Tabled
8.30 am
18/2/13

Firstly I wish to thank you for the opportunity of appearing today.

The points I have raised in my submission are in relation to First Home Owners Grant, Stamp Duty and the inability of members of our community who have an intellectual disability to contribute to the purchase of their own home free of Centrelink penalties. These issues will not be new to some members of this Committee as I have for many years protested loudly for reform on these matters in relation to rules governing Special Disability Trusts.

Two years ago my wife and I purchased a home for our son and as he was unable to legally to have his name on the title we chose to title it in our names. This was done with the intention of a transfer to a Special Disability Trust if his independent living proved successful. He has exceeded our expectations and we plan to make the transfer to a Special Disability Trust in the near future.

As a consequence of that titling decision, we are as a family a living example of the negative impact of the issues I have long identified. We were unable to satisfy State Revenue of our intent of purchase and were denied First Home Owners Grant and relief of payment of Stamp Duty, a net loss of $20,000. In addition, when we were satisfied of our son's ability to reside independently (with support) he gifted to us some of his savings to help clear a mortgage on his home. As a result of that gift his Disability Support Pension has been reduced accordingly under the Centrelink Gifting Rules for a period of five years - our rewards for not asking an already struggling Public Housing Sector to provide for him!

The choice of ownership to be placed on a title document when purchasing a property as a place of residence for a family member with a disability is a minefield of both positives and negatives. I have copies of correspondence relating to those choices available for you.

I wish to take this opportunity to submit an additional recommendation. In situations where a place of residence is purchased for a recipient of NDIS Support Funding and that property due to the disability of the recipient cannot be titled in their name, I recommend the following:

Recommendation:
If a property has been purchased as a place of residence for someone who is in receipt of NDIS support funding and that person is unable due to their disability to have that property titled in their name, no Capital Gains Tax will be payable on the sale of that property on the provision that the recipient of the NDIS Funding has resided in the property for at least one year.

It is my belief that limited availability of accommodation will be the weakness of a fully implemented NDIS. While the option of self provision will initially play only a minor role in filling that shortfall, I believe my recommendations would assist and encourage more families to plan ahead to make privately funded accommodation a reality for their family members.

I thank you for your time.

RCW

Ray Walter

Ray & Wendy Walter
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30 March 2011

Prime Minister of Australia
Julia Gillard

Dear Prime Minister,

As parents of a 37 year old son with an intellectual disability we have recently purchased a home unit for him to allow him to progress into independent living.

Having worked for 22 years our son has saved a considerable amount of money, about 20% of the value of the property we have purchased for him. Whilst not understanding the value of money he has for many years been saying he was saving as his brother had done to one day buy his own home.

One of the hardest decisions to make when purchasing the property was to decide who would own the property taking into consideration the fact that we will not be around forever to manage and watch over his affairs.

The four options we considered were a joint equity deal with the WA Department of Housing, outright purchase in our son's name, purchase and hold the property in a Special Disability Trust (SDT) or purchase it in our names.

All of these options brought to the table their own individual positive and negative aspects. We will endeavor to articulate those aspects to the best of our ability in the following:

Joint equity deal with the WA Department of Housing.
Positives. As a First Home Owner our son would receive the First Home Owners Grant of $7,000 and Stamp Duty of $13,395 would be waived. His personal savings could be used as part of the purchase cost. The WA Department of Housing would be co-owners of the property bringing a degree of ownership security.

Negatives. The property would be titled in our son's name along with the Department of Housing. This is not desirable as even with co-ownership you would understand the real danger of him being exploited at some future point in time resulting in the loss of his home. As we are of pension age, any funds we contribute to the deal will be treated as being gifted and effect our pension entitlement if we were to make application. If independent living was not sustainable for our son and the property was sold all funds we had put into the deal (possibly up to $150,000 of our retirement savings) would become our son's asset. Any attempt to recover that money would see him penalized under the Social Security Gifting Rules.

Outright Purchase in our son's name.
Positives. As above. First Home Owners Grant would be received. Stamp Duty would be waived and his personal savings could be part of the purchase cost.

Negatives. The property would be titled only in our son's name making the possibility of exploitation greater, a risk no thinking parent in our situation would entertain. More of our funds would be required to purchase the property, shifting a higher amount of our savings into his name. Once again the Gifting Rules would apply to ourselves, and as explained above if the property had to be sold a larger amount of our savings would be locked into our son's name. As he lacks testamentary capacity and can not legally sign a document a lot of red tape would be involved to place his name on the title.

Special Disability Trust.
Positives. Maximum security as the SDT would be the owner of the property there would be little possibility of exploitation. The Gifting Rules are waived for any funds up to $500,000 that we place in the SDT.

Negatives. The SDT is denied the right to First Home Owners Grant even though a Senate Standing Committee recommended it should be payable. It can be applied for via an Administration Order but automatic entitlement should be available. In WA we believe Stamp Duty is payable if a property is purchased by a SDT, a further impost, we are unaware of the situation in other states. Offsetting the waiving of the Gifting Rules for funds we may contribute to the SDT is the reality that any assets placed in the SDT are locked in for the life time of the beneficiary, a huge commitment for any parents. The greatest negative aspect is that SDT beneficiary is prohibited from contributing their personal savings to the Trust, even if their savings are directly channeled into the purchase of their home in the SDT and not simply used for care needs. We are constantly told by Government Ministers that allowing beneficiaries to contribute their savings to their SDT is viewed as moving assets to a non assessable area and will not be allowed. We and others see it as discrimination against those with disabilities (those lacking testamentary capacity) by banning them from the right that you, we and the majority of Australians enjoy, the right to work and save for our own home. In view of the fact that they can not sign a legal document and as it is not desirable to title a property in their name, it is totally unfair to treat them differently to all other citizens.

Purchase in our names - our chosen path.
Positives. Maximum security as our son will be the tenant and not be subject to the possibility of losing the property. If at any time he is unable to live independently we could sell the property and recover our outlay.

Negatives. Unable to claim First Home Owners Grant and Stamp Duty was payable - a loss of $20,395. If our son tried to use his savings towards the purchase cost his only avenue was to give the money to us, he would then be penalized under the Gifting Rules. We had little choice other than to take out a mortgage (at retirement age) to make up the shortfall that could have been covered by his savings - **our reward for striving for years to make private provision and not ask the Government to provide our son with a place of residence!!**

QUESTION:
Prime Minister we ask you do you believe it is fair, just, reasonable and most of all Australian that our son and others in his situation are treated so differently when it comes to purchasing their homes.

We have discussed this matter with many Members of Parliament from all parties and have to date been unable to find a Member who disagrees with our stand that our son should be entitled to use his savings towards buying his home if held in a SDT.

Prime Minister we look forward to your answer to this question.

Yours sincerely,

Ray and Wendy Walter.

Treasurer; Attorney General

Our ref: 35-14193

Mr R and Mrs W Walter
57 Kingsmill Gardens
WINTHROP WA 6150

Dear Mr and Mrs Walter

THE PURCHASE OF A HOME FOR A FAMILY MEMBER WITH A DISABILITY

Thank you for your letter of 30 March 2011 to Hon Julia Gillard MP, Prime Minister, about the issues involved in purchasing a home unit for your son. As your letter relates in part to State transfer duty on the purchase of a first home and to the State First Home Owners Grant (FHOG), the Prime Minister has referred it to me for my direct response.

I understand the difficulties you must have faced in deciding who should own the residence. As you are aware, the first home buyer concessional rate of transfer duty and the FHOG would apply to the purchase of a home not only wholly in your son's name but also under a joint equity arrangement with the Department of Housing. In addition, I would like to clarify that in Western Australia these benefits would also apply to the purchase of a residence for your son under a Special Disability Trust.

Furthermore, if you purchased the home unit for your son 'on trust' less than 12 months ago (supported by a trust document or referenced in the original Offer and Acceptance form), you may still be able to claim the duty concession and the FHOG. For further information, please contact the Office of State Revenue on (08) 9262 1299.

The Western Australian Government also provides a land tax exemption for property used as a primary residence for a family member with a disability (i.e. even where other family members own the home). Furthermore, as your son appears to be a disability support pensioner, you should be eligible for a rebate of up to 50% on local government rates and other charges (in relation to the home purchased for your son). These benefits would also be available under the other three purchase options outlined in your letter, subject to certain conditions.

The remaining issues raised in your letter relating to Special Disability Trusts and social security gifting rules are the responsibility of the Commonwealth Government. Accordingly, I have taken the liberty of referring your letter to the Hon Jenny Macklin MP, Commonwealth Minister for Families, Housing, Community Services and Indigenous Affairs, for her consideration.

I trust my comments are of some assistance.

Yours sincerely

HON C. CHRISTIAN PORTER MLA
TREASURER; ATTORNEY GENERAL

24 MAY 2011

cc Hon Julia Gillard MP, Prime Minister
Hon Jenny Macklin MP, Federal Minister for Families, Housing, Community Services and Indigenous Affairs

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