



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

LET'S FOCUS ON SUPERANNUATION

In this issue we have prepared 3 articles on aspects of your superannuation planning that may benefit a dependant with a disability:

- 1. DSP & SUPERANNUATION BALANCES**
- 2. STRATEGIC GIFTING OF DEATH BENEFITS**
- 3. PAYMENT OF (SMSF) SUPER AS A PENSION**

Disability Support Pension & Superannuation balances

Disability Support Pension (DSP) is payable to eligible persons between the ages of 16 years and age pension age (in 2024 this is 67 years).

Did you know that superannuation balances (in accumulation phase) for DSP recipients between these ages are not counted as assets for Centrelink (Services Australia) means testing purposes?

This means that a person receiving DSP can have a superannuation balance (in accumulation phase) of any amount and it does not affect their DSP entitlements. However, once the superannuation is cashed out Centrelink would treat the super as an asset in the hands of the DSP recipient for asset testing purposes.

Superannuation can be cashed out as a lump sum or taken as a pension. Superannuation can be released when the DSP recipient reaches age pension age, retires at preservation age, or meets the conditions for early release of the superannuation.

Giftng money into a superannuation account (within non-concessional contribution limits) for a beneficiary on DSP might be one way to provide them with a “nest egg” for the future, the value of which will compound over time.

What might the needs of your loved on DSP be when they reach age pension age? Will a lump sum be needed to pay out an existing mortgage on a residence? Or for a nursing home deposit? Might it assist with increased medical supports and care costs? Or even be available to prepay a funeral? Or by that time, will the value of the super be sufficient to fund a pension for that person in lieu of receiving an age pension? This would need to be balanced against the potential loss of government supports that go with being a DSP recipient or age care pensioner, such as the health care card, if the lump sum is too large etc.

If this is an option for your family member receiving DSP, you should seek specialist superannuation / financial advice. Contributing to the superannuation account of a DSP recipient may be an excellent way to ensure that there are going to be funds available to a disabled beneficiary when they are much older, and their needs change.

Cash contributions to a DSP recipient's super fund can be made in your lifetime, or made through a gift in your Will when you die. (Note – if you have a SMSF and wish to gift assets other than cash to your disabled beneficiary's member balance, "related party" superannuation laws may prevent this).

Duncan.Legal welcomes working collaboratively with your accountants, superannuation and financial advisors to develop your estate plan to support beneficiaries with a disability. If we can be of assistance, please do not hesitate to make contact with us.

Strategic gifting of superannuation death benefits to maximise the value of your estate

Where you have disabled child or dependent, careful estate planning in relation to the payout of your superannuation death benefits is strongly recommended.

This is because there can be significant **taxation consequences** that follow to the recipient, that may in some cases be minimized or avoided with careful planning.

Certain superannuation dependents receive the payment of superannuation death benefits **tax free**.

These persons are:

- A spouse,
- A child under the age of 18 years,
- A child under the age of 25 years who is still finally dependent, and
- a child or other person of any age who has an **interdependency relationship** with the maker of the superannuation nomination.

The definition of "interdependency relationship" in the *Income Tax Assessment Act 1997* ("ITAA 97") and the *Superannuation Industry (Supervision) Act 1993* ("SIS Act") is identical.

A person with a disability may satisfy the definition of interdependency if they have a close personal relationship with the maker of the superannuation nomination, and they suffer from a physical, intellectual or psychiatric disability, (see s.302.200(s)(c) ITAA 97).

The term "disability" is not defined in the ITAA 97 or the SIS Act. However, the SIS Act picks up the definition of disability in s.8 of the *Disability Services Act 1986* (Cth). This section refers disability that is:

- (a) attributable to an intellectual, psychiatric, sensory or physical impairment, or combination of impairments; and
- (b) is permanent or likely to be permanent; and

- (c) results in substantially reduced capacity of the person for communication, learning or mobility, and the need for on-going support services.

If your child's disability and circumstances meets this criteria, they may be able to receive payment of your superannuation death benefits **tax free**.

If you have a number of adult children, giving them an equal share of your superannuation isn't always the best way to maximise the value of your estate, as adult beneficiaries who are not financially dependent on you will have to pay tax on any superannuation payout they receive.

If your estate is large enough, sometimes a good strategy is to apportion as much of the superannuation as possible to the child with the disability's share, and make up equal shares to the other children from other assets in the estate that do not carry a taxation liability.

Strategic gifting of superannuation death benefits can maximise the value of your estate for all of your surviving beneficiaries.

At Duncan.Legal, review of superannuation death benefit nominations is always an important part of formalising estate plans for families with disability in the mix.

Can I leave my superannuation to my disabled beneficiary as a pension?

If the superannuation is held in a self managed superannuation fund ("SMSF"), the answer is **YES**, but within carefully considered parameters.

Generally, when a person dies their superannuation death benefits must be cashed out as a lump sum or a series of lump sums as soon as is practicable.

However, if a member of a SMSF dies, and at the time of death the person with a disability is in a relationship of interdependency with the member, is over the age of 18 years, and has a disability as defined in section 8 of the *Disability Services Act 1986* (Cth) (see previous article), the death benefits may be paid to the person with the disability as a pension ("income stream benefit") or annuity, (Reg 6.21 *Superannuation Industry (Supervision) Regulations 1994* (Cth)).

The income stream benefit could continue until the annuity or pension is commuted, or the term of the pension expires.

If the member is over the age of 60 years when they die, or the recipient of the superannuation is over the age of 60 years when they receive the benefit, the income stream benefit is **tax free**, (s.302.65 *ITAA 97*). Further, a tax offset of 10% applies to the "element untaxed in the fund" of the superannuation income stream benefit, (s.302.85 *ITAA 97*)

If the member is under the age of 60 years when they die, or the recipient of the superannuation is under the age of 60 years when they receive the benefit, the "tax free component" of the income stream benefit is not assessable as income and not exempt income, (s.302.70 *ITAA 97*). Further, a tax offset of 15% applies to the "taxable component" of the superannuation income stream benefit, (s.302.75 *ITAA 97*)

If you are wanting to establish a pension for a dependant with a disability, you should obtain specialist taxation, financial planning and superannuation advice. Duncan legal is available to work collaboratively with your team of specialist advisors.

Tips for updating your Superannuation Death Benefit Nominations

These days many people have significant balances of superannuation, and disputes around how superannuation death benefits are to be paid out are on the rise. It is vitally important that the Death Benefit Nomination you make is valid. Here are some tips:

Tip 1 – Where possible, complete a **Non-Lapsing, Binding** nomination. That way, it is set and forget. Not all super funds allow for a non-lapsing nomination. Most super fund nominations that are lapsing, will require you to complete a form **every 3 years**. Set a reminder in your phone if this is the case and keep your death benefit nomination up-to-date.

Tip 2 – If you wish to direct your super back to your estate with distribution of the funds via your Will, you need to nominate your **LPR** (Legal Personal Representative) or your “Estate”. After you die, your LPR is your Executor. Your Executor will then manage distribution of your superannuation death benefits as outlined by the terms of your Will. Every super fund has a different format for their nomination form.

Tip 3 – Make sure your nomination form is received by your superannuation fund. Some retail super funds now request lodgement of your nomination form in electronic form, and send an electronic receipt immediately. Others still prefer to receive the original signed nomination by regular mail. If you need to post your form, we suggest using an Express Post envelope as it has a tracking number. This way you can track it’s delivery to the required address. Also, remember to check that your nomination form has been received by the fund and that your nomination details have been updated correctly in your account.

End to Paper Titles



From **3 August 2024**, all new Victorian certificates of title issued by Land Use Victoria will be electronic. Existing paper certificates of title will remain valid but if required for a conveyancing transaction, will be converted to electronic format in the process.

Post 3 August 2024, all conveyancing transactions will become exclusively electronic necessitating an electronic certificate of title.

If you have a mortgage, your title is likely held by the Lender as security for your loan, and will retain it until the mortgage is discharged. Some of the big banks have already converted all titles they hold to electronic titles.

If there is no mortgage on your property, we recommend that you re-gain control of your title personally rather than leaving it under the control of your Lender. If it is already in electronic format, you can ask for the “eCT Control” (electronic certificate of title control) to be transferred to a lawyer or licensed conveyancer of your choice that is PEXA registered. At Duncan.Legal we hold eCT Control for a growing number of clients.

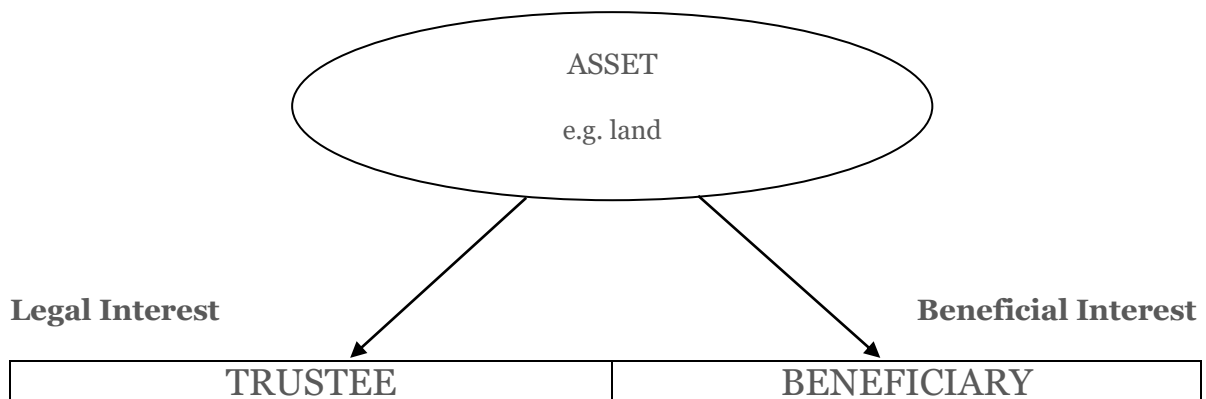
Understanding a Trust

If you have disability in your family and before you embark on your Estate Planning, you need to understand the fundamentals of a Trust.

A trust is a relationship between two parties (a trustee and a beneficiary) in relation to trust asset(s). The **trustee** holds the legal interest in the asset. The **beneficiary** enjoys the benefit of the asset, or income the asset generates. If your person with a disability lacks capacity to manage their own finances and/or an inheritance, a trust is the structure that will assist!



SPLITS THE INTERESTS IN AN ASSET...



- | | |
|--|---|
| <ul style="list-style-type: none">• Legal ownership• Decision making• Responsible for rates, taxes & maintenance etc• Generating income from asset• Distributing income to Beneficiaries | <ul style="list-style-type: none">• Use & enjoyment of land OR• Receives income generated from asset |
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10 Years of Duncan.Legal

On July 1 this year, Duncan.Legal celebrates **10 years!**

From humble beginnings in the front rooms of Marg's home in Surrey Hills, Duncan.Legal has grown from a part time at-home business into a full time professional legal practice offering services in Estate Planning, Probate & Estate Administration and Supported Decision Making.

In the early days of Duncan.Legal, Marg was generally relying on friends and their referrals for legal work. Marg worked solo for 6 months, outsourcing some general administrative tasks such as bookkeeping and website development, while she set-up the business and re-trained in the areas of Estate Planning and Estate Administration.

Lee came on board as Practice Manager in early 2015 just 2 days a week taking over the general running of the office. Quickly her role expanded to 3 days and now is a full 5 day a week position, that incorporates Para Legal tasks.

As both Marg and Lee have sons with Autism and ID (Intellectual Disability), the circles in which they move also have disability in their families. By 2017, it was becoming clear that most of Duncan.Legal's clientele were families that were looking for a lawyer who understood disability, to help them plan for their children's future.



Connections within the disability community began to grow rapidly. In 2018 Duncan.Legal released their first newsletter that was disability-specific and began Disability Estate Planning presentations for special schools and disability organisations around Melbourne.

With the arrival of the pandemic in 2020, in-person presentations were curtailed, however teleconferencing provided a new means to get this much-needed information out to families. We discovered suddenly that we could reach a much wider audience state-wide in the comfort of their own homes.

Webinar recordings are a very cost-effective way to educate families on the fundamentals of **Disability Estate Planning, Special Disability Trusts & Supported Decision Making.**

In 2021, Duncan.Legal moved out of Marg's home and into shared business premises in Whitehorse Road Balwyn. Also in the same office is an Accountancy Practice and a Financial Planner.

Today, over 65% of Duncan.Legal's clientele consists of families with disability. We have many local and regional clients. Families are keen to find lived experience and specialised advice on Disability Estate Planning.

In the 10th year of Duncan.Legal a website refresh is underway, the newsletter has been updated, new webinar recordings have commenced and we will have a stand at the **Source Kids Expo** in July. The other big news is that Marg is studying for her Law Institute of Victoria accreditation as a specialist in Wills and Estate Planning.

Our commitment to clients is to continue to provide personalised, professional Estate Planning legal services with a special focus on assisting families with disability. We are grateful to everyone that has supported us over the last 10 years, and look forward to expansion and new connections being forged as we travel forwards.

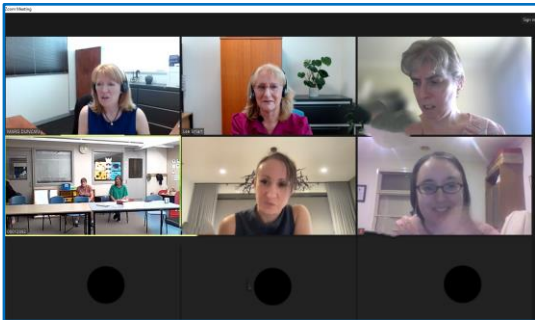


Duncan.Legal presenting to the Community in 2024...

MyTime Presentation

Duncan.Legal held a combined information/webinar session in March for parents & carers at **MyTime** in Mount Evelyn on **Disability Estate Planning**.

MyTime is a peer support program for parents and caregivers of children aged 0-18 years with a disability, developmental delay or chronic medical condition.



Webinars

Duncan.Legal presented 2 online evening webinars on April 11 & May 16 in conjunction with **SWAN** (Syndromes Without a Name) on **Disability Estate Planning & Special Disability Trusts**.

SWAN Australia provides information and support to families who have a child with an undiagnosed or rare genetic condition.

In the coming weeks & months we have more webinars scheduled for:

Rossbourne School, Southern Autistic School and Fragile X Association.

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

Come & visit us at Source Kids Expo!

July 5 & 6
10am – 4pm
Melbourne Convention & Exhibition Centre

Duncan.Legal will have a stand at this year's **Source Kid Expo** at **MCEC**. We visited the expo last year and were blown away with how wonderful this event is. We met old friends and made new ones.

Please swing by and pay us a visit this year - we'd love to catch up! And, we have a small gift for kiddies that love to decorate their bedroom walls that will not leave a trace.

Entry is **free**, and you do need to register. Head to the Source Kids website for information and to register your attendance: www.sourcekids.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



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), 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

If you wish to claim the cost of a webinar on an NDIS plan, please contact Lee and request an invoice.

For more frequent updates and information, follow us on **Facebook** and **Instagram**.

We will be holding more webinars & presentations in 2024 and look out for us at the **Source Kids Expo** in July!



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

E: reception@duncanlegal.com.au Tel: 03 9077 7731 W: www.duncanlegal.com.au