



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

Can an Age Pensioner obtain SDT beneficiary status?

When persons receiving DSP reach pension age, it is the practice of Centrelink to automatically transition the person from DSP to an age pension.

But can that age pensioner still meet the eligibility requirements for a Special Disability Trust (SDT) to be established? Short answer - “YES”.

The eligibility criteria for an SDT does not require an applicant to be in actual receipt of the DSP. Section 1209M of the *Social Security Act* (Cth) states that the person must have an impairment that “would” qualify the person for disability support pension.

In these circumstances, Centrelink will require a **Medical Report FORM SA332a** to be completed and submitted on behalf of the age pensioner seeking assessment for SDT beneficiary status.

This form is usually completed by a medical practitioner, but can also be completed by a registered nurse, physiotherapist, occupational therapist, member of an Age Care Assessment Team, or an Aboriginal Health Worker in a geographically remote area.

The form requires information about the disability, the ways in which it impairs personal activities for daily living, the day-to-day care needs of the person, their level of cognitive functioning and any behavioural issues.

You can search this form online and read for yourself the questions that the medical practitioner (or other person) would be required to answer.

Even an age pensioner that was not previously receiving DSP as a younger person can, with appropriate evidence of their disability, obtain beneficiary status for a SDT.

SDT Beneficiary status can be useful for obtaining a land tax exemption in relation to a property that the age pensioner lives in that is owned by a family member.

Fast 9 on Special Disability Trusts

1. What is a Special Disability Trust (SDT)?

A Special Disability Trust is a protective trust regulated by Commonwealth legislation that provides for the reasonable care and reasonable accommodation expenses for a person with a severe disability.

2. Eligibility

A beneficiary of a SDT must be deemed eligible by Services Australia and meet **all 3** legislative requirements:

- a) Qualify for DSP
- b) Carer/living arrangement component
- c) Work element component

3. SDT Fund Limits

Asset holdings of the SDT & spending limits on the Beneficiary increase annually. For the 2026FY they are \$832,750 (Asset holdings) & \$14,750 (discretionary spending).

4. Advantages of a SDT:

- SDT can hold a property of any value for the beneficiary to live in, but the value of the property is not means tested.
- CGT & Land Tax exemptions are available (with rules)

5. Limitations of a SDT

- Strict rules on what monies can and can't be spent on
- Annual reporting and compliance obligations
- A beneficiary can't contribute to their own SDT
- A SDT cannot borrow money

6. When can a SDT be set up?

- Now - by setting up & declaring the Trust in your lifetime; or
- Later – by building the SDT Deed into your Will & your Executor sets it up after you pass away.

7. How is a SDT set up?

- Declare the Trust using a Model Deed
- Appoint 2 Trustees or a Corporate Trustee (min 2 Directors) or a Trustee Company (Trustees/Directors must be Australian residents)
- Apply to SRO (Vic) for a Stamp Duty exemption
- Obtain a TFN from ATO
- Obtain approval of the Deed from Services Australia

8. Operating an SDT

- Open a bank account
- Record all gifts and maintain a gift register
- Create an investment strategy
- Spend monies on the beneficiary within the designated guidelines
- Ensure taxation, compliance & reporting obligations are met

9. When does a SDT end?

Upon the first of the following scenarios:

- a) When all funds are depleted; or
- b) When the balance of the fund exceeds the limitations; or
- c) When the Beneficiary dies.

For a more detailed explanation of SDTs, head to our website and order our Special Disability Trusts webinar or call us on 03 9077 7731.

Duncan.Legal has assisted many families in setting up a Special Disability Trusts for their vulnerable family member.

Special Disability Trusts Limits for 2026FY

Threshold for SDT assets before
pensions/benefits start to reduce has
increased to:

\$832,750

SDT Discretionary spending limit has
increased to:

\$14,750

For more information on Special Disability Trusts
head to our website or call 03 9077 7731

www.duncanlegal.com.au

When do Estate Planning Documents Commence?

When do your EPOA documents commence?

Autonomy to make personal decisions for oneself is the most fundamental of all human rights. Generally, is a very hard thing for persons with a degenerative illness or who are aging to relinquish.

Many people are confused as to when Enduring Powers of Attorney (“EPOA”) documents come into operation, particularly if they have been appointed into an Attorney role.

Guidance should always be sought by looking at the wording of the EPOA document itself which should advise when the document commences.

Options include:

1. **Immediate operation** - the EPOA document becomes a “live” document the minute it is signed. Where the EPOA maker’s trust in the Attorneys appointed is high, they may take this option. Many EPOA maker’s then elect to have the document securely stored, often with their solicitor. This means that the original document does not see the light of day until it is needed, and the EPOA’s solicitor is satisfied on evidence that the original document should be released.

2. **Incapacity Assessment** – Commencement of the EPOA document may be expressed to be conditional upon obtaining a medical assessment of incapacity to make certain types of decisions any longer. Bear in mind that the right medical expertise should be sought to make this type of assessment, and that the preparation of these assessments can take time. This causes delay. EPOA makers should consider whether their personal affairs and care of their dependants would be adversely impacted if there were delay in an Attorney being able to step into their role as a substituted decision maker.

3. **Other event: written authority given** - Some EPOAs stipulate that the maker of the EPOA can at a future time authorise the Attorney in writing to commence their role as a substituted decision maker. This is relevant where a EPOA maker may be too old, too ill or too tired to undertake decision making any longer, but they still retain capacity. In this instance the Attorney acts as an extension of the EPOA maker, but is able revert back to the EPOA maker for input if in doubt over any decision to be made.

What happens when an EPOA maker does not accept that they are becoming incapable?

This can be a really difficult situation for families to navigate.

In circumstances where an EPOA maker is refusing to relinquish personal decision making autonomy but the appointed Attorney has strong reason to believe that the EPOA maker is no longer capable, the Attorney may be unsure whether they can/should step into the role.

At Duncan.Legal we now prepare a **Consent to Release Personal and Medical Information** document for every estate planning client as part of their suite of EP documents.

This document is a type of permission document that can be presented to any of the EPOA maker's health care providers by the nominated Attorney.

It sets out who the EPOA maker has appointed as their Attorneys, and also acknowledges that there may be circumstances in which one of their Attorneys may need to obtain an expert opinion as to the EPOA maker's capacity. The document provides the EPOA maker's consent to the release of sensitive personal information regarding their state of capacity directly to the appointed Attorney, overcoming the usual privacy barriers that would otherwise exist.

When does a Will commence operation?

Short answer- only after your death.

Ironically, a Will does not become a living document until the maker of the Will is deceased.

Only at this moment are the instructions the last made Will "set in stone". This is because the Will maker always has freedom to change their testamentary arrangements whilst still living.

When do the protective trusts provided for in your Will come into operation?

Some people who set up protective testamentary trusts in their Wills, such as a Special Disability Trust (SDT) or an All Needs Protective Trust (ANPT), can mistake their signing of the Will document with the actual establishment of those trusts. This is not the case, for the reason set out above.

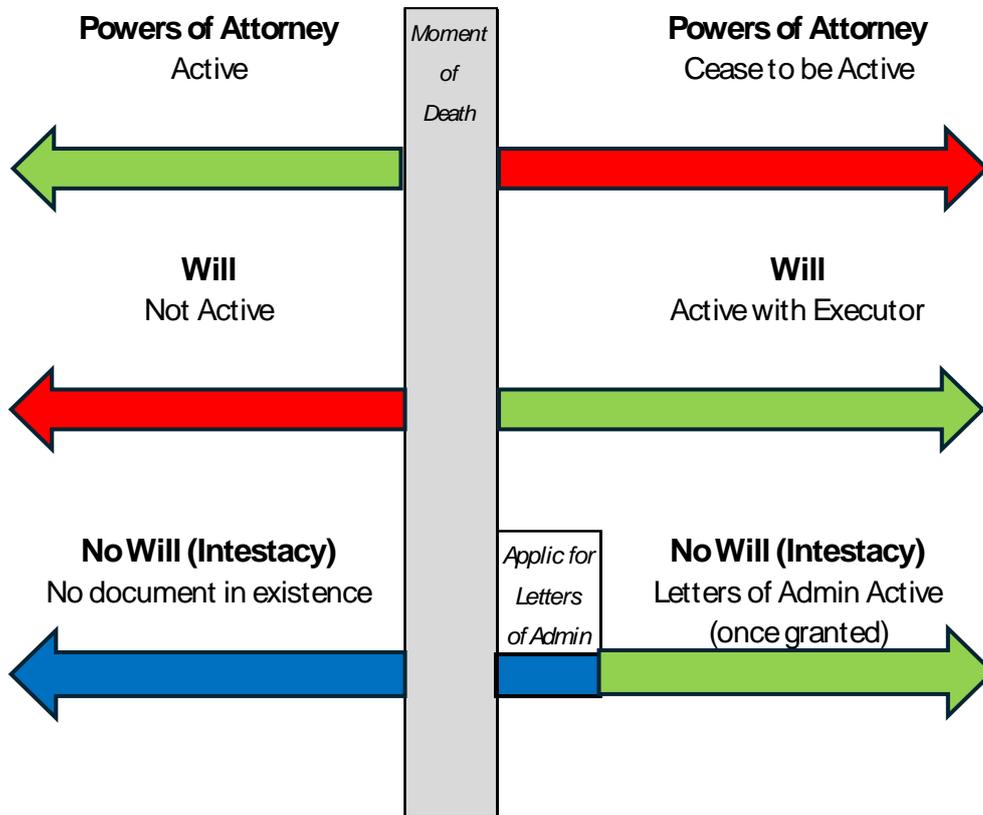
If a couple have made Wills together providing for protective testamentary trusts for a child with a disability, the Wills are usually worded so that the protective trusts are only activated when the second member of the couple dies. This is because the trust(s) may not need to be activated if one member of the couple is still living and continues the care of the person with a disability.

We can never know what the circumstances will be at the time of our death. Effective disability estate planning requires that Wills are flexible documents, that contain a range of options that an Executor can select from when determining what is the best outcome for a beneficiary with a disability. This may include providing for both types of protective testamentary trusts within the Will.

If more than one type of protective testamentary trust is provided for, the Will maker may give the Executor of their Will a **discretion** to decide which protective trusts in a Will are to be activated for the Beneficiary with a disability.

In this circumstance, the Executor should formally **exercise that discretion** by declaring in writing which trusts are to be activated as part of the estate administration process. This declaration marks the commencement of the relevant testamentary trust(s).

Estate Planning Documents When are they Active, Not Active or Cease to be Active?



VCAT Guardianship & Administration Orders Webinar



- *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



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

Webinars

In 2025 Duncan.Legal has again presented our very popular webinars to a number of specialist schools and disability organisation.

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.

Duncan.Legal Webinar Recordings



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

Click to visit our [Webinar Shop](#)

The cost of ordering our informative webinars may 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.



Scan this QR code to:

- Request more information on any topic in this newsletter
- Ask to be placed on the newsletter mailing list
- Book an appointment or
- Request a call-back

We will get back to you as soon as possible.



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Advocating
for children
with disability

Free online workshop

Teens and Beyond



Do you have a child with disability aged 13+?

Then this **FREE** workshop series is for you!

You'll receive practical information, skills and confidence to navigate the teenage years.

This is the only workshop series that covers the full range of information relating to teenagers with disability in one place.

Who is it for?

This series of three workshops is for Victorian families raising children 13+ with disability.

How do I book?

Bookings are essential and can be done via the QR code or this link bit.ly/TEENSoc25

Who will be online?

Professional facilitators are parents parents of young people with disability.

Topics



- Financial support
- Guiding your teen's independence
- School and post-school options
- Wellbeing: friendships, communication, behaviour support and good mental health

When

Monday 20, 27 Oct & 3 Nov at 10:00 am

Monday 20, 27 Oct & 3 Nov at 7:00 pm

Wednesday 22, 29 Oct & 5 Nov at 7:00 pm

Sessions run for 2.5 hours with time for questions.

Scan for more information and to register

Email
educate@acd.org.au

Call 03 9880 7000 or
1800 654 013 regional

