

Time to tax trusts more fairly

Trusts help the wealthy avoid taxes and protect assets from creditors. The use of trusts is growing rapidly in Australia; the number of trusts has almost tripled in the last 30 years. There are now more than 1 million trusts with combined assets of \$2.9 trillion and annual income of \$601 billion. Revenue equivalent to nearly a quarter of the Australian economy now flows through some form of trust.

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In the 2026-27 budget speech, the Treasurer, Jim Chalmers, announced a 30% tax rate on discretionary trusts.¹ Further detail in the budget papers says that beneficiaries other than companies will receive credit for tax paid on their behalf by the trust.² Such reform is important and overdue. Australia's current trust system generates significant inequality, and the trusts may be used to undermine important reforms to the taxes on capital gains and superannuation. The purpose of this paper is to show that the growth of trusts has gotten out of control.

The use of trusts has grown rapidly in recent decades. Australian Taxation Office (ATO) data show the number of trusts grew from around **326,000 in 1990–91 to over 1 million by 2022–23**, with particularly strong growth since the mid-2010s.³ Trusts are now most concentrated in sectors such as rental and real estate, construction, and

¹ Chalmers J (2026) "2026–27 Budget speech", 12 May at <https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/speeches/2026-27-budget-speech-parliament-house-canberra>.

² In this way distributions from trusts will have attached credits similar to the credits attached to franked dividends paid by companies to shareholders. See Australian Government (2026) *Budget Paper No 2: Budget Measures* at https://budget.gov.au/content/bp2/download/bp2_2026-27.pdf

³ Australian Taxation Office (2026) *Taxation Statistics, 2022-23*, <https://data.gov.au/data/dataset/taxation-statistics-2022-23>

professional services, reflecting their role as a common vehicle for small and medium-sized enterprises as well as family wealth structures.⁴

What are trusts?

A trust is a legal relationship in which one party (the trustee) holds and manages property for the benefit of others (the beneficiaries) in accordance with the terms set out by the person who creates the trust (the settlor). Trusts are not a single, uniform structure but a flexible legal device used for many purposes. In Australia, the main categories include **fixed (unit) trusts**, where beneficiaries have defined entitlements; **discretionary (family) trusts**, where trustees have discretion over distributions; **charitable trusts**; **testamentary trusts** created by wills; and **specialised statutory trusts** such as superannuation funds. Superannuation funds are not covered in this brief as they are covered by different rules.

Family discretionary trusts are the most prominent form of trust used by households and private businesses in Australia. Their defining feature is that beneficiaries do not have fixed entitlements; instead, trustees decide how income and capital are distributed each year, subject to the trust deed. This flexibility has made them attractive for protecting assets from creditors during bankruptcy, protecting ‘family’ assets when marriages dissolve, and facilitating tax avoidance.

Why are trusts becoming so popular?

According to a Northern Beaches-based financial planning firm, family trusts “can reduce tax, protect assets, and improve succession outcomes”.⁵

The reference to reducing tax often refers to the ability to split income between beneficiaries of a trust. For example, if a person earned \$300,000 per year, their income would be taxed according to the income tax scales shown in Table 1, with a total tax payable of \$101,138. But if the \$300,000 in income flowed into a family trust and was divided evenly between four family members, then the total amount of tax payable on the same \$300,000 would be just \$53,152, a saving to the family, and loss to the Commonwealth, of \$47,986 per year.⁶

⁴ Australian Taxation Office (2026) *Taxation Statistics, 2022-23*.

⁵ Pailagian (2026) *Setting Up a Family Trust in Australia*, <https://manlyfs.com.au/setting-up-a-family-trust-in-australia/>

⁶ Medicare levy is excluded from these calculations for simplicity.

Income splitting is just part of the raft of strategies tax advisors promote to their clients as tax minimisation strategies involving trusts.

Table 1: Resident tax rates 2025–26

Taxable income	Tax on this income
0 – \$18,200	Nil
\$18,201 – \$45,000	16c for each \$1 over \$18,200
\$45,001 – \$135,000	\$4,288 plus 30c for each \$1 over \$45,000
\$135,001 – \$190,000	\$31,288 plus 37c for each \$1 over \$135,000
\$190,001 and over	\$51,638 plus 45c for each \$1 over \$190,000

Source: Australian Taxation Office

The problem with trusts is not new. In 2019, the ATO, a relatively cautious institution, noted various concerns with trusts, including that:

- *The interactions between the trust and tax laws are being manipulated which could contribute to the sheltering of significant amounts of tax. At conservative levels this amount is estimated to be between \$672 million and \$1.2 billion per annum.*
- *Chains of trusts and interlinking trusts are common which may reflect a deliberate intent to create a degree of opacity with relation to trust income.*

...

- *The current system of trusts presents significant challenges in implementing international transparency obligations and recommendations.⁷*

The Henry Tax Review was released in 2010, 16 years ago, it concluded that:

the rules that set out how trusts are taxed are complex and give rise to uncertainty and should be updated and re-written.⁸

Recommendation 36 of the Henry Review stated:

The current trust rules should be updated and rewritten to reduce complexity and uncertainty around their application.⁹

Dr Henry seemed to be particularly concerned about the need for:

⁷ Australian Taxation Office (2019) *Current issues with trusts and the tax system*, <https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/general-research/current-issues-with-trusts-and-the-tax-system>

⁸ *Australia's future tax system: Report to the Treasurer, December 2009 Part One Overview*, p 42.

⁹ *Australia's future tax system: Report to the Treasurer, December 2009 Part One Overview*, p 87.

Specific rules [that] target the alienation of personal services income to a partnership, trust or company. The rules are effectively aimed at personal services income (income from working) earned by people in employee-like cases (such as dependent contractors). The rules are designed to prevent income splitting and the deferral of tax. They also act to ensure that deductions relating to such alienated income are limited to those available to employees. ... While these specific rules have had some effect, their scope is generally limited to employee-like cases, compliance is poor, they are complex and a good deal of uncertainty remains around their operation.¹⁰

He went on to say:

the use of trusts for tax avoidance or evasion is, however, likely to remain an area of concern that may require targeted responses¹¹

To date, no such targeted response has been forthcoming, and the result has been the rapid growth in the use of trusts and, in turn, the amount of tax avoided.

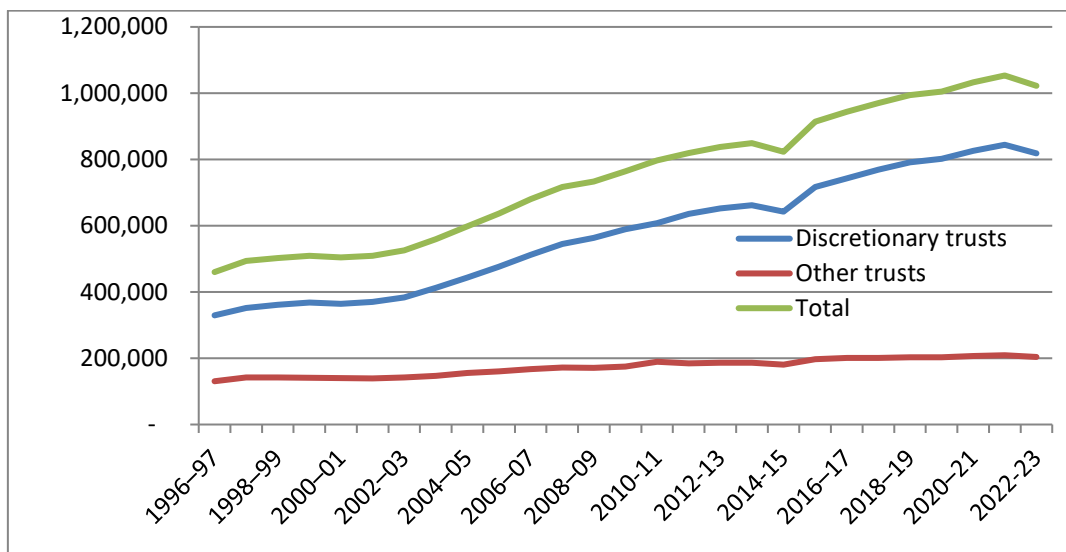
Growth in the use of trusts

The total number of trusts has more than doubled, from 460,030 in 1996-97 to 1,022,229 in 2022-23 (Figure 1), an increase of 122%.

¹⁰ *Australia's future tax system: Report to the Treasurer, December 2009, Part Two, Detailed analysis, volume 1, p 51.*

¹¹ *Australia's future tax system: Report to the Treasurer, December 2009, Part Two, Detailed analysis, volume 1, p 85.*

Figure 1: Growth in trusts, number of trusts since 1996-97



Source: ATO (2025) Taxation Statistics, 2022-23

Most of the growth has been in discretionary trusts, which grew from 329,475 to 818,681, an increase of 148%. The non-discretionary trusts grew by a more modest 56% from 130,555 to 203,548. As of 2022-23, about 80% of Australia’s trusts are discretionary trusts.

As of 2022-23, total gross assets held in trusts were worth \$2.9 trillion or 17% of total household assets.¹² The Australia Institute estimates that in 2022-23, \$601 billion or revenue equivalent to almost a quarter (23%) of Australia’s total economy, was run through a trust.¹³ This includes \$489.4 billion of business income and \$111.4 billion in incomes such as rent, dividends, and interest.

Revenue forgone due to the use of trusts

Nearly 10 years ago, Dale Boccabell, Associate Professor of Taxation at the University of NSW, estimated the revenue loss to the Commonwealth from the reliance on family

¹² Data related to trusts comes from the Australian Taxation Office (2026) *Taxation Statistics, 2022-23*. The total gross assets are not adjusted for the liabilities. The household gross assets in 2022-23 were \$17,655 billion, the average of the 4 quarters. See Australian Bureau of Statistics (2026) *Australian National Accounts: Finance and Wealth, December 2025*, <https://www.abs.gov.au/statistics/economy/national-accounts/australian-national-accounts-finance-and-wealth/dec-2025>

¹³ Australian Bureau of Statistics (2026) *Australian National Accounts: National Income, Expenditure and Product, December 2025*, <https://www.abs.gov.au/statistics/economy/national-accounts/australian-national-accounts-national-income-expenditure-and-product/dec-2025>

trusts at \$2 billion per annum.¹⁴ If this figure grew in line with nominal GDP, then today it would be \$3.2 billion, and if it grew in line with the number of trusts, then it would be \$2.2b.

An alternative and very conservative way to estimate the revenue foregone is to assume that just one per cent of the total business income received by trusts took the form of avoided tax. Such an option suggests foregone revenue of \$4.9 billion per year.

Hudson Financial Planning advises its clients and potential clients that “high-net-worth individuals save an average of \$145,000 annually using family trusts”.¹⁵ If that applies to just 10% of trusts, it suggests avoidance worth \$14.5 billion. Of course, any such estimate is highly uncertain and is based in part on being able to take the marketing claims of financial planners as accurate.

Who benefits from trusts?

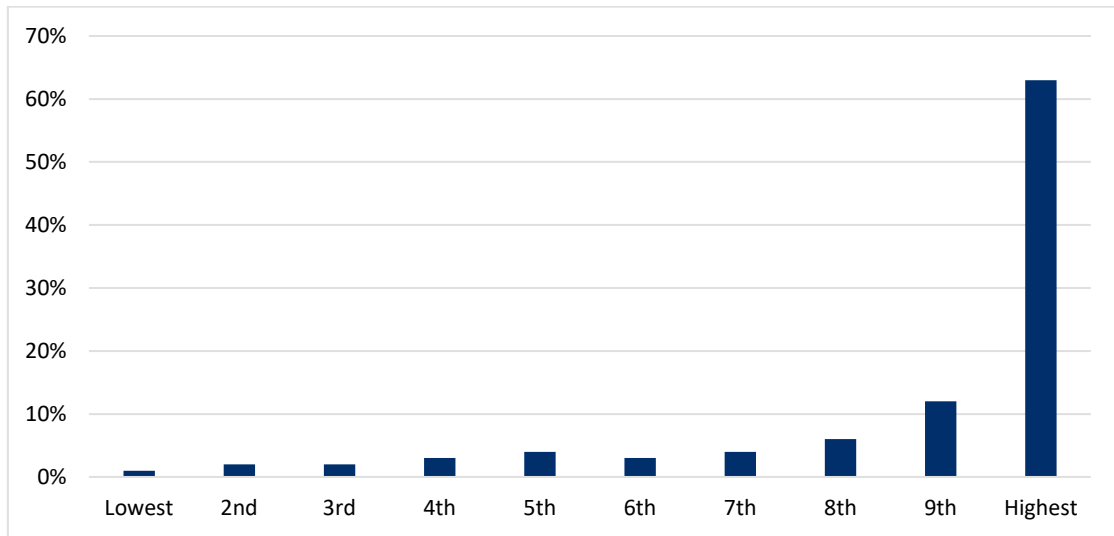
The annual tax expenditures and insights statement¹⁶ now publishes data for trust distributions by the income of individuals. Those figures are summarised in Figure 2.

¹⁴ Millar R and Schneiders B (2017) ‘The tax minimisation tool that nobody wants to talk about’, *The Age*, 6 April.

¹⁵ Hudson Financial Planning (2025) *Legal Tax Minimisation: How Australia’s Wealthy Build Assets in 2025*, <https://hudsonfinancialplanning.com.au/resources/education-reports/tax-minimisation-strategies-wealthy-australians-2025/>

¹⁶ Treasury (2025) *2025-26 Tax Expenditures and Insights Statement*, <https://treasury.gov.au/sites/default/files/2025-12/p2025-721342.pdf>

Figure 2: Share of trust income reported by taxable income decile, 2022-23



Source: 2025–26 Tax Expenditures and Insights Statement

Figure 2 shows the extreme bias in the benefits of using trusts towards the highest income earners. Put simply, the top 10% of income earners receive 63 per cent of all benefits from the use of trusts compared to just 12% going to the bottom half (50%) of income earners and just 1% to the bottom 10%.

Conclusions

The case for reform isn't new; the Henry Review made it clear in 2010. Rapid growth since then, and other changes in Capital Gains Tax, superannuation, and tax avoidance measures, make fixing the tax treatment of trusts all the more important. The Government can collect billions of dollars per year in revenue, reduce inequality, and simplify the tax system, all by simply implementing a change that has been seen as necessary and desirable for decades.