Special Disability Trust - Frequently Asked Questions

What is a Special Disability Trust?

A Special Disability Trust is a trust established for the future care and accommodation needs of a person with a severe disability (known as the 'Principal Beneficiary').

To be eligible to be a Principal Beneficiary of a Special Disability Trust, the individual must meet the definition of severely disabled under the Social Security Act 1991 (Cth) as assessed by Centrelink or the Veterans' Entitlement Act 1986 as assessed by the Department of Veterans' Affairs.

A Special Disability Trust allows the family to:

- provide for the future care and accommodation needs of the individual.
- delivers protection of assets and provides additional lifestyle choices for the individual.
- they also allow the benefit of ongoing eligibility for Centrelink payments.

How can a Special Disability Trust be set up?

A Special Disability Trust can be established:

- by deed during the lifetime of a donor, usually by parents or immediate family members;
- by will on the death of the donor; or
- by the Principal Beneficiary or their partner contributing an inheritance or superannuation death benefit that had been left directly to them within three years of receiving the funds.

Creation by Donor

A Special Disability Trust can be established at any time by deed by the donor. Consideration will need to be given to the following before the creation of a Special Disability Trust:

- the eligibility of the individual to meet the requirements of the Social Security Act 1991 (Cth) as assessed by Centrelink or the Veterans' Entitlement Act 1986 as assessed by the Department of Veterans' Affairs.
- the current and ongoing care, accommodation and lifestyle needs for the individual.
- the current and ongoing financial needs for the individual.
- the current and ongoing financial needs of the donor (no redraw of gifted funds).
- who will be the Trustees of the Special Disability Trust on behalf of the individual.
- what additional support is required - lawyer, accountant, financial planner, occupational therapist.

Having a clear plan and the right support is key to setting up a Special Disability Trust smoothly.

Creation by Will

A Special Disability Trust can be established on death of the donor by the donor:

- including an option/direction in their will for the Special Disability Trust to be created;
- annexing a trust deed to their will and incorporating its terms into the will by reference, or
- including the terms of the Special Disability Trust directly into their Will.

Alternatively, the donor may have already established a Special Disability Trust during their lifetime and funds are gifted to the existing Special Disability Trust in the donor's will.

Which method is best will depend on a range of factors and considerations, including the circumstances of the person wishing to establish the Special Disability Trust and the individual's requirements.

Additional or alternative options to a Special Disability Trust

The donor may wish to provide for the needs of the individual that the restrictions on a Special Disability Trust do not allow. This can be achieved either through the donor's will or outside of their estate.

For example, the donor may wish to make provision in their will for:

- an 'all needs trust' to hold assets which may be applied other than in connection with care or accommodation needs of the Principal Beneficiary; or
- a life interest for the individual to provide ongoing income or accommodation.

It is important to note when considering additional/alternative options that these options may not be able to access the concessions available to a Special Disability Trust. The capital and income may be taken into account by Centrelink in assessing eligibility to a pension and associated benefits.

What are the key benefits of a Special Disability Trust?

The key benefits include:

- contributions or gifts of assets to any value can be made to a Special Disability Trust.
- a Centrelink gifting concession of up to $500 000 combined is available for eligible family members of the Principal Beneficiary.
- a Centrelink assets test exemption of up to $832,750 (as at 1 July 2025 indexed annually) is available for the Principal Beneficiary.
- the Principal Beneficiary's main residence held in a Special Disability Trust is exempt from Centrelink's assets test.
- no income of or distributions from a Special Disability Trust are assessable under Centrelink's income test.
- a CGT exemption applies to a donor in relation to assets gifted to a Special Disability Trust.
- the Special Disability Trust receives a CGT exemption for the Principal Beneficiary's main residence.
- depending on State legislation, transfer duty and land tax exemptions may be available in relation to the Principal Beneficiary's main residence.
- income of a Special Disability Trust is taxed at the Principal Beneficiary's marginal tax rate regardless of whether the income is distributed.

What are the model trust deed requirements and limitations of a Special Disability Trust?

A Special Disability Trust must have a trust deed that contains clauses as set out in the model trust deed by Centrelink. A summary of the key deed requirements and resulting limitations are as follows:

- if the Special Disability Trust is established by deed during the lifetime of a donor, the Special Disability Trust must be established by a Settlor. The Settlor is excluded from having anything further to do with the trust.
- there must be at least two individual Trustees, a corporate Trustee with at least two directors or a professional Trustee.
- there must be only one Principal Beneficiary - the individual as assessed by Centrelink or Department of Veterans' Affairs. Also, an individual can only have one Special Disability Trust established on their behalf.
- all contributions to a Special Disability Trust must be unconditional. If the circumstances of the donor alter, the donor cannot receive the gift back.
- any gifting concession may be revoked where a trust ends within five years of a gift being made and the donor does not receive a share of the trust assets proportionate to their contribution.
- anyone can contribute to a Special Disability Trust other than the Principal Beneficiary and their partner unless the contributions are funded by an inheritance or superannuation death benefit within three years of receipt.
- expenditure of the trust must be compliant - apart from a limited amount of discretionary spending, a Special Disability Trust can only be used to pay for the reasonable accommodation and care needs of the Principal Beneficiary.
- the discretionary spending amount to meet additional costs relating to health, wellbeing, recreation, independence and social inclusion of the Principal Beneficiary is limited up to $14,750 (as at 1 July 2025 indexed annually).

- payments for care must not be made to an immediate family member or child of the Principal Beneficiary.
- a Special Disability Trust cannot purchase or lease property from an immediate family member or child of the Principal Beneficiary, even if that property is to be used for the Principal Beneficiary's accommodation.
- a Special Disability Trust cannot borrow or lend money.
- transactions with Related Parties are restricted and, in some instances, prohibited.
- the Trustee must formulate and give effect to an investment strategy and comply with investment restrictions.
- a Special Disability Trust is subject to additional reporting requirements with Centrelink.
- if the requirements of a Special Disability Trust are not met, the Special Disability Trust and the Principal Beneficiary may lose the Centrelink and taxation concessions.

What are the reasonable care needs that can be paid from a Special Disability Trust?

The reasonable care needs (based on a Principal Beneficiary's disability or medical practitioner request) can include, but are not limited to:

- occupational therapy, case management and professional care
- traditional and alternative therapy
- specialised food and dietary needs
- prostheses, mobility aids and positioning aids
- sleeping and sensory, personal care, pressure care and continence aids
- communication devices (including computers)
- vehicle modifications or a modified vehicle
- transportation
- independent living skills training
- daily care fee and any additional itemised fees from a residential care service or supported care accommodation
- medical related and dental costs of the Principal Beneficiary, including but not limited to: health insurance and ambulance cover, medicines, surgery, specialist and general practitioner services.

What are the reasonable accommodation needs that can be paid from a Special Disability Trust?

The reasonable accommodation needs can include, but are not limited to:

- modification to the Principal Beneficiary's place of residence arising from his or her disability
- purchase of the Principal Beneficiary's place of residence and ongoing rates and maintenance
- rental of the Principal Beneficiary's place of residence
- accommodation bond for the Principal Beneficiary
- any itemised fees which specifically relate to the accommodation of the Principal Beneficiary residing in a residential care service.

What are the discretionary spending items that can be paid from a Special Disability Trust?

Discretionary spending items for the benefit of the Principal Beneficiary can include, but are not limited to:

- food, household items and toiletries
- vehicle running expenses and vehicle maintenance (not required for the Principal Beneficiary's disability)
- recreation, leisure and lifestyle activities
- computer and communication devices (general use)
- household cleaning services
- clothing and footwear (not required for the Principal Beneficiary's disability)
- life skills and social inclusion workshops.
- therapy (not required for the Principal Beneficiary's disability or not approved by a medical practitioner)
- residential improvements (not required for the Principal Beneficiary's disability)
- building/contents insurance and utility charges (for the Principal Beneficiary's residence)

So… What is the catch with a Special Disability Trust?

As with all dealings with Centrelink and the Australian Taxation Office you must stick to the rules. If you do not stick to the rules then the Special Disability Trust can be ruled as non-compliant by Centrelink. Non-compliance may result in the Special Disability Trust and the Principal Beneficiary losing the Centrelink and taxation concessions.

What is the best way to avoid a non-compliant Special Disability Trust?

Through effective planning upfront and the ongoing management of expenditure and contributions on a regular basis, it is easy to maintain the compliance status of a Special Disability Trust.

When are the annual reporting requirements of a Special Disability Trust due with Centrelink?

The Trustees must on or before 31 March each year provide the annual reporting documents in relation to the Special Disability Trust for the previous financial year.

The annual reporting documents must be prepared by a qualified person, who is not an Immediate Family Member of the Principal Beneficiary.

How can we help you?

T&E Accounting specialises in the delivery of Special Disability Trusts by providing education to get you started on the right path, as well as supporting you through the setup process and then delivering the ongoing tax and Centrelink compliance requirements.

**If you have any questions, please feel free to contact us on 1300 082 633
It would be our pleasure to assist you further.**

Current as at 1 July 2025
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