

Estate Planning for your Vulnerable Beneficiaries

When planning for vulnerable beneficiaries, there are a number of matters that need to be considered when determining the appropriate provision and structure for the beneficiary.

In some circumstances, you may have specific concerns about a beneficiary inheriting a large sum of money in their own name. These concerns can include:

- Exploitation by others;
- The beneficiary's inability to handle finances;
- Preserving Centrelink pension or HCC;
- Ensuring the beneficiary is cared for.

What options are available?

There are two main types of trusts that can be incorporated into Wills where you have significant concerns about a beneficiary:

All Needs Protective Trust

- Flexible;
- No Centrelink means testing concessions;

Special Disability Trust

- Strict rules and eligibility requirements;
- Centrelink concessions;
- Tax & Duty concessions;

Deciding on the right trust to include requires consideration of:

- What type of vulnerability or disability does the beneficiary have?
- What is the likely value of assets to be held for the beneficiary?
- Is retention of the Disability Support Pension & Health Care Card a major objective?
- Are there other beneficiaries to consider (eg. children of the principal beneficiary)?
- What are the major anticipated needs of the beneficiary to be funded?
- Who is available to manage the trust?

All Needs Protective Trusts

Typically covers all needs of the beneficiary – typically priorities (in order) will be:

- Accommodation and support services;
- Other essential needs, eg. food, clothing, education;
- Quality of life benefits, eg. entertainment, recreation;
- Any surplus income usually allocated for future needs.

Features of an All Needs Protective Trust

- Trust assets generally counted towards beneficiary's Centrelink means testing
- Fund expenditure on beneficiary not limited to 'care and accommodation'
- Can run concurrently with a Special Disability Trust
- Can support both beneficiary and their children or other dependants?
- Can have single trustee.

Special Disability Trust

A Special Disability Trust is primarily established to provide for the care and accommodation needs of a person who has a severe disability.

The 2 main benefits of an SDT are:

- Centrelink assets test exemption for an allowable concessional amount – as at 1 July 2022, approximately \$724,000 (plus the principal beneficiary's home)
- A gifting concession of up to \$500,000 combined available to eligible family members of the Principal Beneficiary

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Features of Special Disability Trust

- Must only have one beneficiary (not including residual beneficiaries)
- A person can only be the beneficiary of one Special Disability Trust
- Must have professional trustee or two individual trustees
- Expenditure over \$12,500 per annum (as at 1 July 2022) limited to 'care and accommodation'
- Cannot employ or buy from or sell to a related party
- Cannot borrow funds.

Centrelink requires strict eligibility requirements to be met in order to use a Special Disability trust:

- If under 16 years of age, they must have a severe disability or severe medical condition and meet other criteria regarding level of care required.
- If 16 years of age or older they must satisfy 3 key preconditions:
 - Be eligible for disability support pension (or Veterans' invalidity entitlements);
 - Not work nor be likely to work more

than 7 hours a week, at or above minimum wage because of their disability OR is working under the supported wage system;

- Be living in a hostel, institution, or group home for people with disabilities funded (wholly or partly) by the Government OR have a disability such that if they had a sole carer, qualify the carer for carer payment or carer allowance.

Maintaining Control

Managing complex family situations

Use of these types of trusts allows the Willmaker to choose who will control the funds to be managed for their beneficiary.

Another key benefit is that the Willmaker can nominate who receives remaining assets after the beneficiary dies. In contrast, if assets pass directly to the beneficiary, they could be managed unwisely or be affected by relationship breakdown or a challenge to the beneficiary's estate. If the beneficiary has no Will, the Intestacy Rules of the relevant jurisdiction will apply to their estate.

Contact Us

If you need further assistance or advice, please do not hesitate to contact our Estate Planning team on (03) 9843 2169.