



INSTITUTE OF  
FINANCIAL  
PROFESSIONALS  
AUSTRALIA



THE AUDITORS  
INSTITUTE

# THE SUPER PLAYBOOK 2025

## DISABILITY & DEATH An Auditor's & Advisor's Dilemma

PETER BOBBIN

# Disability & Death

## - An Auditor's & Advisor's Dilemma

---

Prevalence means relevance means embracement

Your legal duty is....

Recognise professional negligence risk

Must do's for the client & for you

Other issues not to miss

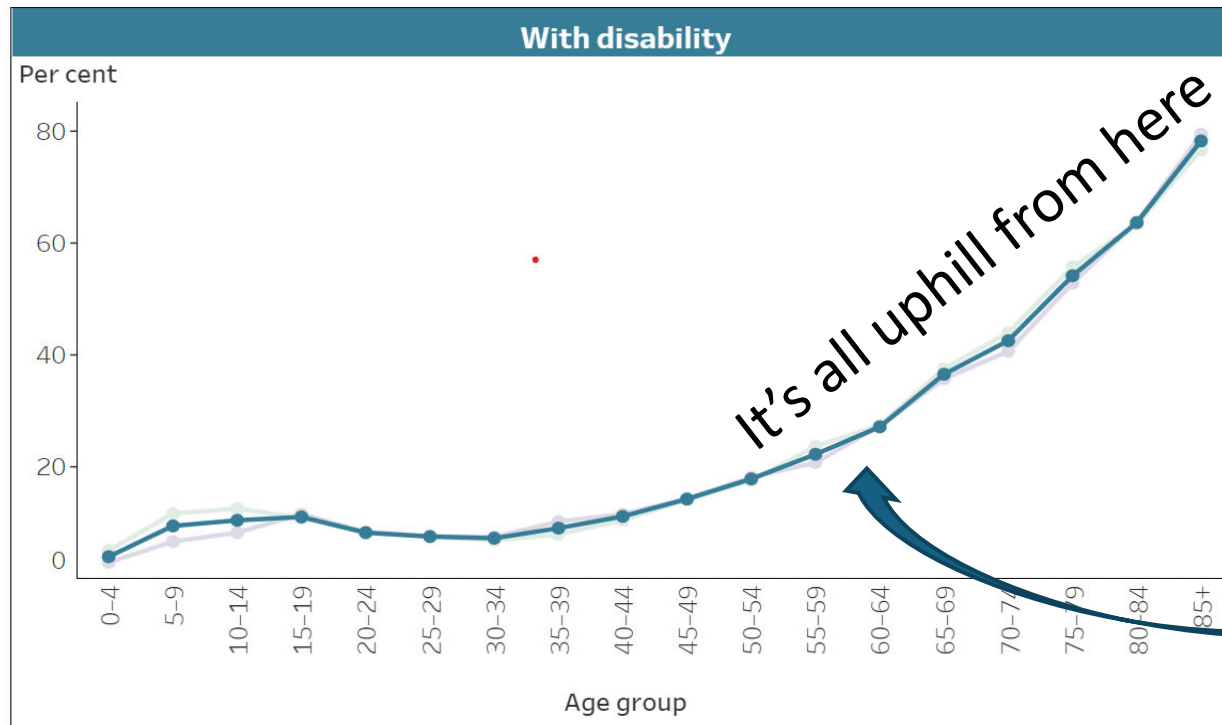
The deathbed dozen to have ready

## research says....

### Prevalence of disability

- 1 in 6 - (18%) Australians have disability (about 4.4m)
- 1 in 3 (32%) with disability have severe or profound disability (about 1.4m)
- For 1 in 4 (23%) with disability, their main form of disability is mental or behavioural

## research says....



- Incidence of disability increases with age
- What is the age basis of your clients?
- Average and median smsf member age is 61/62 years

## research says....

---

Men aged 65

can expect to live 53% (11 years) of their  
remaining lives with some level of disability

Women; 54% for 12 years

**38.4% of smsf members are 65+**

## research says....

Of the 1 in 8 (12% or 515,000) people with disability as a result of an accident or injury, it most commonly happened on the road (30%) or at work (29%), at home (18%) or at sporting venues (7.6%).

**Professional drivers heading home from the game better watch out**

## research says....

The most common cause of disability is that the main condition 'just came on' (21%) followed by diseases, illnesses or hereditary conditions (15%) and accidents and injuries (12%).

**Are you ready for your first/next disabled client?**



## research says....

- 433,300 Australians living with dementia
- the leading cause of death for Australian women
- 1.7 million people in Australia are involved in the care of someone living with dementia





to deal with  
disability or  
death, both are  
certain!



## research says....

- People with disability are;
  - three times as likely to avoid an organisation
  - 36% treated less favourably than able customers
- 62% of SME's have *not done anything* in the past 12 months to make it easier for customers with disability.
  - Are you one of them?



## research says....

Disability awareness is good for business....

73 percent of employees who say they work at a "purpose-driven" company are engaged, compared to just 23 percent of those who don't

Inc Magazine 2014, [How a Sense of Purpose Boosts Engagement](#)

**Are you ready for your first/next disabled client?**

# You must actively embrace disability!

---

Your clients have it or will have it

You will have it

Your staff will have it

It is good for business!

**And legally you must!**



Australian  
Human Rights  
Commission

research says....



Australia ratified the *United Nations Convention on the Rights of Persons with Disabilities*, in 2008.  
The *Disability Discrimination Act* protects people across Australia.

Proactively accommodating disability is the law.



## Disability discrimination

Disability discrimination occurs when a person is treated less favourably, or not given the same opportunities, as others in a similar situation because of their disability.

The *Disability Discrimination Act 1992* (DDA) makes it unlawful to discriminate against a person, in many areas of public life, including: employment, education, getting or using services, renting or buying a house or unit, and accessing public places, because of their disability.

The DDA covers people who have temporary and permanent disabilities; physical, intellectual, sensory, neurological, learning and psychosocial disabilities, diseases or illnesses, physical disfigurement, medical conditions, and work-related injuries.

It extends to disabilities that people have had in the past and potential future disabilities, as well as disabilities that people are assumed to have.

In addition, the DDA protects people with disabilities who may be discriminated against because they are accompanied by an assistant, interpreter or reader; they are accompanied by a trained animal, such as a guide, hearing or assistance dog; or they use equipment or an aid, such as a wheelchair or a hearing aid.

The DDA also makes it against the law to discriminate against someone because of their association with a person with a disability.

### Direct and indirect discrimination

**Direct disability discrimination** happens when a person with a disability is treated less favourably than a person without that disability in the same or similar circumstances.

**Indirect discrimination** can be less obvious. It can happen when employers or service providers put in place conditions, requirements or practices that appear to treat everyone the same but which actually disadvantage some people because of their disability. It will be discriminatory if a requirement or condition:

- applies to everyone, but because of their disability the person is not able to comply or, although able to comply, would suffer serious disadvantage by doing so, and
- the requirement or condition disadvantages a person because of their disability, and
- it is unreasonable in all of the circumstances.

For example, it could be **direct** discrimination if a person who is the best person for the job is not employed because of their disability.

Requiring a Deaf employee to attend meetings where no Auslan interpreter is provided to enable them to understand what is being said could be **indirect** discrimination. Although they could attend the meeting without an interpreter, they would suffer a serious disadvantage as they would have difficulty participating.



Good practice, good business  
[humanrights.gov.au/employers](http://humanrights.gov.au/employers)

## You will have clients with disabilities

---

Do a disability audit of your business practices, it must be able to cope with disabilities, it is the law!

**Have you thought about disability and**

- **You!**
- **Your current client**
- **Your future client**
- **Their family members**
- **Your family!**

## Your legal duty

---

- Best interest duty - Corporations Act
- Professional best interest duty is contract and tort based
- Auditors must *obtain evidence about the compliance activity and controls implemented to meet the compliance requirements – capability!*
- Relates to the client, including the eggshell client\*

\* Not the average client but the client as they are

## Professional negligence risk

---



- The Eggshell Client Rule means you take and are responsible for *the* client as they are
- The *know your client rule* reinforces this
- You need to engage in a disability discussion, just like doctors, fact find should ask: *do you have any disability concerns?*

## Professional negligence risk

---

- Disability in a client does not create a higher standard of care, it is the same care standard carried out differently!
- Adjust the way you communicate
- Part of your annual review must be to enquire about *their ability* progression

If on notice of cognitive decline,  
you must ask status annually

# Do a disability audit.... of your business

---

## Office access

Your original authority

In-person or tele-meeting is better  
for who?

SOA mentions disability and says  
you need to tell me what I need to  
know otherwise I don't know

## Font choice & size

Your post disability authority has  
been updated  
Your instructions from who for  
whom?

Client's disability future proofed

# Do a disability audit.... of your business

---

**Power of attorney\***

**Enduring guardianship\***

**Authentication process**

**Director/smsf trustee succession**

**Other authority process**

**Lifestyle statement**

**Relationship statements**

**Disability impact  
warning/disclaimer**

**\*Refreshen every 3 to 5 years**

## A disability audit makes you \$\$\$\$

---

If your client disability IS NOT future  
proofed?

You have condemned your future  
client lo\$\$ to a public trustee or  
other

If your client disability IS future  
proofed...

You have guaranteed your future  
client \$\$'s and value of your  
business

**A disability documents register is good for them and  
good for your business**

## Professional negligence risk

---

Take instructions from whom?

- Instructions from one for the other is common
- but it is also dangerous for you, especially if other is known to have a disability

Have a clear instruction authority  
and warning statement

# Professional negligence risk

## Issue a Spouse/Agency Statement



## Professional negligence risk

---

Whilst it is your circumstances that I am bound to consider, I understand that I am to gain this from your partner/carer and that they are to be my primary contact point for my services relationship with you. In effect you have nominated or appointed them to act on their *and your* behalf in dealing with me.

To the extent that our services may involve or impact upon you, it is important that you understand that your role as a co-controller/trustee/director/investor raises special responsibility issues for you, often of a nature that can impact on another such as a family member. You cannot abdicate your responsibility to another in such circumstances; this has been made clear in many court decisions. The ATO is of this view as well

As you may appreciate, I cannot determine if the information provided to me by another factually represents you, unless I deal personally with you.....

## Professional negligence risk

---

Disability is so known that it is reasonable for me the lawyer to argue that you are on notice that a client in your future will gain a disability. You must urge income protection and life insurance or disclaim responsibility.

Use the statistics in this presentation

Warn clients about their and  
their family disability risks

## Most difficult issue with cognitive decline is WHEN?

---

- When to invoke power of attorney
- When to take instructions from another
- When to deny instructions from another
- Insist and warn of need for medical certificate

Develop a decline-plan that  
operates in gradual steps

•

## Most difficult issue with cognitive decline is WHEN?

---

Tell them...

- You cannot act unless you are formally told of the cognitive incapacity *and* you are confident any authority document is currently effective
- They need to enable you to be able to act, quickly!

Develop a decline-plan that  
operates in gradual steps

## Most difficult issue with cognitive decline is WHEN?

---

Check/update power of attorney

- Is it current?
- Are State/Territory based and differ, though are commonly cross-recognised
- Does it appoint alternate (back-up) attorneys?

Make these checks part of the  
3-year client status update

## Most difficult issue with cognitive decline is WHEN?

---

Check/update power of attorney

- Are there conflict releases, especially if a carer is to be paid/benefit?
- Doesn't work for the trust, but can for the shares in the trustee company

Make these checks part of the  
3-year client status update

## Most difficult issue with cognitive decline is WHEN?

---

- Put in place alternate signature authorities
- Check the second client signatures are on all relevant files

Get 100 point ID checks  
done before urgently needed

## Most difficult issue with cognitive decline is WHEN?

---

Relationship statements, esp for carers

- The dead can't speak
- But the dead can have written a statement that affirms that a relationship was commercial, not more

(not a spouse/super dependent/interdependent)

## Most difficult issue with cognitive decline is WHEN?

---

Check/update super terms

- Should a BDBN exist? Note the conflict between certainty *versus* a family law risk for a divorcing child
- Are there special rules for a disabled super member?
- How do the smsf trustee appointment rules work?

Trustee conditional disability  
appointment, is being ready

## Most difficult issue with cognitive decline is WHEN?

---

Check/update family trust terms

- How do the family trust trustee appointment rules work?
- Have the paperwork ready

Have an information collation checklist

## Most difficult issue with cognitive decline is WHEN?

---

Capture all information now, before deterioration

- Passwords
- Asset cost bases
- Account access options
- Relationship statements

## You should for you ....

---

Have a Power of Attorney Client Register

- with certified copies
- it is good for your business

## You should for you ....

---

### Rewrite your retainer

- Disclaim or emphasise DSS knowledge and skills
- Insist that you are updated on health and capacity
- Warn that they must plan for disability (liability shift)

## You should for you ....

---

Confirm instructions from whom and set up a process

- Rewrite SoA for the disability communication issue
- Incorporate a disability awareness statement in your audit sign off

Disability is a major change,  
reflect this in your services

## You should for you ....

---

Be vigilant about elder abuse

- You can act if you see an issue and you have *a genuine concern for the welfare of the principal\**
- Most of it is unintentional, much of it is fair, but your participation can be assisting a fraud on the client/Crown

(\*Sect.35(1)(d) Powers of Attorney Act NSW)

Be wary, being nice opens you up to risk,  
**don't be nice**

## Issues not to miss

---

- Disability and assisted dying and the forfeiture rule
- Disability and homelessness and lost monies or super
- Watch out for timeliness failures due to depression and therefore compliance failures
- Develop advisory strategies for the client's family member with a disability

## Issues not to miss

---

### Depression

- Worldwide, the most common disability in people under the age of 60 is depression, followed by hearing and visual problems (2011)
- The client is not going to get done what needs to be done for the super pension and other timely issues. **Set up an auto pension payment for once-a-year pensions.**

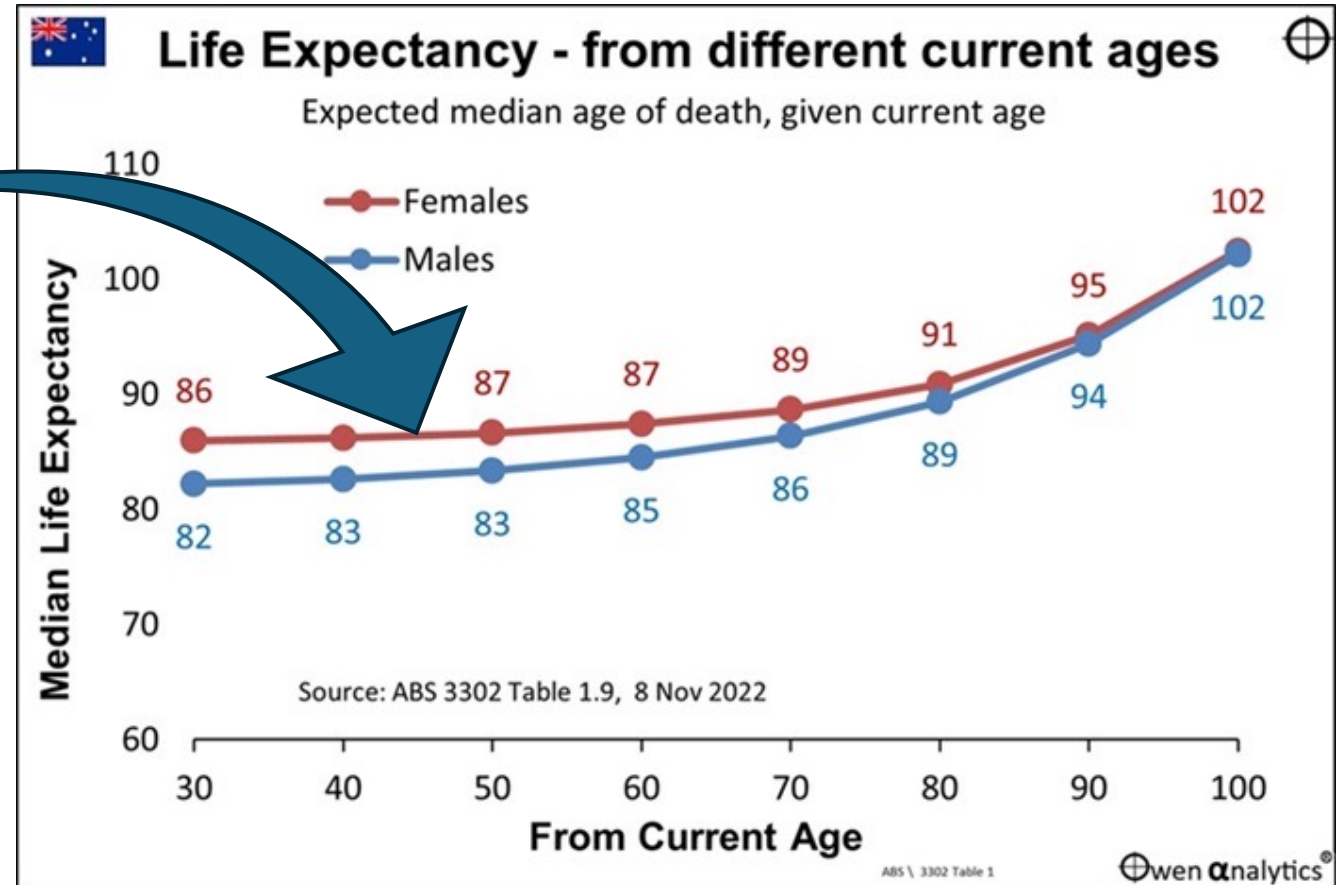
## Client Family Member with a Disability

---

- Develop advisor strategies to advise
- Learn about the Special Disability Trust
  - Great cgt gift concessions
  - Stamp duty benefits
  - Social security gifting excluded
- Can/should the super pay a disability-super pension?

## Death, Everybody is into it!

Are you  
45+?  
Half your  
life is over!



Ashley Owen, How Not to Run Out of Money in Retirement, Firstlinks, June 2024

## Death, Everybody is into it!

---

- Is a normal part of life that
  - You will experience and
  - Have a legal duty to manage and
- Requires good advice risk management
  - Being prepared is being ready

# Be deathbed ready

1. Get cash now
2. Know authority ends, know who and how of immediate new authority
3. Check documents now whilst alive and able!



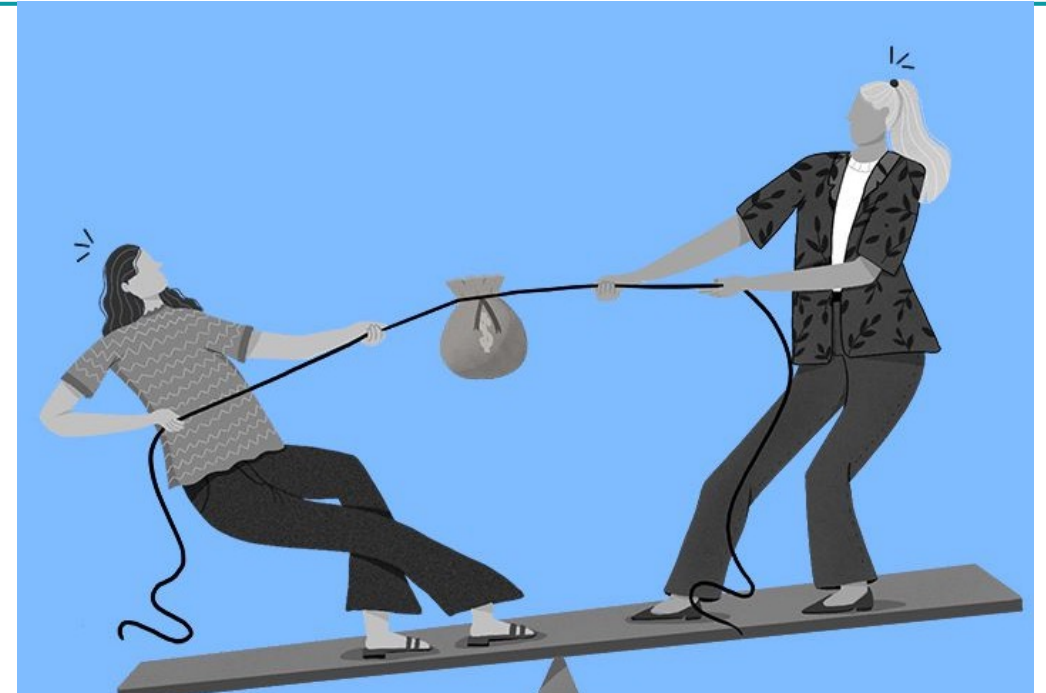
# Be deathbed ready

4. Make your super dependent certain, BDBN? or trust deed terms?
5. Cut problem connections
6. Beat the hearsay rule with sect. 73 Evidence Act relationships and age statement



# Be deathbed ready

7. Use conflict release and self-benefit authorities in Power of Attorney and Will. They (and you) need these.



# Be deathbed ready

---

8. Change directors now? Make them a member now? Adjust authorized signatories?
9. Convert lumpy assets now? Have transfer forms ready?



**KEEP  
CALM**

**YOU'RE  
IN CHARGE**

# Be deathbed ready

- 
10. On death do nothing until the process can start, then put the ***claims staking*** flag up  
- 1<sup>st</sup> step is list of dependants



# Be deathbed ready

11. Have all of the paperwork orderly and fill in the gaps



# Be deathbed ready

12. Carry a pack of withdrawal forms?  
Fill-in, sign, submit & whine until payment into the bank account



# Be deathbed ready

Got Super, maybe....



# Be deathbed ready

Let's do the maths for a  
\$1m super with 90%  
taxable component and  
no tax-free dependent.  
There is \$135,000 in tax



# Be deathbed ready

Let's do the maths, assume 5%pa, keeping super saves up to \$23,500 tax pa. Shut down and early payout saves \$135,000 in tax now, trade off is 5.7 years!



# Be deathbed ready

But don't promote super death tax evasion, Part IVA can apply!

Discuss tax outcomes and the importance of getting whole estate ready.



# Act now!

## Get into Disability and Death

---



**Peter Bobbin**  
Nice Guy & Lawyer  
**P** 0408 111 831  
**E** [peter@bobbin.net.au](mailto:peter@bobbin.net.au)  
Copyright © Peter Bobbin



INSTITUTE OF  
FINANCIAL  
PROFESSIONALS  
AUSTRALIA



THE AUDITORS  
INSTITUTE

# THANK YOU