



Duncan.Legal

planning for life...

Newsletter – Issue No. 17 (Aug 2022)

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](https://www.duncan.legal) website for more information.

Can an SDT be established for a child under 16 years?

YES, but the child must first be assessed to be an “eligible beneficiary” for a Special Disability Trust (“SDT”) by Centrelink.

To be eligible, ALL of the legislative requirements listed below must be met:

1. The child must have a severe disability or severe medical condition; AND
2. The carer of the child must achieve “a qualifying rating of intense” under the **Disability Care Load Assessment (Child) Determination** in relation to the care of the child; AND
3. A treating health professional must certify in writing that because of the disability / medical condition:
 - a. The child will need care for 6 months or more; AND
 - b. The personal care is required to be provided by specified persons; AND
4. The carer must certify in writing that the child will require the same (or an increased) level of care to be provided in future. (See of the *Social Security Act 1991* (Cth), s.1209M(4A).)

The **Disability Care Load Assessment (Child) Determination** (“DCLACD”) is a legislative instrument that is updated periodically. You can access the latest 2020 version using the link listed below: <https://www.legislation.gov.au/Details/F2020C00834>

This DCLACD incorporates the actual Questionnaires that a Carer and a “treating health professional” would both need to complete in relation to the child, to submit to Centrelink. These questions relate to the functional ability, behaviour and special care needs of the child.

The DCLACD also sets out the scoring method to achieve a rating of “intense”.

Interestingly, the instrument also defines the term “treating health professional” widely to include: a medical practitioner, nurse, OT, physiotherapist, psychologist and speech pathologist.

If you are considering establishing an SDT for a child under the age of 16 years it may be useful to examine the DCLACD closely before applying and to take the Questionnaire (warning – 55 questions to answer!).

The SSA does not define “severe disability” or “severe medical condition”.

However, the DCLACD declares a list of “recognised disabilities” and “recognised medical conditions” for the purposes of being eligible to claim carer allowance under the SSA.

The list of recognised disabilities includes (but is not limited to) conditions such as: Autism Spectrum Disorder, Fragile X Syndrome, Down Syndrome, chromosomal conditions, uncontrolled epilepsy, moderate-profound intellectual disability, multiple disabilities, neurometabolic degenerative conditions, neurodegenerative disorders, muscular dystrophy, a range of childhood mental conditions including schizophrenia and major depression, bilateral blindness, hearing loss, dermatological conditions, PKU and Cystic Fibrosis.

The list of recognised medical conditions includes (but is not limited to): organ failure, HIV/AIDS, immunodeficiency, certain blood conditions and cancers, chronic respiratory disease, burns, gastroenterological conditions requiring tube feeding and type 1 diabetes.

If your child has a disability or medical conditions that is “recognised” by Centrelink, you are already half way to meeting the first legislative requirement. It would then be a matter of satisfying Centrelink of the severity of the condition. Some disabilities or medical conditions speak for themselves in terms of severity. Others like ASD may require supporting evidence to be supplied to Centrelink.

Special Disability Trusts

Indexed Limits for 2022/2023

Each year the Income Assets Test Exemption & Annual Expenditure Limits are revised for SDT's.

From **01 July 2022** to **30 June 2023** the threshold for SDT assets before pensions/benefits start to be reduced is:

\$724,750

(not including any SDT home in which the Principal Beneficiary resides)

There is no limit that can be spent on care & accommodation of the principal beneficiary however there is a limit on other discretionary spending (e.g. entertainment, education, travel etc).

This has also been increased to:

\$13,000 p/a

Special Disability Trusts

Further information on Special Disability Trusts can be accessed through our website by ordering our webinar.

www.duncanlegal.com.au

Or order our webinar by clicking on this link:

[Special Disability Trust Webinar](#)





Duncan.Legal Sponsors an athlete at the Special Olympics National Games 2022

Meet **Tyler**. **Tyler** is a Special Olympics athlete, Athlete Leader & Athlete Leadership Rep on the committee of Melbourne Inner East Special Olympics Club.

Tyler will be representing Victoria at the **2022 Special Olympics National Games** in Ten Pin Bowling. He was a part of TeamVic in 2018 winning a Silver Medal in Pairs, a Bronze Medal in Teams and 5th in Singles in his division.

The **2022 Special Olympics National Games** are in **Launceston, Tas** from **October 17 - 21**.

Duncan.Legal is one of **Tyler's** proud sponsors and we will follow his progress closely. We wish all Special Olympics athletes competing at this year's National Games lots of luck.

Go TeamVic!

*If you or your organisation would like to sponsor an athlete competing at the **Special Olympics National Games** click: [Donate to TeamVic Here](#)*

Superannuation Beneficiary Nominations

In today's world, superannuation is a significant asset for most people. Reviewing your Beneficiary Nominations in your superannuation funds is an important part of thorough Estate Planning.

You need to ensure that you know exactly how your beneficiaries will receive these monies – either directly from your Super Fund or via your Estate (Will). Most people do not realise that superannuation death benefits do not automatically form a part of your Estate.

If you want your Will to be the document that governs the distribution of this asset to your beneficiaries, then you need to make a nomination directing the funds to be paid into your Estate. To do this, your Binding Death Benefit Nomination should be made out to your "Legal Personal Representative". Your Legal Personal Representative (LPR) after you pass away is your Executor who is managing your Estate on your behalf. By nominating your LPR, the funds will be sent to your Estate and distributed by your Executor from there.

Careful structuring of your nominations may significantly reduce or remove potential taxation liabilities. A spouse will always receive death benefits tax free as will children who are dependent. However, once your children cease to be dependent upon you, any death benefits payable to them attract a taxation liability of between 15-30% on the "taxed element" in the gift. Why give away money to the ATO when it could go to your beneficiaries instead?

Vulnerable beneficiaries may need to receive death benefits in a form that they can manage, or that can be managed on their behalf. In these cases, it may be best to nominate your LPR to receive your death benefits. The LPR holds the death benefits on trust, to distribute to your beneficiaries according to the terms of your Will. Under the terms of your Will the death benefits can then be applied to any protective trust that is created for a vulnerable family member.



Recently we had the pleasure of hosting beautiful **Mia** for 3 days of work experience. **Mia** is a proud ambassador of Okur-Chung Neurodevelopment Syndrome (OCNDS) awareness & Special Olympics. **Mia** helped us out with collating information kits for our clients, assisting in a much overdue archive file audit and some document scanning. She did a wonderful job and we hope the experience will help her with her upcoming Cert III in Business Administration studies.



Estate Planning Audit

Duncan.Legal offers all clients an Estate Planning (EP) Audit with the first ½ hour free-of-charge. Margaret will meet with you to understand your estate planning goals, your personal circumstances and the complexity of your assets.

At the end of the 30 minutes, we will provide you with an estimate of the cost to update your estate plans (Wills & Powers of Attorney etc). You take the estimate away with you and consider whether you would like to proceed further.

To arrange your EP Audit, contact Lee on 9077 7731 or email leesmart@duncanlegal.com.au



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.

Visit our website: www.duncanlegal.com.au



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