



Trusts

Helpful information for
beneficiaries and carers



NSW Trustee
& Guardian

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Fees outlined in this document are current as at November 2022 and are subject to change.

Visit our website for our current fees:

www.tag.nsw.gov.au/fees/trust-fees



About NSW Trustee & Guardian

NSW Trustee & Guardian is a government agency providing professional services in Will making, Powers of Attorney, appointments of Enduring Guardianship, Trusts and Estate Administration. We have more than 100 years of experience – we know the legal requirements and provide informed advice.

We offer independent and impartial executor services and have the expertise of solicitors, accountants, trust managers, taxation and investment specialists on staff.

This guide explains the process of administering trusts and how we can help. We will be there when you need us to give you fair and impartial advice, and we will carry out trustee duties with understanding and professionalism.

NSW Trustee & Guardian must comply with the Trustee Act 1925 and the NSW Trustee & Guardian Act 2009. We are accountable to the Supreme Court for the performance of our Trustee duties.

Key terms used in this section

Assets

Things you own such as belongings, bank accounts, property, shares and investments.

Beneficiary

People and organisations that will receive or benefit from trust assets or funds.

Capacity

A person's ability to understand the facts about their choices, weigh up the consequences of making choices and communicate consistent choices.

Court ordered

A document that describes the decisions of a court.

Inter vivos

From one living person to another.

Testamentary trust

A trust that is created by a Will and becomes effective after you die.

Trust

A relationship where a person or organisation (trustee) is under obligation to hold real estate and money to benefit other persons (beneficiaries).

Trust deed

A trust that is created by a document and usually becomes effective from the date it is created.

Trustee

A person or organisation responsible for administering a trust on behalf of the person who created it.

Trust fund

A fund held by the trustee containing assets that belong to a trust.

Will

An important legal document that sets out who you want to receive or benefit from your assets when you die.

1. Trust

What is a trust

A trust is a relationship where a person or organisation known as the trustee is under an obligation to hold assets and/or funds for the benefit of other persons known as the beneficiaries.

A trust can be created by a Will, a deed or a court order. A trust created by a Will is called a testamentary trust and becomes effective when you die. In contrast, a trust created by a deed will usually become effective the date the deed was created. A court ordered trust is a trust awarded by the court system.

Types of trusts

Trusts may be created for a range of reasons such as tax effective estate planning or to provide ongoing support for a beneficiary.

All trusts need careful explanation and proper assessment of their benefits. It is important to match your wishes and your beneficiaries' needs with the right type of trust. We can advise on the type of trust you may require and help set it up.

Trusts for children

These are generally created in Wills and are administered for children until

they reach the age of 18 or an older age if specified. While the funds are held in trust, you may want to specify if it can be used for the child's benefit, for things like education and living expenses.

Trusts for adults not able to manage their own finances

Trusts for adults can be an extension of a trust created for a child, if the person does not have capacity to manage their own affairs when they turn 18, or can be created for someone who is already an adult. Trusts can also be created for adults vulnerable to financial loss or financial exploitation. These types of trusts can continue for a very long time, particularly if the person is only young when the trust is created.

Special disability trusts

The purpose of a special disability trust is to assist families to make financial provision for the current and future needs of a family member with a severe disability. The beneficiary must be assessed by Centrelink. Consultation with a professional is recommended as there are eligibility criteria and ongoing reporting obligations.

Trusts for accommodation – life interests and right of residence

A life interest or right of residence can be set up to provide for accommodation for a beneficiary. They are often used so that a family member can have the right to live in the family home for as long as they wish. These trusts can be restrictive, so it is particularly

important to get professional advice in deciding whether such a trust is right for your situation.

Responsibilities of a trustee

A trustee is a person or organisation responsible for administering a trust on behalf of the person who created it. Their main role is to manage the funds or assets within the terms of the trust.

A trustee provides continuing support for the beneficiary and carries out the terms set out in the trust. They may be required to manage assets for a long time, so permanency and financial management skills are needed.

Your trust team

When NSW Trustee & Guardian are the trustee, you will be looked after by a designated trust team to guide you through the process. They will listen to your views, consult with you on important decisions, offer impartial advice, work to resolve any difficulties and keep things moving.

Our trust team is made up of highly skilled specialists who understand the management of all types of trusts. They are supported by our wide range of legal, financial, property, tax, and investment professionals.

2. Administering funds

Trust funds may be used for the beneficiary's maintenance, education and advancement in life. When considering how funds are used, we take into account the financial position of the carer.

Fund advancements

In some cases, funds can be released for the beneficiary's maintenance, education and advancement in life before the trust's finalisation date. This is generally when a child turns 18 years, but depending on the terms of the trust, can continue if a person is not able to manage their own affairs.

We often allow a fixed amount for routine expenditure. We call this 'maintenance' and we ask for your help to work out the amount paid. This can be paid on a regular basis depending on the beneficiary's needs.

Before we can make payments from the trust we require the parent or guardian to complete a Declaration of Parent/ Guardian form. This ensures they understand their obligation to use any funds paid to them for the intended purpose.

Each advance of funds must be considered by us to ensure the beneficiary's financial interests are fully protected, noting that a trust can last many years. This requires careful planning with you.

Your responsibilities

NSW Trustee & Guardian requires written details about proposed spending before we decide to advance funds because we need to have a detailed record of how we meet our obligations as trustee. Our criteria for advancing funds has been formed through our experience administering thousands of trusts in our care.

It is important that you do not incur expenses before you talk to us about advancing funds. For instance, the purchase of a car is not generally approved unless the beneficiary holds their provisional driving licence and can demonstrate a practical need for a motor vehicle, or the car is required by the parent or guardian to assist with the beneficiary's needs. It is also important that all receipts are kept for any purchases made.

If your circumstances change, such as you or the beneficiary move address, it is important to let your trust team know. Similarly, if the care and custody arrangements of the beneficiary change, we should be advised as soon as possible.

STEVEN'S STORY

A court awarded trust was set up for Steven when he was seven, appointing NSW Trustee & Guardian as trustee until he turned 18. At the age of 17, Steven's guardian requested funds be advanced to purchase a laptop to assist him as he made the transition from high school to university. As Steven was still a minor at the time and in the care of his guardian, a Declaration of Parent/Guardian form needed to be completed by the guardian to ensure they understood their obligation to only use the funds to purchase a laptop. When considering the request, the Trust team who managed Steven's funds felt that the request Steven's guardian had made on his behalf would benefit Steven in his education and advancement in life, so the request was approved.

Who can request fund advancements

Requests for funds usually come from the beneficiary's parent or guardian. However, if the beneficiary is old enough and has capacity to understand the value of what is being spent, and there is genuine belief that they will benefit from funds, then requests like this may be accepted.

Investing funds

Part of our role involves investing the funds from a trust. As a trustee we are required by law to invest this money carefully.

We must consider:

- the needs of the beneficiary
- the value of the trust
- how long the trust will run for
- the effect of inflation and taxes.

NSW Trustee & Guardian has one Common Fund with two investment portfolios – the Primary Portfolio and the Growth Portfolio. All funds are initially placed in the Primary Portfolio which is made up of cash and fixed interest investments that provide accessible cash and an investment for the trust.

Where more growth potential is required over longer-term trusts, funds are placed in the Growth Portfolio, which invests in Australian and international shares.

Finalising the trust

When the terms of the trust require the funds to be released to the beneficiary, the beneficiary will be notified, and a finalised statement of account will be provided.



Trust funds can be used for the beneficiary's maintenance, education and advancement in life.

3. Fees

Trust administration fees

NSW Trustee & Guardian charges a one-off trustee fee. The trust management fee is charged monthly for the ongoing administration of the trust.

Fees (including GST)	
One-off trustee fee	Based on the value of assets 3.85% on the first \$100,000 2.75% on the second \$100,000 1.65% on the third \$100,000 0.55% on any amounts over \$300,000
Trust management	0.77% per year on value of assets held (excluding the principal place of residence)* Capped fee may apply**
Account keeping	\$132 per year
Investment	0.165% per year of value of Primary Portfolio and 0.385% of Growth portfolio invested in NSW Trustee & Guardian

*For some categories of trusts, including but not limited to testamentary, inter vivos, trusts for sale, or trusts resulting from a family provision claim, the principal place of residence is included in the asset total.

**For life interest, right of residence and discretionary trusts, the annual trust management fee of 0.77% (inc GST) on the value of the real estate occupied by the beneficiary is capped at a maximum of \$1,100 (inc GST) per financial year.

Financial Planning fees

If financial planning services are undertaken for you by NSW Trustee & Guardian's Financial Planning Unit, the following additional costs will be charged to the trust.

Financial planning service	Asset value	Fee* (inc GST)
Create financial plan	\$0 – 50,000	\$82.50
Create financial plan	Over \$50,000	\$165 per hour
Annual review of financial plan	\$0 – 5,000	No charge
Annual review of financial plan	\$5,001 – 50,000	\$41.25
Annual review of financial plan	\$50,001 – 100,000	\$82.50
Annual review of financial plan	Over \$100,000	\$165 per hour

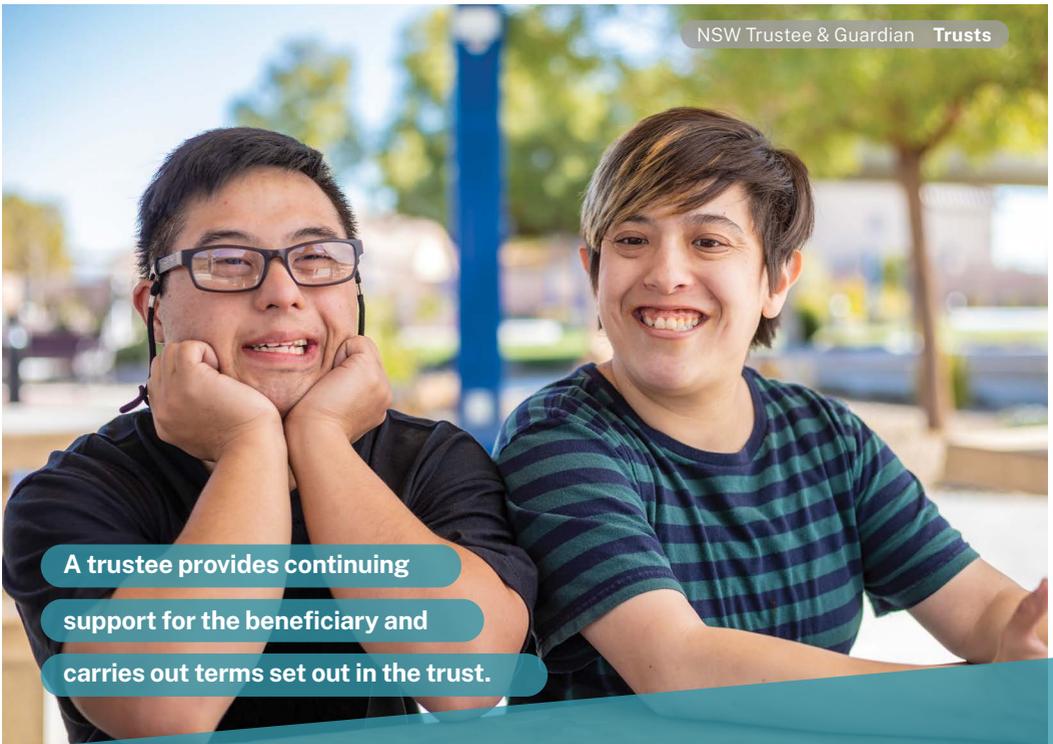
*The capital amount received from a trust is not taxed. Tax will only apply to the income earned by the trust, such as interest or investment returns.

A trustee tax return may need to be lodged depending on the income earned. Any tax liability will be paid from the trust fund. Trustee tax is assessed at personal income tax rates. NSW Trustee & Guardian only lodge tax returns for the income earned from the trust fund. If you need to lodge a personal tax return this will need to be done independently.

Additional fees

Additional fees that may apply (including GST)	
Lodgement of tax return	\$297 first hour \$253 additional hourly rate (charged in 15 minute blocks)
Tax investigation without lodgement	\$148.50 first hour \$253 additional hourly rate (charged in 15 minute blocks)

If legal work is undertaken for you by external legal service providers, their costs will be additional to NSW Trustee & Guardian fees. If legal work is undertaken by NSW Trustee & Guardian, an hourly fee is charged to the trust.



A trustee provides continuing support for the beneficiary and carries out terms set out in the trust.

4. Inclusive services

Everyone is different, so it is important that you tell us the type of adjustment you require.

Requesting an adjustment can include:

- bringing a support person with you
- wheelchair access
- hearing amplification or relocating to a quieter area
- access to an interpreter
- documents in large print or electronic formats.

Some reasonable adjustments may require additional time to organise. If you are unsure, please contact us in advance of your appointment.

5. Our commitment

We are committed to protecting, promoting and supporting the rights, dignity, choices and wishes of our customers. If you have any questions or concerns or feedback, contact your trust team.

Plan ahead with the #1 Will maker in NSW

A valid Will, Power of Attorney and Enduring Guardianship documents give you peace of mind that your wishes will be respected, and both you and your loved ones are taking care of.

Plan for your future legal, financial and health decisions today with NSW Trustee & Guardian.

Contact us



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+61 2 8688 2600



www.tag.nsw.gov.au

Office locations

- Bathurst
- Broken Hill
- Lismore
- Newcastle
- Parramatta
- Port Macquarie
- Sydney CBD
- Wagga Wagga
- Wollongong

Services

- Will Making
- Will Safe Storage
- Power of Attorney
- Enduring Guardianship
- Trust Administration
- Deceased Estate Administration
- Financial Management



**NSW Trustee
& Guardian**