



[Disclaimer – The articles in this newsletter are information only and do not constitute legal, superannuation or financial advice]

Stamp Duty exemption for a potential homeowner with a severe disability

If the establishment of a SDT is not a viable option in your family circumstances, but your family member has been assessed as an eligible beneficiary for a SDT, your estate plan may be to facilitate your person to purchase or be gifted a property in their own name.

Any transfer of a property in Victoria to a “qualifying person” after 01 July 2023 will be entitled to a stamp duty exemption.

A qualifying person is defined as a person with a disability who has received a letter from Centrelink / Services Australia confirming that the person is eligible to be the principal beneficiary of a Special Disability Trust (SDT). A SDT does not have to be established to claim this exemption.

This option was created for the circumstance in which a family member wishes to provide a home for a severely disabled family member, but finds establishing and managing a SDT prohibitive due to its complexity and costs.

A complete exemption from the payment of stamp duty on the purchase is available if the following criteria are met:

1. The person with a disability is a “qualifying person” (ie. letter of eligibility from Centrelink has been obtained)
2. An “immediate family member” wishes to gift a home to the person;
3. The home is “established”;
4. The home has a dutiable value of \$1,500,000 (or less);
5. The person with a disability intends to occupy the home as their principal place of residence within 12 months of settlement, and live there for 12 consecutive months thereafter; and
6. The person with a disability will be the sole owner.

The exemption does not apply if:

1. the purchase price is in excess of 1.5 million dollars;
2. The property is vacant land, or an “off the plan” purchase. There must be a house on the property at the time of transfer that is designed and constructed to be a primary residence.
3. The person with a disability will be a co-owner of the property.

“Immediate family members” include: a natural parent, adoptive parent, step-parent, legal guardian, grandparent or sibling.

Land tax exemption for a home occupied by a person with a qualifying disability

In the last 18 months Victorian residential property owners have become aware of significant increases in annual land tax levied on properties other than their principal place of residence (“PPR”). This has caused financial hardship for many families who provide separate accommodation for a family member with a disability.

In circumstances where a home is made available for a person with a qualifying disability to live in, but ownership is with an immediate family member, the owner may claim a land tax exemption. This is available for the 2024 land tax year onwards.

To be eligible for an on-going land tax exemption:

1. The person with a disability must have been assessed to be an eligible beneficiary for a SDT. (However, the subsequent establishment of a SDT is not required).
2. The landowner must be an immediate family member (see definition in previous article);
3. The person with the qualifying disability must have lived in the property as their PPR in the year preceding the tax year;
4. The person with the qualifying disability has paid no rent whilst living in the property.

NOTE – to take advantage of this exemption you must apply to the State Revenue Office. It will not be automatically applied.

Recently our client, Craig A, tells us that the property in which their son is residing (but still in the parents’ names) has been granted exempt from land tax. Craig tells us that the process was ‘disconcertingly’ simple. He discovered a prompt on the SRO website to which he uploaded a copy of the Centrelink letter of eligibility where his son was deemed eligible as a beneficiary of an SDT.

While it took several months, they eventually received confirmation from the SRO that the property was exempt – saving approximately \$7,000 per annum, indefinitely.

Many thanks to Craig for this invaluable information!

At Duncan.Legal we have the philosophy that families with disability in the mix should “take their wins where they find them”. We are committed to bringing your attention to the existence of disability specific legal information that may ease the financial and other stresses of caring with a person with a significant disability. For more detailed financial advice on taxation and stamp duty issues, you should consult your preferred financial advisors.



Estate Planning Audit

Disability Estate Planning can be a complex and daunting undertaking for many families. To assist you to understand the complexities and to provide you with some options, Duncan.Legal offers all clients an Estate Planning (EP) Audit with the **first ½ hour of the first appointment free-of-charge**. This initial appointment can be held in person or via teleconferencing (Zoom).

At the end of the appointment, we can provide you with a written estimate of the cost to update your estate plans (Wills & Powers of Attorney etc). There is no obligation to proceed.

Take the first step in your Estate Planning or update your existing plans to better reflect your family's situation! To arrange your EP Audit, contact Lee on 9077 7731 or email leesmart@duncanlegal.com.au

SDTs – Breaching the Work Limit Requirement

One of the requirements for obtaining eligibility to be a beneficiary of a Special Disability Trust (“SDT”) is that the Principal Beneficiary (ie. the person with a disability for whom the SDT operates) **must not be able to work more than 7 hours per week** if paid at a full adult hourly rate.

So what happens to the SDT if the Principal Beneficiary starts to work more than 7 hours per week for a full adult wage?

Centrelink require trustees of a SDT to report annually and provide Financial Statements as part of this process. Additionally, in order to continue to receive Disability Support Pension, pension recipients are required to report their hours and wages fortnightly. There is also the over-arching obligation for all recipients of Centrelink benefits that they report any change in circumstances.

If Centrelink becomes aware by any means that the Principal Beneficiary is exceeding the permissible work limit, they will refer to matter to their means testing team for a review.

If it is established that the Principal Beneficiary no longer meets the work eligibility requirements for a SDT, the SDT will be declared to be “non-compliant”.

The effect of this is that the trust loses its means tested concessions and SDT status. It reverts to being a general trust, that is still governed by terms prescribed in the SDT Deed. For a Principal Beneficiary and the Trustees, this could be a disastrous outcome.

In this era of rapidly advancing AI and data matching, SDT trustees should exercise great care to ensure that an established SDT remains compliant.

If Duncan.Legal can assist you with legal queries regarding the operation of a SDT please do not hesitate to make contact.

SDTs – Can an old age pensioner be eligible for an SDT?

Short answer – YES.

Upon reaching pension age, Centrelink routinely transitions recipients of disability support pension (DSP) to receive age pension in lieu.

If it can be shown that the pensioner would formerly have met the eligibility criteria whilst they were receiving DSP, Centrelink can still approve them as an eligible beneficiary for a SDT.

Supported Decision Making – What is involved in being a Decision Supporter?

Part of empowering a person with an intellectual disability to have more control over their own lives may be for them to legally appoint trusted persons to assist them make their own decisions, particularly decisions that require them to exercise legal capacity. Such decisions include: getting married, voting, opening and operating a bank account, signing a lease, negotiating a mobile phone contract, etc.

Persons with an intellectual disability may also need assistance to help them problem solve if they find themselves in a confusing situation with organisations, employers, or authorities.

In Victoria, it is possible for persons to appoint a “Supportive Attorney”, a “Medical Support Person” and a “Mental Health Nominee” to assist them with a range of complex decisions. This is done by the person with a disability instructing the creation of various legal documents that appoint persons in the role of a decision supporter.

For persons with lower overall decision-making capacity, who are unable to instruct the creating of legal documents themselves, it is possible for an interested person apply to VCAT on their behalf to make Orders appointing as a “Supportive Guardian” and/or a “Supportive Administrator”.

A Supportive Guardian would assist the represented person make lifestyle type decisions (and possibly some medical decisions) that are detailed in the VCAT Order. A Supportive Administrator would assist the represented person to make certain financial decisions that are detailed in the VCAT Order. These roles are subject to the oversight of VCAT.

But what does it mean to act as a decision supporter? HOW do you support decision making of a person who has a cognitive disability so that you don’t unduly influence them? How do you guard against allowing your own biases to factor in? When you begin drilling down, supporting the decision making of another isn’t as simple as it sounds!

The role of a decision supporter is to respond to the decision makers will and preferences. Not being able to provide the right assistance in the right way may mean that a person is denied their right to act as a legal citizen. It may also reduce the control a person with a disability is able to exercise over their own life. Great care must also be taken in this role to ensure that there is no abuse of the disabled person’s rights.



In 2023, Belonging Matters in conjunction with Michelle Browning produced a very useful, clearly written FREE resource that addresses this precise question.

It is entitled: ***“How to support everyday decision making: A Guide for Supporters”*** and can be ordered by visiting the Belonging Matters website.

If you have accepted a role as a decision supporter, we at Duncan.Legal would highly recommend it as a “must read”.

Webinars

In 2025 Duncan.Legal is again offering the opportunity for specialist schools and disability organisations to host 1 or more of our very popular webinars.

Held usually in the evenings with a start-time of 7pm, we invite you to host an evening packed with information on:

- **Disability Estate Planning** (approx. 1 hour plus question time); or
- **Special Disability Trusts** (approx. 45 mins plus question time); or
- **Supported Decision Making** (approx. 45 mins plus question time)

Our **Disability Estate Planning** webinar is designed for people that have disability in their family. The **Special Disability Trusts** webinar provides information for people with beneficiaries that have moderate to extreme ID and the **Supported Decision Making** webinar is for families of people over 18 with mild ID.

Our live **Supported Decision Making** webinar has recently been extended to include Supportive Guardianship & Supportive Administration information.

If your organisation or school would like to book a webinar, please get in touch.

Coming soon....

Duncan.Legal is currently developing a new Webinar –
VCAT Guardianship & Administration Orders.



The webinar will cover:

- When to obtain a Guardianship and/or Administration Order
- How to obtain a Guardianship and/or Administration Order
 - Your role as a Guardian or Administrator
- Your reporting obligations as a Guardian or Administrator
 - The review process

Available soon on our website.... www.duncanlegal.com.au



Duncan.Legal Webinar Recordings

‘Disability Estate Planning’ Webinar	\$99.00 (incl GST)
‘Special Disability Trusts’ Webinar	\$99.00 (inc GST)
‘Supported Decision Making’ Webinar	\$99.00 (inc GST)

Click to visit our [Webinar Shop](#)

The cost of ordering our informative webinars can now be claimed under training for carers on a participant’s **NDIS Plan** (so long as the training is relevant to a participant’s stated goal that is funded). Contact us to request an invoice/receipt - the relevant line item for our webinars is:

Capacity Building – Improved Daily Living – Other Supports

15_038_0117_1_3 Training for carers in matters relating to caring for a person with a disability

Note: NDIS will not fund Estate Planning advice or the preparation of Estate Planning documentation.



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