



NEWSLETTER – ISSUE NO. 23 (OCTOBER 2024)

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

LET'S FOCUS ON MILESTONES

In this issue we have prepared 3 articles on your child's milestones into adulthood.

1. **TURNING 14 YEARS**
2. **TURNING 16 YEARS**
3. **TURNING 18 YEARS**

Turning 14 years Access to Medicare & My Health Records

When a child turns **14** years of age, control of their Medicare and My Health Record automatically transfers to the teenage individual. Thereafter access is automatically denied to parents.

This development can take many parents by surprise, particularly if that child is their eldest. If that child has complex medical needs and does not have the mental capacity to manage their own Medicare and Health Records, this "roadblock" can impact the continuity of services provided to that child.

As parents of a child with a disability, it may be prudent to anticipate this by ensuring that you have the following forms ready to lodge upon your child's 14th birthday.

MEDICARE

If your child is "incapacitated and requires assistance with their Medicare services because of a medical condition" you can seek to be authorised as a person to act on their behalf. To do this you need to complete a **M0050** form prepared by Services Australia, entitled "**Authorisation to act on an incapacitated person's behalf for Medicare purposes**".

To be eligible you must be a person over the age of 18 years and a close friend or relative. You may not be a paid carer. The application also needs to be accompanied by 4 types of documents listed below:

1. Proof of **ID**
2. A **Statutory Declaration** stating your relationship and responsibility to the child
3. **Evidence of a similar arrangement** already in place, such as:
 - a. Centrelink Nominee arrangement;
 - b. NDIS Nominee arrangement;
 - c. Authorised representative to receive continence aids payments; or
 - d. Evidence of similar arrangements with a bank or financial institution or government agency.
4. Recent evidence of a child's medical condition (less than 1 month old), that includes reference to the doctor's name, qualification, provider number and contact details.

(NOTE - this form is not required if there is already a Guardianship Order, Administration Order or Enduring Power of Attorney arrangement in place in relation to an adult child over 18 years).

An authorised person can continue to access the child's Medicare records and act as their Nominee.

MY HEALTH RECORDS

A My Health Record is a summary of an individual's health information that is overseen on a government platform called the Australian Digital Health Agency.

If your child is unable to make decisions for themselves, you can also apply to become your child's Authorised Representative on the My Health Record website. The authorised representative then becomes responsible for managing the My Health Record of their dependent child.

An authorised representative can be an adult person with parental responsibility, a carer, a family member, a legal guardian or someone with Enduring Power of Attorney. However, a person cannot be an authorised representative if under a Court Order they must be supervised while spending time with the dependent, or if the life, health or safety of the dependent or another person would be at risk.

Upon becoming an authorised representative, you can have full access to and control of the child's My Health Record. However, you must always act in accordance with the will and preferences, or the likely will and preferences of the child.

Once appointed, the record is managed through your MyGov account by linking your account with your Dependent's My Health record.

In addition to completing the form, you must provide:

1. **Statutory Declaration:** This must describe your relationship with the dependent, state that to the best of your knowledge there is no-one who is authorised by law to act on behalf of the dependent, and explain why you are an appropriate person to be the dependent's authorised representative); and
2. **Written advice from a medical practitioner / psychologist:** attesting to the fact that the dependent is not capable of making decisions for themselves.

For persons who are uncomfortable with the prospect of health information being accessible to a growing number of agencies, you can cancel your My Health Record which will completely wipe the record. An authorised person can also do this.

Cancellation of a My Health Record can be done online through MyGov, or by completing a "Cancel My Health Record" registration form.

Turning 16 years Centrelink & Banking

At the age of **16** years the law deems a child capable of opening and operating their own bank account. If your child has a disability and is eligible, at age 16 they can also commence to be paid Disability Support Pension (“DSP”).

Centrelink requires that DSP must be paid into an account with the child’s name on it. When completing the application forms for DSP, bank details for payment of the pension must be provided. Many parents open a bank account in the sole name of their child for this purpose.

Parents are easily able to manage this account up until the child becomes an adult at the age of 18 years. However, many parents are shocked to suddenly find that their access to and control of that account is denied by the bank. Parents are advised that they need to produce an Enduring Power of Attorney (“EPOA”) document on behalf of the young adult that authorizes them to manage the account for their child, or to seek an Administration Order to be made by VCAT.

Many young adults lack the requisite mental capacity to make an EPOA. Equally, many parents do not wish to submit themselves to the oversight of VCAT when it comes to managing the finances of their family member with a disability. This represents a significant “roadblock” for many families who are left with no other option than VCAT.

In order to avoid being locked out, it may be better for parents to open a **joint account** with their child when they are applying for DSP, and have the pension paid into this account. This means that parents can continue to have full access and control of the account even if the child becomes a young adult.

If your child with a disability is about to turn 16 years, it may be prudent to anticipate opening a joint bank account. This should be done any time before the child turns 18 years, at which time the window of opportunity for a joint account will have passed.

Turning 18 years Privacy Issues & Supported Decision Making

Upon attaining the age of 18 years, the law presumes that the young adult has full decision making capacity and is able to operate as a full legal citizen. Rights of access of parents and carers to information databases regarding the young adult are withdrawn, and privacy laws can operate to prevent parents from having any legal right to advocate, intervene or even be present in a discussion involving their young adult child with a third party.

Many young adults with a disability are either not ready or not capable to take on full adult responsibilities and obligations when they turn 18 yrs. It can be terrifying for a young adult to lose the security of parental support overnight. They may need and want the on-going support of a parent or carer to help them navigate decision making in a sometimes confusing adult world.

If your child has a mild cognitive impairment and could make adult decisions for themselves with appropriate support, they may benefit from legally appointing some trusted family members and/or friends of the family as their Supportive Attorneys. In Victoria, this is done by preparing and executing supported decision making documents.

Supported decision making documents are legal supports. They are a form of scaffolding that can be built around a neurodiverse person to both empower and protect them.

Supported Decision Making is important because it builds capacity and independence over time. A young adult with a disability can more confidently make decisions knowing that if something goes wrong or they don’t understand, there are decision supporters they can turn to for help who have the

legal authority to be involved in the discussions. It also enables a young adult with a disability to be able to make more complex decisions and better quality decisions.

If you believe that your child has decision making capability, it may be advisable to start the process of educating them about supported decision making supports about **6 months before** they turn 18 years.

To find out how to initiate the education process, Duncan.Legal has a “Supported decision Making” webinar available for purchase. We can also email you an information kit of materials on supported decision making.

For those persons with a moderate cognitive disability who are capable of making some decisions for themselves with support, but not complex decisions, application can be made to VCAT to be appointed as a Supportive Guardian or Supportive Administrator for that person. A Supportive Guardian can assist with everyday lifestyle type decisions. A supportive Administrator assists with financial decisions of the young adult with a disability.

If your young adult has severe cognitive disability, you can make application to VCAT to be appointed as a Guardian and/or Administrator. This is a **substituted** decision making role. However, you should only apply for these orders if there is a need for them, as VCAT will not intervene to make orders unless there is an appropriate basis to do so.

If Duncan.Legal can be of assistance in advising you further, please do not hesitate to contact us.

Step Up for Down Syndrome

Again this year we joined the many families of Down Syndrome Victoria for their annual fundraising family event **Step Up for Down Syndrome** on Sunday, October 20 at Princes Park.

The weather was perfect and 3km walk around the park was enhanced by bubbles, superheroes, representatives from Victoria Police, musicians and loads more!

Back at the family hub, there were food trucks and various activities. Stall holders selling their crafts, all made by people with Down Syndrome, were a huge hit!



Guardianship & Administration Orders What is the difference?

The role of a VCAT appointed Guardian is to make personal and lifestyle decisions for a person with a disability such as accommodation, access to services, medical treatment & restricting who can visit the person. A Guardian cannot make financial decisions on behalf of the person unless they are also appointed the Administrator.

The role of a VCAT appointed Administrator is to make financial decisions on behalf of a person with a disability such as buying and selling property, banking and investing, paying bills and managing debts. An Administrator cannot make personal and lifestyle decisions for the person unless they are also appointed the Guardian.

VCAT Guardianship & Administration Orders are usually only made as a last resort, if there is no less restrictive alternative to safeguard the interests of an adult with a disability.

Support Worker Code of Conduct & Complaints

In 2018, the *Disability Services Safeguards Act (Vic)* established the Office of Disability Worker Commission to regulate the conduct of support workers. The Regulations made pursuant to this Act prescribe a Code of Conduct setting out standards applicable to all support workers in Victoria.

Disability Service Safeguards Code of Conduct

This Code adopts the same requirements as the NDIS Code of Conduct. It is designed to ensure that all support workers meet the same standards of conduct, regardless of whether they are registered or unregistered, and whether they are funded through the NDIS or other providers.

Complaints

If you are concerned that the conduct of a disability support worker does not meet Code standards, you may lodge a complaint with the Victorian Disability Worker Commissioner.

The Commissioner has the power to investigate. If the complaint is made out, the Commissioner may impose conditions for the support worker to continue working. Alternatively, the Commissioner may make a Prohibition Order banning the support worker from working in the disability sector. Breach of a Prohibition Order can result in criminal prosecution and the imposition of a fine of up to \$47,422 or imprisonment for up to 2 years or both.

Advice

The Victorian Disability Worker Commissioner is also available to provide advice about support worker registration.

If you want further information, please visit the website of the Commission at <https://www.vdwc.vic.gov.au/>

The graphic features a dark grey rounded rectangle centered on a background with a light blue vertical bar on the left and a grey vertical bar on the right. Both bars have a pattern of small blue dots. The text is white and centered within the grey rectangle.

Special Disability Trusts

Spending Limits for 2024/2025FY

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

\$813,250

SDT Discretionary spending limit has increased to:

\$14,500

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

 www.duncanlegal.com.au

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

Webinars

And that's wrap for 2024!

Duncan.Legal was invited to present our 3 very popular webinars during the course of the year and has hosted **13** webinar sessions for 10 different specialist schools & disability organisations including:

Rossbourne School
Southern Autistic School
Fragile X Association
Down Syndrome Victoria
Syndromes Without a Name (SWAN)
Association for Children with Disability (ACD)
My Time Groups
Down Syndrome NSW
Heatherwood School

We have a number of bookings already secured for 2025!

If your organisation or school would like to book one of our informative webinars, please get in touch.

Our stand at Source Kids Expo!

On July 5 & 6, Duncan.Legal had a stand at **Source Kid Expo** at **Melbourne Convention & Exhibition Centre**. We enjoyed 2 days of activities, inclusion & networking with our tribe and organisations within the disability community. Sore feet but with warm hearts, we were thrilled to meet new friends and reconnected with old.

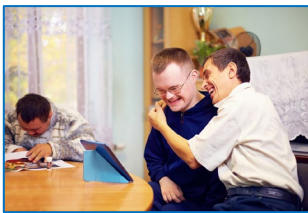


Estate Planning Audit

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). 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



Scan this **QR code** to:

- **Request more information** on any topic in this newsletter
- **Book an appointment** or
- **Request a call-back**

We will get back to you as soon as possible.



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