

WHAT WE DO

Duncan. Legal offers a personalised and caring service with a special focus on assisting families with disability.

We can help you with your Estate Planning (Wills & Powers of Attorney) and provide advice & guidance on Guardianship & Administration, Supported Decision Making and Protective Trusts.

We are committed to educating families with disability on their Estate Planning options. We release a newsletter 4 times a year and hold regular webinars and presentations.

If your school or organisation would like to avail yourselves of a webinar or face-to-face presentation, please call or email us.

Visit the Duncan.Legal website for more information.

When should I set up a Special Disability Trust?

A Special Disability Trust (“SDT”) can be set up for a person with a severe disability at two times: either during your lifetime or after your death through the terms of your Will.

Many people choose for an SDT to be established after their death by Will because there is no real need to establish one any earlier. If you are providing care and accommodation for a person with a severe disability, there may be no benefit in taking on the responsibility and expense of managing a trust at that time. There are also a number of taxation advantages in establishing an SDT through a Will.

However, sometimes there can be good reasons for establishing a SDT whilst you are still alive. These include:

- **Asset protection** – Once an asset is gifted to an SDT it no longer belongs to the donor. The asset therefore cannot form part of the donor’s estate, and no claim can be made upon it by a disgruntled beneficiary who challenges the Will of a donor. The potential for a claim upon estate assets can be particularly concerning in blended family scenarios. Gifting an asset into an SDT effectively puts it out of reach from other potential beneficiaries. The donor can then have peace of mind that the SDT Beneficiary has a property to live in for life and that it is protected from other less scrupulous beneficiaries.
- **Kindness** – Having an SDT already set up makes it much easier for persons nominated as successor SDT Trustees of the SDT to take over the role. You spare them the task of liaising with Centrelink, the State Revenue Office and the Australian Taxation Office at a time when they may be grieving your loss, endeavouring to deal with your estate and supporting the person with a disability’s fears about what will happen in the future.
- **Transitioning** - The death of a parent or close family member in a caring role can be very traumatic and destabilising for a person with a disability. This is particularly so if the person with a disability was living with the deceased up to the time of their death. If you set up an SDT during your lifetime and wish to

move. It can be done calmly at a time when you and the SDT Beneficiary are well and able. It enables you to be part of building the infrastructure necessary to make that transition a success.

- **Gifting** – Often grandparents or other relatives or friends intend to benefit a loved one with a disability in their Wills, but do not know how to do this other than to gift directly to that person. Beneficiaries with a severe disability that affects mental capacity may be vulnerable to financial abuse. It can be helpful to have an SDT already established to “catch” gifts that other donors (such as grandparents, etc) may wish to donate to the SDT when they die or make within their lifetime. You are then able to give potential donors specific details as to how they can make a gift into the SDT when they are making their Wills. Many donors appreciate knowing that their gift will be made in a manner that ensures it will benefit the Principal Beneficiary personally and be protected.
- **Divesting assets for age pension eligibility** – If you are carers of a person with a severe disability but are too “asset rich” to qualify for a full or part age pension, you may wish to explore how your situation would change if you gifted assets to an SDT for your disabled child. Under Centrelink gifting rules you can gift up to \$500,000 of your joint assets to an SDT without it impacting upon your pension eligibility.
- **Live in carers** - As family members you can live in a home gifted to the SDT with the Principal Beneficiary and continue to provide care. As the property is owned by the SDT, it would not be means tested against the live-in family members if they are receiving a pension. However, the property cannot be used to generate income in any manner as this is seen as using it in a way that is inconsistent with the Beneficiary’s right to exclusive use and enjoyment of the property.
- **Stamp duty concession** – If you gift a property to an SDT during your lifetime to accommodate a person with a disability, no stamp duty is levied on the first \$500,000 of the value of the property being transferred.

Duncan.Legal has assisted many families set up SDTs for a severely disabled family member whilst the primary caring family members are still living. It is a complex decision that needs made carefully but can offer some real benefits!

If you would like advice specific to your circumstances on this matter, please do not hesitate to contact us. There is also an informative SDT webinar available for purchase on the Duncan.Legal website at a very affordable price.

Order our [Special Disability Trust Webinar](#) .



Listen here: [Too Peas In A Podcast Recording Link](#)

Too Peas In a Podcast can be downloaded from wherever you access your podcasts.

Disability Estate Planning with Peas Marg & Lee

Recently we were interviewed by Mandy & Kate of ‘Too Peas In a Podcast’ to discuss Disability Estate Planning for the “Pea” Community.

Please tune in for a fun and interesting chat with 4 awesome ladies living in & sharing the world of disability!

Supported Decision Making

Your role in education

When a person with a disability turns 18, they are considered in the eyes of the law to be an adult and many privacy barriers pop up making it difficult for families to assist their young person with financial, medical & mental health decision making. Supported Decision Making documents are legal documents that empower a person over the age of 18 years with a disability to appoint a trusted person (or persons) to assist them with their decision making.

There are 3 Supported Decision Making documents that can be created:

1. **Supportive Attorney** – for financial & personal decision making
2. **Medical Support Person** – for medical decision making
3. **Nominated Person** – for mental health decision making

The process of organising these documents can seem daunting to our young people. As with all legal documents, there must be a level of **understanding** of what the documents are and how they can be used to support them in their decision making. The young person must also show a **willingness** to have these documents made up. They need to be able to **communicate** who they wish to nominate and **why** they have chosen this person (or people).

This is where parents, families & carers need to firstly, step in and **learn** about Supported Decision Making and then secondly, **educate** their young person with a disability. Duncan.Legal has some resources available to help you with your role as an educator. We have an information kit available that can be emailed to you including comprehensive details for you to learn about Supported Decision Making together with more simplified versions including 1 with pictures for you to run through with your young person. If you would like this kit to be sent to you, please email leesmart@duncanlegal.com.au.

For a detailed explanation of Supported Decision Making, Duncan.Legal has recorded a webinar and this can be ordered here: [Supported Decision Making Webinar](#).

If, after reading the information kit and/or viewing the webinar, you still have some questions surrounding Supported Decision Making, please call our office on **9077 7731** and we would be happy to help.

Once you have learned about Supported Decision Making, educated your young person and he/she is willing to go ahead with having 1, 2 or all 3 documents drawn up, we can arrange an appointment to get things started.



Duncan.Legal Webinar Recordings

‘Disability Estate Planning’ Webinar	\$77.00 (incl GST)
‘Supported Decision Making’ Webinar	\$55.00 (inc GST)
‘Special Disability Trusts’ Webinar	\$55.00 (inc GST)

Our webinars are an inexpensive way to receive relevant disability specific information you need to commence your estate planning journey in the comfort of your own home.

Superannuation & Centrelink

Prepared by Gavin Thompson

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Superannuation and Centrelink have a connection that some people may not know about, and it could be impacting them negatively. Here I'll discuss briefly how it could be impacting you positively.

Superannuation basically has two phases: accumulation phase and income stream (pension) phase. Both have tax advantages within them, but both also have access issues, or preservation rules as we call them. Preservation in a superannuation sense is basically the restrictions on when you are able to access some or all of your super monies.

With Centrelink, the main two types of pensions are the age pension and the disability support pension. What some people don't know is that superannuation whilst in accumulation phase, is not tested by Centrelink as an asset until age pension age. Strategically this can be utilised in two main ways. The first is in relation to where a couple may have one person of age pension age and the other person not as yet. By strategizing we can potentially increase an age pension payment or even access it where it may not have been able to be accessed due to asset values.

Secondly, and one of the best ways we can use Centrelink and Superannuation together, is from a Disability Support Pension perspective. Under Australia's superannuation laws, a person who is deemed to be 'permanently incapacitated' is able to access their superannuation monies.

So, think about this for a moment. If you are under the age pension age and receiving a Disability Support Pension, or are eligible to receive one medically, but are unable to because you are deemed to have too many assets, placing assets in the superannuation environment where you can still access the funds, but where Centrelink won't test them as an asset, can have big advantages. It is well worthwhile seeking advice in this area if this may apply to you.

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Note: Gavin Thompson is located at the same business premises as Duncan.Legal and is available to work collaboratively in relation to your Estate Planning needs.

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