



## Kia ora koutou

### WELCOME TO THE NEW LOOK EDITION OF PG NEWS, AND WITH IT COMES A NEW FACE AT THE HELM.

I'm pleased to announce my recent appointment to the role of CEO for Perpetual Guardian. Having spent the majority of my career in financial services, and over 12 years within the Perpetual Guardian Group, I am excited to take the reigns as its leader. And I will do so at pace given how much is going on in the industry right now.

The new Trusts Act 2019 has now landed, so we've boosted up our content this edition to highlight how some of the changes might affect you. Although the changes won't come into effect until January 2021, we encourage you to be prepared for what's to come, and we're always here to help.

As trustee of the Estate of Sir Ernest Hyam Davis, (former mayor of Auckland and founder of New Zealand Breweries), Perpetual Guardian commissioned the writing of a biography to capture his life and legacy. Written by renowned journalist and author Susan Buckland, the book was launched at an event attended by family, beneficiaries and trustees, where his life was warmly remembered and celebrated.

Volunteering is a big part of the Perpetual Guardian culture with the winter months being no exception. The team have been out volunteering for a range of charitable organisations spending tireless hours baking for at-risk women, assisting young children with disabilities, riding horses and more. It is wonderful to see what an impact everyone is making putting their volunteer days to good use.

Another highlight has been the opening of our new Queenstown branch. It has been a long time coming but we are pleased to announce that we now have a Perpetual Guardian office there and we are open for business.

There really is something for everyone in this new-look edition of PG News. I hope you enjoy it!

Nga mihi, **Mark Jephson**  
CEO Perpetual Guardian

## TRUSTS ACT 2019 – NOW IS THE TIME TO PREPARE!

In November 2010 the first of six Issues Papers were published looking to modernise more than 60 years of trust law and Court cases. This resulted in a Trusts Bill being introduced in Parliament in August 2017. Following Parliamentary process, the Trusts Bill became law on 30 July 2019, almost 9 years after the process started – the Trusts Act 2019 is now alive..... well almost.

New Zealand has 18 months to get ready for the date the new Act comes into force. Ready or not the new provisions will apply from 30 January 2021. It is really important that settlors and trustees act now to examine their Trusts to look at their options and what should be done.

You will hear more from us on this later but for now, here are the principal changes:

- + clarification of the key features of trustees duties;
- + clear rules about when trustees are required to provide information to beneficiaries so that beneficiaries can enforce their rights, including providing beneficiaries with information without needing to ask for it;
- + practical and flexible trustee powers that allow trustees to manage and invest trust property in the most appropriate way;
- + options for removing and appointing trustees without having to go to court in straightforward cases;
- + modern dispute resolution procedures;
- + permitting amendments to certain financial and commercial trusts to enable specified provisions of the Bill to not apply to those Trusts.

We will continue to share news updates with our clients as we look at the challenges and opportunities the new Act presents. However, we cannot stress enough that the 18 month period before the provisions of the new law become active will pass by extremely quickly. Often with Trusts major steps like winding up, variations or change of trustees can take time to both consider and then subsequently implement. Clients with Trusts need to use this time wisely and act sooner rather than later. Watch this space for further updates on the Trusts Act 2019 and what this can mean for you.

*In the meantime if you wish to start the ball rolling please contact us.*

### IN THIS ISSUE

[WWW.PERPETUALGUARDIAN.CO.NZ](http://WWW.PERPETUALGUARDIAN.CO.NZ)

02

**TRUSTS**  
Things you  
should know

04

**NEWS**  
Rallys &  
Investing

07

**What's on**  
In our  
community

# Let's talk Trust Issues THINGS YOU SHOULD KNOW ABOUT TRUSTS



THE NEW LANDSCAPE FOR TRUSTS SHOULD PROMPT PEOPLE TO REVIEW THEIR CURRENT TRUST STRUCTURES. NOW IS THE TIME THAT YOU NEED TO LOOK AT WHY YOU SET YOUR TRUST UP AND WHETHER OR NOT THAT REASON IS STILL RELEVANT. DO YOU STILL NEED A TRUST? IF SO, IS IT STRUCTURED CORRECTLY TAKING INTO ACCOUNT THE NEW TRUST LAW ENVIRONMENT? DO THE PROVISIONS IN YOUR CURRENT TRUST PROVIDE ACCEPTABLE LEVELS OF PROTECTION TAKING INTO ACCOUNT THE REASON FOR HAVING A TRUST IN THE FIRST PLACE?

01.

Do you understand the changes to Trustee obligations and the level of disclosure that the new Act imposes on trustees?

02.

Are you sure all assets owned by the Trust are held in the names of current trustees?

03.

Does the Trust have its own bank account and is it being operated correctly?

04.

Do you understand the level of disclosure that will be required to be provided to beneficiaries (both as of right and by asking for further disclosure)

07

CRUCIAL QUESTIONS  
FOR TRUSTEES  
AND SETTLORS

05.

Are you sure that all trustee decisions have been recorded correctly and reflect the documents signed?

06.

Do all the trustees maintain an up to date minute book?

07.

Is your Memorandum of Wishes up to date and reflective of how you wish the Trust to be run (should you no longer be able to voice your wishes)

## We can assist you by

- + discussing the new provisions of the Trusts Act 2019 which will affect you;
- + reviewing your Trust to ensure it is still fit for purpose;
- + amending your Trust to ensure it can be run in accordance with the new requirements of the Act and meet the purpose for which it was set up;
- + winding up the Trust, if appropriate, or resettling the assets to a new Trust.

The time between now and 30 January 2021 will fly by – don't just think about it, **ACT TODAY!**

## Latest in high court ACTION FOR TRUSTEES (SEE ENRIGHT V ENRIGHT)

ONE OF THE PRINCIPAL RESPONSIBILITIES OF ALL TRUSTEES IS TO ENSURE THAT THEY KNOW AND FULLY UNDERSTAND THE TERMS OF THE TRUST DEED. THEY SHOULD ALSO MEET AT LEAST ANNUALLY TO REVIEW THE MANAGEMENT OF THE TRUST ASSETS, AND TO ENSURE THAT THEY HAVE FORMALLY AND APPROPRIATELY DOCUMENTED ANY DISCRETIONS AND DECISIONS THEY MAY HAVE EXERCISED. OF COURSE THESE DISCRETIONS AND DECISIONS MUST BE IN ACCORDANCE WITH THE TERMS OF THE TRUST DEED.

The High Court judgement in *Enright v Enright* [2019] is a timely reminder that regular trustee meetings, documented decisions and discretions, and the ability to demonstrate an understanding of the terms of the deed are crucial if the trust is subsequently challenged.

The J J Enright Trust was formed in 1974. A wide range of decisions were made (and sometimes on the direction of the Settlor who was one of the trustees) by the trustees, including appointing the settlor's youngest child ('the defendant') to be sole capital beneficiary of the Trust in 1985.

The settlor's children were discretionary income beneficiaries, and as such had an entitlement to income at the discretion of the trustees. However, a clause in the trust deed stated that if the trust income wasn't fully applied within six months of balance date each year, then it was to be divided equally between all of those children.

The trustees, whilst providing discretionary income to the children when they were younger, overlooked the provision that dealt with annual surplus net income, and instead didn't document their reasons for allowing it to be used to help grow the trust assets.

*understanding the terms of the deed ensures that you can map out the best future course for you and your family*

The trust's capital assets were transferred to the then sole capital beneficiary at some point between September 2007 and June 2008, and in the mind of the trustees it was effectively wound up and fully distributed at that time.

At the start of the High Court action there was an argument that the Limitation Act applied, and that the adult children who were bringing an action ('the plaintiffs') were out of time to do so. However, the income beneficiaries didn't learn of their entitlement until 2015 and the court found that the concealment of their entitlement from them was fraudulent, that the limitation period hadn't expired, and therefore that



they could bring an action against the trustees. (One of the adult children was excluded from the action as he had been given information in 2008 which should have prompted him to make further enquiry).

The judge ordered the defendant to pay the sum of over \$1.7m to be divided equally between the plaintiffs, being the net annual income that should have been paid to them if the trustees had applied their minds to the specific provisions of the trust deed each year.

The application of the net annual income that was made, and the transferring of the capital to one beneficiary, were discretions that could have been validly exercised in accordance with the terms of the trust deed if the trustees had read, understood and documented their discretions and decisions in an appropriate and timely manner.

## Car rally ANDREW & CHARLOTTE

WELL, IT CERTAINLY HAD IT'S UPS AND DOWNS BUT THE 7TH PEKING TO PARIS MOTOR CHALLENGE ENDED ON 7TH JULY AND PERPETUAL GUARDIAN FOUNDER ANDREW BARNES AND HIS PARTNER CHARLOTTE LOCKHART DID THEMSELVES AND PERPETUAL GUARDIAN PROUD BY FINISHING IN STYLE.

There were moments along the way where Andrew and Charlotte thought they were out of the race because poor old Eleanor (the car) had given up, and they thought it'd be a miracle to even get to the finish line. However, due to some fortunate circumstances and skilled mechanics they managed to get back in the rally and complete the course.

Highlights of the journey included meeting lots of other fellow rally enthusiasts from all around the world, the smiles on the local children's faces as they drove past, being able to give the kids the wonderful Amigo protein bars, seeing some incredible sights and scenery along the route, and getting to the finish line in Paris and seeing their family members there to congratulate them.



**What a huge achievement!** Andrew and Charlotte want to thank the staff at Perpetual Guardian for their support of this crazy adventure and to everyone who made a donation to the Graeme Dingle Foundation's Project K programme, over \$3,500 was raised so you have contributed to a very worthy cause.

## PG News INVESTMENT UPDATE

THE INVESTMENT WORLD IS NEVER DULL, MARKETS WILL CONTINUE TO SURPRISE WITH INCREASING 'NOISE' AROUND THE CURRENT ECONOMIC CYCLE.

Trump tweets and markets react, newspapers sensationalise and the markets continue. We are often reminded that all this noise is forever present and is perfectly normal as economies both local and global, move through their respective cycles.

As fiduciary and investment specialists we remain calm, our long term outlook and beliefs are checked and stress-tested regularly as we consider the impact of events on investor returns. What we have learnt over the many years that we have been managing money, is that diversification across the major asset classes is the key driver for returns. Spread your investments in a sensible and uncorrelated manner and you will drive both returns and de-risk portfolios simultaneously.

Furthermore, our long term view enables us to filter out the noise in the market and concentrate our efforts on investment



fundamentals. We strongly believe that time in the market is rewarded, that is contrary to timing the market. We may miss out on some short term trends, however, these are often associated with greater risk and higher trading costs as volume trading has direct and negative impact on return.

Our team of specialist advisers and investment professionals are always happy to talk with you about our services, free of obligation.

**Disclosure documents are available on request and are free of charge.**



Introducing

# LIZ GIBBS



Liz brings significant experience from over 25 years of working in philanthropy, International NGO Management and Governance having worked with various well-known charities. She previously served as Chief Executive for Save the Children New Zealand, and also as

the Head of Foundation for Te Papa Tongarewa, and studied strategic leadership at Harvard Business School.

We caught up with Liz following the Summit to get her thoughts on the trends she sees emerging in the philanthropic sector, and how these will guide and influence her in her new role.

## 1. Can you tell us more about your new position as Head of Philanthropy with Perpetual Guardian?

It's a real pleasure and privilege to join Perpetual Guardian in the new role as Head of Philanthropy. PG has a long and proud 130 year history as New Zealand's leading trust company. We typically grant \$42 million per annum from the 450 charitable trusts that we have under management to 2000 charitable organisations. My role is focused on growing PG's philanthropy and maximising its benefit and impact on the organisations and communities that we support.

## 2. What are you enjoying most about this new role?

I'm enjoying being back in the world of philanthropy, working with incredible colleagues and organisations all focused on making Aotearoa the best it can be for current and future generations. I'm currently developing PG's new two year philanthropy strategy and look forward to sharing it.

## 3. What was your favourite part of this year's Philanthropy Summit? / What set this Summit apart from others you have attended?

It was fantastic - congratulations to the PNZ team! The content was challenging and thought provoking which was very timely for me six weeks into my new role. It was also wonderful to see the work of many individuals and organisations recognised with the Philanthropy Awards at Parliament.

AS A PAST CHIEF EXECUTIVE OF PHILANTHROPY NEW ZEALAND (PNZ), LIZ GIBBS WAS A FAMILIAR FACE TO MANY AT THE PHILANTHROPY SUMMIT 2019. SHE HAS RECENTLY JOINED PNZ'S LONG STANDING SPONSOR AND SUPPORTER, PERPETUAL GUARDIAN, IN A NEW ROLE AS HEAD OF PHILANTHROPY.

## 4. What were your key takeaways from the Summit, and how are these important to the work you are/ will be doing with Perpetual Guardian?

My team had a debrief soon after the Summit and we are making changes to our philanthropy as a result including :-

- + Making larger, more strategic grants rather than smaller, less impactful grants
- + Streamlining and simplifying the online accountability reporting for grant recipients
- + Providing more capacity building, advocacy and research grants (thanks Vu Lee!)
- + Exploring a more collaborative approach to funding with funders with similar mission, vision and priorities.

## 5. How has the Philanthropy Summit influenced you in your new role as Head of Philanthropy at Perpetual Guardian?

Given the complexity of social and environmental issues, we as funders, have a responsibility to listen and learn from the communities that we work alongside. Shamubeel Eaqub's keynote resonated with me, particularly his compelling arguments that **'inequalities are growing, so we need to invest and direct funds to maximise impact. The big challenges have not been solved and we need leadership – who better than philanthropy?'**

## 6. What excites you most about the future of philanthropy?

Philanthropy alone will never solve the complex issues that we face, but strategic and effective collaboration across the charitable sector, philanthropy, business, Government, iwi and communities can create and leverage greater positive impact for all Kiwis. Philanthropy can provide long term investment into communities and because of this, significant positive change is possible. As Jenny Gill so eloquently stated 'The role of philanthropy is to provide the venture capital of social change.'

## THE TED AND MOLLIE CARR ENDOWMENT TRUST & ESTATE OF ERNEST HYAM DAVIS

### COMBINING MULTIPLE APPLICATIONS IS AN EFFECTIVE WAY FOR TRUSTEES TO MAKE MORE IMPACTFUL GRANTS.

In 2018, one such grant was awarded by The Ted and Mollie Carr Endowment Trust & Estate of Ernest Hyam Davis to the Auckland Health Foundation, a newly established fundraising arm for Auckland Hospital.

Yvonne Aileen Leah Carr (Mollie) was the only daughter of Sir Ernest Davis. Like her father, Mollie's generosity came through in all aspects of her life and now, both of their legacies continue to benefit the people of Auckland.

The Ted and Mollie Carr Endowment Trust was established under Mollie's Will, with the philanthropic focus of:

"The relief of poverty and destitution and the care of homeless, sick and indigent persons (with particular regard to the care of the aged) living in and about greater Auckland".

The Auckland Health Foundation is now helping their clinicians be more efficient, after making a single application to both Trusts for new mobile devices. A clinician's work environment is demanding and varied – at a patients' bedside, triage, or meeting with colleagues to discuss the best treatment. Auckland Hospital clinicians were relying on time-consuming paper forms to record patient information; forms which then had to be scanned or typed into a computer. The computers



*Nursing staff from The Auckland Health Foundation using the newly donated tablets in training.*

were usually some distance away. Security of patient information and environmental sustainability were also a concern with using paper forms. Nearly 350,000 people are helped by clinicians at Auckland DHB every year, so improving systems to ensure clinicians can spend more time with patients is vital, and having access to mobile devices makes clinicians far more efficient.

In mental health wards, therapists, no longer tied down by a desktop, can travel to the patient. In chemotherapy, nurses can access vital information without leaving a patient's side. In the ER, nurses enter notes directly into an electronic patient record, rather than scanning paper forms, vastly improving the triage process.

All of this greatly improves the quality of care that Auckland Hospital can provide, and was made possible through the joint grant from Mollie's and her father's Trusts.

## PG Family office ADVISOR TRANSPARENCY

### IN THE EVER CHANGING AND COMPLEX WORLD OF WEALTH GOVERNANCE AND MANAGEMENT, HAVING A SHARP AND INFORMED ADVISORY TEAM IS PARAMOUNT FOR EFFECTIVE EXECUTION OF FAMILY PLANS.

In order to proactively manage and take hold of opportunities as they arise and in an effective timely manner, an advisory team who is well informed and working cohesively ensures decisions, execution and review of transactions follows a consistent process.

Reactive planning or advisors who must change their strategic direction due to an unforeseen request, may ultimately lead to poor outcomes costing money, missed opportunities or departure from the previous agreements under Deed.

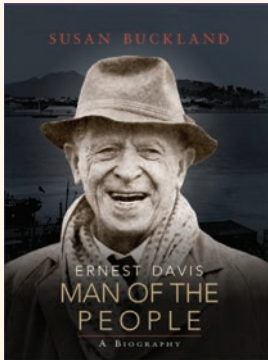
When the lawyer, accountant, investment advisor, trustee and family members are well informed and kept up to date with the current and future direction of the family, they are far better equipped to adapt and convert opportunities to reach success.

The Perpetual Guardian Family Office fosters the establishment of a transparent and astute advisory team, who are able react quickly and accurately, providing robust planning and execution in the ever-changing and complex world of wealth creation, enhancement and family protection.



## BOOK LAUNCH

PERPETUAL GUARDIAN IS TRUSTEE OF THE ESTATE OF SIR ERNEST HYAM DAVIS, A FORMER MAYOR OF AUCKLAND AND FOUNDER OF NEW ZEALAND BREWERIES.



Throughout his lifetime, Sir Ernest was an avid philanthropist, establishing a number of charitable trusts which have benefited organisations in New Zealand. The trusts established by Sir Ernest and those of his children, Desmond and Mollie, distribute approximately \$2.5M annually to charitable organisations for the benefit of the

sick, aged, destitute or poor persons in the Auckland region and to hospitals in both Israel and New Zealand.

Sir Ernest was a man with many varied interests, from being a successful and eminent businessman to sailing, horse racing, sports, arts and social welfare; he enjoyed life to the fullest.

*His strong civic sense saw significant largesse bestowed upon Auckland and its residents both during his lifetime and after his death through the Charitable Trust set up under his will.*

To capture his life story and to preserve his legacy and name, Perpetual Guardian as trustee, commissioned a biography about the life of Sir Ernest, written by renowned journalist and author Susan Buckland. The biography titled "A Man of the People", encapsulates Sir Ernest's legacy – not only as a successful mayor and businessman, but also as a philanthropist and humanitarian who revolutionised the charity sector.

The book was launched at a grand function held on 18th June at the Ernest and Marion Davis Memorial Library endowed by Sir Ernest during his lifetime. The event was attended by extended family members of Sir Ernest, as well as guests across the charities sector in Auckland. Amidst remarkable speeches, book reading and decadent canapes, this was truly a night of celebration. The event was well received by all guests that attended who congratulated Perpetual Guardian for commissioning the book to share Sir Ernest's great life story.

Sir Ernest's biography is available through libraries, including the National Library of New Zealand. The book is also available via the publisher Magari Publishing (magari.co.nz).

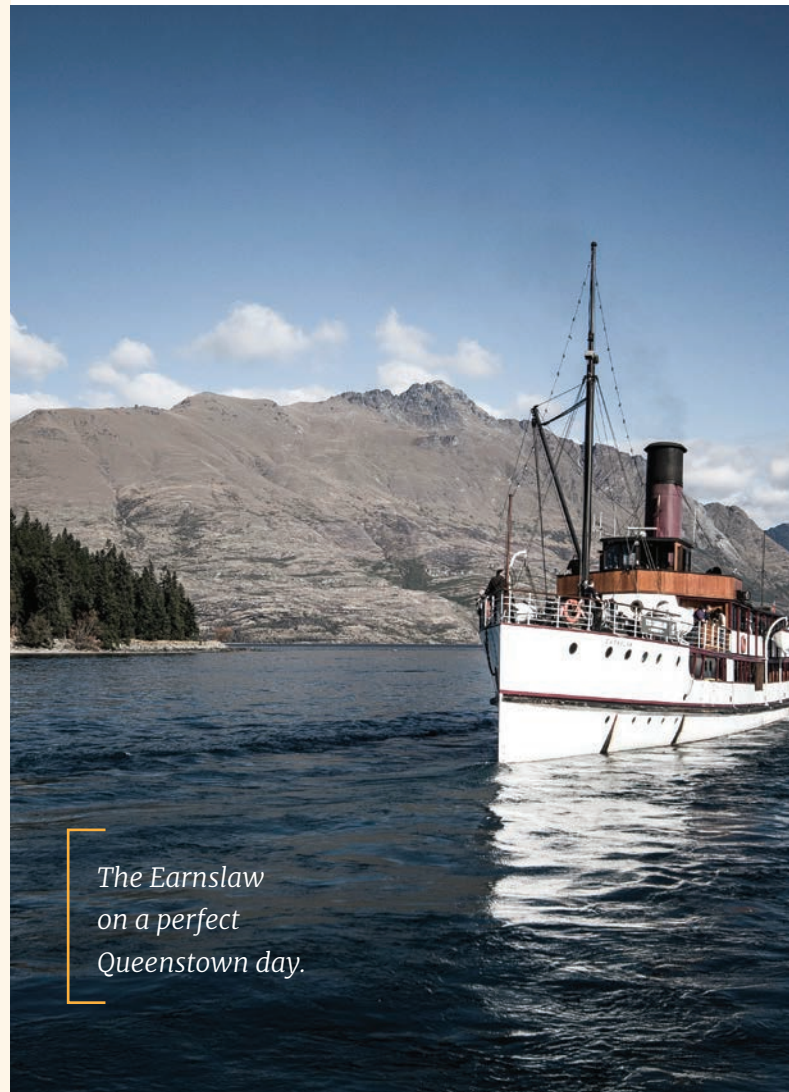
## Welcome to QUEENSTOWN

PART OF OUR FOCUS AS A BUSINESS IS ENSURING THAT WE ARE ON HAND TO HELP SUPPORT AND SERVICE OUR CLIENTS NO MATTER WHERE THEY MAY BE IN AOTEAROA.

Over the last twelve months we have seen our branch network continue to grow into two new areas. Our office in Ashburton was finalised last year and we are proud to announce that we are also opening a Queenstown office.

While Queenstown is best known for all things adventure, we know it is also a key centre in the greater Otago region, with a long and rich history in agriculture, and viticulture, a place where more and more kiwis are looking to raise a family.

We are proud to be joining this vibrant and growing community and look forward to seeing you pop by our new office. We can be found at Remarkables House, 26 Hawthorne Drive, Remarkables Park, Frankton.



*The Earnslaw on a perfect Queenstown day.*



# Volunteering AT PERPETUAL GUARDIAN

IN A FAST-PACED AND BUSY WORLD, IT CAN BE HARD TO FIND TIME TO VOLUNTEER. TAKING A LITTLE TIME OUT TO STOP AND GIVE BACK HAS ENORMOUS BENEFITS; IT PROVIDES VITAL HELP TO PEOPLE AND COMMUNITIES IN NEED AND CAN PROVIDE A REAL SENSE OF PURPOSE FOR OUR PEOPLE. VOLUNTEERING AND GIVING BACK TO THE COMMUNITY HAS ALWAYS BEEN A BIG PART OF PERPETUAL GUARDIAN'S VISION AND CULTURE.

You may remember our Four Day Week innovation from last year – this is now implemented across the company as a 'Productivity Policy'. Our employees who have opted into the Policy also volunteer into a charitable or volunteering organisation four days each year. We have received some wonderful stories so we thought we would share with you some of our experiences:

- + One staff member, **Amy Williams (Client Assistant, Whangarei)** spent some time volunteering at New Zealand Riding for the Disabled. This organisation focuses on children with physical and learning disabilities, and giving them opportunities and experiences to increase the children's strength, confidence and ability, whilst riding horses.
- + **Marisa Tucker (Relationships Manager, Wellington)**, spent her volunteer day collecting for the Mary Potter Hospice annual street appeal. The Mary Potter Hospice provides free palliative care services in Wellington.
- + One of our employees, **Deiryn Wallace (Client Assistant, Takapuna)** joined a volunteering organisation that



collects about-to-expire food from local supermarkets. The collected food was then donated to charities such as Women's refuge and various churches that put together food packs for struggling families.

It is incredibly heart-warming to see so many members of the Perpetual Guardian team getting involved in such worthwhile causes - and enjoying their experiences too!

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