

PRESENTER



Jeff Kenny, Wynn Williams, Christchurch

Jeff is a member of the Wills and Trusts Committee and a member of the Trusts Law Review Working Group of the NZLS Property Law Section and is a member of STEP. He is a contributing author of *New Zealand Conveyancing Law and Practice* and a contributing author of *Equity and Trusts in New Zealand*.

The statements and conclusions contained in this paper are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

CONTENTS

TRUSTEE DUTIES AND POWERS UNDER THE TRUSTS BILL	1
BACKGROUND TO THE TRUSTS BILL	1
<i>New Zealand Law Commission's approach to trustee duties, etc</i>	1
<i>Will this work?</i>	6
<i>Mandatory trustee duties</i>	7
<i>Duty to know the terms of the trust</i>	8
<i>Duty to act in accordance with terms of trust</i>	8
<i>Duty to act honestly and in good faith</i>	10
<i>Duty to act for benefit of beneficiaries or to further permitted purpose of trust</i>	10
<i>Duty to exercise powers for proper purpose</i>	13
DEFAULT TRUSTEE DUTIES.....	14
GENERAL DUTY OF CARE	15
DUTY TO INVEST PRUDENTLY	17
SPECIFIC DEFAULT DUTIES	17
EXEMPTION AND INDEMNITY CLAUSES	18
<i>Relationship between sections 33 to 35 and section 14 and 15(2)</i>	20
<i>Scope of sections 33 and 34</i>	21
<i>Dishonesty</i>	21
<i>Wilful misconduct</i>	22
<i>Gross negligence</i>	23
<i>Effect of sections 33 or 34 being infringed</i>	23
<i>Paid advisers and disclosure</i>	24
<i>Effect of reforms on creditors</i>	25
TRUSTEE POWERS.....	26
<i>General powers of management</i>	27
<i>Protection of purchasers</i>	28
<i>Specific powers of trustees</i>	29
<i>Powers of investment</i>	29
<i>Powers of maintenance and advancement</i>	29
<i>Appointment of agents, managers, custodians, and attorneys</i>	31
<i>General duty of care</i>	34
<i>Delegation of trustee powers and functions</i>	34
<i>Review of trustee decisions</i>	36