) at the earliest possible time after the trust has been set up, including:

- the fact that the person is a beneficiary of the trust
- the name and contact details of the trustee(s)
- the occurrence and details of each appointment, removal, and retirement of a trustee as it occurs
- the right of the beneficiary to request a copy of the terms of the trust or trust information

This information is to be provided to a beneficiary needing to ask for it and it can only be withheld from beneficiaries in exceptional circumstances. The Act provides a procedure for when a trustee decides not to provide information.

Sharing information with beneficiaries will not be a one off event, beneficiaries will need to be kept updated regarding the administration of the trust on an ongoing basis.

What trusts are impacted by the Trusts Act?

Family and Inheritance trusts are particularly impacted by the changes in the Trust Act. Estates may also be impacted where there is no age of inheritance defined in the will for example.

Impact on family trusts, inheritance trusts and estates

The changes in the law also change the age of majority (the default age that a person can inherit) and the maximum lifetime of a trust. Under the new legislation, the age a person can receive their inheritance has come down from 20 years to 18 years and the maximum duration of a trust has increased from 80 years to 125 years. These changes apply to all trusts and estates where there is no specific age or duration stated in the founding documents.

Frequently asked questions

What do I need to do if I have a house-only trust that I have had for many years, and I want to review my trust?

This is a common question. At the outset, we need to work out if a trust is still a good option for you. We need to establish the reasons that the trust was initially set up, and equally what the reasons are for the trust today.

You may wish to discuss this with your professional trustee to understand the best way forward for you and your trust.

What if I don't want to tell the beneficiaries that they are beneficiaries of the trust?

The Trusts Act requires the trustees to make the following information available to all beneficiaries of a trust, including an inheritance trust:

- (a) The fact the person is a beneficiary
- (b) The name and contact details of the trustees
- (c) The occurrence and details of each trustee appointment and change of trustees
- (d) The right of the beneficiary to request a copy of the trust terms

There is a presumption that a trustee must make that information available to every beneficiary. Public Trust will be doing so in all trusts where it is a trustee or co-trustee unless exceptional circumstances apply.

If this is a concern for you then we can review whether your trust is still the right option for you or your family.

What do I need to do if the trust is going to be wound up?

If the trust is going to be wound up, we will let you know what documents need to be prepared, who needs to sign them, what processes will need to be followed and the costs associated. Where the trust owns a property, conveyancing will need to be involved to complete the change of ownership of the property.

I want the trust to continue, but I don't want to be a trustee anymore because it's going to cause me unnecessary stress.

If this is the situation, the person who has the power as protector (or appointor in some trust deeds) may exercise their power to remove themselves/retire as trustee, and we can continue as sole trustee. As the professional trustee we will continue to ensure that the trust is being run appropriately and we will explain to you how we will continue to manage the trust.

What if Public Trust is a trustee of a trust, and the trustees want to review this?

All trustee decisions need to be unanimous and to make the process as efficient and simple as possible and as either sole or co-trustee of your trust, our input into any decisions should be obtained at an early stage.

Where Public Trust is a trustee of your trust and there is a property owned within the trust, our input would be required for decisions such as what to do when :

- when a co-trustee dies
- when a co-trustee looks to sell the property
- when a co-trustee looks to borrow more money and wishes to use the trust property as security

As Public Trust is a co-trustee and is registered proprietor, we will need to be actively involved in this process. If it is felt that Public Trust's involvement as trustee is no longer beneficial to the trust and its beneficiaries, then in most cases the person who holds the protector powers (or appointor in some trust deeds) may exercise their power to remove Public Trust.



Have more questions?

If you have any questions about any of the content of this guide, please get in touch with your main contact at Public Trust, call us on **0800 371 471** or email **info@publictrust.co.nz**

We also provide regular updates on our Facebook page.



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www.publictrust.co.nz

We're committed to helping all New Zealanders plan for their future. We've been around for more than 140 years, so you can be confident that every Public Trust adviser has a wealth of knowledge and experience behind them. That's why more than 250,000 Kiwi already trust us to help them look after the things that matter most.