



## Special Disability Trusts

Thinking of a time when you will not be alive to take care of those who depend on you can be stressful, but most especially stressful for people who have disabled children. The additional consideration for these people is what will happen to their disabled children when they die, who will care for them, and who will provide for their financial support and stability.

Parents of disabled persons can now achieve peace of mind through the introduction of Special Disability Trusts. A Special Disability Trust allows parents and family to make provisions for disabled people after their parents or carers die.

### What is a Special Disability Trust?

A Special Disability Trust is simply a trust that satisfies certain requirements including the following:

- There can only be one principal beneficiary of the trust;
- The principal beneficiary must be either a profoundly disabled child (if under age 16) or have an impairment that enables them to qualify them for a Disability Support Pension with Centrelink;
- If a person is not eligible for a Disability Support Pension from Centrelink due to the assets held by them, they may still be eligible to be a principal beneficiary if they obtain 2 medical reports and IQ Tests which satisfy the criteria to be declared disabled;
- The sole purpose of the trust (as provided in the trust deed) must be to meet the reasonable care and accommodation needs of the principal beneficiary;
- The trust deed must have certain specified provisions; and
- The principal beneficiary (and their partner) cannot transfer assets to the trust (unless the asset was received within three years from an estate or is a superannuation benefit).

In such circumstances, the trust may be given concessional treatment by Centrelink under the *Social Security Act 1991*(Cth) and the *Veterans Entitlement Act 1986* (Cth).

The gifting of money by a parent through their Will can often result in the disabled person becoming ineligible for a pension with Centrelink on the basis that they no longer satisfy the means test. The means test takes into account all assets excluding the primary residence of the person. Gifting money or assets to a disabled person through your Will by way of a Special Disability Trust will significantly reduce the likelihood of their Disability Support Pension from Centrelink being affected or terminated.

Moreover, if a parent of a disabled person gifts money to the disabled person during their lifetime, Centrelink applies Deprivation Rules to that gift. Essentially, the Deprivation Rules will mean that Centrelink will continue to consider the gifted amount as an asset of the parent for 5 years whilst also considering the gifted amount as an asset of the disabled person at the same time. The gifted amount may affect the pension being received by the disabled person.

Gifts by way of a Special Disability Trust or a Testamentary Disability Trust by immediate family (parents, grandparents and siblings) are no longer subject to the Deprivation Rules. The disabled person's Centrelink benefits will not be reduced as a result of the means tests applied by Centrelink. The family member giving the money will not be exposed to any pension being received by them being affected.

### How much money can be put into the trust?

Originally, family members (parents, grandparents and siblings) could put up to \$500,000 into the trust. This amount has increased over time and is currently \$533,000. Please note that the value of the disabled person's primary residence will be excluded from the amount that can be held in the trust.

If the limit is exceeded then the additional amount will be assessed having regard to the 5 year gifting rules of Centrelink. There may be an opportunity for the Trustee to retain the excess amount subject to the provisions of the Trust Deed.

There are no express rules which prohibit the types of investments that the trustee is able to make in respect of the assets of the Trust.

The income and capital earned by the Trust is not considered as the income of the primary beneficiary for Centrelink purposes.

### **What is the tax and stamp duty treatment of Special Disability Trusts?**

For stamp duty purposes, Special Disability Trust are treated as private trusts and are subject to normal duty rates that apply to family trusts. There are tax effective strategies that can be utilised in the initial commencement of the trust that can minimise the stamp duty payable, depending on the State or Territory in which the Trust is established.

There is no special tax treatment provided to Special Disability Trust. The net income of the Trust will be taxed to the principal beneficiary. There will be times when capital gains tax will be payable by the Trust.

### **How do you establish a Special Disability Trust?**

You can establish a Special Disability Trust that operates prior to your death. This may be in your interest if you want to transfer assets to the disabled person in your family prior to your death.

Alternatively, you can establish a Special Disability Trust as a provision within your Will. The Trust Deed will be drafted and affected by the Executor of your Estate during the administration of your Estate.

Once established, the Special Disability Trust does not need to be registered with Centrelink; however, Centrelink will need to approve the Trust Deed to ensure that it complies with all requirements set out under the legislation.

Further, the Trustee is required to provide the following to Centrelink:

1. A certified copy of the tax return;
2. Financial statements prepared by a suitable qualified accountant; and
3. A statutory declaration from each trustee of the trust to confirm that the income only went to help in the maintenance and care of a disabled person.

**If you think that you or your family could benefit from a Special Disability Trust, please contact our Gold Coast office on (07) 5597 8888 or our Brisbane office on (07) 3229 6099.**



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