Speech By

Hon. Deb Frecklington

MEMBER FOR NANANGO

Record of Proceedings, 18 February 2025

TRUSTS BILL

Introduction

Hon. DK FRECKLINGTON (Nanango—LNP) (Attorney-General and Minister for Justice and Minister for Integrity) (3.36 pm): I present a bill for an act to provide for the law relating to trusts, to repeal the Trusts Act 1973, and to amend this act, the Aboriginal Land Act 1991, the Corrective Services Act 2006, the District Court of Queensland Act 1967, the Funeral Benefit Business Act 1982, the Public Trustee Act 1978, the River Improvement Trust Act 1940, the Succession Act 1981, the Torres Strait Islander Land Act 1991 and the legislation mentioned in schedule 2 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Justice, Integrity and Community Safety Committee to consider the bill.

Tabled paper: Trusts Bill 2025 89.

Tabled paper: Trusts Bill 2025, explanatory notes 90.

Tabled paper: Trusts Bill 2025, statement of compatibility with human rights 91.

Today I introduce the Trusts Bill 2025 to repeal and replace the current Trusts Act 1973 with updated legislation suitable for the 21st century. I know I am not the first minister in this House to do that—I have some examples from over there. This is a very good day. It may only be the lawyers in this room who appreciate the importance of this bill. I will return to the timeline of how we got here and what brings us here today a little later in the speech.

Most people are familiar with trusts to some extent, be it a family trust, a superannuation trust, a testamentary trust or a charitable trust. However, any lawyer will tell you that trusts law is complex and has a long history grounded in the common law. A trust is a legal term used to describe a situation where a person with legal title to property, the trustee, holds that property for the benefit of persons who are either named as or fall into a class of beneficiaries. A trustee may also hold legal title to property for a charitable purpose, in the case of a charitable trust.

Trustees are subject to fiduciary duties, which have been described as being of the utmost good faith. A fiduciary duty requires the person subject to the duty to act in another's interest to the exclusion of their own. A trust separates legal ownership to property, which sits with the trustee, and the beneficial ownership or the right to benefit from the property, which sits with the beneficiaries of the trust. This is why fiduciary duties are required: to ensure the trustee manages the trust property for the benefit of the beneficiary, not themselves.

Trusts can be created expressly by a trust instrument, arise at law because of an implied agreement—known as a resulting trust—or be imposed by a court to prevent a person making an unconscionable assertion of ownership over property, known as a constructive or remedial trust. However, typically, there is a document called the trust instrument that sets out the terms of the trust and provides for particular matters relevant to the trust. No matter how descriptive or basic the trust instrument may be, it cannot cover every possible circumstance that will arise nor can it anticipate every possible dispute. This is where the law steps in.

The law of trusts is largely contained in the common law and has developed over centuries, starting in medieval England with a practice called the 'use', which was used to convey land. Over a long period dating back to at least the Statute of Uses 1535 and the Statute of Charitable Uses 1601, the 'use' developed into what we now recognise as the modern trust. This development took centuries and has created a complex body of law to deal with the many ways that trusts are used, created and administered in modern society.

The Trusts Act was introduced in Queensland in 1973, more than 50 years ago. Aside from changes in 1999 to provisions about investments by trustees, it has not been significantly modified. The Trusts Act replaced the Trustees and Executors Act 1897, so clearly law reform in this area is a slow-moving process. Trusts are widely used in our society and, like any area of law, it is necessary to ensure that the law remains fit for purpose, serves the community and solves more problems than it creates.

For the record, I advise that I am a beneficiary of a trust. Even though that trust is declared on my register of interests and I may not be strictly required to declare it, I have chosen to do so.

In Queensland, the Trusts Act supplements the common law to provide for the efficient administration of trusts. This includes conferring powers on trustees that might be lacking under the trust instrument such as the power to invest trust assets, general management and administrative powers, and distributive powers, including to apply income or capital for the maintenance, education, advancement or benefit of beneficiaries. The Trusts Act provides for the appointment and replacement of trustees, including the vesting of trust property when trustees are appointed or removed.

The Trusts Act provides for custodian trusteeship arrangements, sometimes used in commercial settings, which separate legal title to trust property, which vests in a corporate custodian trustee, from the management of trust property, which resides in the managing trustees. The Trusts Act ensures that courts have appropriate powers for supervising the administration of trusts to protect the interest of beneficiaries and ensure compliance with fiduciary duties. The Trusts Act also provides for certain matters relating to charitable trusts, gifts by prescribed trusts and remedies for the wrongful distribution of trust property.

This is where we get to the interesting part, in 2012 and 2013 the Queensland Law Reform Commission, which I will refer to from hereon in as the QLRC, conducted a comprehensive review of the Trusts Act. Mr Deputy Speaker McDonald, I see that you have joined the dots. In 2012 we had an LNP government. Areas considered during the review included: whether the Trusts Act provided adequate, effective and comprehensive frameworks for the regulation of trusts, including charitable trusts, in Queensland; whether there were opportunities for the Trusts Act to be modernised, simplified, clarified or updated—as a former lawyer working on trusts on almost a daily basis, I remember welcoming this review—whether there were options for streamlining the law with respect to deciding disputes about administration of trusts, including the appropriate court to have jurisdiction for less complex matters and disputes; whether there was consideration of equivalent provisions in other jurisdictions; and whether any other Queensland legislation pertaining to the law of trusts should be amended for consistency with, or as a consequence of, any recommended amendments to the Trusts Act.

In December 2012, the QLRC issued a discussion paper that examined a number of issues relating to the Trusts Act. The QLRC sought submissions from a broad range of stakeholders including: the courts; QCAT; key professional bodies, including the Queensland Law Society, the Bar Association of Queensland, Legal Aid Queensland, the Law Council of Australia, Crown Law and the Society of Trust and Estate Practitioners—a very good organisation—legal academics and legal practitioners in trusts and succession law—an area that interests me—the Public Trustee of Queensland; the Financial Services Council and trustee companies; community legal centres; and other interested organisations and individuals.

Let us remember that this was back in 2013. The discussion paper was also published on the then Queensland LNP government's website to seek feedback from the general public. After receiving feedback on the discussion paper, the QLRC issued an interim report in June 2013 titled *A review of the Trusts Act 1973 (Qld): interim report,* WP No. 71, with an overarching recommendation that new and modernised legislation repeal and replace the existing Trusts Act.

For the students who are listening to this—yes, we are in 2025. The QLRC's interim report noted that many of the statutory powers in the act were given to trustees to overcome particular limitations that had been recognised by courts, and that this meant trustee's powers under the act had developed in a piecemeal and ad hoc way. The interim report also rightly noted that many of the provisions in the Trusts Act have remained relatively unchanged from their origins in various English acts in the 1800s. The QLRC in its interim report recommended that many of the provisions in the Trusts Act be retained in substance but be expressed in a more modern and simplified drafting style in new legislation.

Given the increasing use of trusts such as family trusts in modern society as a vehicle for arranging private, commercial and other financial interests, the QLRC was of the view that simplifying the language of the legislation will help many non-professional trustees comprehend and comply with the law. The interim report set out, and discussed in detail, preliminary recommendations, summarised in the interim report as being 'about a wide range of matters', including: the appointment and discharge of trustees; trustees' powers, duties and protections; the appointment of agents and delegation of trustees' powers; the powers of the court; the approval of cy pres schemes for charitable trusts; and the jurisdiction to hear disputes in relation to trusts.

After submissions were received on the interim report, the QLRC prepared its final report that was tabled in this House on 4 March 2014. The QLRC's preliminary recommendations were finalised in the final report, which included a draft bill and a clause-by-clause commentary on that draft. The QLRC was guided by the need for trusts legislation that facilitates the efficient and effective management of trusts with due and proper regard for the interests of the beneficiaries, or charitable purposes, for which trust property is ultimately held.

I will turn to the lapsed Trusts Bill that was finally introduced into this House in 2024. Subsequent to the final QLRC report, I understand the then department of justice and attorney-general sought feedback from targeted stakeholders and peak bodies in the trust and legal industry in October 2017 on the QLRC's draft Trusts Bill. There was nothing from the former Labor government between 2017 and 2023. They had no interest in trusts anymore. It just fell off the agenda of the respective attorneys-general. That is not the case for this Attorney-General. I put it straight back on the radar.

I understand in 2023 there was a consultation version of the draft bill to replace the act. I note at this point that it was the former shadow attorney-general, the member for Clayfield and now Minister for Health, who was consistently asking questions about where the Trusts Bill was up to.

A public consultation version of that draft bill, which reflected feedback from the targeted consultation, was released for public consultation—yes, I can see the shock—eventually in November and December 2023. I also understand that further targeted consultation on a draft bill occurred in early 2024.

Subsequent to this, the Trusts Bill 2024 was eventually introduced in May 2024 and then lapsed when the 57th Parliament was dissolved. I am advised that the lapsed bill was drafted to take account of the significant feedback from targeted stakeholders—and I thank those stakeholders—and broad public consultation that I have previously referred to and that occurred over a decade ago. The lapsed bill was considered by the former committee, which received submissions from key stakeholders.

I thank the former committee for the work they did conducting an inquiry into the lapsed bill, which included a call for submissions from the public, a public briefing by departmental officers and a public hearing where oral submissions were made again by many people including the Public Advocate, the Queensland Law Society, the Public Trustee and the Society of Trust and Estate Practitioners (Qld). In its report No. 17 the former committee made two recommendations: that the lapsed bill be passed and that the department consider some of the issues raised by those said submitters in relation to the lapsed bill. The former government tabled an interim response to the lapsed bill, noting that some issues were still under consideration. On 30 January 2025, in accordance with section 107 of the Parliament of Queensland Act 2001, I tabled a final response to the lapsed bill, noting—

As the Bill has lapsed, the recommendations are not adopted. However, the recommendations and matters raised by the Committee process will be reviewed by the Government if it chooses to consider a similar Bill for introduction in the Legislative Assembly of the 58th Parliament.

We now come to another exciting development. After almost 11 years, the trust lawyers of Queensland can celebrate. Almost 11 years since the tabling of the QLRC's final report, the Trusts Bill 2025 is being introduced today. The time and effort of the former committee, the former attorney-general and stakeholders who provided feedback on the lapsed bill during previous QLRC consultation processes and through submissions to the former committee has not been wasted. The bill I introduce today reflects the outcomes of that previous consultation, conducted by the then department of justice and attorney-general, and also responds to issues raised in submissions to the former committee. Importantly, the bill I introduce today will also broadly give effect to the QLRC recommendations which followed the extensive consultation process by the QLRC that I referred to earlier.

This bill, like the current act, does not codify all aspects of trusts law. Rather, the bill will supplement the common law, improving rules relating to administering trusts and giving trustees new and expanded powers suitable to modern society. Like the lapsed bill, this bill includes a number of practical reforms that are broadly supported by key stakeholders to improve the operation of trusts in today's Queensland.

Before I discuss the bill in greater detail, I would like to note that, because the bill substantially reflects the lapsed bill, much of the content of the explanatory notes and the statement of compatibility I have tabled mirrors the equivalent documents tabled with the lapsed bill. As I am sure members will appreciate—and I would very much like to thank our hardworking public servants for their work on the current and previous explanatory notes and the current and previous statements of compatibility—

A government member: The speech is different.

Mrs FRECKLINGTON: The speech is definitely different. I have retained much of the original drafting in these documents to accurately explain the complex nature of these legislative provisions. I am sure members will appreciate that the documents were drafted with legal precision. That is why much has been retained.

I will now outline several key features of the bill. The bill will apply to a trust whether created before, or partly before and partly after, the commencement—that is, all trusts—except to the extent the bill or another act provides otherwise. The provisions in the bill will apply despite a contrary intention in any trust instrument, except to the extent the bill provides otherwise.

The bill does not prevent a settlor—that is, the person who settles the trust—from conferring on a trustee any powers additional to or greater than those conferred under the bill, but these must be exercised in the same way, and with the same consequences, as a power conferred under the bill, subject to an express contrary intention in the trust instrument. The bill provides that certain people may not be appointed as trustee. As will be discussed shortly, this does not affect a court's power to declare that those people hold property as a trustee.

The bill limits the maximum number of trustees of certain trusts to four persons except where an increased number of trustees has been approved by the court. This is a change from the current Trusts Act that allows the Attorney-General to approve more than four trustees and implements an express recommendation from the QLRC that we have adopted that the ability to approve more than four trustees should rightfully be with the court.

Similar to the current act, the bill includes provisions relating to the appointment, discharge and removal of trustees. The bill clarifies the liability of the custodian trustee and any managing trustees of the trust by ensuring that liability rests with the managing trustees for their acts or omissions, acts or omissions by the custodian trustee and for any costs for bringing or defending proceedings brought in the name of the custodian trustees as the managing trustees direct.

The bill includes a new minimum statutory duty for trustees to act honestly and in good faith for the benefits of the beneficiaries of the trust or, for a charitable trust, to further the purposes of the trust. The bill also includes a general duty in administering the trust for trustees to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons, with a higher duty applied to professional trustees or trustees who have, or hold themselves out as having, special knowledge or experience relevant to administering trusts.

The bill will expand the powers for trustees to deal with trust property so that the trustee has a new general power to deal with trust property like an absolute owner of the trust property, unless the power is expressly excluded or modified by the trust instrument. This ensures the trustee has the power to sell, lease, mortgage and insure trust property, subject to the general duty to act honestly and in good faith.

The bill clarifies the trustee's power to delegate trust powers, including investment powers, and provides that a delegation ends on the occurrence of particular events, including 12 months after the delegation commences and on the trustee being replaced, being removed or dying.

The bill improves the trustee's ability to apply trust property for the maintenance, education or advancement of a beneficiary by increasing the maximum amount that can be applied for these purposes to be the greater of half of the capital of the trust property to which the beneficiary is entitled or $100,000. The bill also expands the powers for a court to disqualify trustees, to remove office holders of a trust and to review and reduce a trustee's excessive remuneration.

The bill includes a new ability for the District Court to hear applications for particular matters if the value of the trust property or the subject of the application does not exceed the District Court's jurisdictional limit—currently $750,000. The bill includes a new power for the Attorney-General to approve a cy pres scheme for charitable trusts that have a value within the District Court's jurisdictional limit. Currently, only the Supreme Court has the power to approve cy pres schemes, and this new power will reduce administration costs for lower valued charitable trusts.

Finally, the bill also removes outdated and unnecessary provisions that have remained in the Trusts Act for historical reasons. This includes reference to abolished or obsolete concepts including provisions relating to settled land trustees, unregistered or 'old system' land, rent charges, estate duty—we have not had that for years—provision for distributions to a minor on marriage and entailed interests.

There are also provisions in the Trusts Act which have become unnecessary because of the provisions contained in the bill or advances in law generally, including: providing for special declarations by local governments when dealing with trust land as this level of specificity is no longer required given the provisions of the Land Title Act 1994; providing protections for trustees dealing with persons acting under a power of attorney given the provisions of the Powers of Attorney Act 1989; and amending the specific additional management and administrative powers which may be granted to trustees by the court given the broader general powers given to trustees to deal with trust property under the bill. The bill represents substantial reform to trusts law and maintains the QLRC recommendations and other provisions in the lapsed bill that were broadly supported by key legal, charity and trusts stakeholders.

The bill addresses a number of issues raised by stakeholders during the former committee's consideration of the lapsed bill as set out in the former committee's report. Firstly, the bill ensures that restrictions on people who can be appointed as trustees do not affect a court's power to order that those people hold property as a trustee, for example, under a resulting, implied or constructive trust. This responds to recommendation 2 of the former committee's report and also to an issue raised by the Society of Trust and Estate Practitioners, or STEP as that organisation is more familiarly known.

As set out in the former committee's report, STEP raised concerns about clause 13 of the lapsed bill, which addresses the definition of trust. That clause in the lapsed bill provided that the following people cannot be appointed as a trustee: a child; a person who is bankrupt or taking advantage of the laws of bankruptcy; a corporation that is a chapter 5 body corporate under the Commonwealth Corporations Act, for example, a corporation that is being wound up, has had a receiver or a receiver and manager appointed or is under administration; or a person who has been disqualified from being a trustee by a court. STEP submitted that this clause could prevent a court from using certain equitable remedies involving trusts.

STEP submitted that, for example, a court would not be able to order that a person who was a bankrupt individual could be held to account by means of a remedial constructive trust. In STEP's view, as noted in the former committee's report, this would also prevent a court from ordering a constructive trust if an underage person has stolen money and deposited it in the bank or in relation to a wrong committed by a company being wound up. STEP recommended that regardless of the definition of 'trust', the clause should clarify that the provisions relating to the appointment of trustees should not limit the court's power to order that a person holds property as a trustee. The bill that I introduce today responds to those concerns. Clause 13(5) of the bill being introduced today declares that to remove any doubt the section does not limit the court's power to declare that a person mentioned in clause 13—that is, a child; an insolvent under administration; a chapter 5 body corporate; or a person who has been disqualified by the court from being a trustee—holds property as a trustee.

Secondly, the bill ensures that a person's renunciation of, or failure to apply for, probate of a will does not affect any express trust established under the will. This means that a person who is appointed executor but disclaims the trust of the will is not taken to renounce any other trust under the will. This addresses a concern that was raised by the Queensland Law Society during the former committee's consideration of the lapsed bill.

Clause 49 of the lapsed bill provided for circumstances when a person is appointed by will as both executor of the will and trustee but renounces or fails to apply for probate of the will. The QLS considered that the clause could lead to the unintended consequence of the person automatically disclaiming all testamentary trusts when in fact only the executorship of the will was intended to be disclaimed.

As noted in the former committee's report, the QLS explained that while renouncing probate should be taken as a renunciation of the associated bare estate trust, the will may go on to create further testamentary trusts at the conclusion of the estate administration and upon the bare estate trust ending. The society sought to ensure that renunciation of probate and the corresponding bare estate trust is kept separate from later testamentary trusts that a will might establish. The bill addresses this concern by including additional provisions to remove any doubt and ensure that disclaiming the trust of the will does not automatically affect any other express test testamentary trusts.

Thirdly, in response to concerns raised by the Public Trustee of Queensland with the former committee, the bill does not include provisions that would automatically vest property in the Public Trustee if the last continuing trustee has impaired capacity for administering the trust. As set out in the former committee's report, the Public Trustee submitted that it is not clear what should occur if the

person with impaired capacity regains capacity to act as trustee. The relevant provisions in the lapsed bill were modelled on similar provisions relating to the death of the last continuing trustee in section 16 in the Trusts Act and retained at clause 21 of the bill I am introducing today; however, death—which is permanent—is not the same as impaired capacity, which may be temporary. The lapsed bill did not address the fact that impaired capacity may be temporary.

The Public Trustee also raised other concerns with how trust property could be dealt with due to issues regarding whether the last continuing trustee's powers were suspended during the period of incapacity and how a trustee might be discharged if replaced. Ultimately, as noted in the former committee's report, the Public Trustee stated that they would prefer to not be involved unnecessarily in the private affairs of Queenslanders. The relevant provisions have not been included in the bill I introduce today.

Not including the provisions in the bill I introduce today avoids a situation where property might vest in the Public Trustee during a period of temporary incapacity that would then require that the trust property be divested from the Public Trustee should that temporary incapacity end. It also avoids having to suspend the incapacitated trustee's powers during the period of incapacity or discharge the incapacitated trustee during that period. Instead, the current law will continue to apply in this situation, meaning that unless there is a mechanism in the trust instrument or some other trustee replacement power in the bill can be used such as under clause 22 of the bill—which allows an administrator or attorney for the last continuing trustee with impaired capacity to replace that trustee in limited circumstances—an application to the court will be required to replace the last continuing trustee with incapacity to administer the trust.

Fourthly, the bill responds to comments by the United Grand Lodge of Antient Free and Accepted Masons of Queensland to ensure that the consequential amendments to the United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942 that were in the lapsed bill do not change the requirement for the Board of Benevolence to obtain Grand Lodge approval prior to making particular investments. As set out in the former committee's report, the Grand Lodge submitted that the consequential amendment in fact created an operative change and would allow the Board of Benevolence to make concern investments without requiring the Grand Lodge's approval. It was submitted by the Grand Lodge in its submission to the committee that this would change the existing balance of control within the internal constitutional framework of the Grand Lodge and its Board of Benevolence.

The bill addresses these concerns by updating the consequential amendments to the United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942 in schedule 2 of the bill so as to not affect existing internal arrangements between the Grand Lodge and its Board of Benevolence.

Fifthly, the bill responds to a highly technical and complex issue raised by the Queensland Law Society with the former committee about whether the lapsed bill narrowed the ability for certain ancillary funds to distribute money, property or benefits to deductible gift recipients, known as DGRs, and maintain their charitable status. I would like to thank the Law Society and my department for working very hard over the last couple of weeks to settle on this position so we can address these concerns.

As set out in the former committee's report, the society submitted that the provisions in the lapsed bill dealing with ancillary funds narrowed the category of DGRs that are eligible to receive distributions from an ancillary fund. Further, the society submitted that the effect of that narrowing of the definition of eligible entities is that if an ancillary fund continued to distribute to DGRs out of scope of the provisions then the fund could lose its status as a charitable trust under Queensland law. I would like to thank the Law Society for its recent engagement with the department and the government on this issue to clarify how these provisions should operate.

Ultimately, the intent is to ensure consistency with Commonwealth charities and taxation law in relation to ancillary funds and the DGRs that a fund can make distributions to. However, I also note that changes to Commonwealth charities and taxation law in both 2013 and 2021 have necessitated changes to how the current Trusts Act deals with ancillary funds. To address the concern raised by the society, the bill includes a regulation-making power so that particular entities which were a DGR under Commonwealth legislation at a point in time can be prescribed as eligible recipients for the purpose of the ancillary fund provisions. This will ensure that, if it is determined that there are certain prescribed trusts that can legally continue under Commonwealth legislation to make distributions to certain DGRs not captured by the definition, those entities can be prescribed and brought within scope of the provisions. As the House will note, it is clear that the work that has been done in the last several weeks with the Law Society has meant we have landed on that very solid position.

There are several issues that were raised in comments to the former committee on the lapsed bill that have not been addressed in the bill I introduce today. I would like to briefly outline these issues and place on record why these issues have not been addressed in the bill, because it is important.

Firstly, there were differing views on the meaning of charity that should be reflected in the bill. Some stakeholders proposed to the former committee that the bill should adopt the definition of 'charitable' from the Commonwealth Charities Act 2013 to promote uniformity and simplify charity administration. This is different to the ancillary fund issue to which I have just referred. I note that the Commonwealth's definition of 'charitable' is broader than the common law definition, which is currently adopted in the Trusts Act and in the bill I introduce today. The Commonwealth's definition includes trusts for the provision of social or public welfare such as childcare services, disaster relief, and advancing Australia's security or safety. This reflects the Commonwealth's purpose to promote philanthropic giving through taxation concessions.

In contrast, to be clear, the definition of 'charitable' in this bill takes into account the Supreme Court's jurisdiction over charitable trusts and determines the scope for the court's and the Attorney-General's powers to apply the property of a charitable trust cy pres to another charitable purpose. Extending the definition of 'charitable' in the bill would have expanded the court's and the Attorney-General's jurisdiction beyond what was recommended by the QLRC review and beyond the scope provided in other relevant jurisdictions. Accordingly, the definition of 'charitable' in the bill adopts the common law definition, is consistent with the approach under the current Trusts Act and is in line with the QLRC's recommendations.

Secondly, the Law Society raised an issue relating to cy pres schemes that can be approved by the Attorney-General. As I previously noted, the bill will provide the Attorney-General with a new power to approve a cy pres scheme for charitable trusts that have a value within the District Court's jurisdictional limit. However, this new power will only apply to a charitable trust that has not previously had its purposes changed by the court.

I understand that the Law Society submitted to the former committee that this eligibility requirement should be removed so that all smaller charities within the monetary limit can apply to the Attorney-General, even if they have previously applied to the court for a cy pres scheme. The bill does not address this issue because, where a cy pres scheme has previously been ordered by a court, it is not considered appropriate for the Attorney-General to be able to now consider and order a new scheme. Therefore, it is appropriate that these charitable trusts return to the court if a new scheme is still considered necessary, even though they might otherwise fall within the monetary limit to be able to apply to the Attorney-General.

Finally, I understand there were substantial comments made to the former committee about provisions in the lapsed bill that would allow an attorney, under a power of attorney, or administrator to replace a last continuing trustee with impaired capacity in limited circumstances, being: there is no appointor, or no appointor willing to act to appoint a replacement trustee; and there is no other mechanism under the trust instrument to replace the trust, or that mechanism has not taken effect within a reasonable time after the trustee became the last continuing trustee or became a person with impaired capacity; and the attorney or administrator is appointed for all financial matters; and there is not a contrary intention in either the trust instrument or the order or instrument by which the administrator or attorney is appointed. It is important that I address these issues in this speech because the committee has done extensive communication and consultation, as has the QLRC for over a decade. So much has happened in this space.

As set out in the former committee's report, certain stakeholders did not support these provisions on the basis that the court is best placed to carry out this function or due to concerns that the role of an attorney or administrator is not intended to have this power and may result in a potential conflict of duties between the wishes of the adult with impaired capacity and the interests of the beneficiaries of the trust.

Government has given careful consideration to the feedback raised and I thank those stakeholders for voicing their concerns. However, the relevant provisions have been retained in the bill. I note that, under the Property Law Act 1974, property can be held on trust for up to 80 years. However, under the Property Law Act 2023, which is due to commence on 1 August 2025, property can now be held on trust for 125 years. The longer duration for property to be held on trust makes it more likely that a situation will arise where the last remaining trustee of a trust has impaired capacity to administer the trust. I note that the provisions in the bill are carefully drafted to only apply in very limited circumstances as mentioned previously and are a measure of last resort to ensure the trust can be administered without needing to pursue more expensive mechanisms such as an application to the court.

Additionally, the attorney or administrator has discretion and is not required to exercise the power. I note that the bill makes clear that the Guardianship and Administration Act 2000 and the Powers of Attorney Act 1998 do not apply to the attorney's or administrator's exercise of the power to replace the trustee, which avoids a conflict of interest arising between the attorney's or administrator's obligations to the trustee with impaired capacity as attorney or administrator and the obligation to the beneficiaries when appointing a replacement trustee. The attorney or administrator exercising this power will be bound by a duty to act in the interests of the beneficiaries of the trust. If there is a dispute or concern about the use of this power, an application can be made to the court.

The new power will only apply to trusts that are settled after the bill commences and cannot be exercised if there is a contrary intention in the trust instrument. This means that the settlor of the trust can expressly exclude the application of these provisions if they so wish. This new power is in line with QLRC recommendation 3-8 in the interim report and clause 16 of the draft Trusts Bill in the QLRC's final report. The new power provides a clear efficiency for the administration of trusts, which is consistent with the intent of the reforms in this bill.

I want to place on record my thanks to the then members of the QLRC for their report and also to the stakeholders whose contributions have led to this very important legislation. This is legislation that should have and could have been before this House many years before today. I note the former attorney-general and the department's work to get it to the parliament last year. However, that bill, as I have clearly outlined, has lapsed. Therefore, I have outlined the extensive summary of the changes I have made to the bill very clearly for the House's noting today. With that, I commend the bill to the House.

First Reading

Hon. DK FRECKLINGTON (Nanango—LNP) (Attorney-General and Minister for Justice and Minister for Integrity) (4.20 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Justice, Integrity and Community Safety Committee

Mr DEPUTY SPEAKER (Mr McDonald): In accordance with standing order 131, the bill is now referred to the Justice, Integrity and Community Safety Committee.