

InfoSheet:

Special disability trusts

A new Centrelink initiative for disabled and vulnerable people

Significant Australian government reforms enable parents and family to protect the disabled and vulnerable. Disabled and vulnerable citizens have much to offer family and society. Disability may arise from severe physical trauma (at birth or later accident) or mental ill health or intellectual impairment.

Jane lives with Downs Syndrome

Jane was a happy baby but her parents soon realised she had a significant disability with Downs Syndrome. Jane's mother committed the next 7 years to ongoing physiotherapy and special care at an intensive Downs Syndrome unit attached to a leading children's hospital.

Today at 22 Jane is a happy person, took out a silver medal in swimming at the Para-Olympics and works as an assisted person in a lawyer's office.

Her parents Bob and Joanne, are now in their mid 60s. Their 2 elder children will provide ongoing support, care and love for Jane but who will be there to protect and provide for her as she, herself, becomes a retiree?

They also appreciate that the time will come when Jane will be eligible for a disability support pension. A special disability trust may be the answer.

For many years, Kells The Lawyers has helped clients through the writing of complex trusts to provide for situations just like Jane's.

Now, with the government reforms, we can help clients with Wills that provide for their loved one upon death, or by setting up a special trust to operate immediately.

The disabled person may then be able to enjoy better access to full Centrelink benefits and a better and stable accommodation (real estate, aged care licence or government group home) and financial assistance to meet the extra cost.

Centrelink requirements

For a special disability trust to be established, the beneficiary must verify that they are severely disabled and the trust complies with the purposes of a Special Disability Trust as defined by Centrelink.

Application can be made to Centrelink at any time to assess current eligibility of your child or loved one. Please contact Centrelink's Special Disability Trust Team on 1800 734 750 (free call).

When the Centrelink criteria are met, the Special Disability Trust attracts concessional treatment under the social security means test to both the person with the severe disability and the eligible contributing immediate family member. A pensioner can contribute to the disability trust without affecting pension rights (up to \$500,000 combined, either as a lump sum or other amounts over time). In fact your gift to the trust may qualify you for Centrelink pension benefits not previously obtained.

Kells The Lawyers have trust documents that comply with Centrelink's requirements.

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Definition of severe disability

A person can be a beneficiary under a trust provision if they can establish:

- a level of impairment that meets the criteria for a disability support pension, who is a child under 16 whose level of impairment would qualify their carer for carer payment, or be receiving a DVA Invalidation Service Pension or DVA Invalidation Income Support Supplement
- has care needs that would qualify a carer for carer payment or carer allowance
- is living in state funded accommodation for people with severe disabilities
- has no likelihood of working for a wage that is at or above the relevant minimum wage.

Making a gift to a Special Disability Trust

Anyone can contribute to a Special Disability Trust. However, only immediate family members will have access to social security / DVA concessions if of pension age or service pension age. If you are a pensioner you may enjoy the gifting concession (see above).

A natural parent, adoptive parent, or step parent, a legal guardian, a grandparent or a sibling of the person with a severe disability is considered an immediate family member.

Is the trust reviewed by Centrelink?

At the start of the operation of the trust, the documentation must be approved by Centrelink. Centrelink may review the documents of the trust each year to decide whether the trustee has used the money in the trust towards the care and accommodation of the person with the severe disability.

Centrelink and people involved with the trust can make a request for the trustee to provide an independent audit if necessary. In this case Kells will provide your accountant with the forms and a copy of the trust documents.

What if the trustee fails to comply with their obligations?

Failure of a trustee to fulfil their obligations may lead to the loss of concessional treatment and the possibility of a debt to Centrelink from the date the trust commenced.

If it is found the trustee has abused their rights on behalf of the person with a disability, government trustees may be appointed to take over the trustee's responsibilities. Kells The Lawyers will advise you in the selection of competent appropriate trustees.

Can a financial planner help?

Yes! A financial planner can help you. You may, in the short term, take out insurances to benefit the trust until the trust has sufficient assets. The trust assets can include accommodation plus \$551,000[#] which will be exempt in the means testing for the sole purpose of the disability trust. These amounts allow for an ongoing Centrelink benefit for the disabled person.

Is it all too complex?

A special disability trust is fairly complex, but it is a brilliant government initiative and Kells The Lawyers will take responsibility for the documentation and explain it to you and your advisors.

Kells is available to meet with schools and employment agencies who cater for disabled persons to further explain the benefits of the Special Disability Trust.

[#] Increased annually in line with the CPI.

Contact Kells the Lawyers Wills & Succession Planning Team

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