SUPREME COURT OF QUEENSLAND

CITATION:	*Re: Asdew Pty Ltd (as trustee)* [2026] QSC 202
PARTIES:	**ASDEW PTY LTD** ACN 001 372 363 **AS TRUSTEE FOR THE WISE DISCRETIONARY TRUST** (applicant)
FILE NO:	2517 of 2026
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland at Brisbane
DELIVERED ON:	28 August 2026
DELIVERED AT:	Brisbane
HEARING DATE:	15 June 2026; further submissions received 13 July 2026
JUDGE:	Treston J
ORDER:	**As made on 15 June 2026**

1. **Pursuant to s 179(3) of the *Trusts Act 2025* (Qld), the applicant has the power to amend the terms of the trust deed by varying clause 1 by deleting:**

   > **"one day before the expiry of twenty one (21) years after the death of the last survivor of the issue now living of her Majesty Queen Elizabeth ll or the expiry of fifty (50) years from the date hereof whichever is earlier"**

   and replacing it with

   > **"8 July 2101"**

As made on delivery of these reasons

1. **Pursuant to s 184(1) of the *Trusts Act 2025* (Qld), the applicant is justified in administering the trust (the Wise Trust) settled by deed dated 9 July 1976 between Steven Charles Wise as settlor and the applicant as trustee on the basis that the document exhibited at DW-2 to the Affidavit of Dianne Ethel Wise affirmed 10 June 2026 (CFI #5) is a true copy of that deed (the trust deed).**

2. Pursuant to s 179(3) of the *Trusts Act 2025* (Qld), the applicant has the power to amend the terms of the trust deed as follows:

(a) by varying clause 1 by deleting:

"for the maintenance support or benefit of all or any one or more of the persons for the time being living and included among the persons or classes of persons specified in the Schedule hereto"

and replacing it with:

"for the maintenance support or benefit of all or any one or more of the persons or companies living or in existence and included among the persons, classes of persons or companies specified in the Schedule hereto"

(b) clause 6 of the trust deed is varied by deleting:

"...New South Wales"

and replacing it with:

"...Queensland".

(c) a new clause 13 is inserted as follow:

"13. This trust and the rights and obligations of the Trustee and Beneficiaries shall be governed by the law of Queensland or such other law a Court determines."

(d) clause 7 of the Schedule of the trust deed is varied by deleting the clause in its entirety and replacing it as follows:

"7. Any company any shares in which are held by one or more of the above beneficiaries in clauses 2, 3, 4, 5 and 6, whether in their own right or as trustee, except Asdew Pty Ltd ACN 001 372 363 or the Trustee of this Trust."

3. The trust deed is rectified by:

(a) deleting the words "Barry Anthony Wise" in clause 3 of the Schedule and replacing them with the words "Barry Allan Wise"; and

(b) deleting the words "Craig Allan Wise" in clause 3 of the Schedule and replacing them with the words "Craig Anthony Wise".

4. The costs of this application are to be paid by the applicant out of the assets of the Trust.

CATCHWORDS: EQUITY – TRUSTS AND TRUSTEES – APPLICATIONS TO COURT FOR ADVICE AND AUTHORITY – APPLICATIONS FOR AUTHORITY NOT CONFERRED BY TRUST INSTRUMENT – JURISDICTION GENERALLY – where the applicant is the trustee of a family-run discretionary trust governed by a trust deed – where no express choice of governing law contained in the trust deed – where implied choice of governing law which has the closest connection at the time of settlement of the trust – where trust initially settled by New South Wales residents, to conduct business in New South Wales, and hold assets based in New South Wales – where factors support that the governing law of the trust deed is New South Wales – where trust now predominantly carries on business in Queensland, owns assets based only in Queensland and the officeholders of the trustee reside in Queensland – where applicant seeks orders under the *Trusts Act 2025* (Qld) – where trust administered in Queensland – whether the court has power to exercise jurisdiction over the trust under the *Trust Act 2025* (Qld) either because the trust is administered in Queensland, or under its *in personam* jurisdiction

EQUITY – TRUSTS AND TRUSTEES – POWERS, DUTIES, RIGHTS AND LIABILITIES OF TRUSTEES – MISCELLANEOUS OTHER POWERS, DUTIES AND LIABILITIES – POWER TO AMEND TRUST DEED – where application brought under s 179 of the *Trusts Act 2025* (Qld) to amend the trust deed – where applicant seeks to amend the trust deed to extend the vesting date, clarify a provision dealing with the allocation of income, and insert a governing law clause – where the court may confer an additional management power on the trustee where it is expedient to do so in the management or administration of the trust property – where s 94 of the *Trusts Act 1974* was the previous equivalent provision – whether s 179 authorises the applicant to amend the trust deed in the manner sought

EQUITY – TRUSTS AND TRUSTEES – DISCRETIONARY TRUSTS – OBJECTS AND DURATION– where the trust had a vesting date of 9 July 2026 – where the applicant sought an order amending the vesting date to 8 July 2101 – where all members of the classes of potential beneficiaries' consented to amendment – where trust carries on business in the management of hotels and holds significant assets in Queensland – where assets managed by family beneficiaries of the trust – where significant capital gains, transfer duty, and transaction costs incurred if vesting date not extended – where appropriate to authorise trustee to amend the vesting date of the trust

EQUITY – TRUSTS AND TRUSTEES – SETTLEMENTS – RECTIFICATION, REVOCATION, RESCISSION AND CANCELLATION – where the trustee seeks to amend the middle names of adult beneficiaries in a schedule of beneficiaries contained in the trust deed – where middle names of beneficiaries swapped – whether change necessary to make the trust deed conform to the true agreement of the parties

Trusts Act 2025 (Qld), s 178, s 179, s 184
Trusts Act 1974 (Qld), s 94
Trustee Act 1936 (SA), s 59C
Trusts (Hague Convention) Act 1991 (Cth), Art 7

L Tucker et al, *Lewin on Trusts*, 20th ed, Sweet and Maxwell, London, 2020, ch 12
Davies, Bell, Brereton, Douglas, *Nygh's Conflict of Laws in Australia*, 11th ed, LexisNexis Australia, 2026, 34.19, 34.26, 34.42

Application of Rinehart (2020) 104 NSWLR 274, considered
Ballard v Attorney General of Victoria [2010] 30 VR 413, applied
BTA Institutional Services Australia Ltd v BNY Trust (Australia) Registry Ltd (2009) 3 ASTLR 207; [2009] NSWSC 1294, considered
Clarke v Ebdon [2020] SASR 67, distinguished
Chellaram v Chellaram [1985] Ch 409, considered
Ewing v Orr Ewing (1883) 9 App Cas 34, applied
Faye and Ors v Faye and Ors [1973] WAR 66, considered
In the matter of the Evangelista Family Trust [2025] QSC 83, considered
Mercanti and another v Mercanti and others (2016) 340 ALR 290, considered
National Commercial Bank v Wimborne (1978) 5 BPR 11,958, cited
Re Constantinou [2013] 2 Qd R 219; [2012] QSC 332, applied
Re Dion Investments Pty Ltd [2013] NSWSC 1941, considered
Re Webb; Webb v Rogers (1992) 57 SASR 193, applied
Re Vita Group (2023) 165 ACSR 576; [2023] FCA 400, considered
Salkeld v Salkeld (No 2) [2000] SASC 296, considered
Staley v Hill Family Holdings [2025] QCA 95, cited
Sutton v NRS(J) Pty Ltd [2020] NSWSC 826, cited
Zec Family Investments Pty Ltd v Zecchini [2024] QSC 173, applied

COUNSEL:	D J Alexander for the applicant
SOLICITORS:	Merthyr Law for the applicant

[1] This is an application for various orders in relation to a discretionary family trust deed settled on 9 July 1976.

[2] A number of orders were sought, but one of them in particular was urgent, being an amendment of the trust deed so as to extend the vesting date.

[3] By operation of the trust deed, the trust was to vest on 9 July 2026.

[4] The applicant sought an order that the vesting date be changed from 50 years to 125 years[1] from the date of settlement of the trust deed, which would vary the vesting date to 8 July 2101.

[5] For the reasons which follow, I made urgent orders to that effect on the day of the hearing. I concluded that the balance of the orders sought were not urgent and reserved my decision in relation to them until this judgment.

[6] In addition to orders extending the vesting date of the Trust, the applicant sought orders broadly as follows:

(a) a direction under s 184(1) of the *Trusts Act 2025* (Qld) that the applicant is justified in administrating the trust known as the Wise Discretionary Trust (**the Wise Trust**) on the basis that a photocopy of the trust deed is a true copy;

(b) an order under s 179(3) of the *Trusts Act 2025* (Qld) conferring on the applicant the power to amend the terms of the trust deed in a number of ways, including by extending the vesting date from 9 July 2026 to 8 July 2101, and correcting the identification of corporate beneficiaries;

(c) a further order under s 179(3) of the *Trusts Act 2025* (Qld) conferring on the applicant the power to amend the trust deed by inserting a governing law clause providing that the Trust would be governed by the law of Queensland in circumstances where the Trust Deed is silent as to the governing law of the Wise Trust; and

(d) that the trust deed is rectified by correcting the middle names of two beneficiaries named in the deed.

Background to the Wise Trust

[7] The applicant, Asdew Pty Ltd (**Asdew**), is the trustee of the Wise Trust. The Wise Trust is a family discretionary trust established by a trust deed settled on 9 July 1976 in New South Wales between Steven Charles Wise, as settlor, and the applicant, Asdew Pty Ltd.

[8] At the time of settlement, the office holders of Asdew were Alan Wise, the son of the settlor, and Alan's wife, Dianne Wise. Alan and Steven are now deceased.

[9] Alan and Dianne had two sons, Barry and Craig. Dianne, Barry and Craig are the current directors of Asdew.

[10] Dianne is the only shareholder of Asdew, following the passing of Alan.

---

1 The maximum period available for a trust under the *Property Law Act 2023* (Qld), s 201.

[11] When the trust was settled, there was then property and business interests in New South Wales, but the evidence demonstrates that for some considerable period of time the family business and its operations have all been situated in Queensland.

[12] At the time the Wise Trust was established, Alan and Dianne owned and managed a hotel in New South Wales. Their accountants at the time advised that they should set up a family trust structure, as that would benefit them more as a family unit by improving their business, helping with cash flow and reducing the running cost of the business.

[13] The trust deed was prepared by a firm of solicitors in New South Wales who advised that Asdew should be appointed as trustee of the family trust, primarily for asset protection, business and taxation reasons.

[14] A photocopy of the trust deed is in evidence. The original deed has been lost.

[15] The trust deed does not contain as clause as to the general governing law of the trust; nor does it contain a variation or amendment power clause.

[16] The Schedule to the trust identifies the beneficiaries as:

> "1. Alan Stanley Wise
>
> 2. Dianne Ethel Wise
>
> 3. Barry Anthony Wise
>
> 4. Craig Alan Wise
>
> 5. Wives of the above beneficiaries 3 and 4.
>
> 6. The Child or children of beneficiaries 1,2,3 and 4.
>
> 7. Any company except Asdew Pty Limited."

A preliminary question

[17] Before turning to the issues raised by the application, there is a question of jurisdiction. It is necessary to consider whether the *Trusts Act 2025* (Qld) applies to the Wise Trust in circumstances where:

(a) there is no general governing law clause in the trust deed;

(b) the address for the Settlor and the Trustee stated in the copy of the trust deed are both in New South Wales;

(c) the initial assets of the Wise Trust after settlement, it being settled with $100, were all in New South Wales;

(d) the address of the solicitor's firm who prepared the trust deed, which appears on the front page of the deed, was in New South Wales; and

(e) clause 6 of the trust deed states:

> "The Trustee may be removed and a new Trustee or an additional Trustee may be appointed at any time all in accordance with the Law for the time being in force in New South Wales."

[18] In those circumstances, it might fairly be thought that because the proper law of a trust is determined by reference to the circumstances existing or contemplated at the time of the creation of the trust,[2] then the proper law of the Wise Trust was the law of New South Wales. Against that:

(a) the Wise Trust is currently administered entirely in Queensland;

(b) all of the assets of the Wise Trust are properties in either Ipswich or Maryborough, Queensland; and

(c) the beneficiaries to whom income is distributed all reside in Queensland.

[19] *In **Re Dion** Investments Pty Ltd,*[3] Young J considered that if there is a statute which is wide enough to cover trusts which have a substantial connection to a state (there, New South Wales, here, Queensland), then that statutory power may be exercised notwithstanding the proper law of the trust is not that State's law. His Honour cited a "classic example" for the exercise of that jurisdiction in ***Re Webb**; Webb v Rogers*,[4] where the Full Court of the Supreme Court of South Australia held it had jurisdiction to order accounts in the case where the trustees were administering trusts in South Australia even though the proper law of the trust was the Northern Territory.

[20] Young CJ further considered ***BTA** Institutional Services Australia Ltd v BNY Trust (Australia) Registry Ltd*,[5] and ***Salkeld** v Salkeld (No 2)*,[6] to conclude that, even where the trust is governed by a different governing law, that the fact that New South Wales was the place of administration provided jurisdiction for the court to exercise the statutory power conferred by the *Trustee Act 1925* (NSW) (**NSW Trustee Act**).

[21] *Re BTA* concerned an application for judicial advice under s 63 of the NSW Trustee Act. One of the trusts for which the trustees sought advice had a governing law of England. Brereton J followed King CJ at 195-196 in *Re Webb* and concluded that the provisions of the NSW Trustee Act were apt to apply. *Salkeld* was an application by a defendant trustee to transfer the proceeding to be determined in New South Wales. Orders were sought by the plaintiff varying the terms of various trusts, and seeking that the trusts, having "outlived their usefulness", vest in the beneficiaries. Such trusts were both governed by New South Wales law and administered in New South Wales.[7] At [26], Perry J considered that the South Australian Supreme Court retained the power to order the variation, either under s 59C of the *Trustee Act 1936* (SA) or in the court's *in personam* jurisdiction, where one of the class of beneficiaries and his family resided in South Australia.[8] His Honour cited ***Faye** and Ors v Faye and Ors,*[9] and King CJ in *Webb* at 196.

---

2 ***Re Constantinou*** [2013] 2 Qd R 219; [2012] QSC 332, 225-227 [29], [39]-[45] (Dalton J) (though this concerned a testamentary trust); *Trusts (Hague Convention) Act 1991* (Cth), Art 7.

3 [2013] NSWSC 1941, [32].

4 (1992) 57 SASR 193.

5 *BTA Institutional Services Australia Ltd v BNY Trust (Australia) Registry Ltd* (2009) 3 ASTLR 207; [2009] NSWSC 1294 (Brereton J).

6 [2000] SASC 296 (Perry J).

7 *Salkeld*, [33]-[37].

8 *Salkeld*, [28].

9 [1973] WAR 66 (Lavan J).

[22] It can be accepted that the court has a clear jurisdiction to administer and supervise trusts which arises *in personam*: *Webb*, 196-197 citing ***Ewing*** *v Orr Ewing*,[10] and ***Chellaram*** *v Chellaram*.[11] Scott J expressed that jurisdiction in *Chellaram* at 432:

> "…The function of English courts in trust litigation is to enforce or protect the rights of the beneficiaries which bind the conscience of the trustee defendants. The identification and extent of those rights is a matter for the proper law of the settlement, but the manner of enforcement is, in my view, a matter of machinery which depends upon the powers enjoyed by the English courts. Among the powers available to English courts is the power to order the removal of trustees and the appointment of new ones. This power is, in my view, machinery which, under English domestic law, can be exercised by English courts where necessary in order to enable the rights of beneficiaries to be enforced or protected..."

[23] Similarly, Dalton J in *Re Constantinou*[12] considered an application for judicial advice regarding the governing law of a trust created by a will, where the governing law may have been Papua New Guinea. Her Honour was satisfied however, in reliance upon *Webb*,

(a) that by bringing the action *in personam* the applicant had submitted to the jurisdiction of the court; and

(b) in circumstances where all the parties had been served and had not objected to the jurisdiction of this court,

that this court had jurisdiction to give advice and deal with the application.

[24] However, according to *Nygh's Conflict of Laws in Australia*,[13] the power does not extend to the variation of trusts and the variation of the trust cannot be achieved simply by the making of an *in personam* order against the trustee.[14]

[25] That view seems to be shared by Parker J who analysed the authorities in an application for judicial advice under the NSW Trustee Act in *Application of* ***Rinehart***.[15] In particular, Parker J observed:

> "[95] If it is correct to say that a statutory power to vary the terms of a trust can be exercised over a foreign trust, then, subject to any difference in statutory language, it would readily follow that a statutory power to give judicial advice could likewise be exercised so as to give advice to the trustee of a foreign trust. But I think that there is room for argument about the correctness of the Australian decisions (*Faye* and *Salkeld*) on the variation of trusts.
>
> [96] In the first place, the decisions cut across the general principle that it is the proper law of the trust which governs the rights and obligations of

---

10 (1883) 9 App Cas 34 (Lords Selborne and Blackburn).
11 [1985] Ch 409 (Scott J).
12 [2013] 2 Qd R 219; [2012] QSC 332 (Dalton J).
13 Davies, Bell, Brereton, Douglas, *Nygh's Conflict of Laws in Australia*, 11th ed, LexisNexis Australia, 2026.
14 At 34.42.
15 (2020) 104 NSWLR 274, 289-290 (Parker J).

> the trustee and the beneficiaries: see Heydon and Leeming, *Jacobs' Law of Trusts in Australia* (8th ed, 2016, LexisNexis Butterworths) at par 28-08. Secondly, the decisions do not consider the constitutional limitation on the power of states to legislate so as to govern the administration of foreign trusts, as recognised by the High Court in *Gosper* [*v Sawyer* (1985) 160 CLR 548]. That case was not cited in *Salkeld* and postdated the decision in *Faye*.
>
> [97] Nor do I think that *Faye* and *Salkeld* derive any support from the Full Court decision in *Webb*. Rather the reverse. The powers of the court to order the production of accounts, and the power to employ an inspector, were not powers which affected the substantive rights and obligations of the trustee and the beneficiaries. They fitted readily within the category of "mechanical" powers identified by Scott J in *Chellaram*."

[26] Despite the, respectfully, compelling arguments made by Parker J in *Rinehart*, there remains a line of authority to the effect that, as a matter of general principle, the court has an *in personam* jurisdiction over any trustee who comes before it, whether by submitting to its jurisdiction or being served in proceedings before it.[16] As the jurisdictional question was not fully argued before me, and there was no contradictor, I too take the position adopted by Jackman J in *Re Vita* that this is not the appropriate case to explore the outer limits of the principle.[17]

[27] On balance, I am satisfied that this court has power to make orders and directions under the *Trusts Act 2025* (Qld), either because the trust is being administered in Queensland,[18] or because the trustee is within the jurisdiction so that the court has an *in personam* jurisdiction over the trustee.

The lost trust deed

[28] I turn to the issue as to whether the applicant is justified in administering the trust on the basis of the copy of the trust deed.

[29] Diane's evidence is that she had seen the original trust deed and recalled that it was bound with a green ribbon and bore the original signature of Steven. In June 2000, when the Wise Trust was purchasing a property at Wardell Street, Enoggera, Diane provided a bundle of documents, including the original trust deed, to a person at the Commonwealth Bank in Queen Street, Brisbane. Approximately six months later, she approached the bank to secure the return of the trust deed and was told that the bank did not hold any such original documentation. Despite making further inquiries, the original document was never located or returned to her.

[30] Based upon her memory of the original document, Diane deposes that the copy document is a true copy of the original lost deed.

---

16 *Ewing,* 40–41 (Lord Selborne LC), 45–46 (Lord Blackburn); *Chellaram,* 426–427 (Scott J); *National Commercial Bank v Wimborne* (1978) 5 BPR 11,958 at 11,982 (Holland J); *Re Constantinou,* [11] (Dalton J); *Re Dion,* [34]–[36]; ***Re Vita** Group* (2023) 165 ACSR 576; [2023] FCA 400, [35] (Jackman J).

17 *Re Vita*, [35].

18 *Re Dion,*[32]-[33] (Young AJ).

[31] I am satisfied that the copy is a true copy. It bears not only Steve's signature, but the company seal of Asdew, affixed and signed by Alan and Diane, who were the directors. It is witnessed by a Justice of the Peace. It is dated and stamped "COPY" on the front cover. It bears the stamp of the Stamp Duties Office, and the notation of the stamp duty paid. In the circumstances, it is most likely that the photocopy of the trust deed is a copy of the original which cannot now be found.[19]

[32] Accordingly, the applicant is justified in administering the Wise Trust on the basis that the copy of the trust deed is a true copy. There will be an order to that effect under s 184 of the *Trusts Act 2025* (Qld).

Amending the trust deed

[33] Most modern trust deeds contain an express power of amendment or variation. This trust deed contains no such power. Rather, this trust deed is a reflection of the drafting style of the 1970's. It is highly proscriptive (at cl 11) of the trustee's powers of investment, accumulation, borrowing, selling, disposing, appropriation, encumbering, payment of expenses, compounding, compromising, engagement of others (bankers, solicitors, investment brokers etc), and applying monies for maintenance, education and the like. Otherwise, it contains little directed to the more administrative matters, except for the number of trustees (cl 7) and the appointment and removal of them (cl 6).

[34] In the absence of a power in the trust deed to vary or amend, the applicant argues that the power to amend the trust deed may arise under s 179 of the *Trusts Act 2025* which provides:

> "**179 Court may confer additional management powers**
>
> (1) This section applies in relation to a trust if the court is satisfied—
>
> (a) the exercise of a particular management power—
>
> (i) would be expedient in the management or administration of the trust property; or
>
> (ii) would be in the best interests of the persons, or the majority of the persons, beneficially interested in the trust property; and
>
> (b) the management power can not be exercised because—
>
> (i) it is inexpedient, difficult or impracticable to exercise the power without a court order; or
>
> (ii) the trustee does not have the management power under this Act, the trust instrument or otherwise.
>
> (2) For subsection (1)(b)(ii), it does not matter that the trustee does not have the particular management power because—

19 A similar order was made by Parker J in *Sutton v NRS(J) Pty Ltd* [2020] NSWSC 826.

(a) this Act allows the power, which would otherwise be conferred on the trustee under this Act, to be excluded or modified under the trust instrument; and

(b) the trust instrument excludes or modifies the power.

Note—

See section 82(3) in relation to the powers that may be excluded or modified under the trust instrument.

(3) The court may, by order, confer the management power on the trustee, either generally or in a particular matter, and on the terms and subject to any conditions the court considers appropriate.

(4) Without limiting subsection (3), the court may direct—

(a) how an amount authorised to be expended is to be paid; and

(b) how the costs of any transaction are to be borne; and

(c) the extent to which the amount or the costs are to be apportioned between capital and income."

[35] A "management power" is defined in s 178 of the *Trusts Act 2025* (Qld) as:

"...

management power, in relation to a trust, means any power for the management or administration of the trust or the trust property, including, for example—

(a) the power to surrender, release or otherwise dispose of the trust property; and

(b) the power to retain the trust property; and

(c) the power to buy, invest in or acquire trust property or engage in another transaction for the trust; and

(d) the power to expend an amount out of trust funds."

[36] The applicant submits that this definition of "management power" is materially broader than the scope of the court's power as it previously existed under s 94 of the now repealed *Trusts Act 1974* (Qld) which I dealt with at some length in *In the matter of the* ***Evangelista Family Trust***.[20] Now, the court need only be satisfied that the power is one to be exercised for the management or administration of the trust or the trust property, and is not limited to matters in the repealed s 94.

[37] I accept that the examples given in s 178(a)-(d) of the *Trusts Act 2025* (Qld) are not exhaustive. Nevertheless, the power in terms of "management or administration" is not

20 [2025] QSC 83 (Treston J).

without limits. In *Evangelista Family Trust*, I respectfully followed *Ballard v Attorney General of Victoria*,[21] where Kyrou J said:

> "[32] None the less, the words "management or administration" are "of wide import and pick up everything that a trustee may need to do in practical or legal terms in respect of trust property". Although their meanings may largely overlap, the disjunctive use of the words indicates that they are not necessarily synonymous and that an unduly narrow interpretation should be avoided. This court has held that "management" refers to "the management of trust property in the commercial or practical sense", whereas "administration" encompasses "all of the legal powers and duties which might be possessed by a trustee in respect of trust property"."

(footnotes omitted)

[38] Here, I am likewise satisfied that the power to amend the trust deed in the ways sought are ones which fall (or fell, in the case of the extension to the vesting date) within the management or administration of the trust deed. Those amendments sought are:

(a) to align the allocation of income with the beneficiaries identified in the Schedule;

(b) to correct the description of eligible beneficiary companies in the Schedule (although, as will be seen below, I consider this is more properly described as rectification rather than amendment);

(c) to insert a clause nominating a governing law of Queensland, with a related change to clause 6; and

(d) to extend the vesting date from 50 years to 125 years.

[39] None of those amendments or variations are ones which I consider would alter the substratum of the trust.[22]

[40] I deal with each issue below.

Extending the vesting date

[41] Dianne's evidence is that she is uncertain whether she and Alan were given any advice about the vesting date of the trust when it was established. To the extent that Dianne turned her mind to the issue of a vesting date, she understood from advice received from her accountant that the trust would not vest for about 100 years. She did not know until quite recently that the trust would vest on 9 July 2026.

[42] Alan died on 11 June 2025, and there is no evidence as to what he knew about the vesting date of the trust. Likewise, Steven died on 13 February 1986, and there is no evidence as to his intention in the settlement of the Wise Trust.

---

21 [2010] 30 VR 413 (Kyrou J).

22 ***Mercanti** and another v Mercanti and others* (2016) 340 ALR 290, [101] (Buss P, Newnes and Murphy JJA); *Staley v Hill Family Holdings* [2025] QCA 95, [37] (Bond JA, Gotterson AJA and Bradley J).

[43] Dianne's sons, Barry and Craig, and their families, all work in the hotel business, which is situated at one of the Wise Trust's properties in Ipswich. Dianne's evidence is that she would like her sons to be able to continue to work there for as long as they choose. It has been explained to her that if the vesting date is not extended then the trust assets (which include 12 real properties) would need to be sold or transferred to herself and her sons, Barry and Craig. That would involve considerable effort and expense, as well as significant stamp duty, capital gains tax liabilities and related transaction costs. Because the trust business continues to be a family business, Dianne wishes to extend the vesting date so as to enable her family to be able to continue to remain employed in, and conduct, the family business.

[44] Dianne's position was supported by the beneficiaries, all of whom had been served, with the exception of the class of beneficiaries in the trust deed described as "any company except Asdew Pty Limited". I was satisfied that it would have been impractical to serve every company except Asdew, and finding, as I do below, that the description of that class of beneficiaries was an error, I concluded that service on every such company was not required.

[45] I was therefore satisfied that it was appropriate to extend the vesting date and made orders to that effect on 15 June 2026.

Changing the governing law of the trust

[46] Changing the proper law of a trust is not uncommon in offshore or international trusts,[23] but little has been said about it in Australian law. The applicant was only able to identify one case in Australia in which the law of the trust was changed,[24] but the case is of limited assistance here because:

(a) the trust deed in question was an employee benefit fund, not a discretionary family trust;

(b) the trust deed in fact contained a variation and amendment clause whereas this trust deed does not; and

(c) the power under s 59C of the *Trustee Act 1936* (SA) was materially different to s 179 of the *Trusts Act 2025* (Qld).

[47] A trustee does not have an implied power to vary a trust deed.[25] Indeed, it is the trustee's duty to adhere to and follow the terms of the trust.[26] Nevertheless, the applicant argues that this court has a broad statutory power to confer on the trustee the power to vary the terms of a trust pursuant to s 179 of the *Trusts Act 2025* (Qld).[27]

[48] As I have said, there is no clause identifying the governing law of the trust. Only cl 6 of the trust deed identifies that for the removal or appointment of a new trustee, the law of New South Wales applies. In the absence of a governing law clause, the implied choice

---

23 L Tucker et al, *Lewin on Trusts*, 20th ed, Sweet and Maxwell, London, 2020, ch 12; Davies, Bell, Brereton, Douglas, *Nygh's Conflict of Laws in Australia*, 11th ed, LexisNexis Australia, 2026, 34.26.

24 *Clarke v Ebdon* [2020] SASR 67 (Blue J).

25 *Mercanti*, [82].

26 *Mercanti,* [81].

27 Previously, *Trusts Act 1973* (Qld), s 94, is now *Trusts Act 2025* (Qld), s 179, which came into force on 28 April 2026.

is that the law of the trust is the one which it has the closest connection.[28] As I observed above at [17]-[18], that combination of features justifies that the proper law of the trust, at settlement, was New South Wales. The applicant seeks to change that implied choice to expressly identify the governing law so as to align the proper law of the trust to the place where the trust is now administered, being Queensland. The consequences of that would include the trust becoming subject to the *Trusts Act 2025* (Qld). That requires amendment or variation of the trust deed.

[49] The applicant submits that the trust deed can be amended by the conferral of "additional management powers" under s 179 of the *Trusts Act 2025* (Qld).

[50] The applicant submits that a governing law provision in a trust deed is not itself a "management power", but that the power to amend a trust deed to insert a governing law provision is a "management power" within the definition of s 178 of the *Trusts Act 2025* (Qld), because it is a power for the administration of the trust as that phrase is used in s 178.

[51] I am satisfied that the power to amend a trust deed is a "management power" within the meaning of s 178 of the *Trusts Act 2025* (Qld), because it is a power for the management or administration of the trust within the meaning of that phrase in the section. It is unnecessary for me to decide whether a governing law provision is itself a management power for the purpose of Division 6. But the words "management or administration" as used in s 178 are words that are of wide import and pick up everything that are trustee may need to do in practical or legal terms in respect of trust property.[29] Whilst subparagraphs 178(a)–(d) of the *Trusts Act 2025* (Qld) give examples of management powers, they are examples only, and do not define the breadth of powers encompassed by the definition. Whether in fact s 179 and the definition in s 178 are broader than the powers under the repealed s 94 of the *Trusts Act 1974* (Qld) is not a matter I need to decide on this application, however given the examples contained in 178(a)-(d), and the terms of s 179(4) of the *Trusts Act 2025* (Qld), the matter is not without argument.

[52] There are two requirements of which the court needs to be satisfied within s 179(1) of the *Trusts Act 2025* (Qld) for the conferral of "additional management powers". First, that the exercise of a particular management power would be expedient in the management or administration of the trust property or would be in the best interests of the persons, or majority of persons, beneficially interested in the trust property (s 179(1)(a)). Second, that the management power cannot be exercised because it is inexpedient, difficult or impractical to exercise the power without a court order or the trustee does not have the management power under the act or trust instrument (s 179(1)(b)).

[53] In this case, it is convenient to deal with the second criteria first. As to s 179(1)(b), here, the management power cannot be exercised because the trust instrument does not contain a power of amendment or variation. That is, if the trustee had a power of amendment, the trustee could arguably insert a governing law clause. But there is no such power of

---

28 *Rinehart,* [51] (Parker J); Davies, Bell, Brereton, Douglas, *Nygh's Conflict of Laws in Australia*, 11th ed*,* LexisNexis Australia, 2026, 34.19; *Trusts (Hague Convention) Act 1991* (Cth), Art 7.

29 *Evangelista Family Trust,* [19], [27]-[28].

amendment. As such, the trustee "does not have the management power…under the trust instrument" within the meaning of s 179(1)(b). That criterion is satisfied.

[54] As to the first criteria, I can be satisfied as to either of the alternatives contained in s 179(1)(a). Both the interests of the persons beneficially interested in the trust property, and the general management or administration of the trust property, would be enhanced by a clause in the trust deed identifying the proper law governing the trust. Such clauses are common in trust deeds and generally enhance the certainty, efficiency and usability of the trust deed. I am therefore satisfied as to the first criteria under s 179(1)(a).

[55] By s 179(3), the court may confer the management power, as defined in s 178, on the trustee, either generally or in a particular matter, and on the terms and subject to any conditions the court considers appropriate.

[56] Having been satisfied therefore that the power of amendment or variation is a "management power" within s 178, and further satisfied of the two criteria in s 179(1)(a) and (b), I am satisfied that pursuant to s 179(3) of the *Trusts Act 2025* (Qld), the power of amendment or variation should be authorised subject to the condition that the variation or amendment be limited to inserting a new clause 13 into the trust deed as follows:

> "13. This trust and the rights and obligations of the Trustee and Beneficiaries shall be governed by the law of Queensland or such other law a Court determines."

Allocation of income

[57] The allocation of income prior to the "Distribution date"[30] is currently dealt with in clause 1 as follows:

> "…the Trustees shall hold the Trust Fund UPON TRUST to pay divide or apply the income…to or between or for the maintenance support or benefit of all or any one or more of the persons for the time being living and included amongst the persons or classes of persons specified in the Schedule hereto (all of whom are hereinafter collectively referred to as "the Beneficiaries")…"

[58] The applicants seek to amend this clause in the underlined and struck through way as follows:

> "…for the maintenance support or benefit of all or any one or more of the persons or companies ~~for the time being~~ living or in existence and included amongst the persons or classes of persons or companies specified in the Schedule hereto…"

[59] As originally drafted, companies could not take under clause 1 unless they could be considered "persons or classes of persons." I am not asked to make any ruling that companies could be eligible to so take, but the problems are immediately obvious. Rather, the amendment seeks to align the power to pay, divide or apply income amongst those beneficiaries who were intended to be available to receive such distributions, that is, to make specific reference to companies.

30 As that term is defined in the trust deed.

[60] However, there is another problem with the Schedule itself in that the corporate beneficiaries as set out at para [16] above includes at subclause 7 "any company except Asdew Pty Limited.". So drafted, the range of companies which are potential beneficiaries is vast, the applicant being the only excluded company. The applicant seeks to amend subclause 7 by deleting it entirely and replacing it with the following:

> "7. Any company any shares in which are held by one or more of the above beneficiaries in clauses 2, 3, 4, 5 and 6, whether in their own right or as trustee, except Asdew Pty Ltd ACN 001 372 363 or the Trustee of this Trust."

[61] I infer from the facts set out above, that the Schedule to the trust deed intended that companies related to family members were to be amongst the eligible beneficiaries to whom income could be distributed. There was an error in describing them in as "persons living or classes of persons" in cl 1, or perhaps an error in not referring to companies at all in that clause. There is then another error failing to limit those companies in the Schedule by their relationship to the family members.

[62] Again, I need to be satisfied of the two criteria in s 179(1)(a) and (b).

[63] As to s 179(1)(b), here, the management power cannot be exercised because the trust instrument does not contain a power of amendment or variation. As such, the trustee "does not have the management power…under the trust instrument" within the meaning of s 179(1)(b). That criterion is satisfied.

[64] As to the first criteria, I can be satisfied as to either of the alternatives contained in s 179(1)(a) of the *Trusts Act 2025* (Qld). Both the interests of the persons beneficially interested in the trust property, and the general management or administration of the trust property, would be enhanced by the amendments to define the companies as eligible beneficiaries. Each of the beneficiaries support the changes to be made. I am therefore satisfied as to the first criteria under s 179(1)(a).

[65] Both errors in the trust deed are ones which can be amended by the use of the management power, and it is appropriate to do so.

Misnamed beneficiaries – rectifying the Trust Deed

[66] In my view, this is more properly described as a rectification issue, rather than an amendment or variation issue.

[67] The Schedule to the trust deed wrongly identifies the middle names of Barry and Craig.

[68] Barry is identified as Barry Anthony, when his middle name is Allan, while Craig is identified as Craig Allan, when his middle name is Anthony.

[69] Each has sworn an affidavit as to their correct names. The only surviving person who signed the original Trust Deed, Diane, has sworn that the persons named in the Schedule were intended to be her two sons. It seems tolerably clear that the middle names were mistakenly switched in a clerical error.

[70] The principles for rectifying a trust deed were set out recently by Henry J in Z*ec Family Investments Pty Ltd v Zecchini* [31] as follows:

> "[11] The remedy involves the Court effectively reforming an instrument which the parties have mistakenly expressed their agreement to. It is generally necessary to show that the parties were in complete agreement on the terms, but, by error, wrote them down wrongly. Mason J in *Maralinga Proprietary Limited v Major Enterprises Proprietary Limited* [1973] 128 CLR 336 at 350 noted:
>
> > "The purpose of the remedy is to make the instrument conform to the true agreement of the parties where the writing by common mistake fails to express that agreement accurately. And there has been a firm insistence on the requirement that the mistake as to the writing must be common to the parties and not merely unilateral except in cases of a special class."
>
> [12] As to the party whose intention is relevant to an order for rectification of trust deeds, Sackar J in *Re George Hardi Family Trust* [2021] NSWSC 1584 observed at [19] to [21]:
>
> > "In the case of a voluntary settlement, which has been established without any active bargain, the question as to whose intention is relevant as to rectification depends on the circumstances and the substance of the matter. Where the settlor has the active and operative intention as a matter of fact, as to the terms of the trust which is declared, then the question is one of the settlor's intention. In other cases, it may be the trustee whose intention is relevant to the terms of the trust."
>
> [13] The distinction as to whether it is the settlor's or trustee's intention which is relevant heralds the relevance of the special class spoken of by Justice Mason in *Maralinga*. Of this, Stevenson J observed in *Sanwick Pty Limited v Kalyk* [2016] NSWSC 100 at 16, that an example of such a class is a voluntary settlement creating a trust where the settlor has no independent intention as to how the trust is to operate and who acts on the instruction of, or at the request of the proposed trustee."

[71] I am satisfied that the errors of the incorrect middle names ought to be corrected so as to conform to the true agreement of the parties, and there will be an order to that effect.

Orders sought

[72] As I have indicated, at the conclusion of the hearing, I made orders as follows:

[31] [2024] QSC 173, [11]-[13] (Henry J).

"1. Pursuant to s 179(3) of the Trusts Act 2025 (Qld), the Applicant has the power to amend the terms of the trust deed by varying clause 1 by deleting:

> "one day before the expiry of twenty one (21) years after the death of the last survivor of the issue now living of her Majesty Queen Elizabeth II or the expiry of fifty (50) years from the date hereof whichever is earlier"

and replacing it with

> "8 July 2101"

[73] The orders following these reasons will be as follows:

1. Pursuant to s 184(1) of the *Trusts Act 2025* (Qld), the applicant is justified in administering the trust (the **Wise Trust**) settled by deed dated 9 July 1976 between Steven Charles Wise as settlor and the applicant as trustee on the basis that the document exhibited at DW-1 to the Affidavit of Dianne Ethel Wise affirmed 10 June 2026 (CFI #5) is a true copy of that deed (**the trust deed**).

2. Pursuant to s 179(3) of the *Trusts Act 2025* (Qld), the applicant has the power to amend the terms of the trust deed as follows:

   (a) by varying clause 1 by deleting:

   "…for the maintenance support or benefit of all or any one or more of the persons for the time being living and included among the persons or classes of persons specified in the Schedule hereto"

   and replacing it with:

   "…for the maintenance support or benefit of all or any one or more of the persons or companies living or in existence and included among the persons, classes of persons or companies specified in the Schedule hereto".

   (b) clause 6 of the trust deed is varied by deleting:

   "...New South Wales"

   and replacing it with:

   "...Queensland".

   (c) a new clause 13 is inserted as follow:

   "13. This trust and the rights and obligations of the Trustee and Beneficiaries shall be governed by the law of Queensland or such other law a Court determines."

   (d) clause 7 of the Schedule of the trust deed is varied by deleting the clause in its entirety and replacing it as follows:

   "7. Any company any shares in which are held by one or more of the above beneficiaries in clauses 2, 3, 4, 5 and 6, whether in their own right or as trustee, except Asdew Pty Ltd ACN 001 372 363 or the Trustee of this Trust."

3. The trust deed is rectified by:

   (a) deleting the words "Barry Anthony Wise" in clause 3 of the Schedule and replacing them with the words "Barry Allan Wise"; and

   (b) deleting the words "Craig Allan Wise" in clause 3 of the Schedule and replacing them with the words "Craig Anthony Wise".

4. The costs of this application are to be paid by the applicant out of the assets of the Wise Trust.