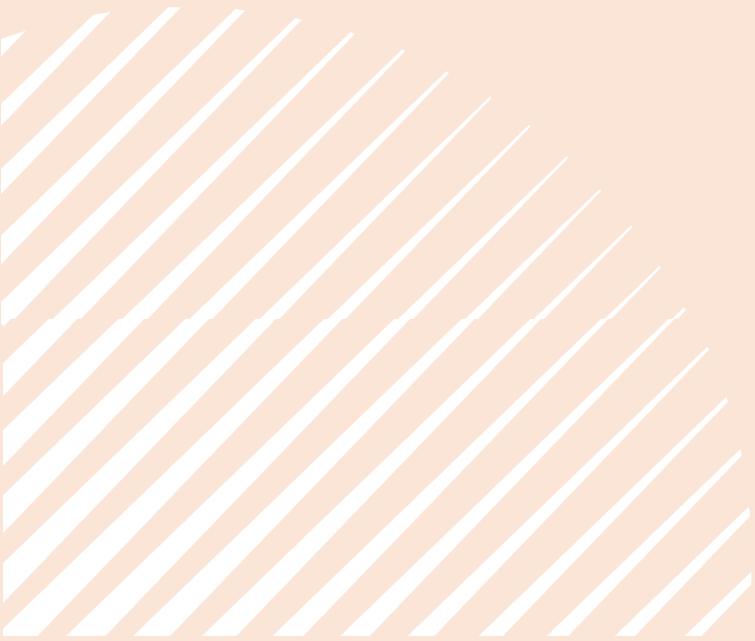


Perth Probate



**A Legal Guide:
Assistance in Protecting your Children
with Special Needs**



Assistance in Protecting your Children with Special Needs

This guide is designed to provide a clear and structured estate planning guide for parents of children with special needs.

Ensuring that children with special needs receive the care they deserve necessitates careful planning and informed guidance.

While raising children brings inherent challenges, parents of children with special needs often face additional concerns, particularly regarding future care and financial stability when they can no longer provide support. The worry extends beyond logistics, delving deep into concerns about the child's overall future well-being.

Addressing estate planning for children with disabilities can be particularly complex. Many parents find themselves overwhelmed by the demands of administrative tasks and paperwork, often feeling time-constrained.

Despite good intentions, the intricacies of legal and financial planning processes can be daunting, intensifying the already demanding role of parenting a child with special needs.

A common, seemingly straightforward question parents face is what assets should be left for a child who requires substantial support, and in what manner should these assets be transferred.

Fortunately, various options exist that can be customized to suit diverse situations, enabling families to tailor solutions to their unique circumstances.

Creating a Care Plan

As an essential first step, drafting a comprehensive, personalized care plan for your child is highly recommended. This document serves as a guide for future caregivers, guardians, executors, and trustees, providing clear direction on numerous aspects of your child's future care.

Key elements to document include:

- The personal wishes and aspirations of the individual with a disability.
- Housing options that align with their needs and desires.
- Recreational and social activities they enjoy and wish to continue.
- Important family and social relationships that contribute to emotional well-being.
- The extent of the child's capability in managing personal and financial matters.

Establishing a care plan serves as a crucial foundation for building appropriate legal and financial structures.

Special Disability Trusts (SDT)

A Special Disability Trust (SDT) is an effective estate planning tool to secure enduring care for individuals with special needs.

This legal structure is specifically designed to address current and future care and accommodation needs, alongside some discretionary spending, such as necessities like food, clothing, therapy, and recreation.

A significant benefit of an SDT is its capacity to qualify for social security asset test concessions, valued at **\$813,250** for the year 2025 (with annual adjustments).

Additionally, SDTs offer concessional gifting opportunities, capped at **\$500,000**.

However, there are constraints and eligibility criteria associated with SDTs. They primarily serve individuals with severe disabilities, requiring intense care as determined by the Disability Care Load Assessment.

Establishing an SDT requires proof that the beneficiary's care needs will persist at least six months and are anticipated to increase over time.

A notable limitation of SDTs is the discretionary spending cap of \$12,500 annually. Although disability pensions can supplement this amount, it may still be insufficient to cover all of a child's financial needs.

Thus, considering an SDT alongside a secondary support strategy is vital for ensuring flexibility and adequate coverage of a child's needs.

Testamentary Trusts

An alternative to an SDT is a testamentary trust, established to hold estate assets either for the lifetime of the beneficiary or until they reach a predetermined age.

Testamentary trusts lack the rigid limitations of SDTs, making them suitable for children who do not meet the severe

disability criteria or who require funding for broader expenses. Created via a will, testamentary trusts empower trustees to distribute income and capital for accommodation, maintenance, education, and other expenses.

Unlike SDTs, assets within a testamentary trust are subject to social security income and asset tests, potentially affecting entitlement qualifications.

Direct Gifts

In situations where individuals with special needs can manage their environments and finances independently, direct gifts might be the optimal solution.

Before proceeding, it is crucial to evaluate tax implications and the potential impact on the recipient's social security status.

Given the evolving nature of personal circumstances and legislation, preparing for scenarios where the beneficiary might become incapable of independent management is essential.

Provisions can be made for appointing a financial manager or attorney post-gift.

Understanding the needed level of support is critical before deciding on direct gifting as an option.

No Provision

Excluding a child from inheritance solely to optimize their social security benefits is generally discouraged. Such an approach might lead to inadequate support and potential future disputes over the will.

Superannuation Benefits

Superannuation is a significant asset for many Australians, second only to the family

home. Parents might consider bequeathing superannuation death benefits to children with special needs, providing a tax-efficient support mechanism while allowing the child to benefit from an income stream through the super fund.

However, superannuation lacks the control and distribution flexibility afforded by trusts. Therefore, it should be integrated into a broader, strategically diversified plan.

Investment-linked lifetime annuities

Investment-linked lifetime annuities are innovative, offering flexibility rarely found in traditional financial products.

These annuities allow investors to customize their income streams, choosing when to receive payments and selecting from various investment options that can be adjusted over time.

Importantly, they can designate a beneficiary or reversionary annuitant who will receive lifelong income, providing security for loved ones.

While some people prefer straightforward financial solutions, lifetime annuities can be particularly beneficial for those who want to ensure ongoing support for dependents, such as a child with a disability or a loved one with a complex mental health condition.

By choosing this option, investors can guarantee a stable income flow for their beneficiaries, allowing them peace of mind in their later years.

Ultimately, investment-linked lifetime annuities empower recipients with financial security while ensuring that the investor's legacy supports family members effectively after they are gone.

This solution offers a strategic approach for those seeking tailored financial planning to address unique family circumstances and long-term care needs.

Combining Strategies

Given the diverse range of available options, it is unlikely that a single solution will perfectly match a child's needs. Combining multiple strategies may offer the best flexibility to accommodate a child's evolving requirements and capabilities.

Conducting thorough research and seeking professional legal advice is essential for constructing a secure, adaptable, and accommodating plan for a child's future.

Contact us for a tailored solution

As parents of children with special needs, Perth Probate has made it our mission to help families in similar circumstances ensure that their children are taken care of and protected the best way possible, both now and into the future.

Contact us to talk with one of our expert disability lawyers to discuss the best solution for your child.

Need Advice?

Call Perth Probate on **(08) 9227 0604** or at **contact@perthprobate.com.au** or visit **perthprobate.com.au**

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