Duncan.Legal

planning for life...

NEWSLETTER – ISSUE NO. 29 (JULY 2026)

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

The taxation of trusts is a complex area. Please note that Duncan.Legal does not provide specialist advice in relation to the taxation of trusts. The following article is offered as background information only. It is not legal advice. We highly recommend that you seek advice or direct your further questions to your trusted taxation advisor.

Proposed 30% min tax on trusts & your Estate Planning

Since the 2026-27 Federal Budget was announced earlier this year, Duncan.Legal has received many inquiries regarding the potential impact of the proposed introduction of a minimum tax on discretionary trusts will have on clients' estate planning arrangements and established protective trusts. The purpose of this article to provide some clarity around what types of protective trusts for vulnerable persons are caught by the proposed tax.

It is proposed that this new tax will be operative from 01 July 2028.

The first thing to make clear is that this proposal has not yet become law. It may undergo more evolution before becoming law. It may be scrapped entirely, particularly if there is a change of government.

Since Budget night, there has been significant public debate and media coverage, and we have already seen the Government refine and clarify its proposal since first announced.

On 08 July 2026, the Government released a Consultation Paper, entitled "*Minimum tax on discretionary trusts*". The public now has a further limited opportunity to make submissions about the tax until 31 July 2026.

At this time there is no certainty for Australians in the pronouncements from the media or from other sources about the scope and application of this tax. All we can do is watch the space. However, it does seem likely that this tax in some form will be legislated.

The following analysis is a snapshot in time only, current as at the date of this Newsletter. It provides some explanation of what the new minimum 30% tax will, and will not, apply to in relation to any protective trusts that may form part of your estate plan.

Application of new tax to protective trusts

The term "protective trusts" refers to any trust with protective aims for a single beneficiary who is vulnerable or has a disability. These include an All Needs Protective Trust ("ANPT") and Special Disability Trust ("SDT").

Protective trusts can be established by Will or during the life of the parties setting it up, to protect a vulnerable beneficiary.

The Government has consistently maintained that the 30% tax does not apply to **fixed** trusts. Fixed trusts are those in which the beneficiary has fixed, measurable or guaranteed entitlement to receive a share of the income generated by the trust.

Exempt fixed trusts include: **Special Disability Trusts**, Unit Trusts, complying superannuation funds, charitable trusts and deceased estates.

A discretionary trust is any trust that is not a fixed trust. These trusts permit the trustees to exercise wide discretion in relation to how the income of a trust is distributed among its beneficiaries.

Historically, discretionary trusts have allowed lower tax rates to be achieved through income splitting. The strategy of the Trustees is to allocate the income of the trust to beneficiaries with a lower marginal tax rate, thus paying less tax overall from the trust. An ANPT is a discretionary trust.

Testamentary trusts

A testamentary trust is any type of trust that is set up under a Will when the Will Maker dies. Therefore, both fixed and discretionary trusts can be testamentary in nature, if they are established by Will.

Exempt Discretionary trusts

Testamentary discretionary trusts (such as an ANPT) are also specifically excluded from the proposed 30% tax, but only in relation to the income generated from the estate assets.

Testamentary discretionary trusts can operate for many years after being established. If assets from a different source (ie. not from the originating estate) are later injected into the established testamentary discretionary trust, the income generated from those later assets will attract the minimum 30% tax rate.

In Summary

At this point in time.....

- SDTs will be exempt from the minimum 30% tax.
- Testamentary trusts (including an ANPT) created under a Will will be exempt from the minimum 30% tax in relation to income generated from estate assets only.

Impact on your Estate Plans

In the past, providing for testamentary discretionary trusts to be set up in a Will has been an attractive tool from an asset protection and taxation perspective.

Asset protection for vulnerable beneficiaries is a high priority for most clients with disability in their family mix. The new tax proposal, if implemented, makes a testamentary discretionary trust (including an ANPT) a slightly less attractive option from a taxation perspective.

Clients may ultimately need to accept that the reduction in tax effectiveness of a discretionary testamentary trust is simply "the cost" of having peace of mind when it comes to protecting the inheritance of a vulnerable beneficiary. However, if the inheritance is large, it will be prudent to seek specialised taxation advice in the course of weighing priorities. Other structures, such as companies, may over time become a more attractive planning option for the succession of family wealth.

Duncan.Legal's continuing approach in preparing Wills is always to provide maximum flexibility to the Executors of an Estate (including "opt out provisions") in relation to the testamentary trusts created for beneficiaries.

Funds in Court

If a person with a disability is successful in a civil court proceeding and is paid an award of costs, damages and/or compensation, all or some of the funds may be ordered to be paid into the Court.

The Office of the Supreme Court of Victoria oversees the management of all funds paid into Court. This Office is known as "Funds In Court" (FIC).

FIC is overseen by a Senior Master, who acts as a trustee for the monies it receives. The Senior Master invests the monies in several Common Funds on behalf of the represented person ("the Beneficiary").

Upon application by the Beneficiary's legal representative, funds can be released for the benefit of the person with a disability, but only by way of a Court Order issuing from the Senior Master. This process can be quite slow.

Funds can be accessed for a range of purposes for the benefit of the Beneficiary. However, there are a range of requirements to be satisfied before the Senior Master will release funds, particularly if the funds are sought for a significant purchase such as a car or a house.

If a residential property is purchased for a Beneficiary, the title to the property must be held in the name of "The Senior Master of the Supreme Court of Victoria".

Receipt of a lump sum into FIC can affect the protected person's right to receive other payments, such as a Centrelink pension, TAC payments, Workcover, etc.

If a Beneficiary dies and there are funds held by FIC on behalf of the deceased, these funds are paid out and form part of the Beneficiary's estate. If the Beneficiary dies without a Will, the funds are dispersed as per the laws of intestacy.

For further information, please look at the FIC website at https://fundsincourt.vic.gov.au/

If Duncan.Legal can assist you in liaising with FIC, please to not hesitate to contact us.

New Litigation Guardian Guideline

A guideline to assist the general public to understand the role and responsibilities of a litigation guardian has been prepared by Court Services Victoria.

A litigation guardian is a person who conducts a court case on behalf of another person, either because the person is not yet 18, or because they have a disability that prevents them from attending to the things needed for the court case to proceed.

The litigation guardian makes the decisions in the case that the represented person would otherwise need to make. Sometimes a VCAT appointed Administrator may act as a litigation guardian for a protected person.

The Guideline is aimed at helping potential litigation guardians to understand:

- The role of a litigation guardian in the court process;
- Why the role is so critical;
- Key duties and responsibilities;
- What questions to ask the represented person's lawyer, including about costs and court processes;
- The importance of avoiding conflicts of interest; and
- The importance of consulting with the represented person and determining their will and preferences as far as practicable.

Whilst Duncan.Legal does not provide litigation services or advice, this Guideline is a great starting point to obtain information about the role of a litigation guardian and how to understand costs in a legal proceeding. We have included it for those persons that are considering initiating litigation, or have to defend litigation for a person with a disability.

To view the Guideline:
https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fcourts.vic.gov.au%2Fsites%2Fdefault%2Ffiles%2Fpublications%2Flitigation-guardians-general-guideline.docx&wdOrigin=BROWSELINK

Special Disability Trust Limits

1 July 2026
To
30 June 2027

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)***

And coming soon:

VCAT Guardianship & Administration Webinar

Click to visit our [Webinar Shop]

Live Webinars

In 2026 Duncan.Legal are again presenting our very popular live webinars to a number of specialist schools and disability organisations.

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 (Vic)** (approx. 45 mins plus question time); or
- **Guardianship & Administration Orders (Vic)** (approx. 45 mins plus question time**.**

If your organisation or school would like to book a webinar in 2026, please get in touch.

The following dates are available if you would like to book an evening:
Aug 25, Sept 1 & 8, Oct 6 & 13 and Nov 24

Sessions are <u>not</u> recorded however, resources will be available following the presentation.

Contact:
Lee Smart
leesmart@duncanlegal.com.au
03 9077 7731

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 create or 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

For more information:

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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A free online support program for fathers of children with developmental delay and disability

Working Out Dads

Learn about

- Tips for positive relationships
- My child and me
- Fathers’ roles and family strengths
- Dealing with stress and focusing on the future

Working out Dads gives fathers raising children with developmental delay or disability aged 0-9, a supportive space to connect with other dads, feel less alone, and build confidence in parenting and wellbeing.

This free six-week online program runs for 90 minutes.

“Talking with other dads who just get it made a big difference. We were all in the same boat.”

What to expect

- A welcoming space designed for fathers of children with developmental delay and disability
- Led by two male facilitators, one of whom is a father of a child with disability
- Weekly exercise tips from a qualified personal trainer

When

Tuesday 28 July	7:30pm
Tuesday 4 August	7:30pm
Tuesday 11 August	7:30pm
Tuesday 18 August	7:30pm
Tuesday 25 August	7:30pm
Tuesday 1 September	7:30pm

Scan for more information and to register

Email: educate@acd.org.au

Call 03 9880 7000 or
1800 654 013 regional

Register now bit.ly/WODT326Promo

ACD Advocating for children with disability

Working Out Dads

tweddle child & family health service