

An Introduction to Discretionary Trusts

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

An increasing number of our clients are considering establishing their own Discretionary Trust. We are often asked to comment on the potential benefits of a Discretionary Trust. This document is intended to provide some general information regarding what is involved in establishing a Discretionary Trust as well as some of the benefits which a Discretionary Trust may offer to you and your family.

The requirements for a Trust are:-

1. **The Settlor:** This is the person who donates an amount of money (usually \$50.00), to establish the Trust. This may be a friend or a family member. However, it is important to ensure that the Settlor will not be a Beneficiary or a potential Beneficiary of the Trust.
2. **The Trustee:** The Trustee is the administrator of the Trust and is responsible to the Trust Beneficiaries. Although the Trustee can be an individual(s) or a company, we recommend using a company as the Trustee. Using a company as the Trustee: (a) ensures continuity of the Trustee when a director/shareholder dies or resigns; (b) limits the liability of the Trustee; and (c) creates less confusion as to the ownership of a Trust asset. Although the Trustee is generally given broad powers under the Trust, the Trustee has an obligation to act in good faith to preserve the Trust assets for the benefit of the Trust Beneficiaries.
3. **The Beneficiaries:** These are the individuals, companies, or charities who are potentially to benefit from the Trust. The Beneficiaries may include categories of people such as you, your children and grandchildren, even if some of those individuals are not in existence at the time the Trust is established. Typically, Trust Beneficiaries receive distributions only at the discretion of the Trustee.
4. **The Appointor:** This may be one or more persons or a company. In many ways the Appointor effectively controls the Trust through the power to remove and replace the Trustee. We always discuss with our clients the question of who will act as the initial Appointor(s) and the basis upon which any new or replacement Appointor(s) will be nominated.



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5. **The Guardian:** In many Trusts a Guardian is named and can be an individual(s) or a company. Like the Appointor, the Guardian often also has effective control of the Trust through its power to oversee some of the Trustee's discretionary powers. For instance, the Trustee may not be able to distribute income and capital to certain Beneficiaries or to amend the Trust Deed without obtaining the Guardian's consent to do so
6. **The Trust Property:** The donation by the Settlor is the first property which the Trust acquires. We recommend that this initial settled sum be placed on an interest bearing deposit with your bank or otherwise set aside and retained so that it is preserved and the Trust always has property. Thereafter, the Trust may either purchase or be given any form of property, including real estate and shares. We recommend that you discuss with your Accountant and your Lawyer any proposed transfers of property to the Trust.
7. **Trust Name:** This is often simply a family name, such as "The Butler Family Trust", or the "The Butler Investment Trust", or any other name which is appropriate for you.

There are many advantages in using a Discretionary Trust. These include:-

1. The ability to acquire property for the long term benefit of your family without the need for the property to be owned by you or any other family member.
2. The continuity of property ownership as no change in ownership occurs on the death of any one family member. The assets owned by the Trust remain the property of the Trust despite the death of any one or more potential Beneficiaries.
3. The ability to share income with Beneficiaries in varying amounts from year to year without giving them any entitlement to the assets or capital of the Trust.
4. The ability to preserve assets beyond one generation in a way that may protect those assets against claims, such as in the event of a marriage breakdown or the death of a potential Beneficiary.
5. Increased opportunities to minimise income tax and to avoid Capital Gains Tax liability through: (a) splitting income with an extended group of Beneficiaries; and (b) maintaining ownership of Trust property on the death of a Beneficiary.
6. As at July 2012 we are happy to establish a Discretionary Trust for a fee of \$450.00 - \$600.00 plus GST. This does not include any costs involved in the use of a company as Trustee (approximately \$800.00). This also does not include any time spent advising you. We refer you to our Schedule of Charges and our Letter of Engagement for more details.

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At Butlers we pride ourselves on being “The Personal Law Firm”. When you visit Butlers you can be assured of our personal attention and care. We aim to reduce your concerns by speaking and writing in plain English, cutting through legal jargon and keeping you informed at all times. Through it all, we work closely with your family’s accountant, bank manager, financial adviser, and other professionals as required. We therefore encourage you to contact us if you have any queries in relation to the establishment of a Discretionary Trust, or the benefits of having a Discretionary Trust prepared.

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