



The Hon Jenny Macklin MP
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The Hon John Murphy MP
Chair
House of Representatives Standing Committee on Petitions
Parliament House
CANBERRA ACT 2600



Dear Mr Murphy

Thank you for your letter of 12 May 2011 enclosing a copy of a petition about Special Disability Trusts that was submitted to the Standing Committee on Petitions by Carers and Friends of citizens with a disability for consideration. I apologise for the lengthy delay in responding.

The petition requested that the guidelines for Special Disability Trusts be amended to make it more accessible, practical and financially viable for a person with disability and to consider making financial assistance available for the establishment and recurrent costs of a Special Disability Trust.

Special Disability Trusts were established in September 2006 to assist immediate family members and carers who have the financial means to do so to make private financial provision for the current and future care and accommodation needs of a family member with severe disability.

Special Disability Trusts attract generous social security means test concessions for the beneficiary and eligible contributors. The principal beneficiary's immediate family members who are of Age Pension age can gift up to \$500,000 into the Trust without having the social security gifting rules applied. In addition, a Special Disability Trust can have assets worth up to \$578,500 (current as at 1 July 2011, indexed annually) without these funds impacting on the beneficiary's social security pension, such as the Disability Support Pension.

The Senate Standing Committee on Community Affairs inquired into why more families of dependants with disabilities are not making use of the current provisions to establish Special Disability Trusts and tabled its report, *Building trust: Supporting families through Disability Trusts*, on 16 October 2008. The Australian Government tabled its response on 14 May 2009.

The Government responded to the recommendations of the Senate Standing Committee on Special Disability Trusts and announced changes to both the social security and taxation legislation, in the 2009-10, 2010-11 and 2011-12 Budgets respectively, to help further reduce the barrier in setting up a Special Disability Trust and make it a more attractive vehicle for families to provide financial provision for a family member with severe disability.

Changes effective from 1 January 2011 include:

- a beneficiary of a Special Disability Trust is now able to work up to seven hours a week at or above the relevant minimum wage;
- a Special Disability Trust is now able to pay for the beneficiary's medical expenses, including private health fund membership and maintenance expenses of the Trust's property; and
- a Trust is now able to spend up to \$10,250 in a financial year indexed annually on 1 July on discretionary items not related to the care and accommodation needs of the beneficiary.

In addition, the Government intends to introduce legislative changes into Parliament in the Spring sittings, with a retrospective start date of 1 July 2006, that will:

- provide a capital gains tax exemption for any asset donated into a Special Disability Trust;
- provide a capital gains tax main residence exemption for Special Disability Trusts;
- provide a capital gains tax exemption for the recipient of the beneficiary's main residence, if disposed of within two years of the beneficiary's death; and
- ensure equivalent taxation treatment among Special Disability Trusts established under different Acts.

Currently, the unexpended income of a Special Disability Trust is taxed at the beneficiary's personal income tax rate, rather than the highest marginal tax rate.

In addition, once a Special Disability Trust is established, the Trust is able to pay reasonable costs associated with running the Trust. A Model Trust Deed has also been set up to assist families establish and maintain a Special Disability Trust. The Model Trust Deed contains the clauses which are essential for a Trust to comply with the requirements of the Special Disability Trust legislation. The Model Trust Deed can be found at www.fahcsia.gov.au/sa/carers/pubs/ModelTrustDeed.

Centrelink offers a free financial information service that provides information about all social security entitlements.

Thank you again for writing.

Yours sincerely

JENNY MACKLIN MP