

Special Disability Trusts

New government initiative to assist
the parents of disabled children

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Introduction

From 20 September 2006, the federal government introduced a new package of measures to assist the parents and other relatives of severely disabled persons.

In the past if a parent set up a trust for \$500,000 to benefit a disabled child, then the parent was deemed to still have that money for another 5 years for means testing purposes for Centrelink payments. To add insult to injury the disabled child was also recognised as having received the money – which affected their Centrelink entitlements.

The new package means that an amount of up to \$500,000 can be invested in a trust for the future care of a severely disabled relative without affecting the social security means and assets tests of both the parents and the disabled child.

Baldock Stacy & Niven, Solicitors has prepared this Bulletin to provide information to their clients and financial advisors who may be able to take advantage of this new package. □



What is a Special Disability Trust?

A Special Disability Trust is a trust established solely for succession planning by parents and immediate family members for the future care and accommodation needs of a person with a severe disability. □

Who can set up a Special Disability Trust?

The parents and immediate family members of the disabled person can set up a Special Disability Trust. Immediate family members include natural parents, legal guardians, adoptive parents, step-parents, grandparents and siblings. Siblings means brothers, sisters, half-brothers, half-sisters, adoptive brothers, adoptive sisters, step-brothers and step-sisters. □

What are the benefits of a Special Disability Trust?

The benefits of a Special Disability Trust are:

- a combined gifting concession for social security purposes of up to \$500,000 is available for eligible family members of the disabled person who create the trust.
- an Assets Test assessment exemption for social security purposes of up to \$500,000 (to be indexed) is available for the principal beneficiary (the disabled person). □

Contact Us

Parramatta Office

Suite 2, Level 4
91 George Street
Parramatta NSW 2150
Ph: (02) 9891 6444
Fax: (02) 9891 6507

www.bsnlaw.com.au
bsn@bsnlaw.com.au

What are the requirements of a Special Disability Trust?

A Special Disability Trust must meet the following requirements. The Trust must:

- be "protective" in nature
- have only one principal beneficiary
- the principal beneficiary must meet the eligibility criteria
- provide only for the accommodation and care of the principal beneficiary
- have a trust deed that complies
- have an independent trustee, or alternatively have more than one trustee
- comply with the investment restrictions
- provide annual financial statements; and
- conduct independent audits when required. □



Who can be an eligible beneficiary?

To be an eligible beneficiary the disabled person must meet the definition of "severe disability". There are two tests depending upon the age of the disabled person.

- If the disabled person is under 16 years of age, they must be "profoundly disabled" as defined under the Social Security Act; or
- If the disabled person is 16 or over, they must:
 - ✓ qualify for a disability support pension; and
 - ✓ not be working or likely to work at relevant minimum wages; and
 - ✓ either live in a institution, hostel or group home or have a disability that would, if the person had a sole carer, qualify the carer to receive Carer Payments or a Carer Allowance. □

How do you arrange for a Special Disability Trust?



The new legislation requires that a Special Disability Trust must meet specified requirements.

There are some clauses, which are essential for the trust to comply with the legislation. It is therefore important to have appropriate financial and legal advice from your accountant or financial adviser and from a firm of solicitors like **Baldock Stacy & Niven**.

Once you and your accountant or financial advisers are happy with the idea we suggest that you contact Stuart Niven at **Baldock Stacy & Niven** who would be happy to assist you with drafting a Special Disability Trust. □

*The material in this bulletin is not a substitute for legal advice and is only of general informational value. No person should act or refrain from acting solely based on this bulletin. It does not constitute legal advice and your possession of this bulletin does not create a client/lawyer relationship. If you would like to discuss your particular circumstances please contact **Baldock Stacy & Niven** and we would be pleased to be of assistance to you.*

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