Australian Executor Trustees

Case study – Jacob's Story

Michael and Matilda Johnston are in their 70s and live in Double Bay, NSW with their son Jacob who is 34 years old. Jacob was involved in a camping accident when he was 19 and as a result has lost the use of his legs and also incurred frontal lobe damage. Due to these injuries he has impaired decision making capacity and significant physical rehabilitation requirements.

Michael and Matilda provide daily care for Jacob within the home as well as receiving respite care. They also provide financial stability and manage Jacob's financial affairs on his behalf.

Jacob continues to live an active lifestyle and enjoys travelling, sports and the outdoors. He remains highly engaged and loves spending time with his family, carers and friends within his support groups.

Michael and Matilda's other children, Luke and Lucy, are both married with children and lead busy lives. Since Luke and Lucy both now live interstate, Michael and Matilda have become increasingly concerned about Jacob's reliance on their care and have started to worry about what might happen if they were not around to help and support him.

While both siblings have a strong bond with Jacob, Michael and Matilda do not want to burden them with providing for Jacob's every need. However, they want to make sure that Luke and Lucy are involved in any important decisions that may need to be made about his care when they are no longer here.

In light of the situation, Michael and Matilda have also started to think about how to pass on their assets to their children once they are gone. They own their home and have both an investment portfolio in their names and within a self-managed superannuation fund.

They would like to provide for all three children equally, but want to ensure that Jacob's share is protected. They know Luke and Lucy will act in Jacob's best interests, but want to make sure Jacob's portion is applied solely for his benefit.

They're also aware that Jacob will need help in managing his finances so that he has an ongoing income stream as well as providing for his accommodation, health care and other bills.

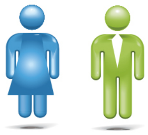
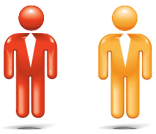
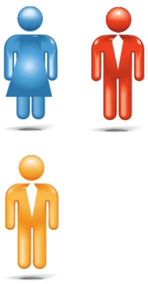
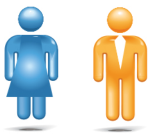
Identifying the Johnston's goals and objectives

The Johnstons have a great relationship with their lawyer, accountant and investment adviser, who together have helped manage their affairs for over 15 years. As the Johnstons have specialist estate planning needs, their professional advisers sought the advice of AET, who helped them identify the following goals and objectives.

1. Divide their estate (including their superannuation), equally between their children, but with Jacob's share to be held in trust as he is unable to manage his own financial affairs.
2. Establish testamentary trusts for Luke and Lucy so they have flexibility in managing their investments.
3. Ensure that their superannuation death benefits can be paid to Jacob as an income stream.
4. Establish a protected trust in their Wills for Jacob and ensure that upon his death the balance of the trust will pass to Luke and Lucy.
5. Keep Luke and Lucy as their executors upon the death of the survivor of Michael and Matilda, with estate administration support from their lawyer.
6. Involve Luke and Lucy in Jacob's protective trust, but recognise that they live interstate, are time poor and are unable to manage his financial affairs on their own.
7. Keep their trusted investment adviser involved in the financial management of Jacob's trust, but recognise the adviser will be unable to handle the day-to-day management of Jacob's personal affairs.
8. Ensure an independent party regularly reviews Jacob's trust.
9. Minimise the amount of tax that the family will need to pay.

Putting a plan in place

By taking an holistic approach, and working in partnership with the family's trusted advisers, we were able to structure Michael and Matilda's finances in the most effective way to benefit each of the family members, both now and in the future.

Jacob's family advisers working in partnership	
	Michael and Matilda's lawyer prepared new Wills which retained Luke and Lucy as the executors of their estate. Their Wills also stated that their overall wealth (including superannuation) is divided equally between the three children, however, they contain a clause which allows Jacob to receive all of the superannuation and Luke and Lucy receive a greater proportion of the other assets.
	With the help of our estate planning specialist Michael and Matilda establish a protective trust and appoint us to act as a trustee with specific directions for us to confer with Luke and Lucy in relation to Jacob's personal needs.
	Their Wills expressed a wish that their investment adviser look after the financial management of the investments in Jacob's trust.
	Michael and Matilda requested that following their deaths the executors obtain advice from our estate planning specialist, their lawyer and their investment adviser as to the most tax-effective way to distribute the overall wealth equally between the three children. As Jacob is financially dependent on Michael and Matilda he will be eligible to receive their superannuation death benefit proceeds tax-free. Although Jacob is over 25, given his disability, he will also be eligible to receive their death benefit in the form of an income stream.
	Their investment adviser recommends that they convert their self-managed super fund (SMSF) into a small APRA fund (SAF). Apart from reducing their current administration and risk as trustees, this allows the fund to continue to operate after they pass away without a family member taking on the often onerous and time-consuming responsibility of acting as trustee. Instead we, as a professional trustee company, would act as trustee of the fund. They also execute death benefit nominations for the SAF to ensure that the superannuation proceeds are paid to Jacob as an income stream into his trust.
	It was also agreed that our client services team would facilitate an annual family meeting with Michael and Matilda, their lawyer, investment adviser and accountant, to ensure that all the legal and financial arrangements for Jacob are regularly reviewed.


AET adviser


Lawyer


Investment adviser


Jacob's family

The partnership between us, the family, and their other professional advisers resulted in peace of mind for the family knowing that Jacob's affairs will be professionally managed, while family and carers are actively involved in his personal affairs.

What happens next?

It's now several years later. Michael died three years ago at age 76 and Matilda has just died at age 79. Upon Michael's death all his assets were transferred to Matilda. At Matilda's death she held the following assets:

Family home	$1,700,000
Superannuation	$1,500,000
Net investment portfolio	$2,500,000
Total net worth	$5,700,000

Luke, Lucy and Jacob receive one third each being $1,900,000. Luke and Lucy's entitlements consist of cash proceeds from the sale of the family home and an in-specie transfer of holdings from the investment portfolio. Their respective portions are placed in a testamentary discretionary trust, of which they are trustees, so they can manage their own inheritance in the most tax-effective manner.

Jacob will receive all of the super tax free. He will also receive $400,000 from the sale of the family home which will be paid to a protective trust. His monthly pension from the SAF is also tax free and paid to the protective trust.

Jacob lives in a private medical facility which provides him with exceptional care as Michael and Matilda had wished. Luke and Lucy visit Jacob as often as they can and the staff help Jacob to use Skype to see and talk with his family as often as desired. Jacob continues to participate in nature and sport outings with his support group and with his new friends in the facility.

All of Jacob's fixed expenses have been previously agreed with Luke and Lucy based on our recommendations. As trustee we regularly review and arrange for all expenses to be paid as they are invoiced. We review any discretionary expenses in consultation with Luke or Lucy.

Upon Jacob's death, the balance of the protective trust will be paid equally to Luke and Lucy, or placed in trust for their children if either of them pre-decease Jacob. Any balance in the superannuation account will be paid to Matilda's estate and distributed to Luke and Lucy's testamentary discretionary trusts. Matilda's estate can then be closed.

Do you know someone who provides for a family member with a disability?
Why not find out more about how our specialist estate planning, trustee services and superannuation could help.

If you would like further information or advice on providing for an intellectually disabled family member please call us on **1800 882 218.**

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