

16 September 2025

**BY EMAIL**

To our valued trust clients,

**WYNDHAM TRUSTEES LIMITED – REMOVING PROFESSIONAL TRUSTEE COMPANY**

Wyndham Trustees Limited ("WTL") has been a long standing professional trustee company for many of our trust clients. However, due to changes in legislation, we are taking unavoidable and necessary steps to disestablish WTL and remove WTL from the Companies Office.

We have previously sent correspondence to our trust clients regarding the reasons for this necessary change, being:

1. **Cross-Over Risk** – WTL acts as a professional trustee across many different trusts. However, should any legal action be taken against WTL in its capacity as a trustee for one trust, it could have negative repercussions on the other trusts where WTL also acts as a trustee.
2. **Anti-Money Laundering ("AML") Legislation** – AML legislation requires every director of a trustee company (and every director of a shareholder of the trustee company) to provide full disclosure whenever financial transactions are being entered into (e.g., refinancing, investing funds, etc.) – effectively meaning all 3 directors of WTL must provide 2 IDs, certified proofs of address, and date of birth every time a financial transaction occurs. This is highly time consuming and is ultimately a costly exercise to you. This is not sustainable and can cause delay in matters that may be urgent.
3. **Changes in Trust Law & Ongoing Trust Management** – trust law has evolved significantly since the Trusts Act 2019 ("Act") came into effect on 30 January 2021. We **enclose** our information sheet which goes into more detail regarding these changes. It is therefore critical that every family trust is properly managed on an annual basis to ensure that the trust's assets, investments, and future strategy are properly considered each year.

We strongly recommend that you have your trust(s) join the Trust Management Programme immediately to ensure that the annual formalities are complied with and to minimise (as best as possible) any risk of the trust being contested in future. Such trusts will be subject to an annual fee for our professional trustee services.

Accordingly, it is important that you give consideration to the future of your family trust. It is possible that the your trust is now redundant due to changes in your personal and family circumstances. We will be happy to discuss this possibility with you and take you through a process to consider a wind up of your trust and the possible distribution of the trust's remaining assets to you and or other members of the class of beneficiaries provided for in the trust.

Alternatively, if there are still good reasons for the trust to endure, then it is important that you now look to resigning WTL and replacing it with a new bespoke trustee company which would be entirely unique to your trust(s). This can be documented by a simple deed of retirement and appointment of trustee, but it will also mean that any property or shares owned by the trust will need to have the register updated to reflect the new ownership. Additionally, if you haven't attended to this already, this is also a good opportunity to vary the trust deed of your trust(s) to be compliant with the changes and trustee obligations brought in by the Act.

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The costs involved are as follows:

<b>Attendance:</b>	<b>Cost:</b>
Establishing new trustee company unique for your trust(s)	\$251.55 (incl. GST & Companies Office charge)
Preparation of trust deeds to retire WTL & appoint new trustee company	\$350.00+GST+disbursements
Updating ownership of properties owned by your trust(s)	\$450+GST+disbursements+bank changes (if any) <b>per property</b>
Updating the ownership of company shares owned by your trust(s)	\$300+GST+disbursements <b>per company</b>
Varying trust deed to be compliant with Trusts Act 2019	\$950.00+GST+disbursements
Trust Management Programme (if you are not signed up already)	\$582.35 <b>per annum for trusts with no taxable income</b> <b>OR</b> \$782.35 <b>per annum for trusts with taxable income</b>

Any other attendances (e.g., change of beneficiaries, gifting, etc.) will be charged separately.

We appreciate that these costs may be considered unexpected and therefore frustrating, however, we genuinely believe that attending to these matters are in your best interests and the interests of the beneficiaries of your trust(s). It has been a long process removing WTL as a trustee from trusts, as this issue first arose back in 2015. We would therefore appreciate your urgent attention to these necessary attendances.

Going forward, it will become increasingly challenging for WTL to sign any trust documentation (including new investment / financial documentation) where WTL is the professional trustee company since the intention is for it to be wound up.

We are happy to answer any queries you may have regarding the above. Our Trust Administrator, Lucy Hutsby, will be assisting me with all the attendances regarding the replacement of WTL. Please contact her via her email noted below to begin this process.

We look forward to hearing from you soon.

Yours faithfully

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## THE NEW TRUSTS ACT AND HOW IT WILL AFFECT YOU AS A TRUSTEE

As you may be aware, the Trusts Act 2019 ("the Act") came into effect on 30 January 2021, replacing the Trustee Act 1956. The Act now clarifies the duties of trustees and the requirements of trustees to provide greater transparency to beneficiaries regarding trust information.

### Duties of Trustees

While the Act does not create any new duties for trustees, it does clarify the pre-existing (common law) duties and categorises them into "mandatory duties" (outlined in sections 23-27, including the duty to act in accordance with the terms of the Trust and to act in good faith and "default duties" (sections 29-38, including duties such as the duty not to profit or the duty to act unanimously).

### Basic Trust Information

It is now presumed under the Act that trustees must make available to every beneficiary or representative or a beneficiary "basic trust information", unless there are "compelling reasons" to withhold it. Basic trust information, which must be provided to beneficiaries, is outlined in section 51 of the Act:

1. The fact that a person is a beneficiary – even if they are only a discretionary beneficiary;
2. Name and contact details of the trustee/s;
3. The occurrence of, and details of, each appointment, removal, and retirement of a trustee as soon as it occurs; and
4. The beneficiary's right to request a copy of the terms of the Trust or Trust information.

In general, basic Trust information is information that is reasonably required by a beneficiary to enable the Trust to be enforced. This is a wide definition – it will be important for trustees to seek legal advice as to exactly what information should be disclosed, and when. Beneficiaries can also seek legal advice on their rights as a beneficiary of a trust.

### "Compelling Reasons" Not To Disclose Basic Trust Information To Beneficiaries

In some circumstances, the presumption to disclose may not apply. As set out in section 52 of the Act, trustees will have to decide whether the presumption applies to each beneficiary. In making this decision, they **must** consider a range of factors (full list of factors outlined in section 53 of the Act), including:

1. Whether the information is confidential;
2. The intentions of the settlor as to whether they wanted such information to be disclosed to beneficiaries;
3. The age and circumstances of the beneficiary (and the Trust's other beneficiaries);
4. The effect that giving the information will have on the beneficiary, the trustees themselves, related third parties, inter-family relationships, and the relationship between the trustees and the family (if it is a family trust);
5. If there are a large number of beneficiaries, the practicality of distributing the information to them all; and
6. Any other factor the trustees consider relevant.

As shown above, the considerations a trustee must take into account when making the decision whether or not to disclose basic trust information to beneficiaries are both numerous and complex. With the new Act now in force, it is increasingly important for trustees to seek legal advice as to their duties and responsibilities towards beneficiaries. The ultimate decision around disclosure or non-

disclosure needs to be made in a manner that is compliant with the new Act – but also be practical and minimise any relationship harm to the family involved.

### **Indemnity Clauses for Trustees**

The Act no longer allows for broad indemnity clauses that aim to shield trustees from claims of gross negligence, dishonesty, or wilful misconduct. Indemnity clauses for ordinary negligence are still permitted – however, they will need to be carefully drafted so that they are not later struck down by the courts.

### **Key Considerations For Your Trust**

Further to the obligations above, consider these points:

1. **What are the current circumstances of the trust?** As a first step, we advise a review of the trust's deeds and documents to evaluate the trust's current circumstances (i.e., assets, debts, income, etc.). We are able to undertake a trust review of your trust and provide you with our legal advice on next steps. This may include varying the trust deed, updating beneficiaries, resettling the trust, or winding up the trust.
2. **What is the Trust's purpose?** Trusts are often set up for asset protection, inheritance planning, or supporting children / family members (e.g., education, medical costs, etc.). A Settlor (or Settlers) of a trust can prepare a Memorandum of Wishes which can guide trustees on the Settlor's intentions for the use of the Trust's assets. If one doesn't exist, we strongly advise Settlers to create one for clarity for the trustees.
3. **Can the Trust afford the costs associated with annual administration?** Depending on Annual trust administration can incur ongoing costs from legal, accounting, and other professional services. Ensure the Trust has sufficient funds to cover these annual costs.
4. **Has there been any change in circumstances since establishing the Trust?** Life changes, such as new family members, financial shifts, and estranged relationships may affect the Trust's relevance and structure. Consider updating beneficiaries and revising the Trust's Memorandum of Wishes.

### **How We Can Help You – Trust Management Programme ("TMP")**

Annual trust administration is a default duty of Trustees. In response to the Act, we have created our TMP. We strongly suggest you instruct us to add you to our TMP, where each and every year we would arrange the following:

1. Adherence to AML rules and compliance for the Trust as it related to lawyers;
2. Hosting the Annual Trustee Meeting of the trustees to discuss the Trust's position and formalise any resolutions required (or alternatively to prepare and arrange execution of an Annual Resolution of trustees);
3. Correspondence with the Trust's accountant to confirm the details of any gifting completed, signing of annual financial statements, and providing legal statements for each financial year (so that the Trust's accounts properly reflect the legal transactions completed in the prior financial year);
4. Provide copies of any Trust documentation to any parties as required (i.e., banks, mortgage brokers, agents, etc.); and
5. The ongoing services of a unique trustee company if required.

If you would like to discuss the contents of this document further, please feel free to contact one of our trust specialists.