

How can you protect a beneficiary with special needs?

If you are concerned that a beneficiary of your estate may find it difficult to manage an inheritance, you may consider using a protective trust to provide them with more security.

Assets inherited directly by your beneficiaries as a lump sum become part of the personal assets under their control. As a result, the sensible use of these assets is dependent on the beneficiary's ability to manage their own financial affairs. Some beneficiaries, however, may not be able to handle a direct inheritance for a variety of reasons, such as:

- physical incapacity
- mental incapacity
- advanced age
- he/she is a child
- drug addiction
- gambling addiction.

Leaving an inheritance directly to a beneficiary with any of these issues may lead to the loss or misuse of their inheritance.

What is a protective trust?

A trust is simply an ownership structure where the trust assets are held by a person or organisation (the trustee) for the benefit of other individuals or organisations (the beneficiaries).

A protective trust is a structure that provides protection for the beneficiary because a separate trustee holds the trust assets for the benefit of the beneficiary, and the beneficiary's specific needs are considered as part of the administration of the trust. A protective trust can be established while you are alive (inter vivos) or built into your Will to take effect after you pass away (testamentary). Most protective trusts are established in a Will and are therefore testamentary trusts.

How does a protective trust operate?

In a typical protective trust:

- A proportion of the estate is held in trust during the life of the beneficiary with special needs, or until they reach a specified age.
- The trustee has the power to use the income and capital of the trust for the ongoing benefit of the beneficiary for a variety of approved purposes specified in the Will.
- Each financial year, sufficient income and capital is distributed to the beneficiary to meet the cost of the approved purposes. Any remaining income is either accumulated within the trust or distributed to other beneficiaries as directed by the Will.
- Upon the death of the beneficiary with special needs, the capital remaining in the protective trust is transferred to other nominated beneficiaries.
- If so desired by the Will maker, the beneficiary may become entitled to the capital of the trust on reaching a specified age or meeting another condition specified in the Will. At this time control of the trust can be transferred to the beneficiary, if appropriate, depending on the circumstances and condition of that beneficiary.

It is common for a Will maker to provide a lesser share for a beneficiary with special needs, with the expectation that Government benefits will be used as a supplement to look after their needs. This approach may increase the potential of that beneficiary bringing a claim against the estate for greater provision.

A protective trust will be a mandatory trust imposed upon the beneficiary due to their vulnerable state.

Case study

Andrew and Michelle's combined estate is worth \$1,250,000. They have nominated their two children, Lucas and Claire, as the beneficiaries of their estate.

Lucas is 14 years old and is physically and intellectually disabled. He currently receives a disability support pension.

Claire is a 19 year old university student.

Upon their deaths, Andrew and Michelle would like to distribute their assets equally to both children but are unsure how to do this given Lucas' inability to manage his own affairs. They also want to ensure Lucas' share is protected and provides for his ongoing support and care, such as accommodation, medical needs and healthcare.

Working with an AET estate planning specialist, Andrew and Michelle decide to establish a protective trust within each of their Wills and nominate Lucas as the primary beneficiary of that trust.

By using a protective trust they can be sure that:

- Lucas' assets are protected and managed in line with their wishes
- the income and capital of the trust is limited to specified purposes for Lucas including:
 - accommodation
 - medical needs
 - healthcare support
 - education
 - advancement in life.
- consideration is given to the impact that distributions from the trust may have on the disability pension that Lucas is receiving.

Andrew and Michelle then create a separate testamentary discretionary trust with Claire as trustee and primary beneficiary, giving her control over her inheritance.

The above approach ensures that Andrew and Michelle are able to provide for Lucas and Claire in such a way that is appropriate to their particular needs and circumstances.

By establishing a protective trust for Lucas, Andrew and Michelle have peace of mind knowing that his inheritance will be protected and his specific needs will be looked after.

Would you like further information?

For further information please contact your AET estate planning specialist on **1800 882 218**.