

# **Trusts Bill**

Government Bill

As reported from the Justice Committee

## **Commentary**

### **Recommendation**

The Justice Committee has examined the Trusts Bill and recommends that it be passed with the amendments shown.

### **Introduction**

As introduced, this Government bill seeks to replace the Trustee Act 1956 and the Perpetuities Act 1964, which are considered outdated and overly complex.

Currently, many key aspects of trusts are set out in common law. As they are based on court rulings in individual cases it is difficult for parties to a trust to get a clear view of their rights and obligations. The bill seeks to take the most fundamental principles from the common law and put them into accessible legislation.

The existing rules of law would continue to apply alongside this legislation, except where the bill makes clear it is replacing them. The courts would draw on existing common law and equity rules when interpreting and applying the legislative provisions.

Because the bill is not a complete codification of trust law, it strikes a balance between prescription and flexibility. The bill focuses on express trusts and aims to be clear enough so that all parties would know what is required, but also general enough so that it could apply to the broad range of ways trusts are used in New Zealand.

The bill reflects recommendations made by the Law Commission following its comprehensive review of trust law from 2009 to 2013, as well as feedback from public consultation on an exposure draft.

The three main objectives of the bill are to:

- set out clear and accessible core trust principles
- ensure more efficient trust administration

- simplify and clarify the role of the courts in relation to trusts.

The bill would not operate retrospectively, but would apply to and affect trusts that are already in existence at the time the bill received Royal assent.

## **Proposed amendments**

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

### **Part 1: General provisions**

We recommend making the following group of changes to the bill to help parties to a trust understand the inter-relationship between the legislation, the terms of a trust, and the objectives of a trust.

#### **Inserting a definition of “terms”**

We recommend inserting a definition of “terms” into clause 9 of the bill. The definition would clarify that when “terms” is used in relation to trusts the meaning is broader than the terms of a trust deed.

Some express trusts do not have trust deeds. Those that do can also have oral terms, and in both cases there can be implied terms. The legislation covers each of these concepts and therefore a particular provision can relate to express terms, oral terms, or implied terms. Our definition clarifies that “terms” has each of these meanings and that the relevant meaning in a provision is what is expressly stated or, if not expressly stated, what the context requires.

#### **Applying the legislation to all express trusts**

We recommend replacing clauses 5(3)(a) and 5(3)(b) with new clauses 5(3A), 5(3B), and 5(3C). These changes would clarify that the legislation applies to all express trusts, despite the terms of a trust deed, unless:

- the provisions of the legislation listed in Schedule 2 can be modified or excluded by either express or implied terms of a trust, to the extent stated in the schedule
- the provisions of the legislation listed in Schedule 3 can be modified or excluded in relation to commercial trusts.

#### **Guiding principle in performing duties**

We recommend inserting new clause 19A to make it clear that a trustee has an obligation to have regard to the context and objectives of a trust when performing both their mandatory duties and their default duties.

#### *Default duties*

We recommend amending the bill to clarify that the default duties of a trustee—which are set out in clauses 27 to 36—are duties that must be performed unless they are modified or excluded in accordance with our proposed clause 5(3A). Our amend-

ments separate the provisions in Part 3 that concern default duties from the mandatory duties—which are set out in clauses 22 to 26. Mandatory duties may not be excluded or modified by the terms of a trust.

### **Amendments to clause 6**

We recommend deleting clauses 6(4) and 6(5). These general provisions are intended as guidance to help parties to a trust in understanding the bill’s provisions, and would be unnecessary with the changes recommended above.

We further recommend amending the title of Schedule 2 to reflect its relationship to proposed clause 5(3A). For consistency with trust law, we recommend amending the wording in clause 6(3), from “deliberately set up” to “intentionally established”. We consider “intention” to be the proper term as “deliberate” is not commonly used in relation to the settlement of trusts. We note that “intention” is common when referring to “three certainties” in trust law.

## **Definitions used throughout the bill**

### **“Default duty” and “mandatory duty”**

We recommend inserting into clause 9 definitions for “default duty” and “mandatory duty”. This change would assist with structural changes that we propose to Part 3 that would help clarify the interaction between a trust’s terms and this legislation.

### **“Lacks capacity”**

For clarity and consistency, we recommend defining the term “lacks capacity” in clause 9, and using it instead of the phrase “incapacitated beneficiaries” throughout the bill. The original phrase as introduced could be interpreted to exclude minors, which we consider is not the intent.

As introduced, clauses 45 and 78 include a child in their definition of “incapacitated beneficiaries”, while clause 139 is unclear on this point, which is likely to cause ambiguity.

By defining “lacks capacity” to specifically include children, there would be consistency throughout the bill and definitions in multiple places would no longer be required.

### **“Power of appointment”**

To avoid ambiguity, we recommend inserting into clause 9 a definition of “power of appointment” as the ability to appoint or remove a trust beneficiary. In the bill as introduced, the term is used to mean three different concepts. The most common use of “power of appointment” in trust law relates to beneficiaries, and we consider it the appropriate definition to include in the bill. We further recommend amending clauses 63, 64, and 86 to clarify what is meant by the use of “power to appoint” in each context.

**“Security trust”**

For consistency, we recommend inserting a definition of “security trust” into clause 9. As introduced, clause 9 contains a definition for “wholesale trust”. Both definitions are part of the “specified commercial trust” concept in clause 1 of Schedule 3. We consider it appropriate for both terms to be defined in clause 9.

**“Court”**

We have retained the definition of “court” to mean the High Court of New Zealand. This may give greater confidence in the use of trusts, and avoid procedural and practical complexities with the introduction of concurrent jurisdiction. In addition, the Family Court has limited jurisdiction.

**Part 2: Express trusts****Creation of express trust**

To avoid doubt, we recommend amending clause 15(1)(b)(ii) to make it clear that an express trust need not identify specific beneficiaries but could identify a broad class of beneficiaries.

**Maximum duration of trust**

Clause 16 would replace the rule against perpetuities and the Perpetuities Act with a simple maximum trust duration of 125 years. This period strikes the right balance between providing a higher degree of flexibility for settlors to dispose of properties as they choose, and the need to retain some form of limit on the duration of trusts.

Clause 16(6) sets out exceptions to the rule in clause 16(1) that the maximum duration of a trust would be 125 years. We recommend various amendments to this provision.

First, we recommend deleting paragraph (b) relating to retirement schemes as we consider it more appropriate to include the exemption for retirement schemes as part of the Financial Markets Conduct Act 2013. As we discuss in relation to Part 9 of the bill which amends that Act, proposed new section 155A(3) of that Act would allow managed investment schemes (which include retirement schemes) to continue indefinitely.

We recommend clarifying the reference to section DC 7 of the Income Tax Act 2007 in clause 16(6)(c) by inserting the word “superannuation” before “scheme”. We also recommend amending paragraph (d) by referring to an exempt employee share scheme (ESS) instead of to a share purchase scheme, in line with recent changes to the Income Tax Act.

To avoid the implication that clause 16(6)(b) limits the types of trust that may be exempt from the maximum duration rule, we recommend inserting paragraphs (e) and (f). These provisions would exempt trusts that, under another enactment or under common law or equity, are allowed to continue indefinitely.

We recommend inserting new clause 16A to make it clear how the new maximum duration rule would apply to resettlements. Under this provision, trusts for property settled on one trust and then resettled on another would not be able to last longer than 125 years from the date of the original settlement before being distributed.

### **Part 3: Trustees' duties and information obligations**

We propose several amendments to clarify this part of the bill and help parties to a trust understand the provisions.

#### **Guiding principle in performing duties**

As noted above,<sup>1</sup> we are recommending inserting new clause 19A to make it clear that a trustee has an obligation to have regard to the context and objectives of the trust when performing both their mandatory duties and their default duties.

The provision is intended to clarify that the current legal position continues under the bill. That is, the nature and extent of the trustee's duties depend on the terms, context, and objectives of the particular trust.

#### **Adviser must alert settlor to modification or exclusion of default duty**

As part of our proposed restructuring of Part 3, we recommend shifting clause 21 to become new clause 36A. We propose the addition of clause 36A(4) which defines "initial settlor". This term is then used throughout the rest of the clause. We consider this clarification necessary to differentiate the duty that does not apply to parties to a trust who later settle property on to the trust.

#### **Duty to act for benefit of beneficiaries or to further permitted purpose of trust**

We recommend amending clause 25 to include a reference to the terms of the trust. As identified in clause 19A the extent of the duties is determined by the context in which they exist. As introduced, the clause does not clearly show the role of terms of the trust. The redrafting of this clause also better distinguishes between a trust for beneficiaries and a trust for a permitted purpose in explaining separately how the duty applies to each type of trust.

#### **Duty not to bind or commit trustees to future exercise of discretion**

As introduced, clause 31 is a default duty that could be modified or excluded requiring trustees not to bind or commit themselves to a future exercise or non-exercise of a discretion relating to the distribution of trust property. However, this duty is intended to be quite broad and not relate only to discretions regarding the distribution of trust property. Our proposed amendment would delete the reference to a discretion regarding the distribution of trust property. We believe this would make the duty sufficiently broad to meet the intent of the bill and reflect the current law.

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<sup>1</sup> As discussed in Part 1, Guiding principles in performing duties.

### **Court consideration of gross negligence**

As introduced, clauses 37, 38, 71, and 78 refer to “gross negligence”. The term is not defined in the bill as introduced and is not a commonly used legal phrase. To clarify the intent of the bill, we recommend inserting clause 40A to provide guidance on how a court is to consider gross negligence.

The bill provides that exemption and indemnity clauses in trust deeds must not limit or exclude a trustee’s liability for dishonesty, wilful misconduct, or gross negligence. Our proposed provision would clarify what factors the court must consider in determining gross negligence. This amounts to whether the trustee’s behaviour was so unreasonable that no reasonable trustee in that position would have considered the conduct to be in accordance with their role and duties. The provision contains a number of factors that the court must have regard to relating to the breach of trust, the trustee’s circumstances and characteristics, and the nature and purpose of the trust.

### **Giving information to beneficiaries**

Clauses 45 to 51 set out a process for determining what information must be provided to beneficiaries and when, to ensure beneficiaries have sufficient information. Clause 50(3) provides for circumstances where a trustee can delay the giving of basic trust information.

#### *Procedure when trustee decides to give no information*

We recommend amending clause 50(3)(b) by deleting the requirement that the trustee provide reasons for not giving basic trust information earlier. As introduced, the provision is arguably inconsistent with clause 45(b). We also consider it to be an extension of the current law. We do not believe this is the bill’s intent.

### **Beneficiary may be required to pay cost of giving information**

As introduced, clause 51 would enable trustees to require beneficiaries to pay the reasonable cost of giving information. However, the clause does not take into account that the information could take considerable resources and expense for a trustee to collate. We recommend inserting clause 51(2) to provide that a trustee may require a beneficiary to pay some or all of the cost before giving information. Our amendment would allow a trustee to prevent any risk of incurring losses if the beneficiary failed to pay costs.

## **Part 4: Trustees’ powers and indemnities**

### **Exercise of trustee powers and functions by others**

As discussed in relation to clause 9, we recommend some amendments in clause 63 to make it clear that a trustee’s “power of appointment” means a power to appoint a person to be a beneficiary of a trust, or to remove them as a beneficiary. Our amendment in clause 63(2)(a) would make it clear that such a power could not be delegated. In light of this change, clause 63(2)(e) would be unnecessary and we recommend that it be deleted. Changes in paragraphs (f) and (i), and clause 66(2), to remove the lan-

guage of “power to appoint” in relation to other powers are to clarify what is meant under these provisions.

Clause 67 relates to giving notice about the delegation of a trustee’s powers and functions. We recommend amendments to make it clear that this clause would only apply to delegations under clause 66, and to improve the clarity of clause 67(2).

### **Application of insurance money for loss or damage of trust property**

We note that the policy intent behind clause 73 was simply to restate and modernise section 25 of the Trustee Act. However, we consider that clause 73 as introduced is broader, as it relates to any contract of insurance taken out by a beneficiary over trust property. We recommend making it consistent with the law as it currently stands in section 25 of the Trustee Act by including further conditions on when the provision applies in clause 73(1).

We recommend amending clause 73(6) to remove reference to the rights of a mortgagee, lessor, or lessee (clause 73(6)(b) in the bill as introduced). We consider this provision unnecessary, as we see no reason why those interests would be affected by the application of insurance money.

### **Protection of purchasers and mortgagees dealing with trustees**

Clause 76 deals with the position of the party taking a disposition of trust property. It is a modernised version of section 22 of the Trustee Act 1956, as amended in 1968. It addresses the legal position of third parties who acquire assets from a trustee as a result of a trustee’s breach of trust.

We consider that this provision is inconsistent with the principles of common law and equity that apply to wrongful dispositions of trust assets. It is also inconsistent with the modern policy of deterring money-laundering of stolen funds.

We recommend replacing clause 76 with a version that accords more closely with the original section 22 of the Trustee Act 1956, albeit in modernised form. The redrafted provision means that, if a trustee purports to exercise a power to sell or mortgage trust property, the purchaser or mortgagee would not be obliged to look into why the trustee needs the money or how the money is later used.

### **Trustees’ indemnities**

#### *Indemnification of trustee with agreement of beneficiaries where indemnity impaired*

Clause 78 deals with the power of beneficiaries to agree to indemnify a trustee from trust property for a breach of trust where the trustee’s indemnity is unavailable.

We recommend substantially amending this clause to allow the court to consent to the indemnification on behalf of certain types of beneficiaries, including people who lack capacity or who may become a beneficiary in the future. Alternatively, the court could dispense with the requirement that some beneficiaries must consent to the indemnification. Our amended provision would echo the court’s powers under clauses 116 and

117 in relation to a termination or variation of a trust. We recommend inserting provisions similar to clauses 116 and 117 as clauses 78A and 78B.

In clause 78(2), we recommend removing the stipulation that beneficiaries cannot indemnify the trustee if the breach of trust arises from gross negligence on the part of the trustee. We accept that it makes policy sense to allow beneficiaries to agree to indemnify a trustee for a breach of trust arising from the trustee's gross negligence after that negligence has occurred, provided they have received legal advice before giving consent.

Clause 78(3), as amended, refers to our proposed new clause 40A, designed to provide the courts with more clarity when considering gross negligence.

#### *Creditor's limited claim to trust property through trustee's indemnity*

Clause 80 concerns a creditor's claim to trust property through a trustee's indemnity. Under clause 80(1)(b)(iii), a creditor could claim against a trustee in some circumstances provided the creditor had acted in good faith. Clause 80(3) spells out limitations on this provision. We accept that it would not be appropriate for a creditor to lose the ability to claim if they had no knowledge that particular circumstances would affect the trustee's indemnity rights. We recommend amending clause 80(3) accordingly.

We also recommend amending clause 80(4) to allow the creditor's claim to include the value of interest.

## **Part 5: Appointment and discharge of trustees**

### **Who may remove trustee and appoint replacement**

As discussed in relation to clause 9, we recommend amending the phrase "power of appointment or removal" in clause 86(4) to "power to appoint or remove a trustee". This would avoid confusion, because the bill as introduced used the phrase in multiple contexts.

### **How trustee accepts or rejects appointment**

Clause 93(3) deals with how a person nominated as a trustee could reject the appointment. We recommend amending this clause to make it clearer how the rejection would work in practice.

### **Death of trustee**

As introduced, clause 96(2) provides for the personal representative of a deceased trustee to act on their behalf in a situation where the sole trustee or the last surviving or continuing trustee dies. We recommend amending clause 96(2)(a) to ensure it is clear that the representative could only act on the deceased trustee's behalf for a reasonable period. This would make it clear that the provision is intended as a temporary measure.

### **Removal of trustee**

We recommend replacing clause 97 and inserting new clauses 97A and 97B to set out more comprehensively how the power to remove a trustee would work, and when a person with this power could act under the terms of the trust or under this legislation. This would avoid some ambiguity in the bill as introduced regarding the interaction between the powers to remove trustees in the bill and any such powers in the terms of a trust.

Our proposed clause 97 would make it clear that a person nominated in the terms of the trust as having the power to remove a trustee could choose to exercise this power either under the power in the terms of the trust or under the statutory powers in clauses 97A and 97B. Another person who exercised that power because there was no nominated person or because that person was not available (under clause 86(1)) could only use the statutory powers (and grounds) to remove a trustee.

For clarity, we propose two separate clauses: 97A (dealing with the grounds for compulsory removal) and 97B (dealing with the grounds for optional removal). However, their content is unchanged from the bill as introduced.

In clause 99(3)(b)(i), we recommend amending the period of notice required for the removal of a trustee to 20 working days after the trustee receives it. As introduced, the bill allowed 21 working days. This was an unusual period, and could cause confusion. Changing it to 20 working days, which equates to four working weeks, would be clearer.

### **Divesting and vesting of trust property**

We recommend inserting new clause 108(2A) to clarify that this provision would not affect any lien to which a trustee may otherwise be entitled. The proposed amendment would ensure that a lien would not be considered inconsistent with the provisions of the legislation and would fall under the preservation of equitable rules under clause 5(2)(b)(iii).

## **Part 6: Termination and variation of trusts**

### **Beneficiary's right to share of trust property**

We recommend amending clause 115(3) to remove the definition of “lacks capacity”. Our earlier recommendation to include a definition of “lacks capacity” in clause 9 of the bill would make it unnecessary to include the definition here.

## **Part 7: Court powers and dispute resolution**

### **Procedure for court's review of trustee's act, omission, or decision**

Clause 119 relates to the procedure of the court when reviewing an action, omission, or decision of a trustee under clause 118. We recommend amending this clause to remove the apparent requirement that the trustee must appear in court before an order can be made. As introduced, the wording does not provide for a situation in which a

trustee fails to appear. The High Court rules provide a process for hearing cases in the absence of the defendant. However, the wording of clause 119(3) would arguably prevent this from applying. We recommend deleting “after hearing the trustee” in clause 119(3). We consider this unnecessary as it is implicit that the court is required to hear the trustee, provided they are not absent.

### **Court may appoint receiver for trust**

We recommend inserting clause 130(5) to clarify that, where a receiver has a trustee power, the trustee cannot also exercise that power. Under current law the default position is that receivers appointed under the clause have the power over trust assets to the exclusion of trustees. We do not consider it the bill’s intent to change this presumption.

### **Court may order payment of remuneration to trustee**

As introduced, clause 131 uses the word “commission”. We recommend replacing it with “remuneration”. We consider this a modern and accessible legal phrase that has a broad meaning covering both a commission and a fee.

### **Vesting orders**

We recommend deleting clauses 133, 134, and 135, and including them instead in Schedule 4 as consequential amendments. These clauses would become new sections 350A to 350C of the Property Law Act 2007.

The provisions are carried over from the Trustee Act and relate to vesting orders the court may make when the legal ownership of land changes. These orders are broad and are not only applicable to express trusts, or even to trusts at all. The bill as introduced would change the process for transferring from one trustee to another, so under the bill there is no longer a need for the court to make an order that would vest trust property in a new trustee.

However, we consider it desirable to continue to provide these powers in legislation relating to other arrangements, as vesting orders can still be useful in contexts other than trusts. We believe the provisions would sit more logically in the Property Law Act.

### **Jurisdiction of Family Court**

Our proposed new clause 136(6) would provide that litigants in Family Court proceedings that raise trust law issues may apply to either the Family Court or the High Court to have the proceedings transferred to the High Court. We consider it appropriate to allow applications to be made by litigants in either court and to allow the High Court to choose its own workload.

## **Alternative dispute resolution**

### **Definitions**

We recommend amending the defined terms in clause 137 to more appropriately cover all types of alternative dispute resolution (ADR) and to distinguish arbitral awards from other alternative dispute resolution outcomes.

#### *Definition of “ADR settlement” and “arbitral award”*

We recommend amending the definition of “ADR settlement” in clause 137 to exclude an arbitral award. Arbitral awards are not agreed settlements, but parties agree to be bound by the decision of the arbitrator. The definition of arbitral award has the same meaning as an award in the Arbitration Act.

#### *Definition of “internal matter”*

We recommend amending the definition of “internal matter” in clause 137 to include a dispute between two or more trustees. We consider that there is no good reason to exclude trustee–trustee relationships from the application of clauses 139 and 140, which apply to internal disputes only.

### **Power of trustee to refer matter to ADR process**

We recommend inserting new clause 138(1AAA) to clarify that clause 138 applies to trusts when no specific provision for ADR is contained in the trust deed. This would clarify that a trustee has the power to refer a matter to an ADR process, with the agreement of the parties, even where there is no specific provision in the terms of the trust. We believe this amendment would clarify the bill’s intent.

### **ADR process for internal matter if trust has beneficiaries who are unascertained or lack capacity**

In clause 139, we recommend replacing the wording “incapacitated” with “lacks capacity” for the reasons discussed earlier in this commentary. Our amendment would clarify that the bill does not intend to exclude a child from this provision.

We recommend amending clause 139(1)(b) in light of our amendment to clause 137, which made a distinction between arbitral awards and other ADR settlements. We do not recommend adding “arbitral award” to clause 139(1)(c) as an arbitral award does not need to be approved by the court in order to be binding.

In addition, parties to an arbitration already have recourse to court through mechanisms in other legislation if they want to contest the outcome. If a representative is appointed to act on behalf of a beneficiary, in an ADR process not involving arbitration, it will be necessary for the resulting ADR settlement to be approved by the court.

We recommend inserting new clause 139(1A) to stipulate that a representative appointed by the court must act in the beneficiary’s best interests, and to empower the court to set the terms of the representative’s appointment. It would also permit the

costs of the representative to be paid out of the trust if appropriate. We consider this to be a suitable measure so a party to a trust who “lacks capacity” has representation through an ADR process.

### **Application of Arbitration Act 1996**

We recommend inserting clause 142A to clarify that when arbitration is used as an ADR process under the bill, the Arbitration Act applies to the arbitration process.

Similarly, we recommend inserting clause 155B to amend the Arbitration Act with a provision to clarify that trust legislation would apply to some arbitration cases.

We consider that these amendments would clarify the interaction between the two Acts, and ensure that the appropriate procedure is used for the relevant ADR process in the bill.

## **Part 8: Miscellaneous provisions**

### **Transfer to the Crown of trust property and financial products**

We recommend inserting clause 143A to make it clear that a financial product transferred to the Crown and any proceeds from the sale or conversion of financial products transferred to the Crown is trust money. We further recommend moving clause 143(6) of the bill as introduced to become new clause 143A(1). This amendment would clarify and update the bill’s provisions.

### **Transitional regulations**

We recommend amending clause 153(2) so that transitional regulations to facilitate or ensure an orderly transition to the new legislation may be made, or may continue in force, for 3 years after the bill comes into force, rather than the 2 years in the bill as introduced. The additional year would provide some further leeway to ensure that this legislation can apply appropriately to existing trusts. The 3-year transitional period would be consistent with other Acts, such as the Land Transfer Act 2017.

## **Part 9: Amendments to other Acts**

### **Amendments to Arbitration Act 1996**

We recommend inserting new subpart 1AAA in Part 9 to insert new section 10A in the Arbitration Act. This new section would be reciprocal to clause 142A of the bill. It would act as a signpost in the Arbitration Act that, where arbitration relates to a trust matter, the relevant provisions of this legislation are applicable.

### **Various amendments to Financial Markets Conduct Act 2013**

Clauses 157 and 161 of the bill would insert new sections 110A and 155A into the Financial Markets Conduct Act. The proposed sections relate to the application of the bill’s provisions to certain trusts for financial products. Proposed new sections 110A(1)(c) and 155A(1)(c), in particular, relate to trusts for financial products in cir-

cumstances where the Financial Markets Authority has granted an exemption or where an exclusion under Schedule 1 of the Financial Markets Conduct Act applies.

To clarify and improve the flexibility of the provisions in the bill that relate to these trusts, we recommend replacing new sections 110A(1)(c) and 155A(1)(c) with the proposed amendments in clause 162 and proposed clauses 163A and 163B.

As introduced, clause 162 would allow regulations to disapply provisions of this legislation to trusts that are regulated by the Financial Markets Conduct Act. Those trusts are already subject to detailed governance obligations under that Act or by regulations. We recommend amending the clause to extend this power to trusts that are excluded under Schedule 1 of the Financial Markets Conduct Act.

We also recommend inserting new clause 163A, which would extend the Financial Markets Authority's power under the Financial Markets Conduct Act to grant exemptions from provisions in this legislation when it is otherwise granting exemptions from requirements of the Act.

These powers are subject to procedural safeguards in both cases to ensure the powers are exercised appropriately. An example of a safeguard is the requirement to have regard to the purpose and principles of this legislation and to ensure that exemptions are not broader than is reasonably necessary.

We further recommend amending the wording in proposed section 155A(1) to ensure it aligns with how a trust may be used under the Financial Markets Conduct Act, and to include "bundled trusts". These were not captured by the previous provision, but should be as they are managed investment schemes.

We recommend deleting "that is a retirement scheme" from proposed section 155A(3). This would reflect that exemptions from the maximum duration rule for trusts are applied to all managed investment schemes.

### **Individual managed superannuation schemes**

We recommend inserting clause 163C to insert new clause 8 in Schedule 3 of the Financial Markets Conduct Act. This would exempt "approved Schedule 3 schemes" from clause 14 of this bill. Clause 14 as introduced requires that a sole trustee cannot be a sole beneficiary. The Financial Markets Conduct Act provides for single-person, self-managed superannuation schemes that are set up as a trust.

### **Amendments to Financial Advisers Act 2008**

#### *Financial advisers and broking trusts*

We recommend amending clause 165 to specify additional provisions of this bill that would not apply to trusts constituted under the Financial Advisers Act. Brokers are subject to detailed obligations about the provision of information under the Financial Advisers Act and the Financial Markets Conduct Act. Those regulations contain specific provisions for beneficiaries of broking trusts. We consider the obligations in those Acts more relevant than the provisions in this proposed legislation, which are intended to apply to beneficiaries of general trusts. In some cases the protections do

not apply as some investors are considered sufficiently sophisticated to insist on the provision of such reporting where they consider they need it.

### **Amendments to Retirement Villages Act 2003**

We recommend inserting subpart 4 in Part 9 to insert a regulation-making power into the Retirement Villages Act. This would allow regulations to exempt trusts or trustees under the Retirement Villages Act from the provisions of this legislation. The power would only be available where it is unnecessary for the bill's provisions to apply, or where compliance would be unduly onerous and burdensome. This change addresses the potential for uncertainty where there is overlap between the provisions of this legislation and the Retirement Villages Act.

### **Amendments to Schedule 2**

We recommend amending Schedule 2 to remove language that may create uncertainty about how it interacts with clause 5. The changes would ensure that the language is aligned and it is clearer how and which provisions of the bill may be modified or excluded for a particular trust.

### **Amendments to Schedule 3**

Schedule 3 defines which types of trusts are the “specified commercial trusts” for which some provisions of the bill are or may be modified or excluded. We recommend several amendments to clarify aspects of the definitions in this schedule by making some more comprehensive and by linking to similar concepts and definitions in other relevant legislation.

In addition, we recommend inserting clause 4(2)(e) and (3)(e) of Schedule 3 to include sections 146 to 151 as provisions of the bill that do not or may not apply to specified commercial trusts. These provisions relate to an investigation of the condition and accounts of trust property by Public Trust, and so are unlikely to be relevant to specified commercial trusts.

### **Amendments to Schedule 4**

We recommend several changes to Schedule 4, which makes consequential changes to other legislation. Our amendments would ensure that the changes made by the bill do not impair the operation of other legislation. They would also update the bill in relation to legislative changes that have been made since its introduction.

We recommend that definitions of “testamentary expense” be added to section 2 of the Administration Act 1969 and section 2 of the Law Reform (Testamentary Promises) Act 1949. This is needed because the previously relied-upon definition from the Trustee Act would no longer be provided under the bill.

We recommend including a definition of “trust” and “trustee” in section 4 of the Limitation Act 2010, as modernised versions of what is in the Trustee Act.

### **Amendments to Schedule 5**

Schedule 5 would make amendments to other legislation as a consequence of the repeal of the Perpetuities Act and the abolition of the rule against perpetuities. Primarily, it would amend numerous Treaty settlement Acts to retain the current legal position of allowing trusts established under these Acts to continue indefinitely. That is, they would not be subject to the maximum duration rule for trusts that is contained in the bill.

We recommend changes to correct and update the amendments to Treaty settlement Acts. Our changes would include new Acts passed since the bill's introduction and ensure the amendments contain more effective wording that is consistent with the legal effect of current provisions.

We also recommend an amendment to the Property Law Act to create a maximum duration rule for future estates and interests of 125 years, in line with the rule that applies to trusts under the bill. The bill as introduced does not provide for the duration of future estates and interests, which could create a problem after the repeal of the Perpetuities Act and the abolition of the rule against perpetuities.

## **Appendix**

### **Committee process**

The Trusts Bill was referred to the committee on 5 December 2017. The closing date for submissions was 5 March 2018. We received and considered 34 submissions from interested groups and individuals. We heard oral evidence from 14 submitters.

We received advice from the Ministry of Justice and an independent adviser, David Goddard QC.

### **Committee membership**

Raymond Huo (Chairperson)

Ginny Andersen

Hon Maggie Barry

Chris Bishop

Hon Mark Mitchell

Greg O'Connor

Hon Dr Nick Smith

Dr Duncan Webb

Hon Christopher Finlayson was present throughout consideration of this bill.

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~



*Hon Andrew Little*

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Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Trusts Act **2017**.

**2 Commencement**

This Act comes into force on the day that is 18 months after the date on which it receives the Royal assent. 5

**Part 1  
General provisions**

**3 Purpose**

The purpose of this Act is to restate and reform New Zealand trust law by— 10

- (a) setting out the core principles of the law relating to express trusts; and
- (b) providing for default administrative rules for express trusts; and
- (c) providing for mechanisms to resolve trust-related disputes; and
- (d) making the law of trusts more accessible.

**4 Principles** 15

Every person or court performing a function or duty or exercising a power under this Act must have regard to the following principles:

- (a) a trust should be administered in a way that is consistent with its terms and objectives:
- (b) a trust should be administered in a way that avoids unnecessary cost and complexity. 20

**5 Application, and relationship of Act with trust terms, common law and equity, and other enactments**

*Trusts to which this Act applies*

- (1) This Act applies only to express trusts that are governed by New Zealand law. 25
- (2) However,—
  - (a) this Act also applies to a trust that is not an express trust but that is created by or under an enactment, if the application of this Act is consistent

with the purpose, text, and context of that enactment and necessary for the due administration of the trust; and

- (b) a court may, where necessary or appropriate, apply the provisions of this Act to any of the following that are governed by New Zealand law:
  - (i) a resulting trust: 5
  - (ii) a constructive trust:
  - (iii) a trust that does not satisfy the definition of express trust but that is recognised at common law or in equity as being a trust.

*Interrelationship between Act and terms of trust*

- (3) This Act applies to all express trusts despite anything to the contrary in the terms of a trust, except that as provided in **subsections (3A) to (3C)** 10
  - (a) ~~Schedule 2 specifies which provisions of this Act may be modified or excluded by the terms of a trust (and for some of those provisions, specifies conditions limiting the extent to which the provisions may be modified or excluded); and~~ 15
  - (b) ~~Schedule 3 provides that the application of certain provisions of this Act is or may be modified or excluded in relation to specified commercial trusts.~~
- (3A) The application of the provisions of this Act specified in column 1 of the table in **Schedule 2** may, subject to the limitations in **subsection (3B)**, be modified by express or implied terms of a trust. 20
- (3B) The modifications and exclusions that may be made to the provisions listed in column 1 of the table are limited to the extent specified in column 2.
- (3C) **Schedule 3** provides that the application of certain provisions of this Act is or may be modified or excluded in relation to specified commercial trusts. 25
- (4) The terms of a trust may impose duties and restrictions on a trustee additional to those provided for in this Act.

*Interrelationship between Act and common law and equity*

- (5) This Act—
  - (a) is not an exhaustive code of the law relating to express trusts; and 30
  - (b) is intended to be complemented by the rules of the common law and equity relating to trusts (except where otherwise indicated or where those rules are inconsistent with the provisions of this Act).

*Interrelationship between Act and other enactments*

- (6) If there is an inconsistency between the provisions of this Act and those of any other enactment, the provisions of that other enactment prevail, unless this Act provides otherwise. 35

## 6 Overview of this Act

- (1) This section is only a guide to the general scheme and effect of this Act.

### *General provisions*

- (2) **Part 1** contains general provisions, including provisions that—
- (a) state the purpose and principles of this Act; and 5
  - (b) set out to which trusts the Act applies; and
  - (c) set out the relationship of the Act with the terms of a trust, the common law and equity, and other enactments; and
  - (d) set out how this Act is to be interpreted; and
  - (e) define certain terms used in this Act. 10
- (3) This Act generally applies only to express trusts, but there are some exceptions (*see* **section 5(1) and (2)**). An express trust is one that is deliberately set up intentionally established by a settlor, as opposed to a trust that arises by operation of law (as listed in **section 5(2)(b)**) or the order of a court.
- (4) ~~Express trusts are to be administered in accordance with their terms and objectives (*see* **section 4**).~~ 15
- (5) ~~This Act sets out legal duties, powers, and processes applicable to trusts. Some of these duties, powers, and processes apply in all express trusts despite what is stated in the terms of a particular trust, while others may be modified or excluded by the terms of a particular trust (*see* **section 5(3)(a)** and **Schedule 2**).~~ 20

### *Express trusts*

- (6) **Part 2** contains fundamental provisions about express trusts. An express trust is a relationship in which a settlor places property on trust to be held by 1 or more trustees for the benefit of beneficiaries or a permitted purpose. As a fiduciary, each trustee owes duties and is accountable for how the trust property is managed and distributed (*see* **sections 12 to 15**). 25
- (7) **Part 2** includes provisions that—
- (a) set out the characteristics of an express trust; and
  - (b) specify how an express trust may be created; and
  - (c) specify the maximum duration of most express trusts (which is 125 30 years) and abolish the rule against perpetuities; and
  - (d) specify the age of majority for the purposes of an express trust (which is 18).

### *Trustees' duties and information obligations*

- (8) **Part 3** relates to the duties and information obligations that are part of the role of trustee. In particular, it contains provisions that— 35
- (a) set out the mandatory duties that apply to trustees of all express trusts; and

- (b) set out the default duties that apply to trustees of a trust unless the terms of the trust modify or exclude those duties; and
- (c) restrict the use of trustee exemption clauses and trustee indemnity clauses (which limit the degree to which trustees can be held accountable for certain misconduct) in the terms of a trust; and 5
- (d) set out the documents that must be kept by trustees and the information that trustees must give to beneficiaries (and that aim to ensure that beneficiaries have sufficient information to enable the terms of the trust to be enforced against the trustees).
- Trustees' powers and indemnities* 10
- (9) **Part 4** relates to the powers trustees have in their role and sets out the indemnities that apply to trustees. It includes provisions that—
- (a) provide for the general powers of trustees to manage trust property (which give trustees all the powers necessary to carry out the role); and
- (b) provide for certain specific powers of trustees, such as the power to invest trust property and powers to use trust property for the welfare of a beneficiary outside of the powers relating to distribution of trust property specified in the terms of the trust; and 15
- (c) set out the power of a trustee to appoint others to exercise certain powers or perform certain functions in relation to the trust and specify which powers can be given to others in this way; and 20
- (d) set out the power of a trustee to delegate all of the trustee's powers and functions to another person in specified circumstances when the trustee is temporarily not able to carry out the role; and
- (e) provide for the appointment of a non-trustee adviser (a **special trust adviser**) to advise on matters relating to a trust; and 25
- (f) set out certain indemnities of a trustee (that is, the right of a trustee to be reimbursed for an expense or a liability out of the trust property) and protections for trustees.
- Appointment and discharge of trustees* 30
- (10) **Part 5** relates to who may be a trustee and how the role may start and end. It includes provisions that set out—
- (a) who may be appointed as a trustee (and who is disqualified); and
- (b) how trustees may be appointed and by whom; and
- (c) how a person may accept or reject appointment as a trustee; and 35
- (d) how a trustee may retire; and
- (e) how a trustee may be removed (and the procedure a trustee can use to challenge the removal); and

- (f) how legal ownership of the trust property is changed when there is a change of trustee.

*Termination and variation of trusts at request of beneficiaries*

- (11) **Part 6** contains provisions that enable beneficiaries acting together to decide to bring a trust to an end, vary the terms of the trust, or resettle the trust property on a new trust. 5

*Court powers and dispute resolution*

- (12) **Part 7** relates to the powers that the court has in relation to trusts, and enables the use of alternative dispute resolution. It includes provisions that—
- (a) set out the court’s general power to review an act, an omission, or a decision of a trustee, and the procedure for this review; and 10
- (b) set out powers of the court in relation to actions involving trusts; and
- (c) set out applications that a trustee may make to the court, including a general ability to apply to the court for directions; and
- (d) give the Family Court the power to exercise jurisdiction under this Act in specified circumstances; and 15
- (e) provide for alternative dispute resolution processes to be used to resolve internal and external trust disputes.

*Miscellaneous provisions*

- (13) **Part 8** contains miscellaneous provisions, including provisions— 20
- (a) relating to the transfer of trust property to the Crown; and
- (b) relating to the investigation of the condition and accounts of certain trust property; and
- (c) empowering the making of transitional regulations; and
- (d) relating to consequential amendments and repeals. 25

*Amendments to other Acts*

- (14) **Part 9** contains amendments to other Acts.

*Schedules*

- (15) **Schedule 1** contains transitional, savings, and related provisions.
- (16) **Schedule 2** specifies provisions of this Act ~~that may be modified or excluded by the terms of a trust (and for some of those provisions, specifies conditions limiting the extent to which the provisions may be modified or excluded) to which **section 5(3A)** applies.~~ 30
- (17) **Schedule 3** defines specified commercial trust and provides that ~~the application of certain provisions of the Act do not apply to certain of those trusts or apply with modifications unless modified or excluded by the terms of the trust.~~ 35
- (18) **Schedule 4** sets out consequential amendments to other Acts.

- (19) **Schedule 5** provides for amendments consequential on the repeal of the Perpetuities Act 1964 and the rule against perpetuities.

## 7 Interpretation of Act

- (1) This Act—
- (a) must be interpreted in a way that promotes its purpose and principles; and 5
  - (b) is not subject to any rule that statutes in derogation of the common law should be strictly construed; but
  - (c) may be interpreted having regard to the common law and equity, but only to the extent that the common law and equity are consistent with— 10
    - (i) its provisions; and
    - (ii) the promotion of its purpose and principles.
- (2) **Subsection (1)** does not affect the application of the Interpretation Act 1999 to this Act. 15  
Compare: 2006 No 69 s 10

## 8 Inherent jurisdiction of court not affected

- (1) The inherent jurisdiction of a court to supervise and intervene in the administration of a trust is not affected by this Act, except to the extent that this Act provides otherwise.
- (2) Despite **subsection (1)**, a court must have regard to the purpose and the principles of this Act when exercising its inherent jurisdiction. 20  
Compare: 2006 No 69 s 11

## 9 Definitions

In this Act, unless the context otherwise requires,—

**adult** means a person aged 18 years or older 25

**beneficiary** means a person who has received, or who will or may receive, a benefit under a trust (other than a trust for a permitted purpose), and includes a discretionary beneficiary

**charitable purpose** means a charitable purpose that relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community, and includes any other purpose within the meaning of charitable purpose in section 2 of the Charitable Trusts Act 1957 30

**charitable trust** means a trust the permitted purpose of which is a charitable purpose

**child** means a person under the age of 18 years 35

**court** means the High Court

**default duty** has the meaning given to it in **section 26A**

- discretionary beneficiary** means a person who may benefit under a trust at the discretion of the trustee or under a power of appointment but who does not have a fixed, vested, or contingent interest in the trust property
- express trust** has the meaning given to it in **section 12**
- financial product** has the meaning given to it in section 7(1) of the Financial Markets Conduct Act 2013 5
- incorporated law firm** has the meaning given to it in section 6 of the Lawyers and Conveyancers Act 2006
- insolvency event** has the meaning given to it in section 6(4) of the Financial Markets Conduct Act 2013 10
- lacks capacity** means, in relation to a beneficiary, that the beneficiary—
- (a) is a child; or
  - (b) is not competent to manage the beneficiary’s own affairs for any reason, including that the beneficiary—
    - (i) is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988; or 15
    - (ii) has a trustee corporation managing the person’s property under section 32 or 33 of that Act
- mandatory duty** has the meaning given to it in **section 20**
- permitted purpose**, in relation to a trust, means a charitable purpose and any other purpose for a trust that is permitted at law and specified in the terms of the trust 20
- person with the power to appoint trustees** means, in any particular case of appointment, a person described in **section 86(2)** as having the relevant power in that case 25
- person with the power to remove trustees** means, in any particular case of removal, a person described in **section 86(1)** as having the relevant power in that case
- personal representative**, in relation to a deceased person, means an executor (original or by representation) who has obtained probate or an administrator of the deceased person’s estate appointed by the court 30
- portfolio investment entity** has the meaning given to it in section YA 1 of the Income Tax Act 2007
- power of appointment** means a power to appoint a person to be, or to remove a person from being, a beneficiary of a trust 35
- security trust** has the meaning given to it in **clause 3 of Schedule 3**
- settlor** has the meaning given to it in **section 15(1)(b)**
- specified commercial trust** has the meaning given to it in **clause 1 of Schedule 3**

**statutory trustee** means a trustee that is a body corporate and that is authorised under an enactment to act as executor or administrator of a deceased person's estate and includes a trustee corporation

**terms**, in relation to a trust, means 1 or more of the following, as the relevant provision expressly, or the context in which it is used, requires: 5

(a) express written terms of the trust:

(b) express oral terms of the trust:

(c) implied terms of the trust

**trustee** means a person who is appointed as trustee of a trust

**trustee corporation** has the meaning given to it in section 2 of the Protection of Personal and Property Rights Act 1988 10

**welfare**, in relation to a person,—

(a) means the person's maintenance, education, advancement, benefit, comfort or well-being; and

(b) includes past maintenance or education 15

**wholesale trust** has the meaning given to it in **clause 2 of Schedule 3**.

## 10 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

## 11 Act binds the Crown 20

This Act binds the Crown.

## Part 2 Express trusts

### 12 Meaning of express trust

For the purposes of this Act, an **express trust** means a trust that— 25

(a) has each of the characteristics set out in **section 13**; and

(b) complies with **section 14**; and

(c) is created in accordance with **section 15**.

### 13 Characteristics of express trust

The characteristics of an express trust are as follows: 30

(a) it is a fiduciary relationship in which a trustee holds or deals with trust property for the benefit of the beneficiaries or for a permitted purpose; and

- (b) the trustee is accountable for the way the trustee carries out the duties imposed on the trustee by law.
- 14 Sole trustee cannot be sole beneficiary**  
A sole trustee of a trust must not be the sole beneficiary of the trust.
- 15 Creation of express trust** 5
- (1) An express trust may be created—
- (a) by or under an enactment; or
- (b) by a person (the **settlor**) who, clearly and with reasonable certainty (and subject to any formalities prescribed by any enactment),—
- (i) indicates an intention to create a trust; and 10
- (ii) identifies the beneficiaries (or classes of beneficiaries) or the permitted purpose of the trust; and
- (iii) identifies the trust property.
- (2) A trust created under **subsection (1)** commences when a trustee holds property of the trust. 15
- 16 Maximum duration of trust**
- (1) The maximum duration of a trust is 125 years.
- (2) The terms of a trust may specify or imply a shorter duration.
- (3) If the terms of a trust do not specify or imply a duration or a mechanism for or means of determining the date on which the trust property will be finally distributed, the trust continues until the date that is 125 years after the creation of the trust. 20
- (4) If the terms of a trust specify or imply a mechanism for or means of determining the date on which the trust property will be finally distributed, the trust continues until the earlier of— 25
- (a) the date determined by that mechanism or means; and
- (b) the date that is 125 years after the creation of the trust.
- (5) The common law rule known as the rule against perpetuities is abolished.
- (6) Despite anything in this section, the following trusts may continue indefinitely:
- (a) a charitable trust: 30
- (b) ~~the trusts of a retirement scheme (within the meaning of section 6 of the Financial Markets Conduct Act 2013):~~
- (c) the trusts of a superannuation scheme to which section DC 7 of the Income Tax Act 2007 applies:
- (d) the trusts of a ~~share purchase scheme~~ an exempt ESS (within the meaning of section YA 1 of the Income Tax Act 2007): 35

- (e) a trust that is created by or under, or is subject to, another enactment that allows the trust to continue indefinitely:
- (f) a trust that may continue indefinitely under common law or equity.

Compare: 1964 No 47 s 19

<b>16A</b>	<b><u>Application of maximum duration rule to resettlements</u></b>	5
(1)	<u>This section applies to property that is held on a trust (<b>Trust A</b>) to which <b>section 16(1)</b> applies and is transferred as a part of a resettlement to be held on 1 or more other trusts without first being finally distributed.</u>	
(2)	<u>The maximum amount of time that may elapse between the property being settled on Trust A and being finally distributed is 125 years.</u>	10
<b>17</b>	<b>Accumulation of income by trust</b>	
	A trust may accumulate income to the extent that is consistent with its terms.	
<b>18</b>	<b>Distribution of trust property on expiry of trust</b>	
(1)	When a trust expires, all trust property must be distributed—	
(a)	in accordance with the terms of the trust; or	15
(b)	if the terms of the trust do not expressly provide for the manner in which trust property is to be distributed, in a manner consistent with the objectives of the trust.	
(2)	However, if there are surviving beneficiaries and it is not possible to determine under <b>subsection (1)</b> the manner in which the trust property should be distributed, the property must be distributed to all surviving beneficiaries in equal shares.	20
<b>19</b>	<b>Age of majority</b>	
(1)	For the purposes of an express trust, the age of majority is 18.	
(2)	In the terms of a trust the expressions <b>adult, child, full age, infant, infancy, minor, minority, full capacity, majority</b> , and similar expressions must be read in accordance with <b>subsection (1)</b> .	25
(3)	This section overrides section 4(1) of the Age of Majority Act 1970.	

## Part 3 Trustees' duties and information obligations

### Subpart 1—Duties of trustee

#### *Types of duties*

- 19A Guiding principle in performing duties** 5
- In performing the mandatory duties set out in **sections 22 to 26** and (except to the extent modified or excluded by the terms of the trust) the default duties set out in **sections 27 to 36**, a trustee must have regard to the context and objectives of the trust.
- 1 Mandatory and default duties** 10
- (1) The duties set out in sections 22 to 26 are mandatory duties that—
- (a) must be performed by the trustee; and
  - (b) may not be excluded or modified by the terms of the trust.
- (2) The duties set out in ~~sections 27 to 36~~ are default duties that must be performed by the trustee unless modified or excluded by the terms of the trust, expressly or by implication. 15

#### *Mandatory duties*

- 20 Mandatory and default duties**
- (1) The duties set out in **sections 22 to 26** are mandatory duties that—
- (a) must be performed by the trustee; and 20
  - (b) may not be excluded or modified modified or excluded by the terms of the trust.
- (2) The duties set out in ~~sections 27 to 36~~ are default duties that must be performed by the trustee unless modified or excluded by the terms of the trust, expressly or by implication. 25
- 21 Adviser must alert settlor to modification or exclusion of default duty**
- (1) This section applies to a person who—
- (a) is paid to—
    - (i) advise on the creation of a trust; or
    - (ii) prepare the terms of a trust; and 30
  - (b) recommends that the settlor should, or causes the initial settlor to, modify or exclude 1 or more default duties in the terms of the trust.

- (2) ~~Before the creation of the trust, a person to whom this section applies must take reasonable steps to ensure that the initial settlor is aware of the meaning and effect of the modification or exclusion.~~
- (3) ~~Failure to comply with **subsection (2)** does not of itself invalidate the modification or exclusion in the terms of the trust.~~ 5

*Mandatory duties*

**22 Duty to know terms of trust**

A trustee must know the terms of the trust.

**23 Duty to act in accordance with terms of trust**

A trustee must act in accordance with the terms of the trust. 10

**24 Duty to act honestly and in good faith**

A trustee must act honestly and in good faith.

**25 Duty to act for benefit of beneficiaries or to further permitted purpose of trust**

~~A trustee must hold or deal with trust property, and otherwise act, for the benefit of the beneficiaries or to further the permitted purpose of the trust.~~ 15

~~A trustee must hold or deal with trust property and otherwise act—~~

(a) ~~for the benefit of the beneficiaries, in accordance with the terms of the trust;~~

(b) ~~in the case of a trust for a permitted purpose, to further the permitted purpose of the trust, in accordance with the terms of the trust.~~ 20

**26 Duty to exercise powers for proper purpose**

A trustee must exercise the trustee's powers for a proper purpose.

*Default duties*

**26A Default duties** 25

The duties set out in **sections 27 to 36** are default duties that must be performed by the trustee unless modified or excluded in accordance with **section 5(3A)**.

**27 General duty of care**

When administering a trust (other than when exercising a discretion to distribute trust property), a trustee must exercise the care and skill that is reasonable in the circumstances, having regard, in particular,— 30

(a) to any special knowledge or experience that the trustee has or that the trustee holds out as having; and

- (b) if the person acts as a trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

**28 Duty to invest prudently**

When exercising any power to invest trust property, a trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others, having regard, in particular,—

- (a) to any special knowledge or experience that the trustee has or that the trustee holds out as having; and
- (b) if the person acts as a trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

Compare: 1956 No 61 ss 13B, 13C

**29 Duty not to exercise power for own benefit**

A trustee must not exercise a power of a trustee directly or indirectly for the trustee's own benefit.

**30 Duty to consider exercise of power**

A trustee must consider actively and regularly whether the trustee should be exercising 1 or more of the trustee's powers.

**31 Duty not to bind or commit trustees to future exercise of discretion**

A trustee must not bind or commit trustees to a future exercise or non-exercise of a discretion relating to the distribution of trust property.

**32 Duty to avoid conflict of interest**

A trustee must avoid a conflict between the interests of the trustee and the interests of the beneficiaries.

**33 Duty of impartiality**

- (1) A trustee must act impartially in relation to the beneficiaries, and must not be unfairly partial to one beneficiary or group of beneficiaries to the detriment of the others.
- (2) This section does not require a trustee to treat all beneficiaries equally (but all beneficiaries must be treated in accordance with the terms of the trust).

**34 Duty not to profit**

A trustee must not make a profit from the trusteeship of a trust.

**35 Duty to act for no reward**

A trustee must not take any reward for acting as a trustee, but this does not affect the right of a trustee to be reimbursed for the trustee's legitimate expenses and disbursements in acting as a trustee (*see section 77(2)*).

**36 Duty to act unanimously**

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If there is more than 1 trustee, the trustees must act unanimously.

**36A Adviser must alert settlor to modification or exclusion of default duty**

(1) This section applies to a person who—

(a) is paid to—

(i) advise on the creation of a trust; or

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(ii) prepare the terms of a trust; and

(b) recommends that the initial settlor should, or causes the initial settlor to, modify or exclude 1 or more default duties in the terms of the trust.

(2) Before the creation of the trust, a person to whom this section applies must take reasonable steps to ensure that the initial settlor is aware of the meaning and effect of the modification or exclusion.

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(3) Failure to comply with **subsection (2)** does not of itself invalidate the modification or exclusion in the terms of the trust.

(4) In this section, **initial settlor** means the settlor who initially creates the trust or causes the trust to be created.

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## Subpart 2—Exemption and indemnity clauses

**37 Restriction on trustee exemption clauses**

The terms of a trust must not limit or exclude a trustee's liability for any breach of trust arising from the trustee's dishonesty, wilful misconduct, or gross negligence.

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**38 Restriction on trustee indemnity clauses**

The terms of a trust must not give a trustee any indemnity against the trust property for liability for any breach of trust arising from the trustee's dishonesty, wilful misconduct, or gross negligence.

**39 Invalidity of exemption clause or indemnity clause**

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A clause in the terms of a trust is invalid to the extent that it purports to have the effect prohibited by **section 37 or 38**.

**40 Adviser must alert settlor to liability exclusion or indemnity clause**

(1) This section applies if—

(a) a person (the **adviser**) is paid to—

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- (i) advise on the creation of a trust; or
  - (ii) prepare the terms of a trust; and
- (b) the adviser recommends that the settlor should, or causes the settlor to, include a liability exclusion or indemnity clause in the terms of the trust.
- (2) Before the creation of the trust, the adviser must take reasonable steps to ensure that the settlor is aware of the meaning and effect of the clause. 5
- (3) The liability exclusion or indemnity clause has no effect with respect to an adviser who is or becomes a trustee of the trust and who is in breach of **subsection (2)**.
- (4) Failure to comply with **subsection (2)** does not of itself invalidate the clause (except as provided in **subsection (3)**). 10
- (5) In this section, **liability exclusion or indemnity clause** means a clause that has the effect of—
  - (a) limiting or excluding the liability of a trustee for breach of trust; or
  - (b) granting a trustee an indemnity against the trust property for the trustee’s liability for breach of trust. 15

#### **40A Court consideration of gross negligence**

- (1) This section applies when a court is deciding whether a trustee has been grossly negligent for the purposes of **section 37, 38, 71, or 78**.
- (2) The court must consider, having regard to the factors in **subsection (3)**, whether the trustee’s conduct (including any action or inaction) was so unreasonable that no reasonable trustee in that trustee’s position and in the same circumstances would have considered the conduct to be in accordance with the role and duties of a trustee. 20
- (3) The factors to which the court must have regard are— 25
  - (a) the circumstances, nature, and seriousness of the breach of trust; and
  - (b) the trustee’s knowledge and intentions relating to the breach of trust; and
  - (c) the trustee’s skills and knowledge that are relevant to the role of trustee; and
  - (d) the purpose for which the trustee was appointed; and 30
  - (e) any other circumstances, including whether the trustee has been remunerated for the role, or characteristics of the trustee that are relevant to the role of trustee; and
  - (f) the type of trust, including, without limitation, the degree to which the trust is part of a commercial arrangement, the assets held by the trust, how the assets are used, and how the trust operates; and 35
  - (g) the purpose of the trust, including, without limitation, what the trust is intended to achieve, and whom the trust is intended to benefit and in what ways; and

- (h) any other factor the court considers relevant.

### Subpart 3—Trustees’ obligations to keep and give trust information

#### *Documents to be kept by trustees*

#### **41 Trustee must keep core documents**

Each trustee of a trust must keep, so far as is reasonable, the following documents relating to the trust: 5

- (a) the trust deed and any other document that contains terms of the trust:
- (b) any variations made to the trust deed or trust:
- (c) records of the trust property that identify the assets, liabilities, income, and expenses of the trust and that are appropriate to the value and complexity of the trust property: 10
- (d) any records of trustee decisions made during the trustee’s trusteeship:
- (e) any written contracts entered into during that trustee’s trusteeship:
- (f) any accounting records and financial statements prepared during that trustee’s trusteeship: 15
- (g) documents of appointment, removal, and discharge of trustees (including any court orders appointing or removing trustees):
- (h) any letter or memorandum of wishes from the settlor:
- (i) any other documents necessary for the administration of the trust:
- (j) any documents referred to in **paragraphs (a) to (i)** that were kept by a former trustee during that person’s trusteeship and passed on to the current trustee. 20

#### **42 Keeping documents where there is more than 1 trustee**

If there is more than 1 trustee of a trust, each trustee must comply with the obligation in **section 41** by— 25

- (a) holding the documents specified in **section 41(a) and (b)** or copies of those documents; and
- (b) being satisfied that at least 1 of the trustees holds the other documents specified in **section 41** and that those documents or copies of them will be made available to the other trustee or trustees on request. 30

#### **43 Documents must be kept for duration of trusteeship**

A trustee must keep, so far as is reasonable, the documents for the duration of the trustee’s trusteeship.

**44 Trustee must pass on documents**

At the time that the trusteeship of a trustee ends, if the trust continues, the trustee must give at least 1 replacement trustee or continuing trustee the documents that the trustee holds at that time.

*Giving information to beneficiaries*

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**45 Definitions for purposes of sections 46 to 51**

In this section and in **sections 46 to 51**,—

**lacks capacity** means, in relation to a beneficiary, a beneficiary who—

- (a) is a child; or
- (b) is not competent to manage the beneficiary's own affairs for any reason, including a beneficiary who—
  - (i) is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988; or
  - (ii) has a trustee corporation managing the person's property under section 32 or 33 of that Act

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**representative** means the parent, guardian, attorney, or property manager of a beneficiary who lacks capacity

**trust information**—

- (a) means any information—
  - (i) regarding the terms of the trust, the administration of the trust, or the trust property; and
  - (ii) that it is reasonably necessary for the beneficiary to have to enable the trust to be enforced; but
- (b) does not include reasons for trustees' decisions.

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**46 Purpose and application of sections 47 to 51**

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- (1) The purpose of **sections 47 to 51** is to ensure that beneficiaries have sufficient information to enable the terms of the trust and the trustees' duties to be enforced against the trustees.
- (2) **Sections 47 to 51** do not apply to charitable trusts or to other trusts established for a permitted purpose that do not have beneficiaries.

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**47 Presumption that trustee must notify basic trust information**

- (1) There is a presumption that a trustee must make available to every beneficiary or representative of a beneficiary the basic trust information set out in **subsection (3)**.

- (2) However,—

35

- (a) before giving the information, the trustee must consider the factors set out in **section 49**; and
- (b) if the trustee reasonably considers (after taking into account those factors) that the information should not be made available to every beneficiary,— 5
- (i) the presumption does not apply; and
- (ii) the trustee may decide to withhold some or all of the basic trust information from 1 or more particular beneficiaries or classes of beneficiaries.
- (3) The basic trust information is— 10
- (a) the fact that a person is a beneficiary of the trust; and
- (b) the name and contact details of the trustee; and
- (c) the occurrence of, and details of, each appointment, removal, and retirement of a trustee as it occurs; and
- (d) the right of the beneficiary to request a copy of the terms of the trust or trust information. 15
- (4) A trustee is required to consider at reasonable intervals whether the trustee should be making the basic trust information available under this section.
- 48 Presumption that trustee must give information on request**
- (1) There is a presumption that a trustee must within a reasonable period of time give a beneficiary or the representative of a beneficiary the trust information that person has requested. 20
- (2) However,—
- (a) before giving the information, the trustee must consider the factors set out in **section 49**; and 25
- (b) if the trustee reasonably considers (after taking into account those factors) that the information should not be given to the person,—
- (i) the presumption does not apply; and
- (ii) the trustee may decide to refuse the request for trust information.
- 49 Procedure for deciding whether presumption applies** 30
- The factors that the trustee must consider (for the purposes of **sections 47(2)(a) and 48(2)(a)**) are the following:
- (a) the nature of the interests in the trust held by the beneficiary and the other beneficiaries of the trust, including the degree and extent of the beneficiary's interest in the trust and the likelihood of the beneficiary receiving trust property in the future: 35
- (b) whether the information is subject to personal or commercial confidentiality:

- 
- (c) the expectations and intentions of the settlor at the time of the creation of the trust (if known) as to whether the beneficiaries as a whole and the beneficiary in particular would be given information:
  - (d) the age and circumstances of the beneficiary:
  - (e) the age and circumstances of the other beneficiaries of the trust: 5
  - (f) the effect on the beneficiary of giving the information:
  - (g) the effect on the trustees, other beneficiaries of the trust, and third parties of giving the information:
  - (h) in the case of a family trust, the effect of giving the information on—
    - (i) relationships within the family: 10
    - (ii) the relationship between the trustees and some or all of the beneficiaries to the detriment of the beneficiaries as a whole:
  - (i) in a trust that has a large number of beneficiaries or unascertainable beneficiaries, the practicality of giving information to all beneficiaries or all members of a class of beneficiaries: 15
  - (j) the practicality of imposing restrictions and other safeguards on the use of the information (for example, by way of an undertaking, or restricting who may inspect the documents):
  - (k) the practicality of giving some or all of the information to the beneficiary in redacted form: 20
  - (l) if a beneficiary has requested information, the nature and context of the request:
  - (m) any other factor that the trustee reasonably considers is relevant to determining whether the presumption applies.
- 50 Procedure when trustee decides to give no information 25**
- (1) This section applies in relation to a trust if, as a result of 1 or more of the following circumstances or events, no beneficiary has any trust information:
    - (a) the trustee cannot identify any beneficiary to whom information can be given:
    - (b) the trustee decides under **section 47(2)(b)** to withhold all of the basic trust information from all beneficiaries: 30
    - (c) the trustee decides under **section 48(2)** to refuse a request for trust information.
  - (2) The trustee must apply to the court for directions in relation to—
    - (a) whether the trustee’s determination that there is no beneficiary to whom information can be given, or to withhold information or refuse a request for information, is reasonable in the circumstances; and 35

- (b) the alternative means by which the trustee can be accountable and the trust can be enforced.
- (3) However, the trustee is not required to apply to the court for directions if—
- (a) the period during which no beneficiary has any trust information is less than 12 months; and 5
- (b) at the end of that period, the trustee gives to at least 1 beneficiary of the trust— the basic trust information.
- (i) ~~the basic trust information; and~~
- (ii) ~~the reasons for not giving the information earlier.~~
- (4) In giving directions under this section, the court must take into account the following principles: 10
- (a) trust information may be withheld from all beneficiaries only in exceptional circumstances:
- (b) alternative means of enforcing a trust pending disclosure of information to beneficiaries must be consistent with the objectives of the trust and not adversely affect its administration. 15

#### **51 Beneficiary may be required to pay cost of giving information**

- (1) A trustee may require the beneficiary to whom trust information is given under **section 48** or in accordance with the terms of the trust to pay the reasonable cost of giving that information. 20
- (2) The trustee may require the beneficiary to pay some or all of that cost before the trustee gives the information to the beneficiary.

## **Part 4**

### **Trustees' powers and indemnities**

#### **Subpart 1—Powers of trustee** 25

#### **52 General powers of trustee**

A trustee has the following general powers:

- (a) all the powers necessary to manage the trust property including, in relation to the trust property, all the powers of an absolute owner of the property: 30
- (b) all the powers necessary to carry out the trust, including powers incidental to those in **paragraph (a)**.

#### **53 Status of provisions on specific powers of trustee**

**Sections 54 to 75** set out specific powers of a trustee and the way in which those powers may be exercised, but they are not an exhaustive source or description of the specific powers of a trustee. 35

*Investment powers***54 Trustee has power to invest**

A trustee may invest trust property in any property.

Compare: 1956 No 61 s 13A

**55 Matters which trustee may consider in exercising power to invest** 5

(1) A trustee exercising any power to invest may have regard to the following matters, so far as they are appropriate to the circumstances of the trust:

- (a) the objectives of the trust or the permitted purpose of the trust:
- (b) the desirability of diversifying trust investments:
- (c) the nature of existing trust investments and other trust property: 10
- (d) the need to maintain the real value of the capital or income of the trust:
- (e) the risk of capital loss or depreciation:
- (f) the potential for capital appreciation:
- (g) the likely income return:
- (h) the length of the term of the proposed investment: 15
- (i) the probable duration of the trust:
- (j) the marketability of the proposed investment during, and on the expiry of, the term of the proposed investment:
- (k) the aggregate value of the trust property:
- (l) the effect of the proposed investment in relation to the tax liability of the trust: 20
- (m) the likelihood of inflation affecting the value of the proposed investment or other trust property:
- (n) the trustee's overall investment strategy.

(2) This section does not limit the matters that a trustee may take into account. 25

Compare: 1956 No 61 s 13E

*Power to determine treatment of returns and accounts***56 Power to determine whether return on investment is income or capital**

For the purposes of distribution, and of preparing and completing a financial statement for a trust, a trustee may determine whether a return on an investment is to be treated as income or capital. 30

**57 Apportionment of receipts and outgoings between income and capital**

(1) A trustee's powers under **subsection (2)** may be exercised only—

- (a) if the exercise of the power is fair and reasonable in all the circumstances; and 35

- (b) in accordance with accepted business practice.
- (2) A trustee may—
- (a) apportion any receipt or outgoing relating to any period of time between the income and capital accounts, or charge any outgoing or credit any receipt exclusively to or from income or capital: 5
- (b) transfer funds between capital and income accounts—
- (i) to recover or reimburse an outgoing previously charged to the account that is to receive the funds:
- (ii) to recover or deduct any receipt previously credited to the account from which the funds are to be recovered: 10
- (c) deduct from income an amount to meet the cost of depreciation, and add the amount to capital.
- (3) This section extinguishes the rules of common law and equity relating to the apportionment of receipts and outgoings.
- (4) If a trustee is the landlord, tenant, vendor, or purchaser of land, the apportionment rules in the Property Law Act 2007 apply in respect of that land. 15

*Powers to apply trust property for beneficiary's welfare*

**58 Trustee's power to pay income for child beneficiary's welfare**

- (1) A trustee may pay some or all of the income on the interest of the beneficiary in respect of whom this section applies for the beneficiary's welfare. 20
- (2) This section applies in respect of a beneficiary who is a child with an interest (whether vested or contingent) in some or all of the trust property.
- (3) In this section, **income**—
- (a) means the income on the beneficiary's interest that arises in the most recent year; and 25
- (b) where they have not been previously paid in respect of the beneficiary but have been accumulated and held for the beneficiary's entitlement in the future, means the income on the beneficiary's interest from previous years and the interest earned from the investment of that income; and
- (c) where the beneficiary has an absolute interest in an annuity, includes the income from the annuity. 30
- (4) In deciding whether to make a payment and the amount of any payment, the trustee must consider all of the relevant circumstances, including the beneficiary's age and requirements.
- (5) The trustee may make the payment under **subsection (1)** to the child's parent or guardian, or in some other manner that is for or toward the beneficiary's welfare. 35

- (6) This power is subject to any prior interests or charges affecting the income.  
Compare: 1956 No 61 s 40(1), (2), (4)
- 59 Trustee’s powers with respect to income of child beneficiary**
- (1) While a beneficiary is a child, a trustee may use the income on the beneficiary’s interest in 1 or more of the following ways: 5
- (a) invest the income:
  - (b) accumulate the income:
  - (c) make a payment under **section 58** for the beneficiary’s welfare.
- (2) If either of the following applies, the trustee must hold the income for the beneficiary absolutely: 10
- (a) the beneficiary’s interest is a vested interest and the child turns 18:
  - (b) the beneficiary, on turning 18, is entitled to the property from which the income arose.
- Compare: 1956 No 61 s 40(2)
- 60 Trustee’s power to pay capital for capital beneficiary’s welfare** 15
- (1) A trustee may pay or apply some or all of a share of the capital money or other capital assets of the trust property of a beneficiary in respect of whom this section applies for the beneficiary’s welfare.
- (2) This section applies in respect of a beneficiary with an interest (whether vested or contingent) in some or all of the capital of the trust property. 20
- (3) In deciding whether to pay or apply capital and the amount to pay or apply, the trustee must consider all of the relevant circumstances.
- (4) In exercising the power under this section, a trustee—
- (a) must not make a payment to a person whose interest is subject to a double or multiple contingency; and 25
  - (b) must not make a payment if the income would prejudice a person entitled to a prior life or other interest (whether vested or contingent) in the amount paid or applied, unless—
    - (i) the person whose interest may be prejudiced is an adult and consents in writing to the payment or application; or 30
    - (ii) the court, on the trustee’s application, orders the amount to be paid or applied.
- (5) An amount paid under this section must be accounted for as part of the share in the trust property to which the person is or becomes absolutely or indefeasibly entitled. 35
- Compare: 1956 No 61 s 41

- 61 Trustee may impose conditions on payment for beneficiary’s welfare**
- (1) A trustee exercising a power to pay or apply an amount of income or capital for the welfare of a beneficiary may impose 1 or more conditions.
- (2) A condition may require the repayment of the amount, payment of interest on the amount, or giving security for the amount. 5
- (3) At any time after imposing a condition, the trustee may, either wholly or in part, waive the condition, or release an obligation undertaken or any security given because of the condition.
- (4) A trustee, when imposing a condition about giving security, is not affected by any restriction on the investment of trust property, whether imposed under this Act or otherwise. 10
- (5) When working out the amount of income or capital that a trustee who has imposed a condition may pay or apply, an amount repaid to the trustee or recovered by the trustee is taken not to have been paid or applied by the trustee. 15  
Compare: 1956 No 61 s 41A; Draft Trusts Bill 2013 cls 101, 102 (Qld)
- 62 Trustee not liable for certain losses in relation to amounts paid or applied for beneficiary’s welfare**
- A trustee is not liable for any loss that may be incurred in relation to an amount that is paid or applied for a beneficiary’s welfare if the loss arises—
- (a) because of a failure to impose any or adequate conditions under **section 61**; or 20
- (b) without limiting **paragraph (a)**, because of a failure to take security or adequate security; or
- (c) because of a failure to take action for the protection of the security (including a failure to exercise a right to enforce the security); or 25
- (d) through the release or abandonment of the security without payment; or
- (e) from any other matter in relation to the conditions imposed or the waiver of any condition.
- Compare: 1956 No 61 s 41A(4); Draft Trusts Bill 2013 cl 103 (Qld)
- Exercise of trustee powers and functions by others* 30
- 63 Trustee’s power to appoint others to exercise or perform certain powers or functions**
- (1) A trustee may—
- (a) appoint a person to exercise or perform, on behalf of the trustee, specified powers or functions in relation to the trust: 35
- (b) appoint a person to make specified decisions in relation to all or part of the trust property:

- (c) appoint an eligible person to hold or deal with all or part of the trust property as nominee or custodian and vest all or part of the trust property in that person.
- (2) However, a trustee may not under this section or under any comparable power in the terms of the trust appoint a person to exercise or perform, on behalf of the trustee, any of the following powers or functions: 5
- (a) a function that is, or is related to, the determination of whether, when, or in what way any trust property should be distributed, used, possessed, or otherwise beneficially enjoyed, including a power of appointment:
- (b) a power to decide whether any fees or other payment due to be made out of the trust funds should be made out of income or capital (where the decision affects a beneficiary's entitlement to trust property): 10
- (c) a power to decide whether payments received by, or payable to, the trustee should be appropriated to income or capital (where the decision affects a beneficiary's entitlement to trust property): 15
- (d) a power to appoint a person to be, or to remove, a trustee of the trust:
- (e) ~~a power of appointment (including a power to appoint a person to be, or to remove, a beneficiary):~~
- (f) a power to ~~appoint~~ set or change the distribution date of trust property:
- (g) a power to resettle the trust, or to amend, revoke, or replace all or any terms of the trust: 20
- (h) a right to apply to the court:
- (i) ~~the powers of appointment~~ trustee's powers conferred by **subsection (1)** (which are powers exercisable only by the trustee personally) and any other power conferred by an enactment or the terms of the trust and exercisable only by the trustee personally. 25
- (3) A person appointed under **subsection (1)** or under any comparable power in the terms of the trust—
- (a) does not take on the duties of the trustee under this Act, but must act in accordance with the terms of the appointment and with any directions of the trustee; and 30
- (b) is liable to the trustee for any failure to comply with those terms or directions.
- (4) For the purposes of **subsection (1)(c)**, **eligible person** means—
- (a) a person who carries on a business that consists of or includes acting as a nominee or custodian; or 35
- (b) a body corporate that is controlled by the trustee; or
- (c) an incorporated law firm (within the meaning of section 6 of the Lawyers and Conveyancers Act 2006).

- (5) For the purposes of **subsection (4)(b)**, a body corporate is **controlled by the trustee** if—
- (a) the trustee has a controlling interest in the body corporate; or
  - (b) the trustee has the capacity (for example, because of practical influence) to determine the outcome of decisions about the body corporate’s financial and operating policies. 5
- 64 Trustee’s duties to keep appointments under review and to fulfil general duty of care**
- (1) If a trustee exercises a power of ~~appointment~~ under **section 63(1)** or any comparable power in the terms of the trust, the trustee must— 10
- (a) keep under review the arrangements under which the appointee acts and how those arrangements are being put into effect; and
  - (b) if the circumstances make it appropriate to do so, consider whether the trustee should exercise any power to intervene (for example, a power to give directions to the appointee, or to amend, revoke, or replace the appointment). 15
- (2) The general duty of care in **section 27** applies to the exercise of a power referred to in ~~subsection (1)~~ under **section 63(1)**.
- (3) This section applies despite **section 20(2)**.
- 65 Trustee’s liability for acts of appointee limited** 20
- A trustee is not liable in a proceeding brought by or on behalf of a beneficiary for any act or default of an appointee of the trustee unless the trustee failed—
- (a) to fulfil any of the trustee’s mandatory duties or the trustee’s default duties (where applicable) in appointing the person under **section 63**; or
  - (b) to fulfil the trustee’s duties under **section 64**. 25
- 66 Trustee’s power to delegate powers and functions in specified circumstances**
- (1) Despite **sections 63 and 64**, a trustee may, by power of attorney, delegate all or any of the trustee’s powers and functions under the trust to any person qualified to be a trustee under **section 90**. 30
- (2) However, the power to delegate may be exercised only ~~if~~ in the circumstances where the delegation is necessary (or the trustee expects that it may from time to time become necessary) because of the trustee’s—
- (a) absence from New Zealand; or
  - (b) temporary inability to be contacted; or 35
  - (c) temporary physical incapability; or
  - (d) temporary lack of capacity to perform the functions of a trustee.

- (3) The delegation—
- (a) commences when the circumstance in **subsection (2)** occurs or begins; and
  - (b) continues for the shorter of—
    - (i) the duration of the circumstance in **subsection (2)**; and 5
    - (ii) 12 months.
- (4) If a delegation has been in place for 12 months and the circumstance in **subsection (2)** continues, the delegation may be extended by the delegating trustee (or the trustee’s delegate in cases to which **subsection (2)(d)** applies) for the shorter of— 10
- (a) the remaining duration of the circumstance in **subsection (2)**; and
  - (b) a further 12 months.
- (5) A trustee may delegate powers to a sole co-trustee only if that sole co-trustee is a statutory trustee.
- (6) A delegate may exercise the delegating trustee’s power to resign. 15  
Compare: Trustee Act 1925 s 25 (UK)

#### 67 Notice of delegation of trustee’s powers and functions

- (1) Not later than 5 working days after a delegation under **section 66** commences, the delegating trustee (or, if the trustee is incapable, the delegate) must notify any co-trustees and any person with the power to remove or to appoint trustees of the following: 20
- (a) the date on which the delegation commences;
  - (b) the duration of the delegation;
  - (c) the name and contact details of the delegate;
  - (d) the reason for the delegation; 25
  - (e) which powers are delegated, if only some are delegated.
- (2) ~~If a document of~~ In the case where a power of attorney authorising delegation under **section 66** is signed ~~but is to take effect only if a circumstance that would make a delegation necessary occurs on the basis that the trustee expects that the delegation may from time to time become necessary (see section 66(2))~~, the delegating trustee (or, if the trustee is incapable, the delegate) must, not later than 5 working days after the ~~document~~ power of attorney is signed, notify any co-trustees and any person with the power to remove or to appoint trustees. 30
- (3) For a sole delegating trustee, it is sufficient compliance with **subsections (1) and (2)** if the trustee (or, if the sole trustee is incapable, the trustee’s delegate) notifies— 35
- (a) any person with the power to remove or to appoint trustees; or

- (b) if there is no person authorised under **paragraph (a)**, all competent adult beneficiaries; or
- (c) if, in the circumstances, it is unreasonable or impracticable to comply with **paragraph (b)**, a reasonably representative sample of beneficiaries. 5
- (4) However, a trustee or delegate is not required to comply with notification requirements under **subsection (3)(b) or (c)** if the trustee or delegate reasonably considers, after taking into account the factors in **section 49(2)**, that beneficiaries should not be notified.
- (5) Failure to comply with a notification requirement under this section does not invalidate any act done or document executed by the delegate in favour of a person dealing with a trustee's delegate. 10
- Compare: Trustee Act 1925 s 25 (UK)
- 68 Trustee's liability for acts of delegate limited** 15
- The trustee is not liable in a proceeding brought by or on behalf of a beneficiary for any act or default of a delegate appointed under **section 66** unless the trustee failed, in appointing the delegate, to fulfil any of the trustee's mandatory duties or the general duty of care in **section 27** (to the extent that it applies).
- 69 Application to Public Trust to consent to become delegate** 20
- (1) This section applies in relation to a trust where—
- (a) a trustee is, for any of the reasons listed in **section 66(2)**, unable to perform the trustee's functions as trustee; and
- (b) that trustee has not delegated the trustee's powers.
- (2) A co-trustee or a beneficiary of the trust may apply to Public Trust for consent for Public Trust to be made the delegate of the trustee. 25
- (3) Public Trust—
- (a) may refuse to consent to be the delegate of the trustee for any reason; and
- (b) must refuse to consent to be made the delegate of the trustee if Public Trust reasonably believes that an application under **subsection (2)** or the circumstances relating to it involve a dispute or present significant complexity. 30
- (4) Public Trust may charge fees for providing services as a delegate under this section. 35
- (5) If Public Trust consents to be made the delegate of the trustee, **sections 66 to 68** apply (with any necessary modifications) to the delegation.

*Special trust advisers***70 Role and appointment of special trust advisers**

- (1) A special trust adviser—
- (a) may advise the trustee on any matter relating to the trust; but
  - (b) is not a trustee of the trust and does not have the powers or duties of a trustee. 5
- (2) A special trust adviser may be appointed—
- (a) in, or in accordance with, the terms of the trust; or
  - (b) by order of the court made on the application of—
    - (i) a beneficiary or trustee; or 10
    - (ii) a person on whose application the court would have the power to appoint a new trustee; or
  - (c) by a person with the power to remove or to appoint trustees; or
  - (d) in respect of property for which the court has jurisdiction under Part 3 of the Protection of Personal and Property Rights Act 1988, by order of the court made on the application of— 15
    - (i) the manager or person authorised to administer the property; or
    - (ii) a person specified in section 26 of that Act; or
  - (e) in respect of property of a person subject to a property order made under the Protection of Personal and Property Rights Act 1988, by order of the court made on the application of— 20
    - (i) the manager of the property; or
    - (ii) a person specified in section 26 of that Act.
- (3) In this section, **manager** and **property order** have the meanings given in section 2 of the Protection of Personal and Property Rights Act 1988. 25
- Compare: 1956 No 61 s 49(2), (3)(a), (b)

**71 Reliance on special trust adviser's advice**

- (1) If there is a special trust adviser, a trustee—
- (a) may consult the special trust adviser on any matter relating to the trust; and 30
  - (b) is not required to follow the special trust adviser's advice; and
  - (c) is not liable in a proceeding brought by or on behalf of a beneficiary for an act or omission the trustee makes as a result of following the special trust adviser's advice unless the act or omission involves the trustee's dishonesty, wilful misconduct, or gross negligence (see **section 40A**, which relates to the court's consideration of gross negligence). 35

- (2) A special trust adviser's disagreement with or objection to a proposed action to be taken by a trustee in respect of trust property does not affect a person dealing with the trustee in the matter.

Compare: 1956 No 61 s 49(3)(c), (4)

## **72 Remuneration of special trust advisers** 5

- (1) If remuneration is payable to a trustee, remuneration may also be paid to a special trust adviser.

- (2) The amount of remuneration for a special trust adviser is to be determined,—

- (a) if the trustee is the Māori trustee, by or under regulations made under the Maori Trustee Act 1953; or 10
- (b) if the trustee is Public Trust, in accordance with Public Trust's fees as notified from time to time; or
- (c) if the trustee is a trustee company within the meaning of section 2 of the Trustee Companies Act 1967, in accordance with that Act; or
- (d) if the trustee is entitled to fix the trustee's remuneration, by the trustee; 15  
or
- (e) in all other cases, by the court.

Compare: 1956 No 61 s 49(5)

### *Other powers and rights of trustee*

## **73 Application of insurance money for loss or damage of trust property** 20

- (1) This section applies if ~~a trustee or a beneficiary receives or is entitled to receive money under an insurance contract against the loss or damage of trust property (insurance money).~~—

- (a) a trustee or a beneficiary receives or is entitled to receive money under an insurance contract against the loss of or damage to trust property (insurance money); and 25
- (b) the insurance contract has been arranged—
  - (i) under the terms of a trust; or
  - (ii) under a statutory or other power; or
  - (iii) in performance of an agreement, or of a statutory or other obligation; or 30
  - (iv) by a life tenant who would be liable for damage or loss to the property.

- (2) If a beneficiary is entitled to receive insurance money, the beneficiary must—

- (a) take reasonable steps to recover and receive the money; and 35

- (b) pay the money received less any recovery costs to the trustee or, if there is no trustee capable of giving a discharge for the money, to the Crown under **section 144**.
- (3) The trustee must hold the insurance money in trust on the same terms and subject to the same powers and provisions as (or those corresponding as nearly as possible to) those to which the lost or damaged property is subject. 5
- (4) The trustee may apply the insurance money (or part of it) to rebuilding, reinstating, replacing, or repairing the lost or damaged property.
- (5) If the insurance money is held by the Crown, the court may direct that the money (or part of it) be applied to rebuilding, reinstating, replacing, or repairing the lost or damaged property. 10
- (6) This section does not affect— any right a person may have to require the insurance money (or part of it) to be applied to rebuilding, reinstating, replacing, or repairing the lost or damaged property.
- (a) ~~any right a person may have to require the insurance money (or part of it) to be applied to rebuilding, reinstating, replacing, or repairing the lost or damaged property; or~~ 15
- (b) ~~the rights of a mortgagee, lessor, or lessee.~~
- Compare: 1956 No 61 s 25
- 74 Trustee’s power to adjust interests in trust property of portfolio investment entity** 20
- (1) This section applies where any trust property is employed in an activity that the trustee is empowered or authorised to carry on as a portfolio investment entity.
- (2) The trustee may adjust the interest of the beneficiaries in the property in any of the ways specified in section HM 48 of the Income Tax Act 2007 in order to comply with that section. 25
- (3) This section applies despite any other provision in this Act or in the Financial Markets Conduct Act 2013.
- Compare: 1956 No 61 s 42E
- 75 Trustee’s liability limited where notice given to distribute trust property without regard to unknown claims** 30
- (1) A trustee is not liable in a proceeding brought by or on behalf of a person in relation to the distribution of trust property if—
- (a) the trustee has first given a notice to potential creditors and other claimants in accordance with **subsection (2)**; and 35
- (b) the distribution is made after the notice deadline mentioned in **subsection (2)(c)**; and
- (c) the trustee did not have notice of the person’s claim at the time of the distribution.

- (2) A notice to potential creditors and other claimants must—
- (a) be given in a manner likely to come to their attention; and
  - (b) identify the trust or estate affected; and
  - (c) state that any creditor or other claimant who asserts a right or an interest relating to that trust property must give notice of their claim to the trustee before a date specified in the notice that is at least 30 days after the date the notice is given (the **notice deadline**); and
  - (d) set out the physical and email addresses to which a notice of claim and details of a claim may be sent or delivered; and
  - (e) state that the proposed distribution may be made without regard to any claim of which the trustee does not have notice before the notice deadline.
- (3) A trustee may apply to the court for directions under **section 125** regarding the type of notice that is appropriate.
- (4) This section does not apply to any claim—
- (a) under the Family Protection Act 1955; or
  - (b) under the Law Reform (Testamentary Promises) Act 1949; or
  - (c) arising out of any contract—
    - (i) to make a will containing certain provisions; or
    - (ii) not to revoke an existing will or a specified provision within a will; or
    - (iii) not to make a will; or
  - (d) by a person to be—
    - (i) a beneficiary under a will; or
    - (ii) entitled in the intestacy of a deceased person; or
    - (iii) beneficially interested under a trust.
- (5) Nothing in this section affects a remedy that a person may have under section 49(1) of the Administration Act 1969 or any other right or remedy available against another person other than the trustee, including a right to follow the property and any money or property into which it is converted.
- Compare: 1956 No 61 s 35

*Protection of person to whom disposition of property is made in excess of trustee's power purchasers and mortgagees dealing with trustees*

**76 Protection of person to whom disposition of property is made**

- (1) ~~This section applies if a trustee purports to exercise a power to make a disposition for value of the trust property, or an interest in the trust property, to any person:~~

- (2) ~~The person receives good title to the trust property or interest, which—~~
- ~~(a) cannot be challenged except on the ground of fraud; and~~
  - ~~(b) is not affected by an absence of authority to make the disposition, or the improper or irregular exercise of the power of disposition.~~
- (3) ~~The person is not responsible for the application or misapplication by the trustee of the money paid or other value given by the person for the disposition.~~ 5
- (4) ~~This section is subject to the Land Transfer Act 2017.~~
- (5) In this section, **disposition**—
- ~~(a) means any sale, mortgage, lease, or other conveyance, alienation, or assurance; and~~ 10
  - ~~(b) includes the creation of an easement or any other interest in property.~~
- Compare: 1956 No 61 s 22*

### **76 Protection of purchasers and mortgagees dealing with trustees**

- (1) This section applies if a trustee purports to exercise a power (whether statutory, under the terms of a trust, or otherwise) to sell or mortgage trust property or an interest in trust property. 15
- (2) The purchaser or mortgagee is under no obligation to inquire into whether the money received by the trustee as a result of the sale or mortgage is needed, or how that money is later dealt with, by the trustee.
- (3) This section is subject to the Land Transfer Act 2017. 20
- Compare: 1956 No 61 s 22*

## Subpart 2—Trustees’ indemnities

### **77 Trustee’s liability for expenses and liabilities incurred, and trustee’s right to indemnity**

- (1) A trustee is personally liable for an expense or a liability incurred by the trustee when acting as a trustee. 25
- (2) However, a trustee who incurs an expense or a liability when acting reasonably on behalf of the trust is entitled,—
- (a) if the trustee has paid the expense or discharged the liability out of the trustee’s own funds, to reimbursement from the trust property; or 30
  - (b) in any other case, to pay the expense or discharge the liability directly from the trust property (or to have it paid or discharged by a remaining trustee).
- (3) The operation and enforcement of the indemnity in this section is governed by the rules of the common law and equity relating to trusts. 35

- (4) This section does not limit any indemnity available at common law or in equity.

Compare: 1956 No 61 s 38(2)

**78 Indemnification of trustee with agreement of beneficiaries where indemnity impaired** 5

- (1) A trustee may be indemnified from the trust property for a breach of trust if all of the ~~adult~~ beneficiaries who together hold all of the beneficial interest in the trust property agree and if the conditions set out in **subsection (1A)** are satisfied.

(1A) The conditions are that— 10

- (a) every beneficiary consents to the indemnification; and  
 (b) if the breach of trust arises from the trustee's gross negligence, the beneficiaries receive legal advice before consenting to the indemnification; and  
 (c) if any beneficiary is a beneficiary described in **section 78A(2)**, the court has made an order under **section 78A** approving the indemnification on behalf of that beneficiary. 15

- (2) However, the beneficiaries cannot indemnify the trustee if the breach of trust arises from the trustee's dishonesty, or wilful misconduct, or gross negligence. 20

- (3) In this section,—

~~**adult beneficiaries** means the beneficiaries who are together absolutely entitled to the trust property, but does not include any beneficiary who lacks capacity~~

~~**lacks capacity** means, in relation to a beneficiary, a beneficiary who—~~ 25

- (a) ~~is a child; or~~  
 (b) ~~is not competent to manage the beneficiary's own affairs for any reason, including a beneficiary who—~~  
 (i) ~~is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988; or~~ 30  
 (ii) ~~has a trustee corporation managing the person's property under section 32 or 33 of that Act.~~

- (3) See **section 40A**, which relates to the court's consideration of gross negligence.

**78A Power of court to approve indemnification** 35

- (1) The court may, on behalf of any of the beneficiaries described in **subsection (2)** who has an interest in the property of a trust, approve the indemnification of a trustee for a breach of trust under **section 78**.

- (2) The beneficiaries are—
- (a) a beneficiary who lacks capacity:
  - (b) a person who may acquire a beneficial interest at a future date or on the happening of a future event or on becoming a member of a certain class of persons: 5
  - (c) a future person who may acquire a beneficial interest.
- (3) An application for an order of approval may be made by—
- (a) the trustees or any one of them:
  - (b) any person with a beneficial interest in the trust property.
- (4) On an application for an order of approval, the court must take into account each of the following factors: 10
- (a) the nature of any person’s interest in the trust property and the effect of the proposed order on that interest:
  - (b) the benefit or detriment that may result to any person with an interest in the trust property if the court makes or refuses to make the proposed order: 15
  - (c) the intentions of the settlor of the trust in settling the trust, if it is practicable to ascertain those intentions.
- (5) An order of approval binds the person on whose behalf it is made and takes effect without any further step. 20

**78B Power of court to waive requirement of consent to indemnification**

- (1) The court may waive the requirement that a beneficiary consent to the indemnification of a trustee for a breach of trust under **section 78**.
- (2) An application for an order of waiver of consent may be made by—
- (a) the trustees or any one of them: 25
  - (b) any person with a beneficial interest in the trust property.
- (3) On an application for an order of waiver of consent, the court must take into account each of the following factors:
- (a) the nature of any person’s interest in the trust property and the effect of the proposed order on that interest: 30
  - (b) the benefit or detriment that may result to any person with an interest in the trust property if the court makes or refuses to make the proposed order:
  - (c) the intentions of the settlor of the trust in settling the trust, if it is practicable to ascertain those intentions. 35
- (4) An order of waiver of consent binds the person on whose behalf it is made and takes effect without any further step.

**79 Ranking of trust property**

- (1) For the purposes of **section 77(1)** (and despite **section 77(2)**), the terms of the trust may rank the order in which the trust property must be applied to reimburse the trustee or pay or discharge an expense or a liability.
- (2) However, the court may set aside the ranking of trust property on the application of— 5
- (a) the trustee; or
  - (b) a creditor; or
  - (c) a beneficiary.

**80 Creditor's limited claim to trust property through trustee's indemnity** 10

- (1) This section applies if a trustee incurs an expense or a liability to a creditor and the trustee—
- (a) has a right to be indemnified from the trust property; or
  - (b) for any reason is not entitled to be indemnified or fully indemnified from the trust property (for example, because the trustee incurred the liability in breach of trust) but— 15
    - (i) the creditor has given value; and
    - (ii) the trust has received a benefit from the transaction between the trustee and the creditor; and
    - (iii) the creditor has acted in good faith. 20
- (2) The creditor has a claim against the trustee that may be satisfied by the creditor being indemnified from the trust property as if the creditor were in the position of a trustee who has a right to be indemnified from the trust property.
- (3) The creditor has not acted in good faith for the purposes of **subsection (1)(b)(iii)** if the creditor had knowledge of any the circumstances that excluded or limited the trustee's indemnity (whether or not the creditor knew ~~it~~ they would have that effect). 25
- (4) ~~A~~ For the purposes of **subsection (1)(b)**, a claim under this section—
- (a) is limited to the ~~value given~~ benefit received by the ~~creditor trust~~ (together with interest); and 30
  - (b) must be paid in priority over any payment to a beneficiary, unless the court orders otherwise; and
  - (c) does not alter the priority of creditors who are entitled to claim from the trust property.
- (5) This section applies in respect of a former trustee who incurs an expense or a liability as a trustee acting on behalf of the trust. 35

**81 Trustee's lien on insurance money for premiums**

- (1) This section applies if a trustee pays any premiums in respect of any insurance contract for trust property for which the trustee has not previously received reimbursement from the trust property.
- (2) The trustee has a lien on— 5
- (a) the insurance money for the amount of the premiums paid; and
- (b) interest on that amount calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

Compare: 1956 No 61 s 34A

**82 Trustee's indemnity for rent, covenant, or agreement under lease** 10

- (1) This section applies if a trustee is, for any reason, liable in relation to—
- (a) any rent, covenant, or agreement reserved by or contained in a lease; or
- (b) any indemnity given for any rent, covenant, or agreement mentioned in **paragraph (a)**.
- (2) The trustee may assign the lease to a person entitled to call for an assignment of the lease if the trustee— 15
- (a) satisfies all liabilities under the lease that may have accrued, and been claimed, up to the date of the assignment; and
- (b) if necessary, sets apart a fund that is enough to pay any future claim that may be made in relation to a fixed and ascertained amount that the lessee agreed to expend on the leased property (even though the time for expending the amount may not yet have arrived). 20
- (3) If the trustee acts under **subsection (2)**, the trustee—
- (a) is not required to appropriate any further amount from the trust property to meet any future liability under the lease; and 25
- (b) may distribute the remaining trust property, other than any fund set apart under **subsection (2)(b)**, to the persons entitled to the trust property.
- (4) A trustee who acts under **subsection (2)** and distributes the remaining trust property under **subsection (3)(b)** is not personally liable for any later claim under the lease. 30
- (5) This section does not affect the right of the lessor, or a person deriving title under the lessor, to follow the trust property into the hands of the persons to whom it was distributed.

Compare: 1956 No 61 s 34; Draft Trusts Bill 2013 cl 115 (Qld)

**83 Protection of trustee in handing over personal property to life tenant** 35

- (1) If personal property is given by will to a person (including a child) for a life interest or another limited interest, the trustee may deliver the personal prop-

- erty to the person (or in the case of a child, to the child's parent or guardian) on the terms and conditions that the trustee thinks fit.
- (2) However, before delivering the personal property to the person, the trustee must—
- (a) prepare an inventory of the property; and 5
  - (b) ensure that the inventory is signed by the person and by the trustee; and
  - (c) give the person a copy of the inventory and keep a copy.
- (3) On and after the delivery of the property, the trustee—
- (a) is not required to repair or insure the property; and
  - (b) is not liable for any loss or destruction of the property or the failure of the person to repair or insure the property. 10
- (4) A copy of the inventory signed by the person and the trustee is a security interest for the purposes of the Personal Property Securities Act 1999, and a financing statement may be registered accordingly.
- Compare: 1956 No 61 s 39A 15

#### **84 Protection of trustee in handing over personal property to child**

- (1) A trustee may deliver to a child, or the child's parent or guardian, any tangible personal property that is absolutely vested in the child.
- (2) The receipt of the child or parent or guardian is a good discharge to the trustee for the property. 20
- Compare: 1956 No 61 s 39B

#### **85 Protection relating to notice when person trustee of more than 1 trust**

- (1) This section applies to a trustee acting for more than 1 trust.
- (2) The trustee is not, unless the trustee is acting in bad faith, to be taken to have notice of a matter in relation to a trust only because notice of the matter is, or was, given to the trustee when acting for another trust. 25
- (3) In this section, **matter** includes document, fact, and thing.
- Compare: 1956 No 61 s 36; Draft Trusts Bill 2013 cl 111 (Qld)

### **Part 5**

## **Appointment and discharge of trustees 30**

### *Power to remove or to appoint trustee*

#### **86 Who may remove trustee and appoint replacement**

- (1) The following persons have the power to remove a trustee in writing under **section 97**:

- 
- (a) the person nominated in the terms of the trust as having the power to remove trustees:
- (b) if there is no person authorised under **paragraph (a)** or the person is unable or unwilling to act, the remaining trustees:
- (c) if there is no person authorised under **paragraph (a) or (b)** or the person or persons are unable or unwilling to act, any of the following persons acting in relation to the trustee being removed that may be relevant: 5
- (i) a property manager appointed under the Protection of Personal and Property Rights Act 1988 to act as manager of the trustee's property: 10
- (ii) a person holding an enduring power of attorney over the property of a trustee who is mentally incapable:
- (iii) the liquidator of a corporate trustee that is in liquidation.
- (2) The following persons have the power to appoint a replacement trustee in writing: 15
- (a) in the case of an appointment to replace a retiring trustee,—
- (i) the person nominated in the terms of the trust as having the power to appoint trustees:
- (ii) if there is no person authorised under **subparagraph (i)** or the person is unable or unwilling to act, the remaining trustees: 20
- (iii) if there is no person authorised under **subparagraph (i) or (ii)** or the person is unable or unwilling to act, the retiring trustee:
- (b) in the case of an appointment to replace a trustee who has been removed,—
- (i) the person nominated in the terms of the trust as having the power to appoint trustees: 25
- (ii) if there is no person authorised under **subparagraph (i)** or the person is unable or unwilling to act, a person with the power to remove a trustee under **subsection (1)(b) or (c)**:
- (c) in the case of an appointment of a trustee to replace a trustee who dies while in office,— 30
- (i) the person nominated in the terms of the trust as having the power to appoint trustees:
- (ii) if there is no person authorised under **subparagraph (i)** or the person is unable or unwilling to act, the remaining trustees: 35
- (iii) if there is no person authorised under **subparagraph (i) or (ii)** or the person is unable or unwilling to act, the executor or administrator of the trustee.

- (3) **Subsection (4)** applies to a person nominated in the terms of a trust as having the power to appoint or to remove trustees for a limited purpose or in specified circumstances only.
- (4) This section does not authorise the person to exercise a power of ~~appointment or removal~~ to appoint or remove a trustee for any purpose or in any circumstances beyond those specified in the terms of the trust. 5
- 87 Person with power to remove or appoint trustee may apply to court for directions**
- (1) A person with the power to remove or to appoint trustees may apply to the court for directions on the exercise of a power of removal or appointment. 10
- (2) The application must be served, in accordance with the rules of court, on each person interested in the application or any of them as the court thinks fit.
- 88 Duty to exercise power to remove or appoint trustee honestly and for proper purpose**
- A person with the power to remove or to appoint trustees must exercise any power of removal or appointment— 15
- (a) honestly and in good faith; and
- (b) for a proper purpose.
- 89 Application to review exercise of power to remove or to appoint trustee**
- (1) A beneficiary may apply to the court for the review of the exercise, by a person with the power to remove or to appoint trustees, of a power to remove or to appoint a trustee. 20
- (2) **Sections 118 and 119** apply with all necessary modifications to the application.
- Appointment of trustee* 25
- 90 Who may be appointed as trustee**
- (1) Any person may be appointed as a trustee of a trust, unless the person is disqualified.
- (2) The following persons are disqualified from being appointed as a trustee: 30
- (a) a child;
- (b) an undischarged bankrupt;
- (c) a person who lacks the capacity to perform the functions of a trustee;
- (d) a body corporate that is subject to an insolvency event.
- (3) Despite **subsection (2)(b)**, an undischarged bankrupt may be appointed as a trustee with the consent of the court. 35

- (4) For the purposes of **subsection (2)(c)**, and without limiting that paragraph, a person **lacks the capacity to perform the functions of a trustee** if the person—
- (a) is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988; or 5
  - (b) has a trustee corporation managing the person’s property under section 32 or 33 of that Act.
- 91 Statutory trustee may be sole trustee**
- (1) A statutory trustee may be appointed and may lawfully act as the sole trustee of any trust, even if the terms of the trust provide for or require the appointment of 2 or more trustees. 10
  - (2) This section does not permit the appointment of a body corporate as trustee if the terms of the trust forbid the appointment of the body corporate.  
Compare: 1956 No 61 s 48
- 92 How trustee is appointed** 15
- A trustee may be appointed—
- (a) by the settlor on the creation of the trust; or
  - (b) by the person or persons nominated for the purpose of appointing new trustees in the terms of the trust in the manner specified in those terms; or 20
  - (c) under **section 105 or 106**.
- 93 How trustee accepts or rejects appointment**
- (1) An appointment of a trustee does not take effect until the appointee accepts the appointment.
  - (2) The acceptance of an appointment may be given expressly or may be implied through conduct unless there is a contrary intention in the terms of the trust. 25
  - (3) ~~An appointee who gives no express indication of acceptance or rejection of the appointment and who for 90 days after the appointment is inactive in relation to the trust is taken to have rejected the appointment.~~
  - (3) The rejection of an appointment— 30
    - (a) may be given expressly; or
    - (b) will be implied if the appointee—
      - (i) gives no express indication of acceptance or rejection of the appointment; and
      - (ii) is inactive in relation to the trust for 90 days after the appointment. 35

**94 Acts of trustee not invalidated by defect in appointment**

The act of a trustee is not invalid by reason only of any defect in the appointment of the trustee.

*Retirement of trustee***95 How trustee retires**

5

A trustee who expresses in writing a wish to retire may be discharged in writing—

- (a) by a person with the power to remove trustees; or
- (b) if there is no person authorised under **paragraph (a)** or that person is unable or unwilling to act, by the remaining trustees; or 10
- (c) if there is no person authorised under **paragraph (a) or (b)** or that person is unable or unwilling to act, and the trustee's retirement will reduce the number of trustees below the minimum number of trustees required by the terms of the trust, by the retiring trustee and a replacement trustee (selected by the retiring trustee) together; or 15
- (d) if there is no person authorised under **paragraph (a) or (b)** or that person is unable or unwilling to act, and the minimum number of trustees required by the terms of the trust will remain, by the retiring trustee alone.

*Death of trustee*

20

**96 Devolution of powers on death of trustee**

- (1) If a power or function is vested in or imposed on 2 or more trustees jointly and 1 or more of those trustees dies, the surviving trustees (if any) may exercise the power or perform the function until a replacement trustee (if any) is appointed.
- (2) If a sole trustee or the last surviving or continuing trustee dies, the personal representative of the trustee— 25
  - (a) may exercise, ~~for a reasonable period of time,~~ any power or perform any function that was vested in, or capable of being exercised or performed by, that trustee; but
  - (b) is not a trustee for the purposes of **subsection (1)**. 30

Compare: 1956 No 61 s 23

*Removal of trustee***97 How trustee is removed***Compulsory removal*

- (1) ~~A person with the power to remove trustees must act to remove a trustee if—~~ 35
  - (a) ~~a trustee loses the capacity to perform the functions of a trustee; and~~

- (b) that trustee's powers have not been delegated in a manner authorised by an enactment or by the terms of the trust.
- (2) For the purposes of **subsection (1)(a)**, and without limiting that paragraph, a person ~~loses the capacity to perform the functions of a trustee~~ if the person— 5
- (a) is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988; or
- (b) has a trustee corporation managing the person's property under section 32 or 33 of that Act.
- Optional removal* 10
- (3) A person with the power to remove trustees may act to remove a trustee if—
- (a) it is desirable for the proper execution of the trust; and
- (b) 1 or more of the following grounds for removal are met:
- (i) the trustee repeatedly refuses or fails to act as trustee;
- (ii) the trustee becomes an undischarged bankrupt; 15
- (iii) the trustee is a corporate trustee that is subject to an insolvency event;
- (iv) the trustee is no longer suitable to hold office as trustee because of the trustee's conduct or circumstances.
- (4) For the purposes of **subsection (3)(b)(iv)**, examples of conduct and circumstances that may make a trustee no longer suitable to hold office as trustee include the following: 20
- (a) the trustee is convicted of an offence involving dishonesty;
- (b) it is not known where the trustee is and the trustee cannot be contacted;
- (c) the trustee is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under the Companies Act 1993; 25
- (d) the trustee is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Financial Markets Conduct Act 2013 or the Takeovers Act 1993. 30
- (5) This section does not limit the grounds on which a person nominated in the terms of the trust as having the power to remove trustees may exercise that power in accordance with the terms of the trust.
- 97 How trustee is removed** 35
- (1) A person with the power to remove a trustee, —
- (a) under **section 86(1)(a)**, may act to remove a trustee in accordance with either —

- (i) a power in the terms of the trust; or
- (ii) the power to remove a trustee on compulsory grounds under **section 97A** or on optional grounds under **section 97B**; and
- (b) under **section 86(1)(b) or (c)**, may act to remove a trustee in accordance with the power to remove a trustee on compulsory grounds under **section 97A** or on optional grounds under **section 97B**. 5
- (2) A person exercising a power to remove a trustee under the terms of the trust may exercise that power on the basis of any ground for the removal of a trustee that is stated in the terms of the trust.
- (3) The power to remove a trustee under **section 97A or 97B** is available in respect of any trust regardless of whether the terms of the trust include a power to remove a trustee or any grounds for the removal of a trustee. 10
- (4) If a ground for the removal of a trustee that is included in both the terms of the trust and—
- (a) **section 97A(1)** is met in respect of a trustee, the person with the power to remove a trustee must remove the trustee, but may elect to exercise the power— 15
- (i) under the terms of the trust; or
- (ii) under **section 97A**;
- (b) **section 97B(1)** is met in respect of a trustee, the person with the power to remove a trustee may elect to exercise the power to remove the trustee— 20
- (i) under the terms of the trust; or
- (ii) under **section 97B**.
- (5) **Sections 98 to 103** (relating to the procedure for the removal of a trustee)— 25
- (a) apply only if the power to remove a trustee is exercised under **section 97A or 97B**; and
- (b) if they do apply, prevail over any procedure in the terms of the trust.

#### **97A** Compulsory removal of trustee

- (1) A person with the power to remove trustees must act to remove a trustee if— 30
- (a) a trustee loses the capacity to perform the functions of a trustee; and
- (b) that trustee's powers have not been delegated in a manner authorised by an enactment or by the terms of the trust.
- (2) For the purposes of **subsection (1)(a)**, and without limiting that paragraph, a person **loses the capacity to perform the functions of a trustee** if the person— 35
- (a) is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988; or

- (b) has a trustee corporation managing the person's property under section 32 or 33 of that Act.

### **97B Optional removal of trustee**

- (1) A person with the power to remove trustees may act to remove a trustee if—
- (a) it is desirable for the proper execution of the trust; and 5
- (b) 1 or more of the following grounds for removal are met:
- (i) the trustee repeatedly refuses or fails to act as trustee;
- (ii) the trustee becomes an undischarged bankrupt;
- (iii) the trustee is a corporate trustee that is subject to an insolvency event; 10
- (iv) the trustee is no longer suitable to hold office as trustee because of the trustee's conduct or circumstances.
- (2) For the purposes of **subsection (1)(b)(iv)**, examples of conduct and circumstances that may make a trustee no longer suitable to hold office as trustee include the following: 15
- (a) the trustee is convicted of an offence involving dishonesty;
- (b) it is not known where the trustee is and the trustee cannot be contacted;
- (c) the trustee is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under the Companies Act 1993; 20
- (d) the trustee is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Financial Markets Conduct Act 2013 or the Takeovers Act 1993.

### **98 Notice of decision to remove** 25

- (1) A person who makes a decision under **section 97** to remove a trustee must give that trustee notice of the decision.
- (2) However, the person is not required to give notice of the decision if, despite the person's reasonable efforts to locate and contact the trustee, it is not known where the trustee is and the trustee cannot be contacted. 30

### **99 Effect of notice**

- (1) This subsection applies in relation to a person who is removed under **section 97(1)** and who—
- (a) is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988; or 35
- (b) has a trustee corporation managing the person's property under section 32 or 33 of that Act.

- (2) If **subsection (1)** applies, the notice of the decision to remove the trustee—
- (a) is the document of removal for the purposes of **section 108**; and
  - (b) is executed and takes effect when it is given under **section 98(1)**.
- (3) In the case of a trustee who receives a notice under **section 98(1)** and in relation to whom **subsection (1)** does not apply, the notice— 5
- (a) is the document of removal for the purposes of **section 108**; and
  - (b) is executed and takes effect—
    - (i) 240 working days after the trustee receives the notice, if the trustee has not made an application under **section 101**; or
    - (ii) only if and when ordered by the court, if the trustee has made an application under **section 101**. 10

#### **100 Removal where notice cannot be given**

- (1) If the person who makes the decision to remove a trustee is not required to give notice of the decision because **section 98(2)** applies, the person must make a statutory declaration recording— 15
- (a) the person's decision; and
  - (b) the efforts the person has made to locate and contact the trustee.
- (2) The declaration—
- (a) is the document of removal for the purposes of **section 108**; and
  - (b) is executed and takes effect when it is made in accordance with section 9 20 of the Oaths and Declarations Act 1957.

#### **101 Application to prevent removal**

- (1) A trustee may (unless **section 99(1)** applies) apply to the court for an order preventing the trustee's removal.
- (2) The application must be made within 20 working days after the trustee receives notice of the decision to remove the trustee. 25

#### **102 Procedure on trustee's application to prevent removal**

- (1) An applicant under **section 101** must produce evidence that raises a genuine dispute as to whether the removal decision was reasonably open to the person in the circumstances. 30
- (2) If the court is satisfied that the applicant has established a genuine dispute, the onus is on the person who made the removal decision to establish that the decision was reasonably open to the person in the circumstances.

**103 Court may make order preventing removal**

The court may make an order preventing the removal of the trustee only if the court is satisfied that none of the grounds for removal specified in **section 97 97A or 97B** or recognised at common law or in equity is made out.

**104 Court may make order for removal**

5

Whenever it is necessary or desirable to remove a trustee and it is difficult or impracticable to do so without the assistance of the court, the court may make an order removing a trustee.

*Replacement of trustee***105 How trustee is replaced**

10

(1) If a trustee retires or is removed or dies while in office and it is necessary (because the trustee was a sole trustee or because the terms of the trust require it) to replace the trustee, a person with the power to appoint trustees must appoint a replacement trustee.

(2) If a trustee retires or is removed or dies while in office and it is not necessary to replace the trustee (because the number of remaining trustees meets or exceeds the minimum number specified in the terms of the trust), a person with the power to appoint trustees may, but need not, appoint a replacement trustee.

15

(3) The appointment of a trustee to replace a trustee who has been removed takes effect only when the removal takes effect under **section 99(2) or (3), 100(2), or 104.**

20

**106 Court may appoint or replace trustee**

(1) Whenever it is necessary or desirable to appoint a new trustee and it is difficult or impracticable to do so without the assistance of the court, the court may make an order appointing a new trustee.

25

(2) However, this section does not empower the court to appoint an executor or administrator.

(3) If the court proposes to appoint Public Trust as the replacement trustee, the court must, before making the appointment, give Public Trust an opportunity to be heard on the matter.

30

(4) If the court (except on application by a supervisor within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) appoints Public Trust as the replacement trustee, Public Trust—

(a) must accept the appointment; and

(b) may charge fees for acting as trustee.

35

Compare: 1956 No 61 ss 46(4), (5), 51(1), (4)

**107 Replacing sole trustee with multiple trustees**

If a sole trustee retires or is removed or dies while in office, the trustee may be replaced with more than 1 replacement trustee unless there is a contrary intention in the terms of the trust.

*Divesting and vesting of trust property* 5

**108 Divesting and vesting of trust property on change of trustees**

- (1) This section applies if—
- (a) a new trustee of a trust is appointed; or
  - (b) a trustee of a trust retires or is removed.
- (2) The execution of the document of appointment, removal, or discharge— 10
- (a) divests the trust property from the persons who were the trustees immediately before the document was executed; and
  - (b) vests the property in the persons who become and are the trustees as joint tenants without any conveyance, transfer, or assignment (but subject to any liabilities attaching to the property). 15
- (2A) This section does not affect any lien to which a trustee may otherwise be entitled.
- (3) **Subsection (2)** is subject to **section 109**.
- (4) In this section and in **section 109**, a court order appointing a trustee or removing a trustee without replacement— 20
- (a) is a document of appointment, removal, or discharge (unless the court otherwise orders); and
  - (b) is, for the purposes of section 89 of the Land Transfer Act 2017, a vesting order vesting the trust property in the persons who become and are the trustees (unless the court otherwise orders). 25

**109 Requirements to notify, register, or record divesting and vesting of trust property**

- (1) If, or to the extent that, the divesting and vesting of trust property must be notified, registered, or recorded under the requirements of another Act,—
- (a) the divesting and vesting are subject to the requirements and do not take effect until the requirements are satisfied; and 30
  - (b) the execution of the document of appointment, removal, or discharge vests in the persons who become and are the trustees a right to call for the transfer of the trust property; and
  - (c) a copy of that document or those documents and a statutory declaration by a continuing or new trustee of the trust that each relevant document was validly executed are sufficient proof of a right claimed under **paragraph (b)**. 35

- (2) **Subsection (1)(c)** does not apply where the document is a court order, and a copy of the order is sufficient proof of a right claimed under **subsection (1)(b)**.

#### 110 Requirement to assist in transfer of trust property

- (1) The following persons must do all things necessary to assist in any transfer and any required notification, registration, or recording of the divesting and vesting of the trust property: 5
- (a) a trustee who has retired or been removed:
  - (b) a continuing trustee of the trust:
  - (c) a new trustee of the trust. 10
- (2) The persons who become and are the trustees may complete any formal requirements necessary for the divesting and vesting of trust property on behalf of a former trustee who loses the capacity to perform the functions of a trustee or who fails or refuses to act under **subsection (1)**.
- (3) For the purposes of **subsection (2)**, and without limiting that subsection, a person **loses the capacity to perform the functions of a trustee** if the person— 15
- (a) is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988; or
  - (b) has a trustee corporation managing the person's property under section 32 or 33 of that Act. 20

#### 111 Protection in relation to notifying, registering, or recording transfer of trust property

A person who, in good faith, notifies, registers, or records the transfer of property in reliance on **section 108(4), 109(1)(c) or (2), or 110(2)** is not liable for any loss or deprivation that may result from that act. 25

#### 112 Departing trustee must be given certain documents

- (1) A continuing or new trustee must give to a trustee who retires or is removed (the **departing trustee**) a copy of any documents that demonstrate that the departing trustee has been divested of trust property, including any document of transfer and registration. 30
- (2) The documents must be given as soon as any requirements relating to the transfer, or notification, registration, or recording of the transfer, of trust property referred to in **section 109** are complete.

## Part 6

### Termination and variation of trusts

#### 113 Termination of trust by unanimous consent of beneficiaries

- (1) A trustee must terminate the trust and distribute the trust property on being required to do so by all of the beneficiaries who together hold all of the beneficial interest in the trust property if the conditions set out in **subsection (2)** are satisfied. 5
- (2) The conditions for the termination of the trust are that—
- (a) every beneficiary consents to requiring the trustee to terminate the trust and distribute the trust property; and 10
  - (b) the trustee receives a request to terminate the trust and distribute the trust property from or on behalf of each beneficiary; and
  - (c) if any of the beneficiaries is a beneficiary described in **section 116(2)**, the court has made an order under **section 116** approving the termination of the trust on behalf of that beneficiary. 15
- (3) The condition in **subsection (2)(b)** is satisfied if—
- (a) the beneficiaries provide a written request to the trustee to terminate the trust and distribute the trust property; and
  - (b) the notice is signed by each beneficiary or by the duly authorised agent of that beneficiary. 20

#### 114 Variation or resettlement of trust by unanimous consent of beneficiaries

- (1) A trustee may do either of the following on being required to do so by all of the beneficiaries who together hold all of the beneficial interest in the trust property, if the conditions set out in **subsection (2)** are satisfied: 25
- (a) vary the terms of the trust: 25
  - (b) consent to the resettlement of the trust.
- (2) The conditions for an action in **subsection (1)** are that—
- (a) every beneficiary consents to requiring the variation or resettlement; and
  - (b) the trustee receives a request to vary the terms of the trust or resettle the trust from or on behalf of each beneficiary; and 30
  - (c) if any of the beneficiaries is a beneficiary described in **section 116(2)**, the court has made an order under **section 116** approving the variation of terms or resettlement on behalf of that beneficiary; and
  - (d) the trustee has agreed to the proposal.
- (3) In this section and in **sections 116 and 117**, **variation** includes a change to the scope or nature of the powers of the trustee. 35

**115 Beneficiary's right to share of trust property**

- (1) A trustee must transfer a fixed share of the trust property to the beneficiary of that fixed share if—
- (a) the beneficiary is absolutely entitled to that share (for example, because any condition relating to the vesting of that share set by the terms of the trust has been met); and 5
  - (b) the property is in a form, or can be changed into a form, that can be transferred to the beneficiary; and
  - (c) the transfer is not detrimental to the interests of the other beneficiaries.
- (2) **Subsection (1)** does not apply in respect of a beneficiary who lacks capacity. 10
- (3) In this section ~~and in section 116,~~ fixed share of the trust property means a share of the trust property that is specified or determined, and in respect of which the trustee does not have a discretion regarding to whom or in what proportion the share is distributed.
- ~~fixed share of the trust property means a share of the trust property that is specified or determined, and in respect of which the trustee does not have a discretion regarding to whom or in what proportion the share is distributed~~ 15
- ~~lacks capacity means, in relation to a beneficiary, that the beneficiary—~~
- (a) is a child; or
  - (b) is not competent to manage the beneficiary's own affairs for any reason, including because the beneficiary— 20
    - (i) is subject to an order appointing a manager under section 31 of the Protection of Personal and Property Rights Act 1988; or
    - (ii) has a trustee corporation managing the person's property under section 32 or 33 of that Act. 25

**116 Power of court to approve termination, variation, or resettlement of trust**

- (1) The court may, on behalf of any of the beneficiaries described in **subsection (2)** who has an interest in the property of a trust, approve the termination, variation, or resettlement of the trust.
- (2) The beneficiaries are— 30
- (a) a beneficiary who lacks capacity:
  - (b) a person who may acquire a beneficial interest at a future date or on the happening of a future event or on becoming a member of a certain class of persons:
  - (c) a future person who may acquire a beneficial interest. 35
- (3) An application for an order of approval may be made by—
- (a) the trustees or any one of them:
  - (b) any person with a beneficial interest in the trust property.

- 
- (4) On an application for an order of approval, the court must take into account each of the following factors:
- (a) the nature of any person’s interest in the trust property and the effect of the proposed order on that interest: 5
  - (b) the benefit or detriment that may result to any person with an interest in the trust property if the court makes or refuses to make the proposed order: 5
  - (c) the intentions of the settlor of the trust in settling the trust, if it is practicable to ascertain those intentions. 5
- (5) The court must not make an order of approval if its effect would be to reduce or remove any vested interest in the trust property. 10
- (6) An order of approval binds the person on whose behalf it is made and takes effect without any further step.
- 117 Power of court to waive requirement of consent to termination, variation, or resettlement of trust 15**
- (1) The court may waive the requirement that a beneficiary consent to the termination of a trust under **section 113** or the variation or resettlement of a trust under **section 114**.
- (2) An application for an order of waiver of consent may be made by— 20
- (a) the trustees or any one of them: 20
  - (b) any person with a beneficial interest in the trust property.
- (3) On an application for an order of waiver of consent, the court must take into account each of the following factors: 25
- (a) the nature of any person’s interest in the trust property and the effect of the proposed order on that interest: 25
  - (b) the benefit or detriment that may result to any person with an interest in the trust property if the court makes or refuses to make the proposed order: 25
  - (c) the intentions of the settlor of the trust in settling the trust, if it is practicable to ascertain those intentions. 30
- (4) The court must not make an order of waiver of consent if its effect would be to reduce or remove any vested interest in the trust property.
- (5) An order of waiver of consent binds the person on whose behalf it is made and takes effect without any further step.

## Part 7

### Court powers and dispute resolution

#### 118 Court may review trustee's act, omission, or decision

- (1) The court may review the act, omission, or decision (including a proposed act, omission, or decision) of a trustee on the ground that the act, omission, or decision was not or is not reasonably open to the trustee in the circumstances. 5
- (2) The court may undertake a review on the application only of a beneficiary.
- (3) The review must be conducted in accordance with **section 119**.
- (4) This section and **section 119** do not limit or affect—
  - (a) the court's jurisdiction to supervise trusts, including its jurisdiction under the Charitable Trusts Act 1957; or 10
  - (b) the Attorney-General's powers and duties with respect to charitable trusts, including powers and duties under the Charitable Trusts Act 1957.

#### 119 Procedure for court's review of trustee's act, omission, or decision

- (1) An applicant for a review under **section 118** must produce evidence that raises a genuine and substantial dispute as to whether the act, omission, or decision in question was or is reasonably open to the trustee in the circumstances. 15
- (2) If the court is satisfied that the applicant has established a genuine and substantial dispute, the onus is on the trustee to establish that the act, omission, or decision was or is reasonably open to the trustee in the circumstances. 20
- (3) If the court, ~~after hearing the trustee,~~ is satisfied on the balance of probabilities that the act, omission, or decision was not or is not reasonably open to the trustee in the circumstances, the court may (but subject to **subsection (4)**)—
  - (a) set aside the act or decision, or direct the trustee to act in the case of an omission: 25
  - (b) restrain the trustee from acting or deciding in the case of a proposed act or decision, and direct the trustee to act in the case of a proposed omission:
  - (c) make any other orders that the court considers necessary.
- (4) The court must not make an order that affects— 30
  - (a) a valid distribution of the trust property that was made before the trustee had notice of the application; or
  - (b) any right or title acquired by a person in good faith and for value.

## **120 Court may take into account investment strategy in action for breach of trust**

In considering whether a trustee is liable, in respect of any investment made by that trustee, for any breach of trust in respect of any duty under **section 28** (to invest prudently to the applicable standard), the court may take into account— 5

- (a) whether the trust investments have been diversified, so far as is appropriate to the circumstances of the trust; and
- (b) whether the investment was made in accordance with any investment strategy.

Compare: 1956 No 61 s 13M 10

## **121 Court may set off gains and losses arising from investment**

(1) This section applies to a proceeding for breach of trust in relation to an investment by a trustee if a loss has been or is suspected to have been incurred by the trust.

(2) The court may set off all or part of the loss resulting from the investment against all or part of any gain resulting from any other investment whether in breach of trust or not. 15

(3) The power does not limit or affect any other power or entitlement to set off all or part of any loss against any property.

Compare: 1956 No 61 s 13Q 20

## **122 Power of court to vary or extend trustees' powers in relation to property**

(1) The court may vary or extend the powers of the trustees of a trust if—

- (a) the court considers that the variation or extension is necessary or desirable for the proper management of the trust property; and
- (b) the variation or extension does not alter a beneficiary's interest under the trust; and 25
- (c) the variation or extension does not involve a power to distribute trust property to a beneficiary.

(2) An application for an order may be made by—

- (a) a trustee of the trust; or 30
- (b) a beneficiary of the trust.

## **123 Court may relieve trustee from personal liability**

(1) The court may relieve a trustee who is or may be personally liable for any breach of trust from personal liability for the breach if it appears to the court that— 35

- (a) the trustee has acted honestly and reasonably; and
- (b) the trustee ought fairly to be excused for the breach of trust.

- (2) The court may relieve the trustee in whole or in part.

#### **124 Court may make beneficiary indemnify trustee for breach of trust**

- (1) This section applies if a trustee commits a breach of trust at the instigation or request or with the written consent of a beneficiary.
- (2) The court may, if it considers it appropriate, make an order indemnifying the trustee out of the beneficiary's interest in the trust property. 5

Compare: 1956 No 61 s 74; Draft Trusts Bill 2013 cl 121 (Qld)

#### **125 Trustee may apply to court for directions**

- (1) A trustee may apply to the court for directions about— 10
- (a) the trust property; or
- (b) the exercise of any power or performance of any function by the trustee.
- (2) The application must be served, in accordance with the rules of court, on each person interested in the application or any of them as the court thinks fit.
- (3) On an application under this section, the court may give any direction it thinks fit. 15
- (4) This section does not restrict the availability of alternative proceedings within the court's jurisdiction, including a declaration interpreting the terms of the trust.

Compare: 1956 No 61 s 66

#### **126 Protection of trustee while acting under direction of court** 20

- (1) A trustee acting under any direction of the court must be treated as having discharged the trustee's duties as a trustee in relation to the direction, even though the order giving the direction is later declared invalid, overruled, set aside, or found to be otherwise ineffective.
- (2) However, **subsection (1)** does not indemnify a trustee for any act done in accordance with a direction of the court if the trustee has acted in bad faith in— 25
- (a) getting the direction; or
- (b) acquiescing in the court making the order or giving the direction.

Compare: 1956 No 61 s 69

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#### **127 Trustee may apply to court to bar claims**

- (1) The court may, on an application by a trustee,—
- (a) bar a claim by any person that directly or indirectly affects the trust property, including a claim against the trustee personally; or
- (b) authorise the trustee to administer the trust property without regard to the person's claim. 35

- (2) Before making an application, a trustee must have served on the person, in accordance with the rules of court, a notice—
- (a) describing the general nature of the claim as the trustee understands it to be; and
  - (b) stating that if a legal proceeding is not, within 90 days after the service of the notice, commenced to enforce the claim, a court may bar the claim or authorise the trustee to administer the trust property without regard to it. 5
- (3) The court may not make an order under this section barring—
- (a) a claim under the Family Protection Act 1955; or 10
  - (b) an application for revocation of a grant of administration.
- (4) An order made by the court does not affect the right of any beneficiary of the trust to contest a claim by the trustee to any payment or indemnity from the trust property unless the beneficiary is a party to the proceeding.
- Compare: 1956 No 61 s 75 15

**128 Trustee may apply to court to allow distribution of missing beneficiaries' shares**

- (1) The court may, on application by a trustee, make an order authorising the trustee to distribute trust property—
- (a) as if a potential beneficiary or a class of potential beneficiaries does not exist or never existed or has died before a date or an event specified; and 20
  - (b) if, because of the order, it is not possible or practicable to determine whether any condition or requirement affecting a beneficial interest in the property or any part of it has been complied with or fulfilled, as if that condition or requirement had been or had not been complied with or fulfilled. 25
- (2) The court may make an order only if it is satisfied that—
- (a) reasonable measures have been taken to bring to the notice of the potential beneficiary or beneficiaries their potential beneficial interest or interests; and 30
  - (b) at least 60 days have passed since the last of those measures was taken; and
  - (c) no potential beneficiary with respect to whom an order is sought has come to the attention of the trustee as a result of those measures, or the claim of any such beneficiary may be disregarded in the circumstances. 35

Compare: 1956 No 61 s 76

**129 Trustee may sue self in different capacity**

- (1) Despite any rule of law or practice to the contrary, a trustee in that capacity may sue, and be sued by, the trustee in any other capacity, including the trustee's personal capacity.
- (2) However, in every such case the trustee must obtain the directions of the court in which the proceeding is taken about the way in which the opposing interests are to be represented. 5
- Compare: 1956 No 61 s 33A

**130 Court may appoint receiver for trust**

- (1) The court may, on an application by an interested person or on its own motion, appoint a receiver to administer a trust. 10
- (2) The court must be satisfied that the appointment of a receiver to administer the trust is—
- (a) reasonably necessary in the circumstances of the trust; and
  - (b) just and equitable. 15
- (3) Only a person qualified to be a trustee may be appointed under **subsection (1)**.
- (4) When appointing a receiver under this section, the court (having regard to the terms of the trust and the interests of justice) must determine—
- (a) the extent of the duties and powers of the receiver; and 20
  - (b) the duration of the receivership; and
  - (c) the principles that the receiver is to apply in determining priorities; and
  - (d) whether the receiver is to be paid from the trust assets.
- (5) If a court determines under **subsection (4)** that a receiver has a power in relation to a trust, the trustee of the trust cannot exercise that power for the duration of the receivership. 25

**131 Court may order payment of ~~commission~~ remuneration to trustee**

- (1) Despite **section 35** (duty to act for no reward), the court may order that a reasonable ~~commission~~ remuneration be paid out of the trust property to a person who is or has been a trustee of the trust if the court is satisfied that it is just and reasonable to do so. 30
- (2) In determining under **subsection (1)** what ~~commission~~ remuneration is reasonable, the court must consider the following:
- (a) the total amount that has already been paid to any trustee of the trust;
  - (b) the number and difficulty of the services provided by the trustee; 35
  - (c) the liabilities to which the trustee is or has been exposed, and the responsibilities imposed on the trustee:

- (d) the skill and success of the trustee in administering the trust:
  - (e) the value of the trust property:
  - (f) the time and services reasonably required of the trustee:
  - (g) whether any payment that might otherwise have been allowed or ordered should be refused or reduced due the conduct of the trustee in the administration of the trust: 5
  - (h) any other circumstances that the court considers relevant.
- (3) If there are 2 or more persons who are or have been trustees, an order may specify whether and how the commission is to be apportioned among the trustees. 10
- Compare: 1956 No 61 s 72 10

### 132 Court may charge costs on trust property

The court may order that the costs of an application to the court under this Act—

- (a) be paid or raised out of—
  - (i) the trust property to which the application relates; or 15
  - (ii) the income of the trust property to which the application relates; or
- (b) be borne and paid in the way and by the persons that the court considers just.

Compare: 1956 No 61 s 71; Draft Trusts Bill 2013 cl 149 (Qld) 20

### *Vesting orders*

### 133 ~~Vesting order consequential on order for sale or mortgage of land~~

- (1) ~~This section applies if the court gives a judgment or makes an order directing the sale or mortgage of any land.~~
  - (2) ~~Each person described in **subsection (3)** is deemed to be entitled to or to have an interest, as the case may be, in the land as a trustee.~~ 25
  - (3) ~~The persons are—~~
    - (a) ~~a person who is entitled to, or who has any interest in, the land:~~
    - (b) ~~a person who has any contingent right in the land:~~
    - (e) ~~a person who is a party to the proceeding to which the judgment or order relates or is otherwise bound by the judgment or order.~~ 30
  - (4) ~~The court may make an order vesting the land or any part of the land for any estate or interest that the court thinks fit in the purchaser or mortgagee or in any other person.~~
- Compare: 1956 No 61 s 55 35

**134 Vesting order consequential on judgment for specific performance**

- (1) ~~This section applies if a judgment is given for the specific performance of a contract concerning any interest in land, or for the sale or exchange of any interest in land, or generally where any judgment is given for the conveyance of any interest in land.~~ 5
- (2) ~~The court may declare—~~
- (a) ~~that any party to the action is a trustee of any interest in the land or any part of the land; or~~
- (b) ~~that the interest of an unborn person is the interest of a person who, on coming into existence, would be a trustee if the unborn person might claim—~~ 10
- (i) ~~under any party to the proceeding; or~~
- (ii) ~~under the will or voluntary settlement of any deceased person who was during his or her lifetime a party to the contract or transaction to which the judgment relates.~~ 15
- (3) ~~If the court makes an order, the court may make a vesting order relating to the rights of those persons, born and unborn, as if they were trustees.~~
- Compare: 1956 No 61 s 56*

**135 Court may appoint person to convey trust property**

- (1) ~~In any case where, in relation to an interest in trust property, a vesting order can be made under this Act, the court may instead make an order appointing a person to convey the property or any interest in the property or to release a contingent right.~~ 20
- (2) ~~A conveyance or release by a person appointed in accordance with the order has the same effect as a vesting order.~~ 25
- Compare: 1956 No 61 s 58*

*Jurisdiction of Family Court***136 Jurisdiction of Family Court**

- (1) This section applies where the Family Court has jurisdiction under section 11 of the Family Court Act 1980 to hear and determine a proceeding. 30
- (2) The Family Court may during the proceeding make any order or give any direction available under this Act if the Family Court considers the order or direction is necessary—
- (a) to protect or preserve any property or interest until the proceeding before the Family Court can be properly resolved; or 35
- (b) to give proper effect to any determination of the proceeding.
- (3) If the parties to the proceeding consent, the Family Court may make any order available under this Act to resolve an issue or a dispute between the parties that

is closely related to the proceeding (but only if the Family Court considers that making the order is necessary or desirable to assist the resolution of the proceeding).

- (4) Despite **subsections (2) and (3)**, the Family Court does not have jurisdiction to appoint a receiver to administer a trust under **section 130**. 5
- (5) To avoid doubt, an exercise by the Family Court of jurisdiction under this section is not subject to financial limits in relation to the value of any property or interest.
- (6) In any case to which this section applies, the High Court or Family Court may order, on the application of a party to the proceedings, that the proceedings be transferred to the High Court. 10

*Alternative dispute resolution*

**137 Definitions for purposes of sections 138 to 142**

In **sections 138 to 142**,—

**ADR process** means an alternative dispute resolution process (for example, mediation or arbitration) designed to facilitate the resolution of a matter 15

~~**ADR settlement**, in relation to a matter, means an enforceable agreement reached through an ADR process that resolves the matter—~~

(a) means an enforceable agreement reached through an ADR process that resolves the matter; but 20

(b) does not include an arbitral award

**arbitral award**, in relation to a matter that has been referred to arbitration, has the same meaning as award in section 2(1) of the Arbitration Act 1996

**external matter** means a matter to which the parties are a trustee and 1 or more third parties 25

**internal matter** means a matter to which the parties are a trustee and 1 or more beneficiaries, or a trustee and 1 or more other trustees, of the trust

**matter—**

(a) means—  
 (i) a legal proceeding brought by or against a trustee in relation to the trust; or 30

(ii) a dispute in relation to the trust between a trustee and a beneficiary, or between a trustee and a third party, or between 2 or more trustees, that may give rise to a legal proceeding; but

(b) does not include a legal proceeding or a dispute about the validity of all or part of a trust. 35

Compare: 1991 No 69 s 268(4)

**138 Power of trustee to refer matter to alternative dispute resolution process**

(1AAA) This section applies if there is no provision in the terms of a trust that requires or empowers a trustee to refer a matter to an ADR process.

- (1) A trustee may, with the agreement of each party to ~~a~~ the matter, refer the matter to an ADR process. 5
- (2) For the purposes of this section, a beneficiary is not a party to an external matter.

**139 ADR process for internal matter if trust has beneficiaries who are unascertained or incapacitated beneficiaries lack capacity**

(1) If a trust has any ~~unascertained or incapacitated beneficiaries,~~ beneficiaries who are unascertained or lack capacity, then, for a matter relating to that trust that is subject to an ADR process,— 10

- (a) the court must appoint representatives for those beneficiaries; and
- (b) those representatives may agree to an ADR settlement, or agree to be bound by an arbitral award, on behalf of the ~~unascertained or incapacitated beneficiaries~~ beneficiaries who are unascertained or lack capacity; and 15
- (c) any ADR settlement must be approved by the court.

(1A) If representatives have been appointed under **subsection (1)** for beneficiaries who are unascertained or lack capacity,— 20

- (a) the representatives must act in the best interests of the beneficiaries on whose behalf they have been appointed; and
- (b) the court may order that a representative's costs be paid out of the trust property; and
- (c) the court may make any order that it thinks fit regarding the terms of a representative's appointment. 25

(2) This section applies only to internal matters.

**140 Power of court to order ADR process for internal matter**

(1) The court may, at the request of a trustee or a beneficiary or on its own motion,— 30

- (a) enforce any provision in the terms of a trust that requires a matter to be subject to an ADR process; or
- (b) otherwise submit any matter to an ADR process (except if the terms of the trust indicate a contrary intention).

(2) In exercising the power, the court may make any of the following orders: 35

- (a) an order requiring each party to the matter, or specified parties, to participate in the ADR process in person or by a representative:

- (b) an order that the costs of the ADR process, or a specified portion of those costs, be paid out of the trust property:
- (c) an order appointing a particular person to act as a mediator, an arbitrator, or any other facilitator of the ADR process.
- (3) This section applies in relation to internal matters only. 5
- 141 Trustee may give undertakings for purposes of ADR settlement or arbitral award**
- Despite **section 31** (duty not to bind or commit trustees to future exercise of discretion), a trustee may, for the purposes of an ADR settlement or arbitral award, give binding undertakings in relation to the trustee's future actions as trustee. 10
- 142 Trustee's liability in relation to ADR settlement or arbitral award limited**
- (1) This section applies to a proceeding brought by or on behalf of a beneficiary and arising from or relating to an ADR settlement or arbitral award.
- (2) An ADR settlement or arbitral award is valid and a trustee is not liable in the proceeding unless, in relation to the ~~ADR settlement~~ or award, the trustee failed to comply with— 15
- (a) the trustee's mandatory duty under **section 24**; or
- (b) any duty specified in the terms of the trust for the purposes of establishing liability under this section. 20
- (3) Despite **subsection (2)(a)**, a trustee is not liable in the proceeding by reason only that the settlement or award was not consistent with the terms of the trust.
- 142A Application of Arbitration Act 1996**
- If arbitration is the ADR process to which a matter is referred under this Act or under the terms of the trust, the Arbitration Act 1996 applies to the arbitration. 25

## Part 8

### Miscellaneous provisions

#### *Transfer to the Crown*

- 143 Transfer to the Crown of non-distributable trust property**
- (1) A trustee who is administering trust property that the trustee is not able to distribute in accordance with the terms of the trust may transfer the trust property to the Crown if the trust property consists of money or of financial products that can legally be transferred to the Crown. 30
- (2) The trustee must provide to the Secretary to the Treasury all the information that the Secretary reasonably considers necessary to allow the Secretary to know— 35

- (a) the terms of the trust; and
  - (b) the persons having a beneficial interest in the trust property; and
  - (c) the state of the trust accounts with respect to the trust property being transferred; and
  - (d) the measures taken by the trustee to attempt to distribute the trust property and the reasons why it was not possible to do so. 5
- (3) The Secretary to the Treasury may refuse a transfer if the required information has not been provided by the trustee.
- (4) The Secretary to the Treasury may, before accepting a transfer, require the trustee to sell, or convert into money, any trust property that consists of financial products. 10
- (5) A trustee is discharged from any further responsibility with regard to trust property transferred to the Crown under this section.
- (6) ~~The Secretary to the Treasury may at any time sell, or convert into money, any financial products transferred to the Crown under this section.~~ 15
- Compare: 1956 No 61 s 77

#### **143A Financial products transferred to the Crown**

- (1) The Secretary to the Treasury may at any time sell, or convert into money, any financial products transferred to the Crown under **section 143**.
- (2) All proceeds of any financial products transferred to the Crown under section 143 and all money received from any sale or conversion of financial products under **section 143(4)** or **subsection (1)** of this section are trust money. 20

#### **144 Administration by the Crown of transferred property**

- (1) The Secretary to the Treasury must hold trust money transferred to the Crown under **section 143** in a Trust Bank Account established under section 67 of the Public Finance Act 1989. 25
- (2) The Secretary to the Treasury must deal with trust property transferred to the Crown under **section 143** as follows:
- (a) if the court makes an order in relation to the transferred property, in accordance with the order: 30
  - (b) if any person claims that the person is the beneficiary entitled to any part of the transferred property and the Secretary is satisfied that the person is so entitled, in accordance with the directions of that person:
  - (c) if the trustee requests that the transferred property be returned to the trustee, in accordance with the request. 35
- (3) The Secretary to the Treasury is not liable for any interest on the transferred property that is trust money and may deduct from any payment made under **subsection (2)** any reasonable costs or expenses incurred in connection with the Crown's administration of the transferred property.

- (4) After the expiry of a period of 6 years after the date on which the transferred property was transferred to the Crown, the Secretary to the Treasury may transfer the trust property that consists of trust money to a Crown Bank Account.
- (5) Any trust money that is transferred to a Crown Bank Account under **subsection (4)** and that is required to be paid under **subsection (2)** may be paid out of the Crown Bank Account without further authority than this subsection. 5
- (6) The Crown is not subject to the duties or liabilities of a trustee in respect of any transferred property, and no claim lies against the Crown or the Secretary to the Treasury if a payment was made under **subsection (2)** in good faith. 10
- Compare: 1956 No 61 s 78 10

#### **145 Public notice of property transferred to the Crown**

- (1) The Secretary to the Treasury must arrange, before 31 March in each year, for a notice to be published on an Internet site maintained by or on behalf of the Treasury setting out all property transferred to the Crown under **section 143** in the previous calendar year and identifying the trustees or trusts from which the property was transferred. 15
- (2) The Secretary must ensure that the notice remains available on the Internet site for inspection by members of the public for at least 3 years.

#### *Investigation of condition and accounts of certain trust property*

#### **146 Application to Public Trust for investigation of condition and accounts of trust property** 20

- (1) A trustee or a beneficiary of a trust may apply to Public Trust for the conduct of an investigation of the condition and accounts of the trust property (unless the trustee is a trustee corporation).
- (2) However, Public Trust must not proceed with the application if— 25
- (a) an investigation of the trust property under this Part has been concluded in the previous 12 months (unless the applicant has been given the leave of the court to make the application); or
- (b) the court has ordered that an investigation must not proceed.
- (3) Before proceeding with the application, Public Trust may require the applicant to pay a deposit or give security for the costs of the investigation (including Public Trust's charges). 30

Compare: 1956 No 61 s 83B(1)

#### **147 Appointment of investigator by Public Trust**

- (1) When proceeding with an application under **section 146**, Public Trust must ensure that a person (the **investigator**) is appointed in accordance with **subsection (2)** and that the investigator is— 35
- (a) either—

- 
- (i) a lawyer; or
  - (ii) a qualified statutory accountant (within the meaning of section 5(1) of the Financial Reporting Act 2013); and
  - (b) not a beneficiary.
- (2) The investigator may be appointed— 5
- (a) by agreement between—
    - (i) the applicant trustee, the co-trustees, and Public Trust; or
    - (ii) the applicant beneficiary, the trustees, and Public Trust; or
  - (b) if no agreement can be reached, by Public Trust.
- Compare: 1956 No 61 s 83B(1), (1A) 10
- 148 How investigator is to conduct and report on investigation**
- (1) The investigator appointed under **section 147** may require from the trustees any documents, information, and explanations necessary to perform the investigator's duties.
- (2) When the investigation is complete, the investigator must forward to the applicant, and to each trustee, and to Public Trust, a report signed by the investigator showing the state of affairs of the trust property. 15
- Compare: 1956 No 61 s 83B(2), (3), (4)
- 149 Costs of investigation borne by trustees**
- (1) Unless the court makes an order under **section 150**, the remuneration of the investigator and the other expenses of the investigation (including Public Trust's charges) are to be borne by the trustees of the trust. 20
- (2) All expenses and costs for which the trustees of the trust are liable under this section or **section 150** are a charge on the trust property. 25
- Compare: 1956 No 61 s 83B(6), (11)
- 150 Application to court to determine who bears costs of investigation**
- Public Trust, a trustee, or a beneficiary may apply to the court for an order for directions on how the remuneration of the investigator and the other expenses of the investigation (including Public Trust's charges) should be apportioned between the trustees (as a charge on the trust property), 1 or more trustees in a personal capacity, and 1 or more beneficiaries. 30
- 151 Application to court to cease investigation**
- At any time after an application for an investigation is made and before the end of an investigation, a trustee or a beneficiary may apply to the court for an order directing that the investigation must not proceed. 35

*Life tenant to have powers of trustee in certain cases***152 Life tenant to have powers of trustee in certain cases**

- (1) This section applies in relation to land if—
- (a) there is no trustee of the land; but
  - (b) the land is vested in a person (the **life tenant**) who is entitled to possession of the land or entitled to receive rents and profits from the land for—
    - (i) a life estate; or
    - (ii) another limited estate.
- (2) The life tenant may (subject to **subsection (4)**) exercise all the powers of a trustee under this Act, and the court may confer on the life tenant all the powers that it could confer on a trustee under this Act. 10
- (3) Anything done by the life tenant in exercise of that power has the same force and effect as if it had been exercised by a trustee.
- (4) However, this section does not authorise the life tenant to sell the land or to raise money by a mortgage or other dealing with the land, unless the money paid on the sale or raised by the mortgage or other dealing is paid to a trustee who is duly appointed and entitled to receive it. 15

Compare: 1956 No 61 s 88

*Transitional regulations* 20**153 Regulations providing for transitional matters**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
- (a) providing transitional and savings provisions concerning the coming into force of this Act that may be in addition to, or in place of, the transitional and savings provisions in **Schedule 1**: 25
  - (b) providing that, subject to any conditions specified in the regulations, during a specified transitional period,—
    - (i) specified provisions of this Act (including definitions) do not apply: 30
    - (ii) specified terms have the meaning given to them by the regulations:
    - (iii) specified provisions repealed or amended or revoked by this Act continue to apply:
  - (c) providing for any other matters necessary for facilitating or ensuring an orderly transition from the provisions of any enactments replaced by this Act to the provisions of this Act. 35

- (2) No regulations under this section may be made, or continue in force, later than 23 years after the date of commencement of this section.

Compare: 2015 No 70 s 216

*Consequential amendments and repeals*

- 154 Consequential amendments** 5  
Amend the enactments specified in **Schedule 4** and **Schedule 5** as set out in those schedules.
- 155 Repeals**  
The following enactments are repealed:
- (a) the Trustee Act 1956 (1956 No 61): 10
  - (b) the Perpetuities Act 1964 (1964 No 47):
  - (c) the Trustee (Prescribed Rate of Interest) Order 2011 (SR 2011/178).

**Part 9**

**Amendments to other Acts**

Subpart 1AAA—Amendments to Arbitration Act 1996 15

**155A Amendments to Arbitration Act 1996**

This subpart amends the Arbitration Act 1996.

**155B New section 10A inserted (Arbitration of trust matters)**

After section 10, insert:

- 10A Arbitration of trust matters** 20
- (1) If an arbitration relates to a trust matter, **sections 137 to 142A** of the Trusts Act 2017 apply to the arbitration.
  - (2) In this section, **trust matter** has the same meaning as matter in section 137 of that Act.

Subpart 1—Amendments to Financial Markets Conduct Act 2013 25

**156 Amendments to Financial Markets Conduct Act 2013**

This subpart amends the Financial Markets Conduct Act 2013.

**157 New section 110A and cross-heading inserted**

After section 110, insert:

*Application of Trusts Act 2017***110A Application of Trusts Act 2017**

- (1) This section applies to a trust constituted (or to be constituted) under a trust deed for a debt security if the trust deed—
- (a) has been lodged under section 103; or 5
  - (b) has been or will be entered into with the intention that the deed will be lodged under section 103; ~~or~~
  - (e) ~~would have been required to be lodged under section 103 except that—~~
    - (i) ~~the FMA has issued an exemption to that requirement under section 556; or~~ 10
    - (ii) ~~an exclusion under Schedule 1 applies.~~
- (2) The following provisions of the Trusts Act **2017** do not apply to a trust referred to in **subsection (1)**:
- (a) **section 21(2)** (adviser must alert settlor to modification or exclusion of default duty): 15
  - (b) **section 24** (duty to act honestly and in good faith):
  - (c) **section 27** (general duty of care):
  - (d) **sections 37 to 39** (exemption and indemnity clauses):
  - (e) **section 40** (adviser must alert settlor to liability exclusion or indemnity clause): 20
  - (f) **sections 41 to 44** (documents to be kept by trustees):
  - (g) **sections 45 to 51** (giving information to beneficiaries):
  - (h) **section 52** (general powers of trustee):
  - (i) **sections 63 to 69** (exercise or performance of trustee powers and functions by others): 25
  - (j) **sections 70 to 72** (special trust advisers):
  - (k) **sections 77(2) and (3), 78, and 79** (trustees' indemnities):
  - (l) **sections 86 to 107** (appointment and discharge of trustees):
  - (m) **sections 113 to 115** (termination and variation of trusts):
  - (n) **sections 137 to 142** (alternative dispute resolution): 30
  - (o) **sections 146 to 151** (investigation of condition and accounts of certain trust property).

**158 Section 112 amended (General duties applying in exercise of supervisor's functions)**

In section 112(1)(a), after “honestly”, insert “and in good faith”. 35

**159 Section 143 amended (General duties applying in exercise of manager’s functions)**

In section 143(1)(a), after “honestly”, insert “and in good faith”.

**160 Section 153 amended (General duties applying in exercise of supervisor’s functions)**

5

In section 153(1)(a), after “honestly”, insert “and in good faith”.

**161 New section 155A and cross-heading inserted**

After section 155, insert:

*Application of Trusts Act 2017*

**155A Application of Trusts Act 2017**

10

(1) This section applies to a managed investment scheme constituted (or to be constituted) as 1 or more trusts or as including 1 or more trusts (or both) if the scheme—

(a) has been registered under this subpart; or

(b) has been or will be constituted as 1 or more trusts or as including 1 or more trusts (or both) with the intention that the scheme will be registered under this subpart; ~~or~~

15

(e) ~~would have been required to be registered under this subpart except that—~~

(i) ~~the FMA has issued an exemption to that requirement under section 556; or~~

20

(ii) ~~an exclusion under Schedule 1 applies.~~

(2) The following provisions of the Trusts Act **2017** do not apply to any relevant trust:

(a) **section 21(2)** (adviser must alert settlor to modification or exclusion of default duty):

25

(b) **section 24** (duty to act honestly and in good faith):

(c) **section 27** (general duty of care):

(d) **section 28** (duty to invest prudently):

(e) **section 33** (duty of impartiality):

30

(f) **section 36** (duty to act unanimously):

(g) **sections 37 to 39** (exemption and indemnity clauses):

(h) **section 40** (adviser must alert settlor to liability exclusion or indemnity clause):

(i) **sections 41 to 44** (documents to be kept by trustees):

35

(j) **sections 45 to 51** (giving information to beneficiaries):

- (k) **section 52** (general powers of trustee):
- (l) ~~**sections 54 to 57**~~ (investment powers):
- (l) **sections 56 and 57** (power to determine treatment of returns and accounts):
- (m) **sections 63 to 69** (exercise or performance of trustee powers and functions by others): 5
- (n) **sections 70 to 72** (special trust advisers):
- (o) **sections 77(2) and (3), 78, and 79** (trustees' indemnities):
- (p) **sections 86 to 107** (appointment and discharge of trustees):
- (q) **sections 113 to 115** (termination and variation of trusts): 10
- (r) **sections 137 to 142** (alternative dispute resolution):
- (s) **sections 146 to 151** (investigation of condition and accounts of certain trust property).
- (2A) In this section, **relevant trust** means a trust referred to in **subsection (1)** if a trust deed for the trust has been or will be lodged with the Registrar by the manager of the scheme. 15
- (3) Despite section 16(1) of the Trusts Act **2017**, the trusts of a managed investment scheme ~~that is a retirement scheme~~ may continue indefinitely.
- 162 Section 548 amended (Other regulations)**
- (l) After section 548(1)(h), insert: 20
- Trusts Act 2017 disappplied*
- (ha) ~~providing that specified provisions of the Trusts Act **2017** do not apply to a trust, or a class of trusts, that are or will be regulated by or under this Act:~~
- (1) After section 548(1)(h), insert: 25
- Trusts Act **2017** disappplied*
- (ha) providing that specified provisions of the Trusts Act **2017** do not apply to a trust, or a class of trusts,—
- (i) that is or will be regulated by or under this Act:
- (ii) that would be regulated by or under this Act except for the fact 30
- that an exclusion under Schedule 1 applies:
- (2) In section 548(2), replace “and (h)” with “(h), and **(ha)**”.
- 163 Section 550 amended (Procedural requirements for regulations relating to exemptions, exclusions, and definitions)**
- (1) In section 550(1)(d), replace “regulations” with “regulations; and”. 35
- (2) After section 550(1)(d), insert:

- (e) **subsection (2)(h)**, have regard to the purpose and principles of the Trusts Act **2017** and be satisfied that the extent to which that Act is dis-applied is not broader than is reasonably necessary to address the matters that gave rise to the regulations.
- (3) After section 550(2)(g), insert: 5
- (h) **section 548(1)(ha)** (regulations may disapply provisions of Trusts Act **2017**).

### **163A Section 556 amended (FMA may grant exemptions)**

After section 556(3), insert:

- (3A) The FMA may, on the terms and conditions (if any) that it thinks fit, exempt any trust or class of trusts (or any person or class of persons in respect of a trust or class of trusts) from any provision or provisions of the Trusts Act **2017** if— 10
- (a) the trust or that class of trusts is constituted (or is to be constituted) under a trust deed or trust deeds that would be required to be lodged under section 103 except for the fact that the FMA has granted or will grant an exemption from that requirement under subsection (1); or 15
- (b) both of the following apply:
- (i) a managed investment scheme is constituted (or is to be constituted) as 1 or more trusts or as including 1 or more trusts (or both):
- (ii) the scheme would be required to be registered under subpart 2 of Part 4 except for the fact that the FMA has granted or will grant an exemption from that requirement under subsection (1). 20

### **163B Section 557 amended (Restriction on FMA's exemption power)**

In section 557, insert as subsection (2):

- (2) In the case of **section 556(3A)**, the FMA must also have regard to the purpose and principles of the Trusts Act **2017**. 25

### **163C Schedule 3 amended**

In Schedule 3, after clause 7, insert:

- 8** **Application of Trusts Act 2017**
- Section 14** of the Trusts Act **2017** (sole trustee cannot be sole beneficiary) does not apply to— 30
- (a) an approved Schedule 3 scheme; or
- (b) a scheme that has been or will be constituted with the intention that the scheme will be approved as a Schedule 3 scheme.

## Subpart 2—Amendments to Financial Advisers Act 2008

**164 Amendments to Financial Advisers Act 2008**

This subpart amends the Financial Advisers Act 2008.

**165 New section 77TA and cross-heading inserted**

After section 77T, insert:

5

*Application of Trusts Act 2017*

**77TA Application of Trusts Act 2017**

- (1) This section applies to a trust constituted (or to be constituted) for the purposes of section 77P.
- (2) The following provisions of the Trusts Act **2017** do not apply to a trust referred to in **subsection (1)**:
- (aaa) **section 21(2)** (duty to take reasonable steps to ensure that settlor is aware of meaning and effect of modification or exclusion):
- (a) **section 27** (general duty of care):
- (b) **sections 41 to 44** (documents to be kept by trustees): 15
- (ba) **sections 45 to 51** (giving information to beneficiaries):
- (c) **section 52** (general powers of trustee):
- (d) **section 68** (trustee's liability for acts of delegate limited):
- (e) **sections 77 to 79** (trustees' indemnities):
- (f) **sections 137 to 142** (alternative dispute resolution): 20
- (g) **sections 146 to 151** (investigation of condition and accounts of certain trust property).

**166 Section 154 amended (General regulations)**

- (1) After section 154(1)(l), insert:
- (la) providing that specified provisions of the Trusts Act **2017** do not apply to a trust, or class of trusts, that are or will be regulated by or under this Act: 25
- (2) After section 154(5), insert:
- (5A) The Minister must not recommend the making of regulations under **subsection (1)(la)** unless the Minister has had regard to the purpose of the Trusts Act **2017** and is satisfied that— 30
- (a) the regulations are consistent with the purposes of this Act; and
- (b) the extent to which the Trusts Act **2017** is disapplied is not broader than is reasonably necessary to address the matters that gave rise to the regulations. 35

### Subpart 3—Amendment to Financial Markets Authority Act 2011

#### 167 **Amendment to Financial Markets Authority Act 2011**

This subpart amends the Financial Markets Authority Act 2011.

#### 168 **Schedule 1 amended (~~Financial markets legislation~~)**

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Trusts Act **2017**

5

### Subpart 4—Amendment to Retirement Villages Act 2003

#### 1 **Amendment to Retirement Villages Act 2003**

This subpart amends the Retirement Villages Act 2003.

#### 2 **New section 105A inserted (Regulations exempting from provisions of Trusts Act 2017)**

10

After section 105, insert:

#### **105A Regulations exempting from provisions of Trusts Act 2017**

(1) The Governor-General may, by Order in Council, make regulations exempting any trust, trustee, statutory supervisor, operator, or other person, or any class of trust or person, from the application of any provision or provisions of the Trusts Act 2017 and prescribing the terms and conditions (if any) of the exemption.

15

(2) Regulations may only be made under this section on the recommendation of the Minister, and the Minister may make a recommendation only if satisfied that—

20

(a) the application of the provision or provisions of the Trusts Act 2017 would, in the circumstances, be unnecessary in respect of the trust or class of trust, or would require the trustee, statutory supervisor, operator, or other person or class of person to comply with requirements that were unduly onerous or burdensome; and

25

(b) having regard to the purpose and principles of the Trusts Act 2017 and the purpose of this Act, the extent to which the application of the provisions of Trusts Act 2017 is disapplied is not broader than is reasonably necessary to address the matters that gave rise to the regulations.

30

## Schedule 1

### Transitional, savings, and related provisions

s 10

#### Part 1

#### Provisions relating to this Act as enacted 5

##### 1 Definitions for this Part

In this Part,—

**commencement date** means the date on which **section 10** commences

**repealed Act** means the Trustee Act 1956.

##### 2 Application of Act to trusts created before, on, and after commencement 10

Except as provided in this Act (and in **clauses 3, 4, 5, 6(2), 8, and 11** of this schedule in particular), this Act applies to all express trusts, whether created before, on, or after the commencement date.

##### 3 Duration of trusts created before commencement date

###### (1) Despite **section 16**,— 15

(a) a trust created before the commencement date continues until the date (if any) specified in the terms of the trust as being the date on which the trust property will be finally distributed; but

(b) that final distribution date may, on or after the commencement date and in accordance with **section 114 or 116** or in any way permitted in the terms of the trust, be extended so that the trust has a maximum total duration of 125 years. 20

(2) However, if a trust created before the commencement date does not specify a final distribution date or duration but specifies or implies a mechanism for, or means of, determining the final distribution date, **section 16(4)** applies to that trust. 25

(3) A trust to which, before the commencement date, the rule against perpetuities did not apply is not affected by **section 16(1)** and continues indefinitely or in accordance with any enactment or common law rules governing its duration.

##### 4 Saving of appointment of agent, nominee, or custodian 30

A person who, in relation to a trust or any part of it, was, immediately before the commencement date, a duly appointed agent, nominee, or custodian continues in that office on and after the commencement date, subject to the terms of the appointment and the terms of the trust.

- 5 Saving of delegations**
- A delegation that was in place before the commencement date continues, subject to the terms of the delegation and the terms of the trust, on and after the commencement date.
- 6 Transitional provision for advisory trustees** 5
- (1) A person who, immediately before the commencement date, was an advisory trustee appointed under section 49 of the repealed Act is, on and after the commencement date, taken to be a special trust adviser appointed under **section 70(2)** of this Act.
- (2) However, **section 72(2)** of this Act does not require the review or redetermination of (or otherwise of itself affect) any remuneration payable to the person in accordance with a determination made under the repealed Act before the commencement date. 10
- (3) A power created before the commencement date to appoint an advisory trustee is, on and after the commencement date, taken to be a power to appoint a special trust adviser. 15
- 7 Saving of notice of application to bar claim under section 75 of repealed Act**
- (1) This clause applies if, no more than 120 days before the commencement date, a trustee— 20
- (a) has served on a person a notice under section 75(1) of the repealed Act; but
- (b) has not made an application under section 75(2) of that Act.
- (2) The trustee is entitled to make an application under **section 127(1)** of this Act as if the notice served under the repealed Act were a notice served under **section 127(2)** of this Act. 25
- 8 Saving of rights and proceedings under repealed Act**
- This Act does not—
- (a) enable any proceeding to be brought that was, before the commencement date, barred under the repealed Act; or 30
- (b) affect the application of section 18 of the Interpretation Act 1999 in relation to the effect of the repeal of the repealed enactments.
- 9 Transitional provision for offences and contravention under repealed Act**
- (1) This clause applies to an offence committed under section 31(7C), 77(8), or 83B(9) of the repealed Act, or a contravention of the repealed Act, before the commencement date. 35
- (2) The repealed Act continues to have effect as if it had not been repealed for the purpose of—

- 
- (a) investigating an offence or a contravention to which this clause applies:
- (b) commencing or completing a proceeding for an offence or a contravention to which this clause applies:
- (c) imposing a penalty or other remedy, or making an order, in relation to an offence or a contravention to which this clause applies. 5
- 10 Transitional provision for jurisdiction of Family Court**
- Despite **clause 8(b)**, on and after the commencement date the Family Court may exercise the jurisdiction conferred by **section 136** of this Act in any proceeding commenced, but not completed, before the commencement date.
- 11 Transitional provision for transfer of trust property** 10
- (1) This clause applies if—
- (a) a trustee resigns or is removed before the commencement date; and
- (b) on the commencement date, the divesting and vesting of trust property as a result of the resignation or removal has not taken effect.
- (2) The divesting and vesting of trust property, and the satisfaction of any requirements to which the divesting and vesting are subject, must be completed as if this Act had not commenced. 15
- 12 Saving of section 15(2) of Trustee Amendment Act 1988**
- Despite the repeal of the Trustee Amendment Act 1988, section 15(2) of that Act continues to apply to any instrument creating a trust that was created before the commencement date, except that the reference in paragraph (a) of that provision to “the provisions of the Trustee Act 1956 as to the investment of trust funds, as those provisions are amended by this Act” must be read as a reference to this Act. 20

## Schedule 2

**Default provisions Provisions that apply except as modified or excluded in accordance with section 5(3A)****s 5(3)(a)(3A)**

The application to a particular trust of the provisions of this Act listed in column 1 of the following table may be modified or excluded by the terms of the trust. Any such modification or exclusion is limited to the extent specified opposite that provision in column 2: 5

Column 1 (section)	Column 2
<b>19</b>	<u>The application of <b>section 19</b> may be modified only to the extent that the modified age is not less than 18 years</u>
<b>27 to 36</b>	<u>The application of <b>section 30</b> may be modified only to the extent that is consistent with <b>section 47(4)</b></u>
<b>52</b>	
<b>54 to 57</b>	
<b>58(1) to (5)</b>	
<b>59 to 61</b>	
<b>62</b>	The application of <b>section 62</b> may be modified only to the extent that the terms of a trust may impose liability on a trustee for a loss arising from 1 or more of the acts or omissions specified in that section.
<b>63(1)(a) and (b)</b>	
<b>63(1)(c)</b>	The application of <b>section 63(1)(c)</b> may be completely excluded but may not be modified, despite any contrary intention in the terms of the trust, if it is proposed that another party should hold or deal with trust property as a nominee or custodian.
<b>82 to 85</b>	
<b>86(1) and (2)</b>	
<b>93(2)</b>	
<b>95</b>	
<b>96</b>	
<b>107</b>	
<b>137 to 141</b>	
<b>142</b>	The application of <b>section 142</b> may be completely excluded but may not be modified, despite any contrary intention in the terms of the trust, if a trustee has the power to refer a matter to an alternative dispute resolution process.

## Schedule 3

### Specified commercial trusts

**ss 5(3)(b)(3A), 9**

- 1 Meaning of specified commercial trust**
- (1) A **specified commercial trust** means— 5
- (a) an express trust (within the meaning of **section 12**)—
- (i) that is created for the purpose of facilitating 1 or more commercial transactions; and
- (ii) every beneficiary of which is a beneficiary as a result of entering into the commercial transaction that the trust is created to facilitate, or as a result of entering into a commercial transaction of the type that the trust is created to facilitate; or 10
- (b) a wholesale trust; or
- (c) a security trust.
- (2) To avoid doubt, a trust— 15
- (a) ceases to be a specified commercial trust under **clause 1(1)(a)** if any person becomes a beneficiary of the trust and **clause 1(1)(a)(ii)** does not apply to that beneficiary; and
- (b) is not a specified commercial trust for as long as that person is a beneficiary of the trust. 20
- (3) In this clause,—
- commercial transaction** is a transaction that all parties enter into in trade **goods**—
- (a) means personal property of every kind (whether tangible or intangible); and 25
- (b) includes—
- (i) ships, aircraft, and vehicles:
- (ii) animals, including fish:
- (iii) minerals, trees, and crops, whether on, under, or attached to land or not: 30
- (iv) gas and electricity:
- (v) to avoid doubt, water and computer software
- services**—
- (a) includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges, or facilities that are or are to be provided, granted, or conferred; and 35

- (b) without limiting **paragraph (a)**, includes the rights, benefits, privileges, or facilities that are or are to be provided, granted, or conferred under any of the following classes of contract:
- (i) a contract for, or in relation to,—
    - (A) the performance of work (including work of a professional nature), whether with or without the supply of goods: 5
    - (B) the provision of, or the use or enjoyment of facilities for, accommodation, amusement, the care of persons or animals or things, entertainment, instruction, parking, or recreation:
    - (C) the conferring of rights, benefits, or privileges for which remuneration is payable in the form of a royalty, tribute, levy, or similar exaction: 10
    - (D) to avoid doubt, the supply of electricity, gas, telecommunications, or water, or the removal of waste water:
  - (ii) a contract of insurance, including life assurance and life reinsurance: 15
  - ~~(iii) a contract for a financial product (within the meaning of section 5 of the Financial Advisers Act 2008):~~
  - ~~(iii) a contract between a bank and a customer of the bank:~~
  - (iv) any contract for, or in relation to, the lending of money or granting of credit, or the making of arrangements for the lending of money or granting of credit, or the buying or discounting of a credit instrument, or the acceptance of deposits, or other provision of financial accommodation; but 20
  - (c) does not include rights or benefits in the form of the supply of goods or the performance of work under a contract of service 25

**trade** means any trade, business, industry, profession, activity of commerce, or undertaking relating to the supply or acquisition of goods or services or to the disposition or acquisition of any interest in land.

## 2 Meaning of wholesale trust 30

- (1) A **wholesale trust** is an express trust (within the meaning of **section 12**) that has the following characteristics:
- (a) the trust is established in connection with or as a consequence of 1 or ~~both~~ more of the following:
    - (i) an offer of financial products exclusively to wholesale investors or persons who are controlled by, or who are otherwise associated persons of, those investors: 35

- (ii) the lending of money to, or the borrowing of money from, wholesale investors or persons who are controlled by, or who are otherwise associated persons of, those investors:
- (iii) the provision of a broking service exclusively to a wholesale client; and 5
- (b) every beneficiary is 1 or more of the following:
- (i) a wholesale investor (or person who is controlled by, or who is otherwise an associated person of a wholesale investor) or wholesale client:
- (ii) a manager or an investment manager of the trust (or an associated person of that person): 10
- (iii) an originator of any ~~debt securities~~ property of the trust (or an associated person of that beneficiary):
- (iv) a person who is controlled by, or who is otherwise an associated person of, an investment business, a large entity, or a government agency: 15
- (v) an overseas person who is, or who undertakes a role that is, substantially similar to a person under any of **paragraphs (i) to (iv)**:
- (vi) the trustee of the trust:
- (vii) a residual beneficiary. 20
- (2) In this clause,—
- associated person** has the meaning given to it in section 12 of the Financial Markets Conduct Act 2013
- broker** has the meaning given to it in section 77A of the Financial Advisers Act 2008 25
- broking service** has the meaning given to it in section 5 of the Financial Advisers Act 2008
- controlled** has the meaning given to it in clause 48 of Schedule 1 of the Financial Markets Conduct Act 2013
- government agency** has the meaning given to it in clause 40 of Schedule 1 of the Financial Markets Conduct Act 2013 30
- investment business** means an entity that is an investment business as defined in clause 37 of Schedule 1 of the Financial Markets Conduct Act 2013, and includes an equivalent overseas entity
- large** has the meaning given to it in ~~section 45 of the Financial Reporting Act 2013~~ clause 39 of Schedule 1 of the Financial Markets Conduct Act 2013, 35

except that the relevant time for the purpose of applying that schedule under this clause must be treated as the following:

- (a) in relation to an offer of financial products referred to in **subclause (1)(a)(i)**, the time immediately before financial products are issued or transferred to the person under the offer: 5
- (b) in relation to the lending or borrowing of money referred to in **subclause (1)(a)(ii)**, the time immediately before the money is first transferred to the recipient:
- (c) in relation to the provision of broking services referred to in **subclause (1)(a)(iii)**, the time immediately before the trustee receives the wholesale client's money or property in the trustee's capacity as a broker for the wholesale client 10

**residual beneficiary** means a beneficiary that is an entity that—

- (a) receives trust property only— after any other claims on the trust property have been satisfied; and 15
  - (i) at the termination of the trust; and
  - (ii) after any other claims on the trust property have been satisfied; and
- (b) at the time when the trust was created, operated exclusively for a charitable purpose or was otherwise for the benefit of the community 20

**wholesale client** has the meaning given to it in section 5 of the Financial Advisers Act 2008

**wholesale investor** has the meaning given to it in clause 3 of Schedule 1 of the Financial Markets Conduct Act 2013, but,—

- (a) for the purposes of this definition, large in that clause has the meaning given to it in this subclause; and 25
- (b) also includes an overseas person with characteristics that are substantially similar to a New Zealand wholesale investor such that, if the overseas person was a New Zealand incorporated entity, the overseas person would be a wholesale investor under clause 3 of Schedule 1 of the Financial Markets Conduct Act 2013. 30

### 3 Meaning of security trust

- (1) A security trust is an express trust (within the meaning of **section 12**) if, as part of a financing arrangement, the trustee holds security over the assets of a debtor, guarantor, or another party to the arrangement (a **borrower**) for the benefit of a party of that debtor as a part of a financing arrangement. 1 or more counterparties. 35
- (2) In this clause, **financing arrangement** ~~means a loan facility agreement or an issue of a debt security—~~

- (a) ~~in which each party to the financing arrangement is a beneficiary who falls within **clause 2(1)(b)(i) to (vi)**; or~~
- (b) ~~that is a regulated offer of debt securities (within the meaning of section 6 of the Financial Markets Conduct Act 2013).~~
- (a) means a loan facility agreement, an arrangement for borrowing money under a debt security, or another provision of financial accommodation— 5
- (i) in which each party to the agreement, arrangement, or accommodation, (other than the borrower) is a person who falls within **clause 2(1)(b)(i) to (vi)**; or 10
- (ii) that is offered under a regulated offer of debt securities (within the meaning of section 6 of the Financial Markets Conduct Act 2013) or offered under clause 19 of Schedule 1 of that Act; and
- (b) includes an arrangement that is in connection with, or contemplated by, an arrangement under **paragraph (a)**. 15
- 4 Certain provisions are or may be modified or excluded in relation to specified commercial trust**
- (1) The following provisions do not apply to a specified commercial trust (whether created before or after the commencement of this clause):
- (a) **section 21(2)** (requiring paid adviser to ensure settlor aware of meaning and effect of any modification or exclusion of default duties): 20
- (b) **section 40** (requiring paid adviser to ensure settlor aware of meaning and effect of any liability exclusion or indemnity clause).
- (2) The following provisions do not apply to a specified commercial trust that was created before, or that was created under terms agreed to and in effect before, 25 the commencement of this clause:
- (a) **sections 41 to 51:**
- (b) **sections 63 to 72:**
- (c) **sections 77 to 79:**
- (d) **sections 113 to 115:** 30
- (e) **sections 146 to 151.**
- (3) The following provisions apply to a specified commercial trust (other than a trust referred to in **subclause (2)**) that was created after the commencement of this clause unless their application is modified or excluded by the terms of the trust: 35
- (a) **sections 41 to 51:**
- (b) **sections 63 to 72:**
- (c) **sections 77 to 79:**

- 
- (d) **sections 113 to 115:**
- (e) **sections 146 to 151.**
- (4) **Sections 37 to 39** apply to a specified commercial trust (whenever created) as if the references to gross negligence were omitted from those provisions.

**5 Application of this schedule to trusts under Financial Markets Conduct Act 2013 and Financial Advisers Act 2008** 5

Nothing in this schedule limits the powers and provisions in the Financial Markets Conduct Act 2013 or the Financial Advisers Act 2008 that relate to the application of this Act.

**Schedule 4**  
**Amendments consequential on repeal of Trustee Act 1956**

s 154

**Part 1**  
**Amendments to other Acts**

5

**Administration Act 1969 (1969 No 52)**

In section 2(1), insert in their appropriate alphabetical order:

**full age** means 18 years or older

**minor** means a person who is under 18 years, and **minority** has a corresponding meaning

10

**testamentary expense** includes any fee or amount that is payable to a trustee in respect of the administration of the estate of a deceased person

After section 4, insert:

**4A Age of majority**

- (1) For the purposes of this Act and of a will, the age of majority is 18.
- (2) In a will, adult, child, full age, infant, infancy, minor, minority, full capacity, majority, and similar expressions must be read in accordance with **subsection (1)**.
- (3) This section—
  - (a) overrides section 4(1) of the Age of Majority Act 1970; and
  - (b) is subject to any contrary intention in the will.

15

20

**4B Application of Trusts Act 2017**

- (1) The duties incidental to the office of an administrator under this Act are taken to be express trusts for the purposes of the Trusts Act **2017**.
- (2) The Trusts Act **2017** applies, with any necessary modifications, to those trusts.

25

Replace section 9(3) with:

- (3) Where a testator by his or her will appoints a person who is a minor to be an executor, probate of the will may be granted to the person if, at the date of the grant, the person has attained full age.

Replace section 28 with:

30

**28 Method of sale or lease**

- (1) An administrator exercising a power to sell or lease an estate or part of an estate under section 26 or 27 has all of the powers necessary to give effect to the sale or lease.

**Administration Act 1969 (1969 No 52)**—*continued*

- (2) However,—
- (a) nothing in this section restricts the term of a lease granted under section 26; and
  - (b) land of any value may be sold or leased under section 26 or sold under section 27 without the consent of the court.

5

In section 49(1)(a), (b), and (c) and (4), replace “section 35 of the Trustee Act 1956” with “**section 75** of the Trusts Act **2017**”.

In section 68, replace “Trustee Act 1956” with “Trusts Act **2017**”.

In section 78(1)(a), delete “or marry or enter into a civil union under that age” in each place.

10

In section 78(1)(b), delete “or sooner marrying or entering into a civil union”.

In section 79(4), delete “in accordance with section 28 of the Trustee Act 1956”.

**Anglican Church Trusts Act 1981 (1981 No 5) (P)**

In section 5(1)(b), replace “section 50 of the Trustee Act 1956” with “**section 63** of the Trusts Act **2017**”.

15

In Schedule 2, clause 18, replace “an advisory trustee in accordance with section 49 of the Trustee Act 1956” with “a special trust adviser in accordance with **section 70** of the Trusts Act **2017**”.

**Anglican (Diocese of Christchurch) Church Property Trust Act 2003 (2003 No 1) (P)**

20

In section 7(1), replace “Trustee Act 1956” with “Trusts Act **2017**”.

In Schedule 1, item 6, replace “any manner authorised under Part 2 of the Trustee Act 1956” with “accordance with the Trusts Act **2017**”.

In Schedule 1, item 18, replace “an advisory trustee in accordance with section 49 of the Trustee Act 1956” with “a special trust adviser in accordance with **section 70** of the Trusts Act **2017**”.

25

**Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35)**

In section 5, definition of **trustee**, replace “section 2(1) of the Trustee Act 1956” with “**section 9** of the Trusts Act **2017**”.

30

**ANZ Banking Group (New Zealand) Act 1979 (1979 No 1)**

In Schedule 1, item E, replace “the office of custodian trustee under the Trustee Act 1956” with “the role of custodian under **section 63(1)(c)** of the Trusts Act **2017**”.

**Bank of New Zealand Act 1988 (1988 No 172)**

Repeal section 11.

35

**Burial and Cremation Act 1964 (1964 No 75)**

In section 2(1), insert in its appropriate alphabetical order:

**registered bank** has the same meaning as in section 2 of the Reserve Bank of New Zealand Act 1989

In section 28(3), replace “such bank within the meaning of the Trustee Act 1956 as the trustees from time to time determine” with “a registered bank”. 5

In section 35(2), replace “in the purchase of land for the purposes of the endowment or in any of the modes of investment authorised by the Trustee Act 1956” with “by the trustees”.

**Cadastral Survey Act 2002 (2002 No 12)** 10

In section 16(3), replace “provisions of the Trustee Act 1956 as to the investment of trust funds” with “Trusts Act **2017**”.

**Canterbury Museum Trust Board Act 1993 (1993 No 4) (L)**

Replace section 22 with:

**22 Investment of money** 15  
Subject to the terms of any trust or endowment, any money held by or on behalf of the Board and available for investment may be invested by trustees in accordance with the Trusts Act **2017**.

**Care of Children Act 2004 (2004 No 90)**

In section 14(3), delete “(for example, the powers of the High Court under sections 64 and 64A of the Trustee Act 1956)”. 20

**Charitable Trusts Act 1957 (1957 No 18)**

In section 21(1), replace “Trustee Act 1956” with “Trusts Act **2017**”.

In section 21(2), replace “any investments for the time being authorised by the Trustee Act 1956 for the investment of trust funds” with “accordance with the Trusts Act **2017**”. 25

In section 33, replace “Trustee Act 1956” with “Trusts Act **2017**”.

In section 41(2), replace “Trustee Act 1956” with “Trusts Act **2017**”.

In section 51(2)(d), replace “Trustee Act 1956” with “Trusts Act 2017”.

**Christchurch District Drainage Act 1951 (1951 No 21) (L)** 30

In section 55(3), replace “in securities referred to in section 4 of the Trustee Act 1956” with “in accordance with the Trusts Act **2017**”.

**Community Trusts Act 1999 (1999 No 54)**

In the heading to section 21, replace “Trustee Act 1956 not affected” with “Trusts Act **2017**”. 35

**Community Trusts Act 1999 (1999 No 54)**—*continued*

In section 21(1), replace “Trustee Act 1956” with “Trusts Act **2017**”.

~~In section 21(2),—~~

(a) ~~replace “Despite section 2(4) of the Trusts Act 1956, if” with “If”; and~~

(b) ~~replace “by the Trustee Act 1956” with “by the Trusts Act **2017**”~~

In section 21(2), replace “Despite section 2(4) of the Trustee Act 1956, if” with “If”. 5

In section 21(2), replace “by the Trustee Act 1956” with “by the Trusts Act **2017**”.

~~In section 21(3)—~~

(a) ~~In section 21(3), replace “Despite section 2(5) of the Trustee Act 1956, if” with “If”; and~~

(b) ~~replace “by the Trustee Act 1956” with “by the Trusts Act **2017**”.~~ 10

In section 21(3), replace “Despite section 2(5) of the Trustee Act 1956, if” with “If”.

In section 21(3), replace “by the Trustee Act 1956”, with “by the Trusts Act **2017**”.

**Companies Act 1993 (1993 No 105)**

In section 316(3), replace “provisions of the Trustee Act 1956 as to the investment of trust funds. Interest” with “Trusts Act **2017**, and interest”. 15

**Construction Contracts Act 2002 (2002 No 46)**

In section 18F(1), replace “Trustee Act 1956 in relation to investment of trust funds” with “Trusts Act **2017**”.

**Contract and Commercial Law Act 2017 (2017 No 5)**

Repeal section 91(2). 20

In section 101(b), replace “64 or 64A of the Trustee Act 1956 (which relate to authorising dealings with trust property and variations of trust)” with “**section 116, 117, or 122** of the Trusts Act **2017** (which relate to termination, variation, or resettlement of a trust, and variation or extension of trustees’ powers in relation to property)”.

**Deaths by Accidents Compensation Act 1952 (1952 No 35)** 25

In section 16(2), replace “section 64 of the Trustee Act 1956 (which relates to dealings with trust property)” with “**section 122** of the Trusts Act **2017** (which relates to variation or extension of trustees’ powers in relation to property)”.

**Eastwoodhill Trust Act 1975 (1975 No 1) (P)**

In section 13(1), replace “Trustee Act 1956” with “Trusts Act **2017**”. 30

In section 13(3), replace “powers to carry on business set out in section 32 of the Trustee Act 1956 shall be varied to permit the board to” with “board may”.

**Education Act 1989 (1989 No 80)**

In section 201D(1), replace “the provisions of the Trustee Act 1956 as to the investment of trust funds” with “the Trusts Act 2017”.

**Energy Companies Act 1992 (1992 No 56)**

Replace section 14 with:

5

**14 Trusts Act 2017, etc, not to apply to interim trustees**

The fact that a person holds or has held office as an interim trustee does not, of itself, confer or impose on that person any of the rights, powers, duties, or liabilities of a trustee under the Trusts Act 2017 or under any other enactment of rule of law.

10

**Financial Markets Conduct Act 2013 (2013 No 69)**

In section 372(3)(d), replace “(as defined in section 2(1) of the Trustee Act 1956)” with “(as defined in section 2 of the Protection of Personal and Property Rights Act 1988)”.

**Friendly Societies and Credit Unions Act 1982 (1982 No 118)**

15

In section 49(2), replace “pursuant to Part 2 of the Trustee Act 1956” with “under **section 55** of the Trusts Act 2017”.

In section 52, replace “the provisions of the Trustee Act 1956 as to the investment of trust funds” with “the Trusts Act 2017”.

**Gambling Act 2003 (2003 No 51)**

20

In section 247(3), replace “the provisions of the Trustee Act 1956 as to the investment of trust funds” with “the Trusts Act 2017”.

Replace section 252(4) with:

- (4) The Lotteries Commission may invest, in accordance with the Trusts Act 2017, any money kept in the lottery prize fund account that is not immediately required for the payment of prizes.

25

In section 262, replace “the provisions of the Trustee Act 1956 as to the investment of trust funds” with “the Trusts Act 2017”.

In section 287(1), replace “the provisions of the Trustee Act 1956 as to the investment of trust funds” with “the Trusts Act 2017”.

30

**Hutt Valley Drainage Act 1967 (1967 No 3) (L)**

Replace section 67(2) with:

- (2) The Board must pay all money set aside into 1 or more separate bank accounts, and may invest any part of it in accordance with the Trusts Act 2017.

**Income Tax Act 2007 (2007 No 97)**

Replace section FC 1(1)(f)(ii) with—:

- (ii) **section 60** of the Trusts Act **2017** as the payment or application of capital money or other capital assets.

Replace section HR 3(6)(a) with:

5

- (a) in authorised investments; or

After section HR 3(6), insert:

(6A) In **subsection (6)(a)**, **authorised investment** means any of the following:

- (a) any investment authorised by the instrument (if any) creating the trust: 10
- (b) an investment in New Zealand Government securities or securities of any Australian government or of the Government of Fiji: 10
- (c) an investment in a mortgage on land in New Zealand:
- (d) an investment in securities issued under any general or special statutory authority by a local authority, public utility, harbour board, drainage board, or transport board: 15
- (e) an investment in a deposit with, or securities issued by, a trustee bank's successor company:
- (f) an investment in securities issued by the Housing Corporation of New Zealand:
- (g) an investment in debentures issued by any dairy finance company: 20
- (h) an investment in a deposit with any building society or in the National Provident Fund:
- (i) an investment in securities guaranteed by the Government of New Zealand:
- (j) an investment in a deposit with any dealer in the short-term money market approved by the Reserve Bank of New Zealand as a short-term money market dealer, only if there are mortgaged to the trustee (or held by any bank on behalf of the trustee) by that dealer investments described in **paragraphs (a) to (i)** that have at the time of the deposit a redemption value not less than the amount deposited. 25 30

In section YA 1, insert in its appropriate alphabetical order:

**authorised investment** is defined in section HR 3 (definitions for section HR 2: group investment funds) for the purposes of that section

In section YA 1, replace the definition of **trust** with:

**trust**, in the definitions of **superannuation scheme** and **unit trust**, does not include the duties incidental to an estate conveyed by mortgage, but with that exception it extends— 35

- (a) to implied and constructive trusts; and

**Income Tax Act 2007 (2007 No 97)—continued**

- (b) to cases where the trustee has a beneficial interest in the trust property; and
- (c) to the duties incidental to the office of—
- (i) an administrator within the meaning of the Administration Act 1969; or 5
- (ii) a manager or person authorised to administer the estate of any person under the Protection of Personal and Property Rights Act 1988; or
- (iii) a manager of a protected estate appointed under the Protection of Personal and Property Rights Act 1988,— 10
- and **trustee** has a corresponding meaning and includes—
- (a) a trustee corporation; and
- (b) every other corporation in which property subject to a trust is vested; and
- (c) every person who immediately before the commencement of the Trustee Act 1956 was a trustee of the settlement or in any way a trustee under the Settled Land Act 1908. 15

**Insolvency Act 2006 (2006 No 55)**

Replace section 378(3)(b) with:

- (b) D's executor or administrator for the purposes of **section 86(2)(c)(iii)** of the Trusts Act **2017**. 20

In Schedule 1, paragraph (r), replace “Trustee Act 1956” with “Trusts Act **2017**”.

**Insurance Intermediaries Act 1994 (1994 No 41)**

In section 15(1), replace “provisions of the Trustee Act 1956 as to the investment of trust funds” with “Trusts Act **2017**”.

**Kirkpatrick Masonic Trust Empowering Act 1998 (1998 No 1) (P)** 25

In section 8, replace “Trustee Act 1956” with “Trusts Act **2017**”.

In section 9, replace “exercise the powers relating to letting and leasing in section 14 of the Trustee Act 1956 in respect of” with “let or lease”.

**KiwiSaver Act 2006 (2006 No 40)**

In section 82, replace “Part 2 of the Trustee Act 1956 does” with “**Sections 28, 54, 55, 120, and 121** of the Trusts Act **2017** do”. 30

In section 125(1) and (2), replace “Section 77 of the Trustee Act 1956” with “**Section 144** of the Trusts Act **2017**”.

**Law Reform (Testamentary Promises) Act 1949 (1949 No 33)**

In section 2, insert in its appropriate alphabetical order: 35

**Law Reform (Testamentary Promises) Act 1949 (1949 No 33)—continued**

testamentary expense includes any fee or amount that is payable to a trustee in respect of the administration of the estate of a deceased person

**Life Insurance Act 1908 (1908 No 105)**

Replace the cross-heading above section 75A with *Insurances for benefit of others*:

*Insurances for benefit of others*

5

Replace the heading to section 75A with “**Person may insure own life for benefit of spouse, partner, or children**”.

In section 75A(5), replace “Trustee Act 1956” with “Trusts Act **2017**”.

**Limitation Act 2010 (2010 No 110)**

In section 4, replace the definition of **trust** and **trustee** with:

10

trustee has the same meaning as in **section 9** of the Trusts Act **2017**

trust includes—

- (a) an express trust under the Trusts Act **2017**; and
- (b) a trust that is not an express trust but that is created by or under an enactment; and
- (c) a trust that is not an express trust but that is recognised at common law or in equity as being a trust; and
- (d) a resulting trust; and
- (e) a constructive trust

15

trustee means a person who is a trustee of a trust

20

**Local Legislation Act 1971 (1971 No 50)**

In section 7(3), delete “in investments authorised for the time being as trustee investments under the Trustee Act 1956”.

**Māori Purposes (Wi Pere Trust) Act 1991 (1991 No 38)**

In the heading to section 5, replace “Trustee Act 1956” with “Trusts Act **2017**”.

25

In section 5(1), replace “Trustee Act 1956” with “Trusts Act **2017**”.

In section 6(3)(b)(iii), replace “Trustee Act 1956” with “Trusts Act **2017**”.

In section 13(2)(c), replace “Trustee Act 1956” with “Trusts Act **2017**”.

In Schedule 1, clause 10.6, replace “Trustee Act 1956” with “Trusts Act **2017**”.

In Schedule 1, clause 13.2(b), replace “Trustee Act 1956” with “Trusts Act **2017**”.

30

**Maori Trust Boards Act 1955 (1955 No 37)**

In section 25A, replace “in any securities in which trust funds may be invested by trustees in accordance with the Trustee Act 1956” with “in accordance with the Trusts Act **2017**”.

**Māori Trustee Act 1953 (1953 No 95)**

5

In section 14A(6), replace “an advisory trustee in terms of section 49 of the Trustee Act 1956” with “a special trust adviser in terms of **section 70** of the Trusts Act **2017**”.

In section 28(1), replace “in any securities in which trust funds may be invested by trustees in accordance with the Trustee Act 1956” with “in accordance with the Trusts Act **2017**”.

10

In section 45A(7), replace “Trustee Act 1956” with “Trusts Act **2017**”.

In section 48A(4), replace “section 75 of the Trustee Act 1956” with “**section 127** of the Trusts Act **2017**”.

**Marlborough Agricultural and Pastoral Association Empowering Act 1974 (1974 No 5) (P)**

15

In section 12, replace “Trustee Act 1956” with “Trusts Act **2017**”.

**Masterton Borough Council Staff Retiring Fund Act 1962 (1962 No 9) (L)**

Replace section 6 with:

**6 Investment of the Fund**

20

All money belonging to the Fund and available for investment may be invested by the Council in the following manner:

- (a) in New Zealand Government securities; or
- (b) on deposit in any bank lawfully carrying on the business of banking in New Zealand; or
- (c) in the Common Fund of Public Trust; or
- (d) in the debentures or stock of any local authority; or
- (e) in the National Provident Fund.

25

**Masterton District Council (Montfort Trimble Foundation) Act 2003 (2003 No 5) (L)**

30

In section 18, replace “section 66 of the Trustee Act 1956” with “**section 125** of the Trusts Act **2017**”.

**Masterton Trust Lands Act 2003 (2003 No 1) (L)**

In section 15(2), replace “section 13B of the Trustee Act 1956, exercise the care, diligence,” with “**section 28** of the Trusts Act **2017**, exercise the care”.

35

**Methodist Charitable and Educational Trusts Act 1911 (1911 No 1) (L)**

Replace section 30(1) with:

- (1) The Board may invest any money held by the Board for and on behalf of the institution in accordance with the Trusts Act **2017**.

Repeal section 30(2) to (4).

5

In section 30(7), replace “**listed issuer, quoted, and financial products** have the same meanings” with “**financial products** has the same meaning”.

**Mining Tenures Registration Act 1962 (1962 No 48)**

In section 4(6)(a), replace “Trustee Act 1956” with “Trusts Act **2017**”.

**Motor Vehicle Sales Act 2003 (2003 No 12)**

10

In section 8(3), replace “section 2(1) of the Trustee Act 1956” with “**section 9** of the Trusts Act **2017**”.

**Music Teachers Act 1981 (1981 No 3)**

In section 7(c), replace “the provisions of the Trustee Act 1956 as to the investment of trust funds” with “the Trusts Act **2017**”.

15

**National Provident Fund Restructuring Act 1990 (1990 No 126)**

In section 53(4), replace “Trustee Act 1956” with “Trusts Act **2017**”.

**New Zealand Horticulture Export Authority Act 1987 (1987 No 93)**

In section 53, delete “authorised as a trustee investment under the Trustee Act 1956, or in any other investment that may from time to time be authorised by the Minister of Finance for the purpose”.

20

**New Zealand Maori Arts and Crafts Institute Act 1963 (1963 No 51)**

In section 21, replace “provisions of the Trustee Act 1956 as to the investment of trust funds” with “Trusts Act **2017**”.

**New Zealand Railways Staff Welfare Society Dissolution Act 1999 (1999 No 17)**

25

In the heading to section 10, replace “Trustee Act 1956” with “Trusts Act **2017**”.

In section 10, replace “Trustee Act 1956” with “Trusts Act **2017**”.

**Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (2010 No 119)**

In Schedule 3, clause 8(3)(a), replace “Part 2 of the Trustee Act 1956” with “the Trusts Act **2017**”.

30

**Official Information Act 1982 (1982 No 156)**

In section 2(1), definition of **official information**, paragraph (g)(i), replace “Trustee Act 1956” with “Trusts Act **2017**”.

**Official Information Act 1982 (1982 No 156)**—*continued*

In section 22(6)(a), replace “Trustee Act 1956” with “Trusts Act **2017**”.

In section 23(5)(a), replace “Trustee Act 1956” with “Trusts Act **2017**”.

In section 24(5)(a), replace “Trustee Act 1956” with “Trusts Act **2017**”.

**Ombudsmen Act 1975 (1975 No 9)**

In section 13(7)(b), replace “Trustee Act 1956” with “Trusts Act **2017**”. 5

**Otago Museum Trust Board Act 1996 (1996 No 1) (L)**

Replace section 22 with:

**22 Investment of money**

Subject to the terms of any trust or endowment, any money held by or on behalf of the Board and available for investment must be invested in accordance with the Trusts Act **2017**. 10

**Otago Regional Council (Kuriwao Endowment Lands) Act 1994 (1994 No 4) (L)**

In section 8(2), replace “Part 2 of the Trustee Act 1956” with “the Trusts Act **2017**”.

**Otaki and Porirua Trusts Act 1943 (1943 No 4) (P)**

In section 14A(5), replace “Trustee Act 1956” with “Trusts Act **2017**”. 15

**Pacific Education Foundation Act 1972 (1972 No 138)**

Replace section 22 with:

**22 Powers of investment**

The Board may invest any money held by or on behalf of the Foundation, whether as capital or unexpended income, in accordance with the Trusts Act **2017**. 20

**Patriotic and Canteen Funds Act 1947 (1947 No 63)**

In section 38(3), replace “provisions of the Trustee Act 1956 as to the investment of trust funds” with “Trusts Act **2017**”.

**Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74)** 25

In section 146(3), replace “provisions of the Trustee Act 1956 as to the investment of trust funds” with “Trusts Act **2017**”.

**Property Law Act 2007 (2007 No 91)**

In section 115(3)(a), replace “as a trustee is entitled and required to invest trust funds under Part 2 of the Trustee Act 1956” with “in accordance with the Trusts Act **2017**”. 30

After section 350, insert:

**Property Law Act 2007 (2007 No 91)—continued***Powers relating to vesting orders***350A Vesting order consequential on order for sale or mortgage of land**

- (1) This section applies if a court gives a judgment or makes an order directing the sale or mortgage of any land.
- (2) A person described in **subsection (3)** is deemed to be entitled to, or to have an interest in, as the case may be, the land as a trustee. 5
- (3) The person is a person who—
- (a) either—
- (i) is entitled to, or who has any interest in, the land; or
- (ii) has any contingent right in the land; and 10
- (b) is a party to the proceeding to which the judgment or order relates or is otherwise bound by the judgment or order.
- (4) The court may make an order vesting the land or any part of the land for any estate or interest that the court thinks fit in the purchaser or mortgagee or in any other person. 15

Compare: 1956 No 61 s 55

**350B Vesting order consequential on judgment for specific performance**

- (1) This section applies when a judgment is given for the specific performance of a contract concerning any interest in land, or for the sale or exchange of any interest in land, or generally when any judgment is given for the conveyance of any interest in land. 20
- (2) The court may declare—
- (a) that any party to the action is a trustee of any interest in the land or any part of the land; or
- (b) that the interest of an unborn person is the interest of a person who would become a trustee were the unborn person to come into existence and claim— 25
- (i) under a party to the proceeding; or
- (ii) under the will or voluntary settlement of a deceased person who was, during that person's lifetime, a party to the contract or transaction to which the judgment relates. 30
- (3) If the court makes an order, the court may make a vesting order relating to the rights of those persons, born and unborn, as if they were trustees.

Compare: 1956 No 61 s 56

**Property Law Act 2007 (2007 No 91)—continued****350C Court may appoint person to convey trust property**

- (1) In any case where a vesting order can be made under **section 350A or 350B**, the court may instead make an order appointing a person to convey the property or any interest in the property or to release a contingent right.
- (2) A conveyance or release by a person appointed in accordance with the order has the same effect as a vesting order.

5

Compare: 1956 No 61 s 58

**Protection of Personal and Property Rights Act 1988 (1988 No 4)**

In section 95(4), replace “section 31 of the Trustee Act 1956” with “**section 66** of the Trusts Act **2017**”.

10

In section 107(1)(c)(iii), replace “funds under section 13A of the Trustee Act 1956” with “property under **section 54** of the Trusts Act **2017**”.

In Schedule 1, clause 1(c), replace “in the manner authorised by the Trustee Act 1956 for the investment of trust funds” with “in accordance with the Trusts Act **2017**”.

In Schedule 1, clause 1(n), (o), and (r), delete “(as determined in accordance with section 28 of the Trustee Act 1956)”.

15

In Schedule 1, after clause 1(w), insert:

- (wa) ascertain and fix the value of any of the property of the person subject to a property order—
- (i) in good faith; and
  - (ii) in any manner the manager thinks appropriate, including in consultation with a qualified valuer:

20

**Public Trust Act 2001 (2001 No 100)**

In section 6(1), replace “Trustee Act 1956” with “Trusts Act **2017**”.

In section 49, replace “provisions of the Trustee Act 1956 as to the investment of trust funds” with “Trusts Act **2017**”.

25

In section 59(1), replace “provisions of the Trustee Act 1956 as to the investment of trust funds” with “Trusts Act **2017**”.

In section 60(2)(b), replace “they are applicable, in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds” with “it is applicable, in accordance with the Trusts Act **2017**”.

30

Replace section 64(1) with:

- (1) Public Trust must invest the funds of a group investment fund in accordance with the terms of the instrument (if any) creating the trust under which the money is held and the Trusts Act **2017**.

35

Replace section 73 with:

**Public Trust Act 2001 (2001 No 100)**—*continued***73 Examination of group investment funds**

- (1) A solicitor or an accountant authorised in writing by an interested person is entitled to examine at any reasonable time the accounts, books, and vouchers of the group investment fund that relate to—
- (a) the investments and funds comprising the group investment fund; and 5
  - (b) the income of the fund; and
  - (c) the expenses and management fees payable out of the fund; and
  - (d) the proportion to which the person who required the examination, or the estate in which the person is a beneficiary, is entitled.
- (2) In this section, **interested person** means a person who has— 10
- (a) an entitlement in the group investment fund; or
  - (b) an interest in an estate that has an entitlement in the fund.

Compare: 1956 No 61 s 83A; 2001 No 100 s 73;—

In section 92(a), replace “section 46(4) of the Trustee Act 1956” with “**section 106(4)** of the Trusts Act **2017**”. 15

In section 103(1)(j) and (k), replace “Trustee Act 1956” with “Trusts Act **2017**”.

In section 127(4), replace “section 75 of the Trustee Act 1956” with “**section 127** of the Trusts Act **2017**”.

**Queen Elizabeth the Second National Trust Act 1977 (1977 No 102)**

In section 25(1), replace “from time to time be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds” with “be invested in accordance with the Trusts Act **2017**”. 20

Repeal section 25(2).

In section 25(3), replace “from time to time be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds” with “be invested in accordance with the Trusts Act **2017**”. 25

**Racing Act 2003 (2003 No 3)**

In Schedule 3, clause 11(a), replace “provisions of the Trustee Act 1956 that relate to the investment of trust funds” with “Trusts Act **2017**”.

**Roman Catholic Bishops Empowering Act 1997 (1997 No 4) (P)**

In section 26(5), replace “Section 50 of the Trustee Act 1956 applies” with “**Sections 63, 64, and 65** of the Trusts Act **2017** apply”. 30

**Rotorua High Schools Board Empowering Act 1979 (1979 No 19) (L)**

In section 2(3), replace “in trustee securities within the meaning of the Trustee Act 1956” with “in accordance with the Trusts Act **2017**”. 35

**Sale and Supply of Alcohol Act 2012 (2012 No 120)**

In section 28(1)(i), replace “Trustee Act 1956” with “Trusts Act **2017**”.

Replace section 394 with:

**394 Application of Trusts Act 2017**

The Trusts Act **2017** applies to a community trust.

5

**Soil Conservation and Rivers Control Act 1941 (1941 No 12)**

In section 120(3), replace “provisions of the Trustee Act 1956 as to the investment of trust funds” with “Trusts Act **2017**”.

**St Peter’s School Board Trust Act 1985 (1985 No 3) (P)**

In the Schedule, clause 4(3), replace “shall be deemed to have vacated his appointment upon the happening of any event specified in section 43(1) of the Trustee Act 1956” with “is taken to have vacated the trustee’s appointment if the trustee dies or an event or a circumstance specified in **section 97(1) or (3)(b)** of the Trusts Act **2017** occurs or arises”.

10

**Taranaki Scholarships Trust Board Act 1957 (1957 No 108)**

15

In section 16(1)(b), replace “provisions of the Trustee Act 1956 as to the investment of trust funds” with “Trusts Act **2017**”.

In section 16(1)(c), replace “authorised by” with “under”.

**Te Runanga o Ngai Tahu Act 1996 (1996 No 1) (P)**

In section 14(2), replace “Trustee Act 1956” with “Trusts Act **2017**”.

20

**Te Runanga o Ngati Awa Act 2005 (2005 No 1) (P)**

In section 8(4), replace “Trustee Act 1956” with “Trusts Act **2017**”.

**Te Ture Whenua Maori Act 1993 (1993 No 4)**

In section 338A(1)(a)(iv) and (v) and (b), replace “Trustee Act 1956” with “Trusts Act **2017**”.

25

**Te Whanau-a-Taupara Trust Empowering Act 2003 (2003 No 2) (P)**

In section 13(2), replace “section 67 or section 68 of the Trustee Act 1956 or under any other provision of that Act” with “the Trusts Act **2017**”.

**Thomas Cawthron Trust Act 1924 (1924 No 6) (P)**

Replace section 12(1)(e) with:

30

- (e) subject to subsection (2), to invest any of the money it holds under the trust in any property, including—
  - (i) any securities; and
  - (ii) any land; and

**Thomas Cawthron Trust Act 1924 (1924 No 6) (P)—continued**

- (iii) the erection, alteration, or improvement of buildings on land owned by the Board; and
- (iv) the improvement of any land owned by the Board.

In section 17, replace “The Trustee Act 1956” with “**section 131** of the Trusts Act **2017**”.

5

**Timaru Borough Drainage, Sewerage, and Loans Act 1905 (1905 No 5) (L)**

In section 60, replace “such securities as defined in the Trustee Act 1956 or any amendment thereof” with “accordance with the Trusts Act **2017**”.

**Trustee Companies Act 1967 (1967 No 35)**

In section 2, replace the definition of **trust** and **trustee** with:

10

**trustee** has the meaning given in **section 9** of the Trusts Act **2017**.

Replace section 3(b) with:

- (b) a statutory trustee for the purposes of the Trusts Act **2017**.

Replace section 7(2)(q) with:

- (q) custodian under **section 63** of the Trusts Act **2017**.

15

In section 15(1)(a), replace “provisions of the Trustee Act 1956 as to the investment of trust funds” with “Trusts Act **2017**”.

In section 29(2)(b), replace “provisions of the Trustee Act 1956 as to the investment of trust funds” with “Trusts Act **2017**”.

In section 33(a), replace “Trustee Act 1956” with “Trusts Act **2017**”.

20

Replace section 34 with:

**34 Examination of Group Investment Funds**

(1) A solicitor or an accountant authorised in writing by an interested person is entitled to examine at any reasonable time the accounts, books, and vouchers of the Group Investment Fund that relate to—

25

- (a) the investments and funds comprising the Group Investment Fund; and
- (b) the income of the fund; and
- (c) the expenses and management fees payable out of the fund; and
- (d) the proportion to which the person who required the examination, or the estate in which the person is a beneficiary, is entitled.

30

(2) In this section, **interested person** means a person who has—

- (a) an entitlement in the Group Investment Fund; or
- (b) an interest in an estate that has an entitlement in the fund.

Compare: 1956 No 61 s 83A; 1967 No 35 s 34;

**Trustee Companies Management Act 1975 (1975 No 25)**

In section 2(1), definition of **trustee**, replace “section 2(1) of the Trustee Act 1956” with “**section 9** of the Trusts Act **2017**”.

**Veterans’ Support Act 2014 (2014 No 56)**

Replace section 263 with:

5

**263 Investment of capital and income**

- (1) Any money that is capital of the fund held by the Crown may be invested in accordance with the Trusts Act **2017**.
- (2) VANZ may invest income of the fund in accordance with the Trusts Act **2017**.
- (3) If at any time the income of the fund is insufficient for the purposes of section 261, VANZ may, to the extent of the insufficiency, use the capital of the fund for those purposes.

10

**Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (2010 No 24)**

In Schedule 5, clause 8(3)(a), replace “applicable provisions of Part 2 of the Trustee Act 1956” with “Trusts Act **2017**”.

15

**Wellington Methodist Charitable and Educational Trusts Act 1916 (1916 No 13) (L)**

Replace section 31(1) with:

- (1) All money held by the Board may be invested in the name of the Board in accordance with the Trusts Act **2017**.

20

Repeal section 31(2) and (3).

In section 31(4), replace “pursuant to paragraph (b) of subsection (1) of this section” with “in the financial products of any company that is a listed issuer”.

**Wellington Regional Water Board Act 1972 (1972 No 3) (L)**

25

In section 82(4), delete “in the manner in which trust funds may be invested in accordance with the Trustee Act 1956 or in accordance with any other Act”.

**Westpac Banking Corporation Act 1982 (1982 No 1) (P)**

In section 13(4), replace “Trustee Act 1956” with “Trusts Act **2017**”.

**Wheat Industry Research Levies Act 1989 (1989 No 64)**

30

In section 18, replace “provisions of the Trustee Act 1956 as to the investment of trust funds” with “Trusts Act **2017**”.

**Winston Churchill Memorial Trust Act 1965 (1965 No 39)**

Replace section 17 with:

**Winston Churchill Memorial Trust Act 1965 (1965 No 39)**—*continued***17 Powers of investment**

- (1) The Board must invest money that is capital of the Fund (within the meaning of section 16).
- (2) The Board may invest money that is income of the Fund (within the meaning of section 16).
- (3) Any investment under this section must be made in accordance with the Trusts Act **2017**.

5

**Part 2****Amendments to legislative instruments****Climate Change (Pre-1990 Forest Land Allocation Plan) Order 2010 (SR 2010/190)** 10

In the Schedule, replace clause 5(3)(a)(vi)(B) with:

- (B) **section 60** of the Trusts Act **2017** as the payment of capital money or the application of capital assets:

**District Court Rules 2014 (LI 2014/179)** 15

Replace rule 16.27(2) with:

- (2) **Sections 127 and 128** of the Trusts Act **2017** override subclause (1).

**High Court Rules 2016 (LI 2016/225)**

Replace rule 16.28(2) with:

- (2) **Sections 127 and 128** of the Trusts Act **2017** override subclause (1). 20

In rule 18.1(b)(xiii), replace “Trustee Act 1956” with “Trusts Act **2017**”.

In rule 19.2(x), replace “76 of the Trustee Act 1956” with “**128** of the Trusts Act **2017**”.

In rule 27.14(2)(e), replace “35(4) of the Trustee Act 1956” with “**75(3)** of the Trusts Act **2017**”. 25

In rule 27.37(1), replace “72 of the Trustee Act 1956” with “**131** of the Trusts Act **2017**”.

In rule 27.38(g), replace “72(3) of the Trustee Act 1956” with “**131(3)** of the Trusts Act **2017**”.

**Māori Land Court Fees Regulations 2013 (SR 2013/219)** 30

In the Schedule, Part 6, item 12(o), replace “Trustee Act 1956” with “Trusts Act **2017**”.

**Protection of Personal and Property Rights (Enduring Powers of Attorney Forms and Prescribed Information) Regulations 2008 (SR 2008/310)**

In the Schedule, form 1, item 14, replace “Trustee Act 1956” with “Trusts Act **2017**”.

**Trust Estates Audit Regulations 1958 (SR 1958/71)**

In the Schedule, form 1, replace “section 83B of the Trustee Act 1956” with “**sec- 5**  
**tion 146** of the Trusts Act **2017**”.

## Schedule 5

### Amendments consequential on repeal of Perpetuities Act 1964 and abolition of rule against perpetuities

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#### Part 1

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#### Table of amendments to Acts

For each Act specified in the second column of the table, amend the section (or sections) or cross-heading set out opposite it in the third column in the manner specified in the first column.

Amendment	Act	Section/s or cross-heading
Replace in the heading to the section; replace “ <b>Rule against perpetuities does not apply</b> ” with “ <b>Maximum duration rule</b> ”.	Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008 (2008 No 98)	18
Replace “ <b>Limit on duration of trusts does not apply</b> ”.	<u>Heretaunga Tamatea Claims Settlement Act 2018 (2018 No 14)</u>	19
	Hineuru Claims Settlement Act 2016 (2016 No 33)	19
	<u>Iwi and Hapū of Te Rohe o Te Wairoa Claims Settlement Act 2018 (2018 No 28)</u>	19
	Maraeroa A and B Blocks Claims Settlement Act 2012 (2012 No 52)	18
	Mauao Historic Reserve Vesting Act 2008 (2008 No 31)	12
	Maungaharuru-Tangitū Hapū Claims Settlement Act 2014 (2014 No 12)	18
	Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 (2014 No 52)	15
	<del>Ngāa Rauru Kītahi Claims Settlement Act 2005 (2005 No 84)</del>	19
	<u>Ngāi Tahu Claims Settlement Act 1998 (1998 No 97)</u>	466
	<u>Ngāi Tai ki Tāmaki Claims Settlement Act 2018 (2018 No 18)</u>	19
	Ngai Tāmanuhiri Claims Settlement Act 2012 (2012 No 55)	17
	Ngāi Takoto Claims Settlement Act 2015 (2015 No 78)	19
	Ngāruahine Claims Settlement Act 2016 (2016 No 93)	19
	<u>Ngāti Awa Claims Settlement Act 2005 (2005 No 28)</u>	19

<b>Amendment</b>	<b>Act</b>	<b>Section/s or cross-heading</b>
	Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014 (2014 No 19)	26
	Ngāti Apa (North Island) Claims Settlement Act 2010 (2010 No 129)	17
	Ngāti Hauā Claims Settlement Act 2014 (2014 No 75)	19
	Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014 (2014 No 20)	29
	Ngāti Koroki Kahukura Claims Settlement Act 2014 (2014 No 74)	19
	Ngāti Kuri Claims Settlement Act 2015 (2015 No 76)	19
	Ngāti Mākino Claims Settlement Act 2012 (2012 No 53)	15
	<del>Ngāti Manawa Claims Settlement Act 2012 (2012 No 27)</del>	47
	Ngāti Manuhiri Claims Settlement Act 2012 (2012 No 90)	18
	Ngāti Mutunga Claims Settlement Act 2006 (2006 No 61)	19
	Ngāti Pāhauwera Treaty Claims Settlement Act 2012 (2012 No 30)	18
	Ngāti Porou Claims Settlement Act 2012 (2012 No 31)	17
	<u>Ngāti Pūkenga Claims Settlement Act 2017 (2017 No 39)</u>	<u>19</u>
	Ngāti Rangiteaorere Claims Settlement Act 2014 (2014 No 13)	20
	Ngāti Rangiwewehi Claims Settlement Act 2014 (2014 No 14)	20
	Ngāti Ruanui Claims Settlement Act 2003 (2003 No 20)	19
	Ngāti Tama Claims Settlement Act 2003 (2003 No 126)	16
	<u>Ngāti Tamaoho Claims Settlement Act 2018 (2018 No 19)</u>	<u>19</u>
	Ngāti Toa Rangatira Claims Settlement Act 2014 (2014 No 17)	20
	<u>Ngāti Tūrangitukua Claims Settlement Act 1999 (1999 No 118)</u>	<u>14</u>
	Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005 (2005 No 72)	19
	<del>Ngāti Whare Claims Settlement Act 2012 (2012 No 28)</del>	47

Amendment	Act	Section/s or cross-heading
	Ngāti Whātua o Kaipara Claims Settlement Act 2013 (2013 No 37)	18
	Ngāti Whātua Ōrākei Claims Settlement Act 2012 (2012 No 91)	20
	<u>Ngatikahu ki Whangaroa Claims Settlement Act 2017 (2017 No 41)</u>	<u>19</u>
	Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 (2009 No 26)	14
	<u>Pouakani Claims Settlement Act 2000 (2000 No 90)</u>	<u>18</u>
	Rangitāne o Manawatu Claims Settlement Act 2016 (2016 No 100)	19
	<u>Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Act 2017 (2017 No 38)</u>	<u>19</u>
	Raukawa Claims Settlement Act 2014 (2014 No 7)	19
	Rongowhakaata Claims Settlement Act 2012 (2012 No 54)	19
	Tapuika Claims Settlement Act 2014 (2014 No 15)	19
	Taranaki Iwi Claims Settlement Act 2016 (2016 No 95)	19
	Te Arawa Lakes Settlement Act 2006 (2006 No 43)	17
	Te Atiawa Claims Settlement Act 2016 (2016 No 94)	19
	Te Aupouri Claims Settlement Act 2015 (2015 No 77)	19
	Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (2017 No 7)	90
	Te Kawerau ā Maki Claims Settlement Act 2015 (2015 No 75)	18
	Te Rarawa Claims Settlement Act 2015 (2015 No 79)	19
	Te Roroa Claims Settlement Act 2008 (2008 No 100)	17
	Te Uri o Hau Claims Settlement Act 2002 (2002 No 36)	21
	Tūhoe Claims Settlement Act 2014 (2014 No 50)	19
	Waitaha Claims Settlement Act 2013 (2013 No 38)	16
	<del>Whakarewarewa and Roto-a-Tamaheke Vesting Act 2009 (2009 No 50)</del>	<del>22, 33</del>

Amendment	Act	Section/s or cross-heading
In the heading to the section, replace “ <b>Rule against perpetuities</b> ” with “ <b>Maximum duration rule does not apply</b> ”.	Nga Wai o Maniapoto (Waipa River) Act 2012 (2012 No 29)	34
	Ngāti Awa Claims Settlement Act 2005 (2005 No 28)	19
	Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (2010 No 119)	61
	Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (2010 No 24)	92
In the heading to the section, replace “ <b>Rule against perpetuities not to apply</b> ” with “ <b>Maximum duration rule does not apply</b> ”.	Ngāi Tahu Claims Settlement Act 1998 (1998 No 97)	466
	Ngāti Tūrangitukua Claims Settlement Act 1999 (1999 No 118)	14
	Pouakani Claims Settlement Act 2000 (2000 No 90)	18
Replace “law against perpetuities” with “limit on the <del>maximum</del> duration of a trust”.	Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008 (2008 No 98)	5(3)(c)(iv)
	<u>Heretaunga Tamatea Claims Settlement Act 2018 (2018 No 14)</u>	<u>6(2)(g)(iv)</u>
	Hineuru Claims Settlement Act 2016 (2016 No 33)	6(2)(g)(iv)
	<u>Iwi and Hapū of Te Rohe o Te Wairoa Claims Settlement Act 2018 (2018 No 28)</u>	<u>6(2)(g)(iv)</u>
	Maraeroa A and B Blocks Claims Settlement Act 2012 (2012 No 52)	5(2)(d)(iv)
	Maungaharuru-Tangitū Hapū Claims Settlement Act 2014 (2014 No 12)	6(2)(g)(iv)
	Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 (2014 No 52)	6(2)(f)(iii)
	Ngaa Rauru Kīitahi Claims Settlement Act 2005 (2005 No 84)	5(4)(d)
	<u>Ngāi Tai ki Tāmaki Claims Settlement Act 2018 (2018 No 18)</u>	<u>6(2)(g)(iv)</u>
	Ngai Tāmanuhiri Claims Settlement Act 2012 (2012 No 55)	5(2)(d)(iv)
	Ngāi Takoto Claims Settlement Act 2015 (2015 No 78)	6(2)(g)(iv)
	Ngāruahine Claims Settlement Act 2016 (2016 No 93)	6(2)(g)(iv)

<b>Amendment</b>	<b>Act</b>	<b>Section/s or cross-heading</b>
	Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014 (2014 No 19)	6(2)(g)(iv)
	Ngāti Apa (North Island) Claims Settlement Act 2010 (2010 No 129)	5(3)(d)(iv)
	Ngāti Awa Claims Settlement Act 2005 (2005 No 28)	5(4)(d)
	Ngāti Hauā Claims Settlement Act 2014 (2014 No 75)	6(2)(g)(iv)
	Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014 (2014 No 20)	6(2)(g)(iv)
	Ngāti Koroki Kahukura Claims Settlement Act 2014 (2014 No 74)	6(2)(g)(iv)
	Ngāti Kuri Claims Settlement Act 2015 (2015 No 76)	6(2)(g)(iv)
	Ngāti Mākino Claims Settlement Act 2012 (2012 No 53)	5(2)(e)(iv)
	Ngāti Manawa Claims Settlement Act 2012 (2012 No 27)	5(3)(c)(iv)
	Ngāti Manuhiri Claims Settlement Act 2012 (2012 No 90)	6(2)(j)
	Ngāti Mutunga Claims Settlement Act 2006 (2006 No 61)	5(2)(c)(iv)
	Ngāti Pāhauwera Treaty Claims Settlement Act 2012 (2012 No 30)	5(2)(e)(iv)
	Ngāti Porou Claims Settlement Act 2012 (2012 No 31)	5(2)(d)(iv)
	<u>Ngāti Pūkenga Claims Settlement Act 2017 (2017 No 39)</u>	<u>6(2)(g)(iv)</u>
	Ngāti Rangiteaorere Claims Settlement Act 2014 (2014 No 13)	6(2)(g)(iv)
	Ngāti Rangiwewehi Claims Settlement Act 2014 (2014 No 14)	6(2)(g)(iv)
	Ngāti Ruanui Claims Settlement Act 2003 (2003 No 20)	5(4)(d)
	Ngāti Tama Claims Settlement Act 2003 (2003 No 126)	5(4)(d)
	<u>Ngāti Tamaoho Claims Settlement Act 2018 (2018 No 19)</u>	<u>6(2)(g)(iv)</u>
	Ngāti Toa Rangatira Claims Settlement Act 2014 (2014 No 17)	6(2)(g)(iv)
	Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005 (2005 No 72)	5(4)(d)
	Ngāti Whare Claims Settlement Act 2012 (2012 No 28)	5(3)(d)(iv)

Amendment	Act	Section/s or cross-heading
	Ngāti Whātua o Kaipara Claims Settlement Act 2013 (2013 No 37)	6(2)(d)
	Ngāti Whātua Ōrākei Claims Settlement Act 2012 (2012 No 91)	5(2)(l)
	<u>Ngatikahu ki Whangaroa Claims Settlement Act 2017 (2017 No 41)</u>	<u>6(2)(g)(iv)</u>
	Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 (2009 No 26)	5(2)(d)(iv)
	Rangitāne o Manawatu Claims Settlement Act 2016 (2016 No 100)	6(2)(g)(iv)
	<u>Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Act 2017 (2017 No 38)</u>	<u>6(2)(g)(iv)</u>
	Raukawa Claims Settlement Act 2014 (2014 No 7)	6(2)(g)(iv)
	Rongowhakaata Claims Settlement Act 2012 (2012 No 54)	5(2)(e)(iv)
	Tapuika Claims Settlement Act 2014 (2014 No 15)	6(2)(g)(iv)
	Taranaki Iwi Claims Settlement Act 2016 (2016 No 95)	6(2)(g)(iv)
	Te Arawa Lakes Settlement Act 2006 (2006 No 43)	5(3)(c)(iii)
	Te Atiawa Claims Settlement Act 2016 (2016 No 94)	6(2)(g)(iv)
	Te Aupouri Claims Settlement Act 2015 (2015 No 77)	6(2)(g)(iv)
	Te Kawerau ā Maki Claims Settlement Act 2015 (2015 No 75)	6(2)(g)(iv)
	Te Rarawa Claims Settlement Act 2015 (2015 No 79)	6(2)(g)(iv)
	Te Roroa Claims Settlement Act 2008 (2008 No 100)	5(2)(c)(iv)
	Te Uri o Hau Claims Settlement Act 2002 (2002 No 36)	5(4)(d)
	Tūhoe Claims Settlement Act 2014 (2014 No 50)	6(2)(g)(iv)
	Waitaha Claims Settlement Act 2013 (2013 No 38)	5(2)(d)(iv)
Replace “Neither the rule against perpetuities nor the Perpetuities Act 1964 prescribes or restricts” with “Section 16 of the Trusts Act <b>2017</b> does not prescribe or restrict”.	Nga Wai o Maniapoto (Waipa River) Act 2012 (2012 No 29) Ngāti Manawa Claims Settlement Act 2012 (2012 No 27)	34(1) 17(1)

Amendment	Act	Section/s or cross-heading
	Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (2010 No 119)	64(1)
	Ngāti Whare Claims Settlement Act 2012 (2012 No 28)	17(1)
	Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (2010 No 24)	92(1)
Replace “The rule against perpetuities and the provisions of the Perpetuities Act 1964” with “ <u>A limit on the duration of a trust in any rule of law, and a limit in the provisions of any Act, including <b>Section 16</b> of the Trusts Act 2017,</u> ”.	<u>Heretaunga Tamatea Claims Settlement Act 2018 (2018 No 14)</u>	19(1)
	Hineuru Claims Settlement Act 2016 (2016 No 33)	19(1)
	<u>Iwi and Hapū of Te Rohe o Te Wairoa Claims Settlement Act 2018 (2018 No 28)</u>	19(1)
	Maungaharuru-Tangitū Hapū Claims Settlement Act 2014 (2014 No 12)	18(1)
	<u>Ngāi Tai ki Tāmaki Claims Settlement Act 2018 (2018 No 18)</u>	19(1)
	Ngai Tāmanuhiri Claims Settlement Act 2012 (2012 No 55)	17(1)
	Ngāi Takoto Claims Settlement Act 2015 (2015 No 78)	19(1)
	Ngāruahine Claims Settlement Act 2016 (2016 No 93)	19(1)
	Ngāti Hauā Claims Settlement Act 2014 (2014 No 75)	19(1)
	Ngāti Koroki Kahukura Claims Settlement Act 2014 (2014 No 74)	19(1)
	Ngāti Kuri Claims Settlement Act 2015 (2015 No 76)	19(1)
	Ngāti Porou Claims Settlement Act 2012 (2012 No 31)	17(1)
	<u>Ngāti Pūkenga Claims Settlement Act 2017 (2017 No 39)</u>	19(1)
	Ngāti Rangiteaorere Claims Settlement Act 2014 (2014 No 13)	20(1)
	Ngāti Rangiwewehi Claims Settlement Act 2014 (2014 No 14)	20(1)
	<u>Ngāti Tamaoho Claims Settlement Act 2018 (2018 No 19)</u>	19(1)
	Ngāti Whātua o Kaipara Claims Settlement Act 2013 (2013 No 37)	18(1)
	<u>Ngatikahu ki Whangaroa Claims Settlement Act 2017 (2017 No 41)</u>	19(1)
	Rangitāne o Manawatu Claims Settlement Act 2016 (2016 No 100)	19(1)

Amendment	Act	Section/s or cross-heading
	<u>Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Act 2017 (2017 No 38)</u>	<u>19(1)</u>
	Raukawa Claims Settlement Act 2014 (2014 No 7)	19(1)
	Tapuika Claims Settlement Act 2014 (2014 No 15)	19(1)
	Taranaki Iwi Claims Settlement Act 2016 (2016 No 95)	19(1)
	Te Atiawa Claims Settlement Act 2016 (2016 No 94)	19(1)
	Te Aupouri Claims Settlement Act 2015 (2015 No 77)	19(1)
	Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (2017 No 7)	90(1)
	Te Kawerau ā Maki Claims Settlement Act 2015 (2015 No 75)	18(1)
	Te Rarawa Claims Settlement Act 2015 (2015 No 79)	19(1)
	Tūhoe Claims Settlement Act 2014 (2014 No 50)	19(1)
Replace “do” with “does”.	<u>Hineuru Claims Settlement Act 2016 (2016 No 33)</u>	<u>19(1)(a), 19(1)(b)</u>
	Maungaharuru-Tangitū Hapū Claims Settlement Act 2014 (2014 No 12)	18(1)(a), 18(1)(b)
	Ngai Tāmanuhiri Claims Settlement Act 2012 (2012 No 55)	17(1)(a), 17(1)(b)
	Ngai Takoto Claims Settlement Act 2015 (2015 No 78)	19(1)(a), 19(1)(b)
	Ngāruahine Claims Settlement Act 2016 (2016 No 93)	19(1)(a), 19(1)(b)
	Ngāti Hauā Claims Settlement Act 2014 (2014 No 75)	19(1)(a), 19(1)(b)
	Ngāti Koroki Kahukura Claims Settlement Act 2014 (2014 No 74)	19(1)(a), 19(1)(b)
	Ngāti Kuri Claims Settlement Act 2015 (2015 No 76)	19(1)(a), 19(1)(b)
	Ngāti Porou Claims Settlement Act 2012 (2012 No 31)	17(1)(a), 17(1)(b)
	Ngāti Rangiteaorere Claims Settlement Act 2014 (2014 No 13)	20(1)(a), 20(1)(b)
	Ngāti Rangiwewehi Claims Settlement Act 2014 (2014 No 14)	20(1)(a), 20(1)(b)
	Ngāti Whātua o Kaipara Claims Settlement Act 2013 (2013 No 37)	18(1)(a), 18(1)(b)

Amendment	Act	Section/s or cross-heading
	Rangitāne-o-Manawatu Claims Settlement Act 2016 (2016 No 100)	19(1)(a), 19(1)(b)
	Raukawa Claims Settlement Act 2014 (2014 No 7)	19(1)(a), 19(1)(b)
	Tapuika Claims Settlement Act 2014 (2014 No 15)	19(1)(a), 19(1)(b)
	Taranaki Iwi Claims Settlement Act 2016 (2016 No 95)	19(1)(a), 19(1)(b)
	Te Atiawa Claims Settlement Act 2016 (2016 No 94)	19(1)(a), 19(1)(b)
	Te Aupouri Claims Settlement Act 2015 (2015 No 77)	19(1)(a), 19(1)(b)
	Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (2017 No 7)	90(1)(a), 90(1)(b)
	Te Kawerau ā Maki Claims Settlement Act 2015 (2015 No 75)	18(1)(a), 18(1)(b)
	Te Rarawa Claims Settlement Act 2015 (2015 No 79)	19(1)(a), 19(1)(b)
	Tuhoe Claims Settlement Act 2014 (2014 No 50)	19(1)(a), 19(1)(b)
Replace “The rule against perpetuities and the provisions of the Perpetuities Act 1964 do <u>not</u> ” with “ <u>No rule of law or provisions of an Act limiting the duration of a trust, including <b>Section 16</b> of the Trusts Act 2017, does</u> ”.	Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 (2014 No 52)	15(1)
	Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014 (2014 No 19)	26(1)
	Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014 (2014 No 20)	29(1)
	Ngāti Manuhiri Claims Settlement Act 2012 (2012 No 90)	18(1)
	Ngāti Pāhauwera Treaty Claims Settlement Act 2012 (2012 No 30)	18(1)
	Ngāti Toa Rangatira Claims Settlement Act 2014 (2014 No 17)	20(1)
	Ngāti Whātua Ōrākei Claims Settlement Act 2012 (2012 No 91)	20(1)
	Waitaha Claims Settlement Act 2013 (2013 No 38)	16(1)
Replace “Neither the rule against perpetuities nor any provisions of the Perpetuities Act 1964” with “ <u>No rule of law or provisions of an Act limiting the duration of a trust, including <b>Section 16</b> of the Trusts Act 2017, does not</u> ”.	Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008 (2008 No 98)	18(1)
	Maraeroa A and B Blocks Claims Settlement Act 2012 (2012 No 52)	18(1)

Amendment	Act	Section/s or cross-heading	
	Ngāti Apa (North Island) Claims Settlement Act 2010 (2010 No 129)	17(1)	
	Ngāti Mākinō Claims Settlement Act 2012 (2012 No 53)	15(1)	
	Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 (2009 No 26)	14(1)	
	Rongowhakaata Claims Settlement Act 2012 (2012 No 54)	19(1)	
	Te Roroa Claims Settlement Act 2008 (2008 No 100)	17(1)	
Replace “The rule against perpetuities or any relevant provisions of the Perpetuities Act 1964 do not” with “ <u>No rule of law or provisions of an Act limiting the duration of a trust, including <b>Section 16</b> of the Trusts Act 2017,</u> does not”.	Ngāi Tahu Claims Settlement Act 1998 (1998 No 97)	466	
	Ngāti Tūrangitukua Claims Settlement Act 1999 (1999 No 118)	14	
	Pouakani Claims Settlement Act 2000 (2000 No 90)	18	
	Te Uri o Hau Claims Settlement Act 2002 (2002 No 36)	21	
Replace “Neither the rule against perpetuities nor any relevant provisions of the Perpetuities Act 1964” with “ <u>No rule of law or provisions of an Act limiting the duration of a trust, including <b>Section 16</b> of the Trusts Act 2017,</u> does not”.	Maori Fisheries Act 2004 (2004 No 78)	31(2), 79(2), 92(2)	
	Mauao Historic Reserve Vesting Act 2008 (2008 No 31)	12	
	Ngāa Rauru Kīitahi Claims Settlement Act 2005 (2005 No 84)	19(1)	
	Ngāti Awa Claims Settlement Act 2005 (2005 No 28)	19	
	Ngāti Mutunga Claims Settlement Act 2006 (2006 No 61)	19(1)	
	Ngāti Ruanui Claims Settlement Act 2003 (2003 No 20)	19(1)	
	Ngāti Tama Claims Settlement Act 2003 (2003 No 126)	16(1)	
	Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005 (2005 No 72)	19	
	Te Arawa Lakes Settlement Act 2006 (2006 No 43)	17(1)	
	Replace “that rule or the provisions of that Act” with “that provision of the Trusts Act 2017”.	Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008 (2008 No 98)	18(1)(b)

Amendment	Act	Section/s or cross-heading
	Hineuru Claims Settlement Act 2016 (2016 No 33)	19(1)(b)
	Maori Fisheries Act 2004 (2004 No 78)	31(2)(b), 79(2)(b), 92(2)(b)
	Maraeroa A and B Blocks Claims Settlement Act 2012 (2012 No 52)	18(1)(b)
	Maungaharuru-Tangitū Hapū Claims Settlement Act 2014 (2014 No 12)	18(1)(b)
	Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 (2014 No 52)	15(1)(b)
	Ngaa Rauru Kaitahi Claims Settlement Act 2005 (2005 No 84)	19(1)(b)
	Ngāi Tahu Claims Settlement Act 1998 (1998 No 97)	466
	Ngai Tāmanuhiri Claims Settlement Act 2012 (2012 No 55)	17(1)(b)
	Ngāi Takoto Claims Settlement Act 2015 (2015 No 78)	19(1)(b)
	Ngāruahine Claims Settlement Act 2016 (2016 No 93)	19(1)(b)
	Ngāti Apa ki te Rā Tō, Ngāti Kuaia, and Rangitāne o Wairau Claims Settlement Act 2014 (2014 No 19)	26(1)(b)
	Ngāti Apa (North Island) Claims Settlement Act 2010 (2010 No 129)	17(1)(b)
	Ngāti Awa Claims Settlement Act 2005 (2005 No 28)	19(a)
	Ngāti Hauā Claims Settlement Act 2014 (2014 No 75)	19(1)(b)
	Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka a Māui Claims Settlement Act 2014 (2014 No 20)	29(1)(b)
	Ngāti Koroki Kahukura Claims Settlement Act 2014 (2014 No 74)	19(1)(b)
	Ngāti Kuri Claims Settlement Act 2015 (2015 No 76)	19(1)(b)
	Ngāti Mākino Claims Settlement Act 2012 (2012 No 53)	15(1)(b)
	Ngāti Manuhiri Claims Settlement Act 2012 (2012 No 90)	18(1)(b)
	Ngāti Mutunga Claims Settlement Act 2006 (2006 No 61)	19(1)(b)
	Ngāti Pāhauwera Treaty Claims Settlement Act 2012 (2012 No 30)	18(1)(b)
	Ngāti Porou Claims Settlement Act 2012 (2012 No 31)	17(1)(b)

<b>Amendment</b>	<b>Act</b>	<b>Section/s or cross-heading</b>
	Ngāti Rangiteaorere Claims Settlement Act 2014 (2014 No 13)	20(1)(b)
	Ngāti Rangiwewehi Claims Settlement Act 2014 (2014 No 14)	20(1)(b)
	Ngāti Ruanui Claims Settlement Act 2003 (2003 No 20)	19(1)(b)
	Ngāti Tama Claims Settlement Act 2003 (2003 No 126)	16(1)(b)
	Ngāti Toa Rangatira Claims Settlement Act 2014 (2014 No 17)	20(1)(b)
	Ngāti Tūrangitukua Claims Settlement Act 1999 (1999 No 118)	14
	Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005 (2005 No 72)	19(b)
	Ngāti Whātua o Kaipara Claims Settlement Act 2013 (2013 No 37)	18(1)(b)
	Ngāti Whātua Ōrākei Claims Settlement Act 2012 (2012 No 91)	20(1)(b)
	Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 (2009 No 26)	14(1)(b)
	Pouakani Claims Settlement Act 2000 (2000 No 90)	18
	Rangitāne o Manawatu Claims Settlement Act 2016 (2016 No 100)	19(1)(b)
	Raukawa Claims Settlement Act 2014 (2014 No 7)	19(1)(b)
	Rongowhakaata Claims Settlement Act 2012 (2012 No 54)	19(1)(b)
	Tapuika Claims Settlement Act 2014 (2014 No 15)	19(1)(b)
	Taranaki Iwi Claims Settlement Act 2016 (2016 No 95)	19(1)(b)
	Te Arawa Lakes Settlement Act 2006 (2006 No 43)	17(1)(b)
	Te Atiawa Claims Settlement Act 2016 (2016 No 94)	19(1)(b)
	Te Aupouri Claims Settlement Act 2015 (2015 No 77)	19(1)(b)
	Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (2017 No 7)	90(1)(b)
	Te Kawerau ā Maki Claims Settlement Act 2015 (2015 No 75)	18(1)(b)
	Te Rarawa Claims Settlement Act 2015 (2015 No 79)	19(1)(b)

Amendment	Act	Section/s or cross-heading
Replace “the application (if any) of the rule against perpetuities or of any provision of the Perpetuities Act 1964 to that trust must be determined under the general law” with “the trust may continue indefinitely under <b>section 16(6)(a)</b> of the Trusts Act <b>2017</b> ”.	Te Roroa Claims Settlement Act 2008 (2008 No 100)	17(1)(b)
	Te Uri o Hau Claims Settlement Act 2002 (2002 No 36)	21(a)
	Fūhoe Claims Settlement Act 2014 (2014 No 50)	19(1)(b)
	Waitaha Claims Settlement Act 2013 (2013 No 38)	16(1)(b)
	<u>Heretaunga Tamatea Claims Settlement Act 2018 (2018 No 14)</u>	19(2)
	Hineuru Claims Settlement Act 2016 (2016 No 33)	19(2)
	<u>Iwi and Hapū of Te Rohe o Te Wairoa Claims Settlement Act 2018 (2018 No 28)</u>	19(2)
	Maungaharuru-Tangitū Hapū Claims Settlement Act 2014 (2014 No 12)	18(2)
	<u>Ngāi Tai ki Tāmaki Claims Settlement Act 2018 (2018 No 18)</u>	19(2)
	<u>Ngāi Takoto Claims Settlement Act 2015 (2015 No 78)</u>	19(2)
	Ngāruahine Claims Settlement Act 2016 (2016 No 93)	19(2)
	Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014 (2014 No 19)	26(2)
	Ngāti Hauā Claims Settlement Act 2014 (2014 No 75)	19(2)
	Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014 (2014 No 20)	29(2)
	Ngāti Koroki Kahukura Claims Settlement Act 2014 (2014 No 74)	19(2)
	Ngāti Kuri Claims Settlement Act 2015 (2015 No 76)	19(2)
	Ngāti Manuhiri Claims Settlement Act 2012 (2012 No 90)	18(2)
	<u>Ngāti Pūkenga Claims Settlement Act 2017 (2017 No 39)</u>	19(2)
	Ngāti Rangiteaorere Claims Settlement Act 2014 (2014 No 13)	20(2)
	Ngāti Rangiwewehi Claims Settlement Act 2014 (2014 No 14)	20(2)
<u>Ngāti Tamaoho Claims Settlement Act 2018 (2018 No 19)</u>	19(2)	
Ngāti Toa Rangatira Claims Settlement Act 2014 (2014 No 17)	20(2)	

Amendment	Act	Section/s or cross-heading
	<u>Ngatikahu ki Whangaroa Claims Settlement Act 2017 (2017 No 41)</u>	<u>19(2)</u>
	Rangitāne o Manawatu Claims Settlement Act 2016 (2016 No 100)	19(2)
	<u>Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Act 2017 (2017 No 38)</u>	<u>19(2)</u>
	Raukawa Claims Settlement Act 2014 (2014 No 7)	19(2)
	Tapuika Claims Settlement Act 2014 (2014 No 15)	19(2)
	Taranaki Iwi Claims Settlement Act 2016 (2016 No 95)	19(2)
	Te Atiawa Claims Settlement Act 2016 (2016 No 94)	19(2)
	Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (2017 No 7)	90(2)
	Te Kawerau ā Maki Claims Settlement Act 2015 (2015 No 75)	18(2)
	Te Rarawa Claims Settlement Act 2015 (2015 No 79)	19(2)
	Tūhoe Claims Settlement Act 2014 (2014 No 50)	19(2)
Replace “the application (if any) of the rule against perpetuities or any provision of the Perpetuities Act 1964 to that trust must be determined under the general law” with “the trust may continue indefinitely under <b>section 16(6)(a)</b> of the Trusts Act 2017”.	Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008 (2008 No 98)	18(2)
	Maraeroa A and B Blocks Claims Settlement Act 2012 (2012 No 52)	18(2)
	Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 (2014 No 52)	15(2)
	Ngai Tāmanuhiri Claims Settlement Act 2012 (2012 No 55)	17(2)
	Ngāti Apa (North Island) Claims Settlement Act 2010 (2010 No 129)	17(2)
	Ngāti Mākino Claims Settlement Act 2012 (2012 No 53)	15(2)
	Ngati Porou Claims Settlement Act 2012 (2012 No 31)	17(2)
	Ngāti Whātua o Kaipara Claims Settlement Act 2013 (2013 No 37)	18(2)
	Ngāti Whātua Ōrākei Claims Settlement Act 2012 (2012 No 91)	20(2)
	Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika)	14(2)

Amendment	Act	Section/s or cross-heading
	Claims Settlement Act 2009 (2009 No 26)	
	Rongowhakaata Claims Settlement Act 2012 (2012 No 54)	19(2)
	Te Aupouri Claims Settlement Act 2015 (2015 No 77)	19(2)
	Waitaha Claims Settlement Act 2013 (2013 No 38)	16(2)
Replace “the application (if any) of the rule against perpetuities or any relevant provisions of the Perpetuities Act 1964 to that trust must be determined under the general law” with “the trust may continue indefinitely under <b>section 16(6)(a)</b> of the Trusts Act 2017”.	Ngāti Mutunga Claims Settlement Act 2006 (2006 No 61)	19(2)
	Te Arawa Lakes Settlement Act 2006 (2006 No 43)	17(2)
Replace the cross-heading with “ <i>Maximum duration rule</i> <del>No limit on duration of trusts</del> ”.	Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008 (2008 No 98)	<del>The</del> Cross-heading above <u>section 18</u>
	<del>Ngāa Rauru Kīitahi Claims Settlement Act 2005 (2005 No 84)</del>	<del>The</del> Cross-heading above <u>s 19</u>
	Ngāti Apa (North Island) Claims Settlement Act 2010 (2010 No 129)	<del>The</del> Cross-heading above <u>section 17</u>
	<u>Ngāti Awa Claims Settlement Act 2005 (2005 No 28)</u>	<del>Cross</del> -heading above <u>section 19</u>
	Ngāti Mākino Claims Settlement Act 2012 (2012 No 53)	<del>The</del> Cross-heading above <u>section 15</u>
	Ngāti Mutunga Claims Settlement Act 2006 (2006 No 61)	<del>The</del> Cross-heading above <u>section 19</u>
	Ngāti Pāhauwera Treaty Claims Settlement Act 2012 (2012 No 30)	<del>The</del> Cross-heading above <u>section 18</u>
	Ngāti Ruanui Claims Settlement Act 2003 (2003 No 20)	<del>The</del> Cross-heading above <u>section 19</u>
	Ngāti Tama Claims Settlement Act 2003 (2003 No 126)	<del>The</del> Cross-heading above <u>section 16</u>
	Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005 (2005 No 72)	<del>The</del> Cross-heading above <u>section 19</u>
	Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 (2009 No 26)	<del>The</del> Cross-heading above <u>section 14</u>
	Rongowhakaata Claims Settlement Act 2012 (2012 No 54)	<del>The</del> Cross-heading above <u>section 19</u>
	Te Arawa Lakes Settlement Act 2006 (2006 No 43)	<del>The</del> Cross-heading above <u>section 17</u>
	Waitaha Claims Settlement Act 2013 (2013 No 38)	<del>The</del> Cross-heading above <u>section 16</u>

## Part 2

### Other amendments to Acts

#### Māori Purposes (Wi Pere Trust) Act 1991 (1991 No 38)

Replace section 12 with:

<b>12</b>	<b>Trust not subject to <u>limit on maximum duration</u> rule</b>	5
	<u>No rule of law or provisions of an Act, including <b>Section 16</b> of the Trusts Act 2017 does not</u> , prescribe or restrict the period during which the trust may exist.	

#### Medical Assurance Society Members' Trust (Exemption from Perpetuities) Act 1997 (1997 No 3) (P)

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Repeal the Long Title.

Replace sections 1 and 2 with:

<b>1</b>	<b>Title</b>	
	This Act is the Medical Assurance Society Members' Trust (Exemption from Limit on Maximum Duration of Trusts) Act 1997.	15
<b>2</b>	<b>Exemption from limit on maximum duration of trust</b>	
	<b>Section 16</b> of the Trusts Act 2017 does not apply to the trust known as the Medical Assurance Society Members' Trust, which was established by a deed of trust dated 1 November 1995.	

#### Nga Wai o Maniapoto (Waipa River) Act 2012 (2012 No 29)

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Replace section 34(2) with:

<del>(2)</del>	<del><b>Section 16</b> of the Trusts Act 2017 does not apply to a document entered into to give effect to the deed if the application of that provision would make the document invalid or ineffective or a right conferred by the document invalid or ineffective.</del>	<del>25</del>
<b>34</b>	<b>Limit on duration of trusts does not apply</b>	
<del>(1)</del>	<del>No rule of law or provisions of an Act, including <b>section 11</b> of the Trusts Act 2017, prescribe or restrict the period during which—</del>	
	<del>(a) the Trust and the Waikato River Clean-up Trust may exist in law; or</del>	
	<del>(b) the trustees of the Trust and the Waikato River Clean-up Trust may hold or deal with property or income from property in their capacity as trustees.</del>	30
<del>(2)</del>	<del>No rule of law or provisions of an Act, including <b>section 16</b> of the Trusts Act 2017, apply to a document entered into to give effect to the deed if the applica-</del>	

**Nga Wai o Maniapoto (Waipa River) Act 2012 (2012 No 29)—continued**

tion of that provision would make the document invalid or ineffective or a right conferred by the document invalid or ineffective.

**Ngaa Rauru Kiitahi Claims Settlement Act 2005 (2005 No 84)**

Replace the cross-heading above section 19 and section 19 with:

*Limit on duration of trusts does not apply*

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**19 Limit on duration of trusts does not apply**

(1) No rule of law or provisions of an Act, including **section 16** of the Trusts Act **2017**,—

(a) prescribes or restricts the period during which the governance entity may—

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(i) exist in law; or

(ii) hold or deal with property (including income derived from property); or

(b) applies to a document entered into to give effect to the deed of settlement (including the deeds that grant a right of first refusal referred to in clauses 6.3.3(m) and 6.3.5 of the deed of settlement) if the application of that rule or the provisions of that Act would otherwise make the document, or a right conferred by the document, invalid or ineffective.

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(2) However, if the governance entity is or becomes a charitable trust, the trust may continue indefinitely under **section 16(6)(a)** of the Trusts Act **2017**.

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**Ngāti Manawa Claims Settlement Act 2012 (2012 No 27)**

Replace section 17(2) and (3) with:

(2) ~~**Section 16** of the Trusts Act **2017** does not apply to a document entered into to give effect to the deed of settlement if the application of that provision would make the document invalid or ineffective or a right conferred by the document invalid or ineffective.~~

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(3) ~~However, if the trust established by the Te Rūnanga o Ngāti Manawa trust deed is or becomes a charitable trust, the trust may continue indefinitely under **section 16(6)(a)** of the Trusts Act **2017**.~~

**17 Limit on duration of trusts does not apply**

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(1) No rule of law or provisions of an Act, including **section 11** of the Trusts Act **2017**, prescribe or restrict the period during which—

(a) the trust established by the Te Rūnanga o Ngāti Manawa trust deed may exist in law; or

(b) the trustees of Te Rūnanga o Ngāti Manawa, in their capacity as trustees, may hold or deal with property or income from property.

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**Ngāti Manawa Claims Settlement Act 2012 (2012 No 27)**—*continued*

- (2) No rule of law or provisions of an Act, including **section 11** of the Trusts Act **2017**, apply to a document entered into to give effect to the deed of settlement if the application of that provision would make the document invalid or ineffective or a right conferred by the document invalid or ineffective.
- (3) However, if the trust established by the Te Rūnanga o Ngāti Manawa trust deed is or becomes a charitable trust, the trust may continue indefinitely under **section 16(6)(a)** of the Trusts Act **2017**.

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**Ngāti Pāhauwera Treaty Claims Settlement Act 2012 (2012 No 30)**

In section 18(2), replace “the application (if any) of the rule against perpetuities or any provision of the Perpetuities Act 1964 to either trust must be determined under the general law” with “that trust may continue indefinitely under **section 16(6)(a)** of the Trusts Act **2017**”.

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**Ngāti Ruanui Claims Settlement Act 2003 (2003 No 20)**

Replace section 19(2) with:

- (2) However, if the governance entity is or becomes a charitable trust, the trust may continue indefinitely under **section 16(6)(a)** of the Trusts Act **2017**.

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**Ngāti Tama Claims Settlement Act 2003 (2003 No 126)**

Replace section 16(2) with:

- (2) However, if the governance entity is or becomes a charitable trust, the trust may continue indefinitely under **section 16(6)(a)** of the Trusts Act **2017**.

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**Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (2010 No 119)**

Replace section 61(2) with:

- (2) ~~**Section 16** of the Trusts Act **2017** does not apply to a document entered into to give effect to the deed if the application of that provision would make the document invalid or ineffective or a right conferred by the document invalid or ineffective.~~

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**61 Limit on duration of trusts does not apply**

- (1) No rule of law or provisions of an Act, including **section 11** of the Trusts Act **2017**, prescribe or restrict the period during which—
- (a) each Trust and the Waikato River Clean-up Trust may exist in law; or
- (b) the trustees of each Trust and the Waikato River Clean-up Trust may hold or deal with property or income from property in their capacity as trustees.
- (2) No rule of law or provisions of an Act, including **section 11** of the Trusts Act **2017**, apply to a document entered into to give effect to the deed if the applica-

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**Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (2010 No 119)—*continued***

tion of that provision would make the document invalid or ineffective or a right conferred by the document invalid or ineffective.

**Ngāti Whare Claims Settlement Act 2012 (2012 No 28)**

Replace section 17(2) and (3) with:

(2) ~~**Section 16** of the Trusts Act **2017** does not apply to a document entered into to give effect to the deed of settlement if the application of that provision would make the document invalid or ineffective or a right conferred by the document invalid or ineffective.~~ 5

(3) ~~However, if the trust established by the Te Rūnanga o Ngāti Whare trust deed is or becomes a charitable trust, the trust may continue indefinitely under **section 16(6)(a)** of the Trusts Act **2017**.~~ 10

**17 Limit on duration of trusts does not apply**

(1) No rule of law or provisions of an Act, including **section 11** of the Trusts Act **2017**, prescribe or restrict the period during which—

(a) the trust established by the Te Rūnanga o Ngāti Whare trust deed may exist in law; or 15

(b) the trustees of Te Rūnanga o Ngāti Whare, in their capacity as trustees, may hold or deal with property or income from property.

(2) No rule of law or provisions of an Act, including **section 11** of the Trusts Act **2017**, apply to a document entered into to give effect to the deed of settlement if the application of that provision would make the document invalid or ineffective or a right conferred by the document invalid or ineffective. 20

(3) However, if the trust established by the Te Rūnanga o Ngāti Whare trust deed is or becomes a charitable trust, the trust may continue indefinitely under **section 16(6)(a)** of the Trusts Act **2017**. 25

**Property Law Act 2007 (2007 No 91)**

~~Repeal~~ Replace section 59(2) with:

(2) Subsection (1) applies subject to **subsection (3)**.

(3) The maximum amount of time that may elapse between the date on which an estate or interest in property is created and the date on which the estate or interest takes effect is 125 years. 30

After section 59, insert:

**Property Law Act 2007 (2007 No 91)—continued****59A Transitional provision for maximum duration of future estates and interests**

- (1) This section applies to an estate or interest in property that has been created, but that has not yet taken effect, before the date on which the Trusts Act 2017 enters into force. 5
- (2) The maximum amount of time that may elapse between the date on which the estate or interest was created and the date on which the estate or interest takes effect must be determined as if the rule against perpetuities and the Perpetuities Act 1964 had not been repealed by the Trusts Act 2017.

In Schedule 6, clause 9(7), replace “The rule against perpetuities as modified by the Perpetuities Act 1964” with “**Section 16** of the Trusts Act 2017”. 10

**Te Roroa Claims Settlement Act 2008 (2008 No 100)**

In section 17(2), replace “the application (if any) of the rule against perpetuities or any provision of the Perpetuities Act 1964 to that trust is to be determined under the general law” with “the trust may continue indefinitely under **section 16(6)(a)** of the Trusts Act 2017.” 15

**Te Ture Whenua Maori Act 1993 (1993 No 4)**

In the heading to section 235, replace “rule against perpetuities” with “limit on duration”.

**Waikato Raupatu Claims Settlement Act 1995 (1995 No 58)** 20

Replace section 23 with:

**23 Land holding trust not subject to maximum duration rule**

- (1) No rule of law or provisions of an Act, including **Section 16** of the Trusts Act 2017 does not,— 25
- (a) prescribe or restrict the period during which the land holding trust may exist; or
- (b) apply in relation to the rights conferred by section 11 of this Act.
- (2) The land holding trust is not subject to any enactment or rule of law restricting the period for which a trust may run.

**Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (2010 No 24)** 30

Replace section 92(2) with:

- (2) **Section 16** of the Trusts Act 2017 does not apply to a document entered into to give effect to the 2008 deed or the 2009 deed if the application of that provision would make the document invalid or ineffective or a right conferred by the document invalid or ineffective. 35

**Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (2010 No 24)**—*continued*

**92 Limit on duration of trusts does not apply**

- (1) No rule of law or provisions of an Act, including **section 11** of the Trusts Act **2017**, prescribe or restrict the period during which—
- (a) the Trust and the Waikato River Clean-up Trust may exist in law; or
  - (b) the trustees of the Trust and the Waikato River Clean-up Trust may hold or deal with property or income from property in their capacity as trustees. 5
- (2) No rule of law or provisions of an Act, including **section 11** of the Trusts Act **2017**, apply to a document entered into to give effect to the 2008 deed or the 2009 deed if the application of that provision would make the document invalid or ineffective or a right conferred by the document invalid or ineffective. 10

**Whakarewarewa and Roto-a-Tamaheke Vesting Act 2009 (2009 No 50)**

Replace the heading to section 22 with:

**22 Limit on duration of trusts does not apply to joint trust**

In sections 22(1) and 33(1), replace “Neither the rule against perpetuities nor any provisions of the Perpetuities Act 1964 ~~prescribes or restricts~~” with “No rule of law or provisions of an Act, including **Section 16** of the Trusts Act **2017**, ~~does not prescribe or restrict~~”. 15

Replace section 22(2)(b) and 33(2)(b) with:

- (b) the trust may continue indefinitely under **section 16(6)(a)** of the Trusts Act **2017**. 20

Replace section 22(3) with:

- (3) No rule of law or provisions of an Act, including **Section 16** of the Trusts Act **2017**, ~~does not~~ apply to a document entered into to give effect to the vesting deed if and to the extent that the application of that provision would make the document invalid or ineffective or a right conferred by the document invalid or ineffective. 25

Replace the heading to section 33 with “**Limit on duration of trusts does not apply to first transferees**”.

**Legislative history**

1 August 2017  
5 December 2017

Introduction (Bill 290–1)  
First reading and referral to Justice Committee