




Speech By
David Lee

MEMBER FOR HERVEY BAY

Record of Proceedings, 14 March 2025

TRUSTS BILL

 **Mr LEE** (Hervey Bay—LNP) (8.28 pm): I rise to make a modest contribution to the Trusts Bill 2025 by way of general comments. The Attorney-General dealt with the technical details of the bill's clauses in her second reading speech. I commend the Crisafulli government for introducing this bill so early in the term after so much work and consultation has already occurred. The Crisafulli government will finally deliver legislative Trusts Act reform after 10 years of lazy Labor's decade of dithering and procrastination. I also wish to congratulate our hardworking Attorney-General, Deb Frecklington, for her diligence in preparing the legislation for the House. It is a fresh start for the law of trusts.

There is now no reason to delay this long overdue legislative reform which is so important for Queenslanders. On Wednesday, our Minister for Small and Family Business informed the House that in Queensland there are 495,000 small and family businesses employing one million Queenslanders and contributing \$131 billion per annum to our Queensland economy. On the Fraser Coast there are 6,726 registered businesses. Many of our small and family owned businesses and primary producers use a trust as a means for protecting their assets and for tax planning. Trusts also have an important role in estate planning, giving to charitable causes and protecting the vulnerable. There are currently one million trusts registered in Australia with the Australian Taxation Office.

After 10 years of Labor's deferral, dithering and procrastination, it is time for reform of our trust legislation. There generally seems to be an increasing demand for trusts as a lawful and legitimate form of asset protection, succession planning and taxation planning.

This bill will repeal and replace the current Trusts Act 1973 with modernised, simplified and fit-for-purpose legislation that is appropriate and adapted to the 21st century. Like the current act, the bill does not codify all aspects of trusts law but rather supplements the common law. This bill broadly replicates recommendations from the Queensland Law Reform Commission. Between 2012 and 2013, the Law Reform Commission conducted a full, comprehensive and independent review of the former Trusts Act 1973. Since that time, nearly a decade passed before the former Labor government belatedly introduced the Trusts Bill 2024, which lapsed when the 57th Parliament was dissolved. It is now more than 50 years since a comprehensive review has been undertaken of trusts legislation in Queensland.

The act commenced in 1973 and, aside from significant changes to investment powers that were introduced by the Trusts (Investments) Amendment Act 1999, it has not been substantially amended since its commencement over 50 years ago. According to a 2012 Law Reform Commission paper—

This review provides an opportunity to examine whether the Act can be further improved and simplified, especially in relation to its articulation of trustees' duties and powers.

The Law Reform Commission, in reviewing the former 1973 trust legislation, considered equivalent provisions in other jurisdictions and widely engaged with stakeholders before producing an interim and then a final report.

The modern trust law has an historical lineage dating back to the time of King Henry VIII in the Statute of Uses 1535 and the Elizabethan Statute of Charitable Uses 1601 which was passed after King Henry dissolved the monasteries. The Elizabethan statute then gave rise to the charitable object's principle of a 'public benefit test'. In later years, trusts were dealt with in the courts of chancery, which was heavily influenced by the ecclesiastical tradition to mitigate the strict application of the common law. The law of trusts now exists as an important part of the law of equity.

A trust exists when the beneficial ownership of property is separated from the legal ownership of the property. There are three elements to a trust: firstly, the trustee—a legal person who holds a vested legal title, or an equitable title, in the property, subject to fiduciary duties; secondly, trust property—legal or equitable property; and, finally, a beneficiary—a person or group of persons who hold a beneficial interest in the property and on whose behalf the trustee must act. The person who creates the trust is usually identified as the 'settlor'.

There are a number of different types of trusts: express trusts, implied trusts and statutory trusts. An example of an express trust is a discretionary trust, which is commonly used in commercial business structures for small- and medium-sized businesses. An example of an implied trust is a resulting trust which arises usually out of presumptions of intention or a constructive trust imposed by law. Nonetheless, the trustee is legally responsible for the operation of the trust and legally liable for the debts of the trust.

Analogous to the lapsed 2024 bill, the Trusts Bill 2025 grants broad powers to trustees to deal with trust property and imposes new minimum statutory duties on trustees to exercise care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons. I welcome the 'prudent person' test as a well-established objective standard for ascertaining a trustee's obligations of care, diligence and skill.

The bill also includes an ability for the District Court to hear applications for matters involving trust property which does not exceed its jurisdictional limit, which is currently at \$750,000. This bill furthermore deals with a range of important matters under trusts law, including: restrictions on the appointment of trustees; the appointment, discharge and removal of trustees; the devolution of trusts; and the general powers of trustees.

In relation to smaller charitable trusts, where it is not possible to give practical effect to the objects of a charitable trust, this bill will give the court power to apply charitable trust property under a *cy pres* scheme for another charitable purpose that is as close as possible to the original purpose of that trust. This bill will require a lead-in time of approximately 12 months to ensure that all Queenslanders are prepared for the new requirements.

In summing up, this bill largely retains and re-enacts in modern drafting and plain English many of the existing provisions in the act, continuing the application of well-known and settled trusts law provisions. The bill reflects some incremental and minor changes for clarity or to address areas of uncertainty in the existing law. In several areas, the bill builds upon existing legal requirements but includes changed obligations to modernise practices and provide for greater administrative efficiency for trusts. Only a Crisafulli government has the ticker to deliver substantive legislative reform to modernise trusts legislation. A modern, fit-for-purpose Trusts Act will provide clarity and certainty in relation to the operations of a trust. I support and endorse this Trusts Bill 2025 to the House.