

Since 20 September 2006, families have been able to establish a Special Disability Trust, which attracts social security means test concessions for the beneficiary and eligible contributors. The purpose of the trust is to assist immediate family members and carers who have the financial means to do so, to make private financial provision for the current and future care and accommodation needs of a family member with severe disability and receive means test concessions.

It is necessary that, before a Special Disability Trust is established, the prospective trust beneficiary be assessed as severely disabled under the legislation for this type of trust (for details see Special Disability Trust beneficiary assessment process).

Inquiry into Special Disability Trusts

On 15 May 2008 the Senate Standing Committee on Community Affairs announced an inquiry into Special Disability Trusts. The Committee issued its report *Building trust: Supporting families through Disability Trusts* on 16 October 2008. The Government tabled its response to the report on 14 May 2009 (for details see Government response to the Senate Standing Committee on Community Affairs' report on Special Disability Trusts).

Budget Measures

As part of the 2009-10, 2010-11 and 2011-12 Federal Budgets, the Australian Government announced measures to respond to the recommendations of the Senate Standing Committee on Special Disability Trusts.

From 1 July 2006:

- allow capital gains tax exemption for any asset donated to a Special Disability Trust,
- allow capital gains tax main residence exemption for Special Disability Trusts,
- allow capital gains tax exemption for the recipient of the beneficiary's main residence, if disposed of within two years of the beneficiary's death, and
- ensure equivalent taxation treatment amongst Special Disability Trusts established under different Acts.

From 1 July 2008:

- unexpended income of a Special Disability Trust is taxed at the beneficiary's personal income tax rates, rather than the highest marginal tax rate.

From 1 January 2011:

- a beneficiary of a Special Disability Trust can work up to seven hours a week at or above the relevant minimum wage,
- the Trust can pay for the beneficiary's medical expenses, including private health fund membership, and the maintenance expenses of the Trust's property, and
- the Trust can 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, ie for items relating to a beneficiary's health, wellbeing, recreation, independence and social inclusion.

Other Changes

The Government has expanded on its 2010-11 Budget measure and has agreed to annually index the \$10,000 that can be spent in a financial year on discretionary items not related to the care and accommodation needs of the beneficiary of the trust.

As at 1 July 2013 the Trust is able to spend up to \$10,750 (for the 2013-14 financial year).

Means Test Concessions

A Special Disability Trust can have assets worth up to \$609,500 (indexed annually and current as at 1 July 2013) without these assets impacting on the trust beneficiary's income support payment (such as Disability Support Pension).

Where the assessable assets of the trust exceed the limit, the amount in excess of the limit will be counted as assessable assets for the person 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 veterans' entitlement payment and are within five 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).

For the purposes of this concession, 'immediate family members' include natural parents, legal guardians, adoptive parents, step parents, grandparents and siblings.

Setting up a Trust in your Will

A Special Disability Trust can be a testamentary trust established through a will (that is, it does not come into effect until after the death of the person making the will).

Deed of Variation of Special Disability Trust Deed

Special Disability Trusts created before 1 July 2011 need to be varied to reflect the legislative beneficial measures that came into effect on 1 January 2011 and in accordance with the Trust Deed, Reporting and Audit Requirements Determination 2011. The beneficial measures introduced as at 1 January 2011 altered the purpose of a Special Disability Trust from 'sole purpose' to 'primary and other purposes'.

To assist you in updating your existing Special Disability Trust's deed, a Deed of Variation of Model Trust Deed has been created to ensure your Special Disability Trust meets all current legislative requirements. The variation needs to be signed and attached to your Special Disability Trust's deed and lodged with Centrelink to ensure the Special Disability Trust remains compliant.

Note: The Deed of Variation of a Model Trust Deed for Special Disability Trusts is based upon varying the Model Trust Deed, as previously published prior to 1 July 2011. If you have any concerns you may wish to speak to your legal representative.

Model Trust Deed and Trust Booklet

Both the model trust deed and trust booklet, have been developed to help families who have decided to set up a Special Disability Trust.

NOTE: This information guide covers legal issues in a general way. It is not designed to express opinions on specific cases. It is intended for information purposes only and should not be regarded as legal advice. Further advice should be sought regarding your specific situation before taking any action.