

A photograph of a man and a pregnant woman on a sandy beach. The man, on the left, is wearing a green t-shirt and khaki shorts, looking down at a black dog lying on the sand. The woman, on the right, is wearing a light-colored tank top and patterned pants, with a red flower in her hair. A large red square is overlaid on the image, containing the text.

Public Trust

Rotary
15 October 2018



Outline for this session

- **Who we are**
- **Wills**
- **Enduring powers of attorney**
- **Personal Assist & PPR**
- **Elder Abuse**
- **Case Studies**
- **Q&A**



Who we are

Who we are

Te Tari Tiaki Iwi – the organisation that takes care of people

- We are one of New Zealand's largest trustee organisations and a Crown entity – our independence is guaranteed under the Public Trust Act 2001.
- We've been protecting the interests of New Zealanders and their families for over 140 years.
- We provide personal, business and corporate trustee services to over 250,000 clients.
- We have 350 staff operating from 22 locations and a growing number of part-time and appointment only sites across New Zealand.





We manage 2,000 estates each year, from the straightforward to the complex.

We manage the financial matters of around 2,000 customers as their attorney, including approximately 700 people who are incapacitated and unable to manage their own affairs.



We manage over 400 charitable trusts and 25 farms, including New Zealand's largest training farm.



We supervise approximately \$40 billion on behalf of investors.

We provide trustee services for debt issues, managed funds, custodial services and participatory securities.



We administer or manage nearly \$4 billion in assets, including around \$1.1 billion in investment funds.



We provide estate planning services, writing over 6,000 wills and almost 5,000 enduring powers of attorney.

What we do



Wills



Wills – helping you care for what's precious

Every adult should have an up-to-date will – it's one of the most valuable legal documents you'll have.

A will lets you decide how you will provide for your family and how you'd like things managed after you're gone.





Wills

What is a will?

A will is a legal document that sets out your final wishes, making them clear to everyone.

It allows you to specify:

- who you'd like to provide for financially
- who you'd like to leave gifts or sentimental items to
- your funeral and burial wishes
- an executor (administrator) who will carry out your wishes.



Wills

Why do we need a will?

- If you die without a will, your loved ones could have difficulty sorting out your affairs, and what happens next may not be as you expected or wanted.
- Without a will, the law determines how your estate is divided and how those you care about are provided for and looked after. A formula is used to decide this.
- We realise writing a will is a sensitive issue and can be emotional for some people, but it is a really important thing to do. It's also important to update it to reflect any changes in your life.
- Anyone over 18 years old with more than \$15,000 in assets and/or children should get a will. Assets aren't limited to what we would think of as traditional property either – for example, if you or someone you know has \$15,000 held in KiwiSaver, it's time to consider getting a will.

Challenges to wills

- When a person dies without a will, they are said to have died **intestate**. Their assets are distributed according to the rules set out in the Administration Act 1969 sections 77A, 77B, 77C and 78.
- Only Public Trust solicitors and staff with delegated authority can confirm who is entitled to inherit when a will is intestate.



Enduring powers of attorney



Enduring powers of attorney

Planning for the unexpected

An enduring powers of attorney (EPA) sets out who can take care of an individual's personal or financial matters if they no longer can.

Things just aren't as simple without one.



Enduring powers of attorney

What is an enduring power of attorney (EPA)?

- Through an enduring power of attorney (EPA), as a donor, you legally enable someone you trust to make life's important decisions for you when you need it most.
- The two types of EPA are:
 - property
 - personal care and welfare.

Who can set up an EPA?

- Anyone who is over 18 or has been married
- They must have capacity to understand their actions.

The role of an attorney

Your personal care and welfare attorney make decisions about your health and personal matters.

Your property attorney makes decisions about your money and property.

They have a number of responsibilities by law.



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Enduring powers of attorney

Who can be an attorney?

- Property EPA:
 - Anyone over 20 who is not bankrupt or subject to a property or personal order.
 - A trustee corporation.
 - More than one person can be appointed (jointly or jointly and severally).
 - Appointment of successive attorney(s) is possible.
- Personal care and welfare:
 - Only one person.
 - Cannot be a trustee corporation.

When is an EPA effective?

- Property EPA:
 - Immediately, or
 - From a future date, and/or
 - When the donor becomes incapacitated.
- Personal care and welfare:
 - When the donor becomes incapacitated.



Enduring powers of attorney

What can an attorney do?

- This is defined by the Act but essentially anything on behalf of the donor that they could have lawfully done themselves and can be:
 - general
 - specific
 - limited to certain assets.

Can an EPA be changed or revoked?

- Yes either by:
 - making a change in writing or
 - upon death.



Enduring powers of attorney

What happens if you don't have an EPA?

- If you don't have an EPA and become incapacitated, your partner, family and friends won't be able to:
 - step in straight away and make decisions for you on your care and finances
 - do things like change your home loan terms, change a term deposit or sell your house if you need to move (even if you have a joint account).
- Without an EPA, your partner, family, friends, social worker or rest home manager will need to apply to the Family Court for permission to manage your affairs (under the Protection of Personal and Property Rights Act 1988).
 - This can be expensive and stressful.
 - If your family cannot agree on who the Court should appoint, it may appoint someone you wouldn't choose to make decisions on your behalf.

Without an EPA

Your family can't just step in and take over management of your affairs.

The Protection of Personal and Property Rights (PPPR) Act enables the Family Court to appoint property managers and welfare guardians.



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Personal Assist



Personal Assist

What is Personal Assist?

- Personal Assist from Public Trust provides assistance for anyone who wants help managing their financial affairs. It offers professional advice and administration services.

When can Personal Assist help?

- Sometimes managing your financial affairs can become challenging, for example:
 - it's all just becoming a bit much staying on top of everything
 - your partner used to manage the finances and they are no longer here to do that.
- You want some impartial advice and/or support:
 - to avoid becoming reliant on family/friends
 - to avoid family conflict.
- You want to free up some time to focus on enjoying your retirement rather than dealing with complex financial and property matters
- You'd like some short-term help to deal with a specific matter such as:
 - selling a home and moving
 - moving into care – completing the paperwork such as the rest home agreement, applying for subsidies, structuring your finances to maximise available government grants.

PPPR Act

Protection of Personal and Property Rights (PPPR) Act

- The PPPR Act is important legislation that aims to protect the personal and property rights of people who are not fully able to manage their own affairs.
- Under the PPPR Act, we are appointed under a court order act as a property manager.

Trustee corporation considerations

- Before consenting to act we consider:
 - health, safety and risk
 - assets and liabilities
 - duties to perform
 - value added.



Elder Abuse

What is Elder Abuse

Elder Abuse is defined as:

....a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person...

(Action on Elder Abuse, 2004; WHO/INPEA, 2002)

Elder Abuse and Neglect

- Last year Age Concern over 2200 referrals
- Psychological abuse 70%
- Financial abuse 50%
- Physical abuse 18%
- Neglect 18%
- Self Neglect 18%
- Sexual abuse ?
- Institutional Abuse ?

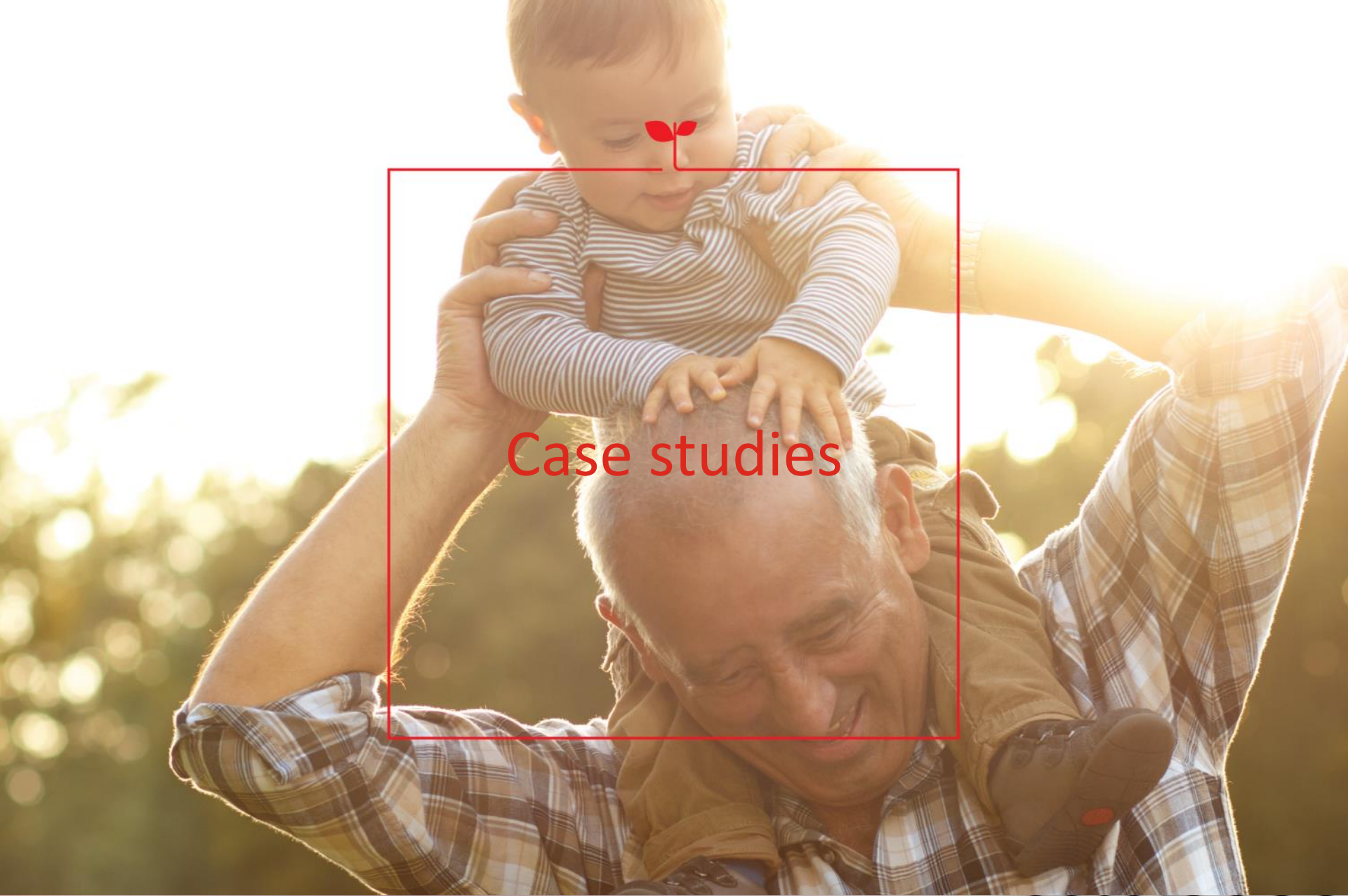


Crimes Act 1961- Amended

195 Ill-treatment or neglect of child or vulnerable adult

- (1) Everyone is liable to imprisonment for a term not exceeding 10 years who, being a person described in subsection (2), intentionally engages in conduct that, or omits to discharge or perform any legal duty the omission of which, is likely to cause suffering, injury, adverse effects to health, or any mental disorder or disability to a child or vulnerable adult (the *victim*) if the conduct engaged in, or the omission to perform the legal duty, is a major departure from the standard of care to be expected of a reasonable person.
- (2) The persons are—
 - (a) a person who has actual care or charge of the victim; or
 - (b) a person who is a staff member of any hospital, institution, or residence where the victim resides.

Section 195: replaced, on 19 March 2012, by the Crimes Amendment Act (No 3) 2011 (2011 No 79).



Case studies

Case study – Mary* a 103 year old female client

We were approached by Court Counsel to consent to being Property Manager as there was a likely conflict of interest with Mary's niece applying for Property and Welfare appointments.

Challenges we faced:

- Mary had a motel which was run like a boarding house and required extensive maintenance and upkeep.
- The gentleman doing the maintenance and day to day tasks had been accused of misappropriating funds from Mary. This same gentleman was also renting her private residence.
- Mary had been giving this man her bank card and pin number and also authority to transact on her overseas funds.

*not the client's real name

PPPR

Case study – Bernard* 45 year old male client

Bernard had a rugby accident resulting in head injury in 2008. We were approached by Court Counsel to be appointed as there was a conflict between the Bernard's current Property Managers (his parents and wife).

Challenges we faced:

- Resolving on-going conflict and issues with Bernard's estranged wife. This included limiting access to his funds due to the wife's gambling problem where her spending was excessive.
- Attend to lump sum payments and entitlements received from ACC, insurance and superannuation.
- Completed PRA to separate Bernard and his wife's assets. Including purchasing a property solely in Bernard's name for him to live after rehab.
- Child support and financial support for four young and vulnerable children.

*not the client's real name

PPPR

Case study – John* 90 year old male client

Enduring Power of Attorney was invoked following Medical Certificate confirming John had lost capacity to manage financial affairs.

Challenges we faced:

- House Property: tenants claimed John had offered the property at rating valuation, but the current Will stated to offer tenants to purchase at fair market value.
- John had a number of people befriend him and we had concerns of the motive of some of these people. We cancelled the cheque book and withdrew his funds from the bank, which was beneficial as one friend tried to cash a number of cheques and withdraw funds from a term deposit, thankfully these were declined by the bank.

*not the client's real name



Questions?