



Trustee duties

Mandatory Duties

1. Know terms of trust
2. Act in accordance with terms of trust
3. Act honestly and in good faith
4. Act for the benefit of beneficiaries or to further permitted purpose of trust
5. Exercise powers for proper purpose

Default Duties ¹

General default duties:

- General duty of care
- Invest prudently

Specific default duties:

- Not to exercise power for own benefit
- Consider the exercise of power
- Not to bind or commit trustees to future exercise of discretion
- Avoid conflict of interest
- Impartiality
- Not to profit
- Act for no reward
- Act unanimously

¹ Apply unless modified/excluded by the terms of the trust

Obligations to keep and give trust information

Core Trust Documents

- a. Trust deed / terms of trust ²
- b. Variations made to trust deed or trusts ²
- c. Records of trust property
- d. Records of trustee decisions
- e. Written contracts entered into by trustees
- f. Accounting records /financial statements
- g. Appointment, removal & discharge trustees
- h. Letter or memorandum of settlor wishes
- i. Other documents necessary for trust admin
- j. Documents handed over by former trustees

² Must be held by all trustees

Giving information to beneficiaries

Presumption that a trustee must make available to every beneficiary or representative of a beneficiary the **basic trust information**:

- The fact that a person is a beneficiary of the trust
- The name/contact details of the trustees
- Any changes to the trustees
- The right of the beneficiary to request a copy of the terms of the trust or trust information

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 ³

³ Subject to considering factors in Section 53

Section 53: Procedure for deciding whether presumptions apply

- a. Nature of the beneficiaries interests and likelihood of receiving trust property in future
- b. Confidentiality of information
- c. Expectations and intentions of the settlor when the trust was created
- d. Age and circumstances of the beneficiary
- e. Age and circumstances of the other beneficiaries
- f. Effect on beneficiary of giving information
- g. Effect on the trustees, other beneficiaries and third parties of giving the information
- h. For family trusts, the effect on relationships within family, between trustees and beneficiaries
- i. In trusts with a large number of beneficiaries, practicality of giving information to all beneficiaries
- j. Practicality of imposing restrictions or safeguards on the use of information
- k. Practicality of giving information in redacted form
- l. The nature and context of the beneficiary request
- m. Any other factor that the trustee reasonably considers is relevant to determining whether the presumption applies