

Special Disability Trusts

What is a Special Disability Trust?

A Special Disability Trust is a trust established for the future care and accommodation needs of a person with a severe disability (known as the 'Principal Beneficiary').

To be eligible to be a Principal Beneficiary of a Special Disability Trust, the individual must meet the definition of "severely disabled" under the Social Security Act 1991 (Cth) as assessed by Centrelink or the Veterans' Entitlement Act 1986 as assessed by the Department of Veterans' Affairs.

A Special Disability Trust allows the family to:

- provide for the future care and accommodation needs of the individual.
- a Special Disability Trust delivers protection of assets and, when used in conjunction with an all needs trust, provides additional lifestyle choices for the individual.
- they also allow the benefit of ongoing eligibility for Centrelink payments.

How can a Special Disability Trust be set up?

A Special Disability Trust can be established:

- by deed during the lifetime of a donor, usually by parents or immediate family members;
- by Will on the death of the donor; or
- by the Principal Beneficiary or their partner contributing an inheritance or superannuation death benefit that had been left directly to them within three years of receiving the funds.

Creation by Donor

A Special Disability Trust can be established at any time by deed by the donor. Consideration will need to be given to the following before the creation of a Special Disability Trust:

the eligibility of the individual to meet the requirements of the Social Security Act 1991 (Cth) as assessed by Centrelink or the Veterans' Entitlement Act 1986 as assessed by the Department of Veterans' Affairs.

- the current and ongoing care, accommodation and lifestyle needs for the individual.
- the current and ongoing financial needs for the individual.
- the current and ongoing financial needs of the donor (no redraw of gifted funds).
- who will be the Trustees of the Special Disability Trust on behalf of the individual.
- what additional support is required - lawyer, accountant, financial planner, occupational therapist.

Having a clear plan and the right support is key to setting up a Special Disability Trust smoothly.

Creation by Will

A Special Disability Trust can be established on death of the donor by the donor:

- including an option/direction in their Will for the Special Disability Trust to be created;
- annexing a trust deed to their Will and incorporating its terms into the Will by reference, or
- including the terms of the Special Disability Trust directly into their Will.

Alternatively, the donor may have already established a Special Disability Trust during their lifetime and funds are gifted to the existing Special Disability Trust in the donor's Will.

Which method is best will depend on a range of factors and considerations, including the circumstances of the person wishing to establish the Special Disability Trust and the individual's requirements.

Additional or alternative options to a Special Disability Trust

The donor may wish to provide for the needs of the individual that the restrictions on a Special Disability Trust do not allow. This can be achieved either through the donor's Will or outside of their estate.

For example, the donor may wish to make provision in their Will for:

- an 'all needs trust' to hold assets which may be applied other than in connection with care or accommodation needs of the Principal Beneficiary; or
- a life interest for the individual to provide ongoing income.

Alternatively, the donor may establish a Superannuation Income Stream Death Benefit. A superannuation income stream can be used to provide ongoing income for the individual and depending on the circumstances, may be taxed concessionaly.

It is important to note when considering additional/alternative options that these options may not be able to access the concessions available to a Special Disability Trust. The capital and income may be taken into account by Centrelink in assessing eligibility to a pension and associated benefits.

What are the key benefits of a Special Disability Trust?

The key benefits include:

- contributions or gifts of assets to any value can be made to a Special Disability Trust.
- a Centrelink gifting concession of up to \$500 000 combined is available for eligible family members of the Principal Beneficiary.
- a Centrelink assets test exemption of up to \$781,250 (as at 1 July 2023 indexed annually) is available for the Principal Beneficiary.
- the Principal Beneficiary's main residence held in a Special Disability Trust is exempt from Centrelink's assets test.
- no income of or distributions from a Special Disability Trust are assessable under Centrelink's income test.
- a CGT exemption applies to a donor in relation to assets gifted to a Special Disability Trust.
- the Special Disability Trust receives a CGT exemption for the Principal Beneficiary's main residence.
- depending on State legislation, transfer duty and land tax exemptions may be available in relation to the Principal Beneficiary's main residence.
- income of a Special Disability Trust is taxed at the Principal Beneficiary's marginal tax rate regardless of whether the income is distributed.

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