

Update Law of Trusts

Service 62 — March 2022

Legislative amendments

Financial Reporting (Inflation Adjustments) Regulations 2021 (LI 2021/307)

These regulations amended the following Act on 1 January 2022:

- s 42D of the Charities Act 2005

Secondary Legislation Act 2021 (2021 No 7)

This Act amended the following Acts on 28 October 2021:

- s 62 of the Charitable Trusts Act 1957
- ss 2, 43 and 73 of the Charities Act 2005
- s 2D of the Property (Relationships) Act 1976
- ss 160 and 184 of the Trusts Act 2019

Counter Terrorism Act 2021 (2021 No 37)

This Act amended the following Act on 5 October 2021:

- s 13 of the Charities Act 2005

Updated commentary

Trusts Act 2019, s 21 — guiding principle in performing duties — settlor's memorandum of wishes

The relevance of the settlor's memorandum of wishes was considered in:

- *Easton v New Zealand Guardian Trust Co Ltd* [2021] NZHC 2084
- *Public Trust v Kain* [2021] NZHC 1000
- *Kain v Public Trust* [2021] NZCA 685

See [TRU21.04].

Trusts Act 2019, s 53 — procedure for deciding whether presumption applies — privilege over documents relating to beneficiary

In *Easton v New Zealand Guardian Trust Company Ltd* [2021] NZHC 519; [2021] 3 NZLR 182 Cooke J held that although not directly applicable to issues of privilege, the articulation of the underlying principles in the Trusts Act 2019 assists in identifying the relevant principles to be applied in understanding the scope of a trustee's ability to claim privilege over the documents in relation to a beneficiary. See [TRU53.01].

Trusts Act 2019, s 124 — power of court to approve variation of trust

In *Gavin v Gavin* [2021] NZHC 550 Mander J summarised the principles to be applied in considering an application whether to consent to an arrangement on behalf of minors, unborn and unascertained beneficiaries who are not able to consent themselves. These principles were applied in *Re Macalister* [2021] NZHC 3572. See [TRU124.01].