Fact Sheet

Australian Unity

What is a special disability trust?

A special disability trust is generally established by parents or immediate family members to plan for the future care and accommodation needs of a person with a severe disability. A trust can be incorporated in a will and activated when the will maker dies, or it can be created while you are alive.

What are the features of a special disability trust?

To be considered a special disability trust it must meet the requirements:

- have one principal beneficiary with a severe disability
- the primary purpose is the care and accommodation of the principal beneficiary
- have a trust deed with compulsory clauses
- have a professional trustee or more than one trustee
- comply with legislative requirements
- provide annual financial statements and a statutory declaration to Centrelink (or DVA)
- conduct an independent audit when required
- the trustee must formulate and give effect to an investment strategy.

Who can be a beneficiary of a special disability trust?

- The person who is to benefit from the special disability trust must be assessed as 'severely disabled' by Centrelink. The disability criteria can be severe physical, intellectual, psychiatric or behavioural disability or medical condition. The person does not have to receive a Centrelink income support payment.
- Each principal beneficiary can only have one special disability trust, and each special disability trust can only have one principal beneficiary.

What can the trust be used for?

- The primary purpose of the trust is to pay for any care and accommodation costs that relate to the person's disability.
- The money held within a special disability trust can only be used in Australia and for the following purposes:
- Reasonable accommodation for the beneficiary
- Care costs arising from the disability
- Medical and dental expenses (including health insurance premiums)
- Reasonable maintenance expenses of the trust assets
- The daily care fee and additional fees charged by an approved provider in a residential care service
- Discretionary spending currently limited to $12,000 (indexed) in a financial year.

What are the benefits of a special disability trust?

- It may give you peace of mind from knowing the cost of your family member's care and accommodation will be paid beyond your lifetime.
- The trust beneficiary can have up to $669,750 (indexed each year) of exempt assets that is exempt from the Centrelink assets test. Their principal residence is also exempt.
- If the beneficiary is on a low tax rate, there may be taxation advantages arising from a special disability trust.
- Eligible family members who gift assets up to $500,000 to the trust (in total) may receive an exemption from the usual Centrelink gifting rules. This may help to increase their own entitlement to Centrelink.

Why is legal advice needed?

- The rules for the trust are very specific so it is important to seek legal advice to determine how it should be set up and whether it is an appropriate structure to use.

Who can create or gift to a special disability trust?

- The beneficiary or their spouse cannot create the trust themselves, nor can they gift their own assets into it. However, it may be possible for a beneficiary to create a trust with their share of a deceased estate within three years of receipt of the bequest. Compensation money received by or on behalf of the principal beneficiary cannot be gifted to a special disability trust.
- Anyone else can create or gift assets to a special disability trust, however only immediate family members in receipt of a Centrelink age pension or DVA service pension will be eligible for Centrelink gifting rule exemptions, up to $500,000 per trust.