




Speech By
Linus Power
MEMBER FOR LOGAN

Record of Proceedings, 1 May 2025

TRUSTS BILL

 **Mr POWER** (Logan—ALP) (4.36 pm): It is interesting that we had a member speaking before who moved to guillotine this debate and yet insisted on taking a turn out of order and then ran the most anodyne and pathetic piece of boilerplate just to engage in self-congratulations. That shows the kind of arrogant and out-of-touch government that is running this state.

From 2012 to 2013, the Queensland Law Reform Commission conducted a comprehensive review of the Trusts Act. As part of that review, the commission suggested clause 11, which is a new provision that implements recommendation 3-2 of the interim report. The report states that the commission considered it undesirable that a trust should, at the outset, or on the later appointment of a trustee, have a trustee appointed who is an undischarged bankrupt or insolvent or takes advantage of the laws of bankruptcy or is a debtor under the Bankruptcy Act or similar law in a foreign jurisdiction. While a person's bankruptcy or insolvency is not necessarily an indication that a person is unfit to be a trustee, a person's bankruptcy or insolvency has the potential to complicate and adversely affect the administration of a trust or make third parties less willing to deal with that trustee, in particular because the bankruptcy may affect the trustee's legal capacity to institute legal proceedings and, of course, to be sued.

We note from chapter 2.6 of the Justice, Integrity and Community Safety Committee's report, at page 20, that there is an amendment to the terminology in the 2024 bill regarding the exclusion of persons as trustees, from 'bankrupt' to 'insolvent under administration'. As noted in chapter 2.1 of the report, the bill provides that an individual who is insolvent under administration cannot be appointed as a trustee of a trust. At chapter 2.6 the report states—

A similar provision was also included in the 2024 Bill. It proposed to exclude 'an individual who is a bankrupt, or is taking advantage of the laws of bankruptcy as a debtor, under the Bankruptcy Act 1966 (Cwlth) or a similar law of a foreign jurisdiction' from appointment as a trustee.

The Department of Justice noted, 'For example, the lapsed Bill used the phrase "a bankrupt or is taking advantage of the laws of bankruptcy" whereas this bill refers to 'an insolvent under administration' or someone who is taking advantage of the insolvency. That brings us to an interesting point because we know that the *Australian* recently reported that member for Broadwater, the Premier, paid \$200,000 in order to skip court—

Mr NICHOLLS: Mr Speaker, I rise to a point of order in relation to relevance. I refer to the Speaker's statement on Tuesday regarding standing order 139 and the matters that are relevant in a second reading debate. It states the debate may address 'the principles of the bill, the portfolio committee's examination and report and any amendments recommended by the committee.' In my submission, the member is straying well outside the confines of standing order 139 and the practice in this House.

Mr DEPUTY SPEAKER (Mr McDonald): Member for Logan, please confine your contribution to the long title of the bill or the committee report, as outlined by the Speaker. This is about modernising the legislation, so if you can keep your comments to how that relates to the bill you may continue.

Mr STEVENS: Mr Speaker, I rise to a point of order. The member is making reference to a matter which is before the Ethics Committee, which is totally prohibited in this House.

Mr DEPUTY SPEAKER: It is a different matter. Member for Logan, please refrain from breaching the standing orders.

Mr POWER: I have carefully considered what is before the Ethics Committee and make no reference to the matter that is before the Ethics Committee. I am talking about other matters. In relation to the other point of order, I am addressing paragraph 2.6 on page 20 of the report relating to the 'amendment to terminology of the 2024 bill' and what unintended consequences it may have for a particular member of this House.

Mr DEPUTY SPEAKER: Nice try, member for Logan. This is about the broad principle of modernising the bill, not specific matters, as the Speaker referred to.

Mr POWER: No doubt—

Mrs FRECKLINGTON: Mr Speaker, I rise to a point of order.

Mr DEPUTY SPEAKER: Member for Logan, we are not going to have an argument about this. This is a very clear direction. Yes, Attorney-General?

Mrs FRECKLINGTON: If you have made a clear direction, I will not raise the point of order.

Mr POWER: With due respect, I want to speak to paragraph 2.6, which relates to amending terminology under the bill, which interestingly did not say 'bankrupt' but someone who is 'taking advantage of the laws of bankruptcy' under a Commonwealth act or similar law. As MPs, we need to—

Mrs FRECKLINGTON: Mr Speaker, I rise to a point of order. I refer to the member for Mermaid Beach's point of order where he just informed the House about the matter before the Ethics Committee. It is clear the member for Logan is trying to use trickery with an issue that is before the Ethics Committee.

Mr POWER: Mr Speaker, I rise to a point of order.

Mr DEPUTY SPEAKER: Member for Logan, you have the call. I have given clear directions with regard to the Ethics Committee and also the specifics of this bill. Return to those matters, please.

Mr POWER: May I get a point of clarification?

Mr DEPUTY SPEAKER: What is your point of clarification?

Mr POWER: The matter before the Ethics Committee is strictly about declarations. It is strictly about whether an event was declared or not. I will make no reference to that whatsoever, and I wish to continue.

Mr DEPUTY SPEAKER: Let me take some advice, please. Member for Logan, I have had clarification of my earlier ruling with regard to standing order 271. You cannot refer to anything that is before the Ethics Committee. You will be warned if you continue down that line.

Mr POWER: If it helps the House, I can speak hypothetically.

Mr DEPUTY SPEAKER: Do not be argumentative, member for Logan, or I will sit you down.

Mr POWER: I am in no way being argumentative. I was absolutely agreeing with you, Mr Deputy Speaker. In paragraph 2.6, we note that the amended terminology says that persons who are regarded to be excluded as trustees—and I am reading directly from the report here—has changed from 'bankrupt' to 'insolvent under administration'. In this case, if someone has taken advantage of the laws of bankruptcy to enter into an undertaking—and here I speak completely hypothetically—to make a payment to forestall some kind of action, then I am asking whether this section—

Mr NICHOLLS: Mr Speaker, I rise to a point of order. The member for Logan is simply using a device of sophistry to get around your direction. In my submission, he is deliberately ignoring your direction and is being argumentative in doing so.

Ms FENTIMAN: Mr Speaker, I rise to a point of order.

Mr DEPUTY SPEAKER: Thank you, member for Clayfield. I am listening very carefully, and there may be some merit in your suggestion that he is being very convenient. I am paying attention now to a hypothetical that probably has very broad relevance. I am listening very carefully. Member for Logan, I have given you some very strong advice, so please be careful.

Mr POWER: This change in terminology from 'bankrupt' to 'insolvent under administration' is also reflected in clauses 20, 23, 102 and 228 of the bill. Of course, we as members of parliament should carefully consider whether there are unintended consequences for somebody who had undertaken some kind of administrative payment to forestall some kind of bankruptcy under the act and whether that would affect their ability to be a trustee. If they were a trustee in their role as a public servant of any description, this would be of concern if there is an unintended consequence of the act. There are many trusts that governments, including ministers, have to be involved with, and if someone has undertaken some kind of agreement to forestall some kind of further—

Mr NICHOLLS: Mr Speaker, I rise to a point of order. Again, I draw your attention to standing order 139 and relevance. In my submission, the member for Logan is attempting to avoid the rulings that you made previously in relation to relevance to the debate of the main points of the bill by drawing tenuous lines, by misusing terminology and by using sophistry. He is yet to advance any argument in the debate regarding a philosophical difference that has been raised either in the committee report—or it has not been raised in the committee report—or in relation to the bill in respect of this matter.

Ms FENTIMAN: Mr Speaker, I rise to a point of order. In relation to the point of order, the member has outlined exactly which pages of the committee report he is quoting from and he has not gone anywhere near any of the matters that would activate standing order 271. To the point of order made by the Acting Leader of the House, the member cannot get to his argument because of the several points of order that continue to be made. You have ruled that you are listening carefully. In fact, the member for Logan is being incredibly careful. I think the member for Clayfield might take a seat and let the member for Logan get his argument out.

Mr DEPUTY SPEAKER: Member for Logan, I have given you a very clear direction. Please stick within the orders given and the committee report. If you do stray, I will sit you down.

Mr POWER: Thank you very much for your guidance, Mr Deputy Speaker. I turn to page 21, paragraph 2.6—departmental advice. It states—

In respect of this change in terminology, the DoJ noted that this was a 'minor and technical' amendment to improve readability and consistency:

I further quote—

For example, the lapsed Bill used the phrase 'a bankrupt or is taking advantage of the laws of bankruptcy as a debtor under the Bankruptcy Act 1966 (Cwth) of a similar law of a foreign jurisdiction'. In the Bill, the phrase 'an insolvent under administration' is used instead, which is a defined term under the Acts Interpretation Act 1954 defined by reference to the Corporations Act 2001 (Cth) and means the same thing.

In that way, I wish to pose the question to the House before we vote and legitimately discuss the unintended consequences of who else might be affected by this clause and how it would inhibit them from being a trustee of a trust that they are part of or a trust that they are required to be a part of in any role that they undertake. The QLRC review states—

2.19 The provision has been expressed in these terms to avoid any ambiguity that might arise from providing that the appointment is 'void'.

2.20 The Commission considers that different considerations may apply in the case of a person who is bankrupted after his or her appointment as trustee has taken effect. As explained later, the bankruptcy of a trustee is a ground for the replacement of a trustee under clause 15(1)(g) and the removal of a trustee under clause 23(1), although the replacement or removal of the trustee on that ground is not automatic under those provisions.

The question is that those who have undertaken some form of payment to forestall a bankruptcy should not be able to—

Mr NICHOLLS: Mr Deputy Speaker, I rise to a point of order. The bill does not mention forestalling some form of bankruptcy in any way, shape or form. In relation to the amendment to the bill, the evidence to the committee quite clearly was that the change was driven because of advice from the Department of Justice and Parliamentary Counsel in relation to the Acts Interpretation Act. If the member were addressing the change and the evidence before the committee, he would be relevant—but he is not.

Mr POWER: I am not a lawyer.

Mr DEPUTY SPEAKER: Member for Logan, I am listening very carefully. I have had advice. I am being consistent with the advice that I have been given. Be very careful about trying to relate to something that is not within this bill.

Mr POWER: We note, on further reading, that the change in terminology from 'bankrupt' to 'insolvent under administration' is to deal with those people who should not be given the responsible role of being a trustee in this state. That is why this language was changed—to modernise it. We also note that the modernisation under the Commonwealth act, which it is making reference to, further

expands that it is not 'bankrupt' in the sense that we might understand it but 'insolvent under administration'—so anyone who is insolvent under administration or has made some administrative undertaking to forestall bankruptcy in the future.

Government members interjected.

Mr POWER: I have a question before these interjections—

Dr ROWAN: Mr Deputy Speaker, I rise to a point of order. I submit to you that there have been a number of points of order made in relation to the contribution. There is what I would term deliberate obfuscation in relation to the content of the member for Logan's contribution to this bill. Your directions have been very clear, but I would ask you, once again, to consider the ongoing contribution and what I would term the deliberate obfuscation in relation matters that are before the Ethics Committee under standing order 217.

Mr KRAUSE: Mr Deputy Speaker, I rise to a point of order. My point of order is that I think the member for Logan is engaging in tedious repetition with his contribution to this bill, in addition to the point of order made by the Leader of the House.

Ms FENTIMAN: Mr Deputy Speaker, I rise to a point of order. Government members have been interjecting with points of order—repetitious points of order—and not allowing the member for Logan to make his contribution, which is directly relevant because he is talking about a change in terminology in the Trusts Bill. That is directly relevant to this bill. I have made this point of order before, but he cannot get his argument out because of the same points of order that continue to be made from government benches.

Mr DEPUTY SPEAKER (Mr McDonald): For the benefit of the House, I have taken advice and the advice that I have is consistent. If the member for Logan is being hypothetical sufficiently away from this but in line with the bill and quoting the bill then I will let him continue, although he is becoming repetitious, as the Deputy Speaker has outlined, and that will be another point for me to consider—whether you should be able to continue. Member for Logan, you have the call but, if you could extend your argument of debate, that would be beneficial.

Mr POWER: I do wish to put some questions. In this debate we were going to have the ability to speak to the clauses individually. At that time I probably would have had many more questions. However, this debate was guillotined earlier which prevents those who wish to put more detailed questions, especially about this clause, to the Attorney-General. That means that these things are more difficult. I also wish to note that there has never been a motion that has had more points of order made than we have had in this debate. I think on reading the transcript it will be quite clear that I am making reference to the bill.

The questions I want to put are: did the Attorney-General give consideration—we know that it is not a fit and proper person who has made undertakings under the Bankruptcy Act. Were similar undertakings under the Corporations Act, which are to forestall these things, given consideration? Should there be greater clarity? If it was not considered, why was it not considered, and what further work could be done to put that into the bill?