



## TRUSTS: What's all the fuss about?

For many South Australians, especially those in regional communities, the word “trust” carries weight. Maybe you’ve heard that trusts are a great tool for protecting assets or reducing tax. Or maybe, like many, you’re unsure what a trust even does. With so many types of trusts out there, such as family trusts, unit trusts, and testamentary trusts – it’s no wonder people can feel overwhelmed.

### **So, what is a trust?**

At its core, a trust is a legal arrangement where one party (the trustee) holds and manages assets for the benefit of others (the beneficiaries). Depending on how a trust is structured, it can be an incredibly effective way to manage and protect wealth, organise the succession of family assets, or even support vulnerable family members.

### **Why use a trust?**

Trusts can serve a wide range of purposes. Some families use them to hold farming land or operate a business, often allowing income to be distributed flexibly among family members. Others use them for estate planning, to ensure assets are passed down in a flexible yet protected and tax-effective manner. Trusts can also provide for minors or vulnerable family members and ensure that the right people will look after their money. In regional communities, we often see trusts used to manage generational landholdings, particularly when the goal is to keep the farm in the family. In this context, a trust can help to protect against future risks such as divorce or insolvency, although of course these can be complex situations. But not all trusts are created equal. Each type works differently and is designed for different purposes:

**Discretionary Trusts** the most common type (often being called “family trusts”) give the trustee flexibility to decide which beneficiaries receive which portion of income or capital from the trust each year.

**Fixed Trusts** require that income and capital is distributed to beneficiaries in fixed proportions.

**Unit Trusts** divide ownership into “units” and are often used in business or joint venture arrangements.

**Testamentary Trusts** are created in a person's Will and come into effect after that person dies—offering excellent protection and flexibility for beneficiaries.

**Special Disability Trusts** can provide for the long-term needs of a family member with a severe disability, without affecting their access to social security benefits.

**Superannuation Proceeds Trusts** can also be created in a person's Will to ensure that benefits from that person's superannuation fund are dealt with in the best possible way. Understanding which type of trust suits your needs requires careful consideration, as there are significant tax, legal and administrative differences between them.

### **What about tax savings?**

There's a common belief that trusts help you save on tax. This is true to an extent—but only if used properly. For example, a family trust can often share income between adult beneficiaries in the family group, potentially reducing the overall tax burden. But there are traps for the unwary. In a family trust, distributing income to children under 18 often triggers penalty tax rates. However, if the income is from a Testamentary Trust, minor children's expenses can often be paid for with the income used for those payments being taxed at normal adult rates, due to special rules about “excepted income.” For those looking deeper into this area, section 102AG(2)(a) of the *Income Tax Assessment Act 1936* (Cth) is worth exploring, though we recommend doing so with a qualified legal or tax advisor. The ATO has increased its scrutiny on trusts in recent years, and you can't assume that a trust will automatically create tax savings. Compliance and documentation must be handled with care.

### **Trusts and succession: planning for the next generation**

For farming families, succession planning is often more than just a financial and logistical process—it's an emotional one. A trust can be a valuable structure for transitioning a farming business or land to the next generation, but only if it is set up with the right governance. We recently assisted a third-generation farming family in the Murray Lands region. The parents had set up a discretionary family trust to hold the farming land and related assets. Over time, three adult children became involved in various ways—one working full-time on the farm, one in an off-farm job who spent some time working on the farm books, and one with no involvement in the farm. As retirement approached, the parents wanted to ensure the farming business could continue, without the full-time farming child having to sell land to pay out the siblings. Our team helped review the trust deed, prepare a well-thought-out Will, draft a memorandum of wishes, and put in place a staged succession plan that balanced family harmony with financial fairness. These issues can mean tough conversations for families – but with the right legal advice, they don't have to become confrontational.

### **Reviewing your trust: when and why?**

Many people assume that once a trust is set up, it's a “set and forget” arrangement. Unfortunately, that's rarely the case. Trusts need to be regularly reviewed to ensure they remain legally compliant and are tweaked when necessary so that they continue to meet your needs. Things to watch for include:

- Whether the trust deed allows for modern tax planning techniques like streaming capital gains or franking credits
- Whether the people selected for the key roles of trustee and appointer roles are still

appropriate

- Changes in your family structure (such as marriage, divorce, births and deaths)
- Updates to tax law or regulatory requirements

For example, if your trust deed doesn't specifically allow for income streaming, you may miss out on significant tax benefits—or worse, fall foul of the ATO. If your trust includes non-resident beneficiaries, or if your family is planning to move overseas, you'll need to consider the implications including regarding tax residency and regulatory compliance.

### **The jargon: decoded**

Trusts come with their own language, which can be intimidating. You may hear terms like **appointor** (the person who can hire or fire the trustee), **settlor** (the person who establishes the trust), and **guardian**, or **protector**—all of which carry different legal responsibilities and can vary significantly from one trust to the next. That's why it's important to have a lawyer who can clearly explain these terms in the context of your trust and your unique circumstances.

### **Our advice: don't go it alone**

Trusts are powerful tools, but they're not DIY solutions. They require careful planning, good record-keeping, and, most importantly, professional guidance. At Andersons, we work with farming families, small business owners, professionals and ordinary families who care about protecting their wealth and providing for their loved ones across regional South Australia to help structure, review and manage trusts that truly work for them. Whether you're setting up a new trust, reviewing an existing one, or planning for the next generation, we're here to help. For personalised advice, contact our team.