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SPECIAL DISABILITY TRUSTS & TESTAMENTARY DISABILITY TRUSTS

Being a parent can be a difficult and emotional role at the best of times. Worries about your children's health and safety are paramount. However, if your child is severely disabled your concerns may be compounded by your anxiety for their future financial needs. Often parents would like to provide additional financial support to their severely disabled child, when the child becomes an adult and/or in your Will after you die. However, this desire to provide additional financial support to a severely disabled child can be muted for fear of how such support or gift would impact upon the child's disability benefits and even upon the parent's aged or veteran's pension.

In 2006 the Federal Government introduced changes to permit certain trusts, known as "*Special Disability Trusts*" to be created to enable the families of people, who are severely disabled, to provide them with additional financial support for their care and accommodation without being affected by the social security rules relating to means testing or gifting.

These trusts can be created during your lifetime, known as "*Special Disability Trusts*" or in your Will, known as "*Testamentary Disability Trusts*", which will only come into existence upon your death.

However, the government has specified requirements in the *Social Security Act* 1991 that must be met before a trust may be considered to be a "*Special Disability Trust*".



Who may be an eligible beneficiary of the Trust?

There are two (2) initial tests to consider before identifying a person as an eligible beneficiary:

1. If the beneficiary is under the age of sixteen (16) years, then they must be "*profoundly disabled*";
2. If the beneficiary is over the age of sixteen (16) years, then they must qualify for a "*disability support pension*" or equivalent;

Then there are three (3) additional criteria, basically the beneficiary must:

1. Be entitled to and be receiving a *Disability Support Pension*, which is means tested and you may also be required to provide two (2) medical reports and an IQ report; and
2. Provide evidence that he or she is unable to work at or above the federal minimum wage; and



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3. Be living at a care facility that is entitled to financial assistance from the government; or Provide evidence of the support of a carer who would qualify for a Carer's Allowance.

Means Test Concessions

A *Special Disability Trust* can have assets worth up to \$563, 250 (this figure is current as at 1 July 2010), which is indexed annually, without these assets impacting on the trust beneficiary's Disability Support Pension or equivalent.

If the assessable assets of the trust exceed the above limit, the amount, which is in excess of the limit will be calculated as assessable assets of the trust beneficiary and will be assessed against the relevant assets test thresholds.

Where immediate family members contributing to the trust are in receipt of a social security or veteran's entitlement payment and are within five (5) years of Age Pension age or older, they may be eligible to receive a concession from the usual social security or veterans' entitlement rules relating to making gifts (disposal of assets). "*Immediate Family Members*" include natural parents, legal guardians, adoptive parents, step-parents, grandparents and siblings.

The Good News

Since the *Special Disability Trusts* became available in 2006, only 52 trusts have been created and registered across Australia. The Federal Government is keen to provide more incentives to make these trusts more attractive. These incentives include:



From 1 July 2008

Unexpended income of a *Special Disability Trust* will be taxed at the beneficiary's personal income tax rates, rather than the highest marginal tax rate;

From 1 July 2009

The Federal Government will extend the capital gains tax main residence exemption to include a residence that is owned by a *Special Disability Trust* and used by the beneficiary as their main residence;

From 1 January 2011

Beneficiaries of a *Special Disability Trust* will be able to work up to seven (7) hours a week in the open labour market and still qualify;

The *Special Disability Trust* will be able to pay for the beneficiary's medical expenses, including membership costs for private health funds, and the maintenance expenses of the Trust's assets and properties; and

The *Special Disability Trust* will be able to spend up to \$10,000 in a financial year on discretionary items not related to the care and accommodation needs of the beneficiary of the trust.