Special disability trusts

All parents worry about their children. However, parents of children with disability often carry the additional burden of what will happen to their child after their own death. The good news is that the federal government's Special Disability Trust Scheme may just be the way to reduce these worries and find you that all-important peace of mind, writes solicitor Katherine Hawes.

What is a Special Disability Trust?

Created by the Federal Government in 2006, it is a trust which is established primarily for the current and future care and accommodation needs of a person with a severe disability or medical condition. Importantly, the trust is only for the benefit of the child with a disability and cannot be used for any other reason.

The general approach is that the trust can pay for any care, accommodation, medical costs and other needs of the beneficiary during their lifetime. In addition, all trust income is excluded from the income test assessment for the beneficiary without affecting the all-important person with a disability's entitlement to the disability support pension.

As an added incentive, family members providing assets or capital into the trust may also receive an exemption from the usual gifting rules.

How does it work?

- The amount is indexed annually but as at July 2013, a Special Disability Trust can hold a maximum of $609,500. Therefore, a person with a severe disability can have up to this amount plus a residence held in trust before the assets test applies to their social security entitlements.
- The trust rules also state that apart from $10,750 per annum (again, index linked) the income and capital of the trust cannot be used for the person with a disability's general day-to-day living expenses.

Therefore, the trust must only be used for the person's reasonable:

- o Care needs which arise as a result of the disability, e.g. mobility aids and a modified motor vehicle; and
- o Accommodation needs which arise as a result of the disability, e.g. the purchase of a modified residence or the payment of an accommodation bond in a residential care service.

What assets can the child have?
Another benefit of the trust is that the value of assets held outside the Special Disability Trust for the benefit of the person with a disability will not affect his/her entitlement to the disability support pension, as follows:

- If the person with a disability owns a home, then they can have $186,750 in other assets;
- If they do not own a home then they can have $321,750 in other assets.
- Thus, at present, the maximum parents can leave for the benefit of a child with disability is $900,250 ($578,500 and $321,750).

What do I need to do to set up a Special Disability Trust?
The trust can be set up while parents are alive and an easy way to do this is by incorporating it into a will. The trust deed does not come into effect until the death of the person making the will.

With more than 20 years' legal and business experience, Katherine Hawes is the founder and principal solicitor of Aquarius Lawyers in Sydney. To find out more about her work, visit ***newagelegalsolutions.com.au*** *or phone (02) 9615 9635.*