



Duncan.Legal

planning for life...

Newsletter – Issue No. 20 (August 2023)

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.

Supported Decision Making – Funding “Legal Supports” under your NDIS Plan?

Under Victorian laws, a person seeking decision making support may make a range of legally recognised appointment documents appointing Support Persons to assist them in various situations.

These documents give legal authority to the Support Persons nominated to be able to provide the desired support in situations where privacy or other laws might otherwise operate to “lock” them out.

These legal documents include the appointment of:

- a Supportive Attorney;
- a Medical Support Person; and
- a Mental Health Nominee.

These documents are particularly useful if the person with a disability gets themselves in a difficult situation and are otherwise precluded from involving another to assist them. They are also useful when the person hits a legal “road block” needing the support of another to help them to progress.

Legal documents are not classically thought of as “supports” for NDIS purposes. However, we at Duncan.Legal would like to challenge that thinking! These documents operate in a way no different to a wheelchair or prosthetic limb: to protect, empower and enable.

Having this suite of documents in place for a person with a disability gives a person confidence to practice, and thus build, their decision making capacity. Making mistakes is an important part of how we all learn to make better decisions for ourselves. Knowing that there are persons appointed to provide support to help if mistakes are made, or complex decisions are required, can be a great comfort to a person with a disability, and to their family. Creation of these legal supports can be a very important part of the infrastructure put in place to safeguard them, whilst encouraging growth of skills and capacity building.

Can the cost of Supported Decision Making Documents be funded as a reasonable and necessary legal “support” under a NDIS Plan?

We say “Yes” in theory, for plan managed or self managed NDIS participants only (which is about 70% of the NDIS community). However, the claiming of the cost of creating these documents is not yet a recognized support.

In order to be claim the cost of preparing these legal documents, the **foundation for claiming** must be properly laid. This means that:

1. building capacity to make decisions must be **relevant to a stated goal** of the participant in their NDIS Plan;
2. funding for this legal support must be advocated for at the Planning meeting, and shown to be **reasonable and necessary**; and
3. such funding must actually be **approved** in the person's plan, or there must be flexibility in the plan to use more general core or capacity building funding for this purpose.

To date, Duncan.Legal is aware of a number of Self Managed participants successfully claiming the cost of this type of legal support. And we are also aware of some knock-backs from Plan Managers. However, supported decision making is now squarely in line with the NDIA's policy newly released in April 2023.

Reasonable and Necessary

Supported Decision making documentation provides safeguarding and scaffolding to persons who want to confidently build decision making capacity in relation to decisions that have legal consequences. This type of support is protective, empowering and brings confidence. SDM documents (SAA, MSP and MHN) cannot be created by anyone other than legal professionals, so recourse to a lawyer is therefore "necessary" to build this scaffolding.

The cost of preparing these documents is a one-off package of sessions that are very reasonably priced. Additionally, the appointing of support persons means that there are unpaid volunteers undertaking key support roles. This may obviate the need for paid support workers in the future, and thus lessen the overall claim on the public purse.

Be part of the Paradigm shift

Supported decision making represents a significant paradigm shift that is critical to a person with a disability achieving a good life. Whilst claiming funding for this legal support is relatively untested, we invite you to be bold in your planning meetings and discussions with your Plan Managers and Support Coordinators. Just because it hasn't been done so far or perhaps doesn't fit into existing categories doesn't mean it shouldn't be funded. Be part of the changing narrative. Have a GO!

If Duncan.Legal can be of assistance in helping to formulate the basis for negotiating this funding, please do not hesitate to get in touch with us!

IMPORTANT UPDATES

SDT Indexed Limits for 2023/2024FY

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

01 July 2023 to 30 June 2024, the threshold for SDT assets before the pension start to reduce is:
\$781,250

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, travel etc).

The discretionary spending limit for **01 July 2023 to 30 June 2024** has also been increased to:
\$14,000 p/a

Increase in stamp Duty Exemption for property gifted to an SDT

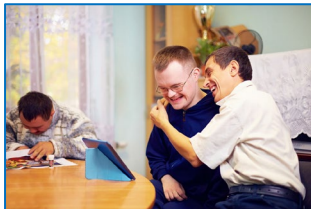
The *Duties Act 2000* has been amended from 1 July 2023 to increase the property value threshold for this duty exemption from \$500,000 to \$1.5 million where the property will be used and occupied as the principal place of residence of the primary beneficiary of the SDT.

If the value exceeds \$1.5 million, the duty will be assessed on the amount that exceeds the new threshold.

New duty exemption for a transfer of land to a person with a disability

The *Duties Act 2000* has also been amended from 1 July 2023 to introduce an exemption for a transfer of property from an immediate family member to a person with a disability who would be eligible to be a primary beneficiary of an SDT even if an SDT has not been established. The exemption is available from 1 July 2023 for properties valued up to \$1.5 million.

Special Disability Trust Is it a good option for your family?



If you wish to explore whether a Special Disability Trust (“SDT”) is a good option for your family member with a disability, we suggest you order our **Special Disability Trusts webinar**. Following that, you are welcome to make an appointment with Duncan.Legal to discuss your options.

Before planning an SDT, you must have your person with a disability deemed eligible as a beneficiary of an SDT by Centrelink (Services Australia).

How – Telephone Services Australia (Centrelink) on **132 717** and ask to speak with a **COMPLEX ASSESSMENT OFFICER** (this cannot be done in person at a Centrelink Customer Service Centre).

What – Obtain a letter from Services Australia confirming that your person is eligible as a beneficiary of a Special Disability Trust. Once you have your letter of eligibility, you can seek legal advice as to whether you should set up an SDT now or through your Will.

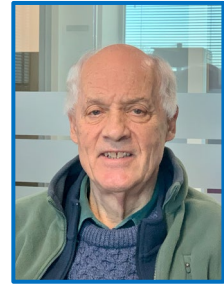
Learn - remember, the best place to start is with knowledge - learn about Special Disability Trusts. The easiest and most inexpensive way to do that is to order our webinar.

Click [HERE](#) or head to our website www.duncanlegal.com.au to order.

Are you looking for an Independent Support Worker/Job Coach?

John Davies is expanding his clientele base and looking to create new work opportunities for people with disabilities.

- Experienced in working with people with high-functioning autism and mild intellectual disability;
- Tutors clients to persist with their job applications while soothes client anxieties to win job success;
- Patiently guides clients through on-line job applications and workplace training; and
- A great communicator, engages with prospective employers to create inclusive job opportunities and eases the client into their new workplace.



If your young person needs help with finding work, give John a call – he is based in Balwyn, Vic.

Testimonial:

John Davies has delivered real results in assisting my son with ASD and a mild intellectual disability to significantly expand his employment opportunities and to mature as a young adult. He continues to provide meaningful weekly support.”

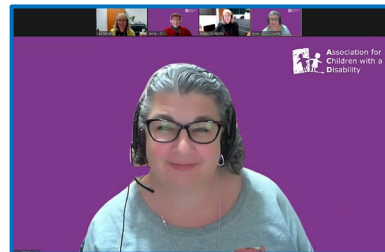
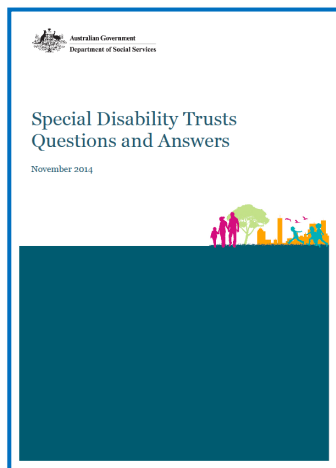
Marg Duncan, Principal Lawyer Duncan.Legal

Contact John on 0425 011 162

DID YOU KNOW?

Did you know that a Special Disability Trust can be used to pay for a beneficiary’s **medical and dental expenses** including **private health fund membership**?

For more examples of what can & can’t be paid for through an SDT, Department of Social Services has a comprehensive booklet available for download. Click here: [SDT Questions & Answers](#)



Recently **Duncan.Legal** presented 2 webinars in conjunction with **Association for Children with a Disability (ACD)**

on

Disability Estate Planning & Special Disability Trusts

If your school, group or association would like to arrange a webinar, please get in touch.

We are happy to hold evening webinars for attendees that cannot join during normal business hours.

Call Lee on 03 9077 7731



Safeguarding Decision Making - 2 Part online webinar

Dates: Friday 8th and Friday 15th of September, 2023

Time: 10am – 12pm

Duncan.Legal is privileged to be invited to present at an upcoming Belonging Matters Safeguarding Decision Making webinar series. Together with co-presenter Michelle Browning, we will be exploring the Supported Decision Making concept and the legal supports that are available.

What is this webinar series about?

Supported decision-making is an important concept as it actively engages people with cognitive disabilities in making decisions that affect their own lives. We will explore how to support people to make important legal decisions such as when they consent to a medical procedure, sign a service contract or open a bank account. Some people with cognitive disabilities may struggle to understand these types of legal decisions without the support of family, friends and supporters.

In Victoria, there are a number of legal roles people with disability can use to ensure they get the support they need when making important legal decisions. This workshop will explore what these roles are and how they can be put in place to legally safeguard and ensure supported-decision making, rather than substituted decision-making or the exclusion of supporters who know the person well. A decision-making supporter can legally assist a person to:

- Understand complex information and make informed decisions in a way that meets their vision and goals
- Know that if they make a mistake, they have a trusted person available to support them
- Overcome privacy barriers or “roadblocks” with companies e.g. banks, phone companies, support agencies, NDIS
- Explore resolutions to problems and make progress towards their goals.

For further information on this webinar series, visit the Belonging Matters website under Events.

TICKET INFORMATION

To register, visit this [Eventbrite Link](#)

Registrations are only available online and close on **5th September, 2023.**

Understanding how your property is owned is an important step in your Estate Planning. Here the difference between **Joint Tenants** and **Tenants in Common** is outlined:

Owning property as joint tenants or tenants in common: What's the difference?





Association for
Children with a
Disability

Free online workshop

Getting Support at School

Does your child need more support at school?

Do you want to feel more confident to ask for the help they need?

Then don't miss this FREE online workshop by ACD.

Take a detailed look into how school processes work and learn how plans can help your child.

When:

- Monday 14 August 7:00 pm
- Tuesday 15 August 10:00 am
- Wednesday 16 August 10:00 am
- Thursday 17 August 10:00 am

More information:

- This workshop is for families of school-age children with disability
- Workshop is two hours
- Bookings are essential
- For families in Victoria only
- Professional workshop facilitators are parents of children with disability

Topics include:

- Individual Education Plans
- Behaviour Support Plans
- Reasonable adjustments
- Understanding school processes and plans

Read more and register now



bit.ly/GSSaug23

Contact us



educate@acd.org.au



03 9880 7000 or
1800 654 013 (regional callers)

www.acd.org.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).

We will meet with you to understand your estate planning goals and the complexity of your assets. Margaret can highlight issues relevant to your personal circumstances for you to consider, and answer your questions.

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). You take the estimate away with you and consider it. 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



Duncan.Legal Webinar Recordings

'Disability Estate Planning' Webinar	\$99.00 (incl GST)
'Supported Decision Making' Webinar*	\$99.00 (inc GST)
'Special Disability Trusts' Webinar	\$99.00 (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 and at your own pace.

*Check out our newly recorded **Supported Decision Making** webinar – far more comprehensive AND includes our thoughts on including SDM documents in an **NDIS plan!**

Click to visit our [Webinar Shop](#)

Visit our website: www.duncanlegal.com.au



Ground Floor, 333 Whitehorse Road BALWYN VIC 3103
PO Box 1309 SURREY HILLS NORTH VIC 3127

E: reception@duncanlegal.com.au Tel: 9077 7731 W: www.duncanlegal.com.au