



Australian Government

AUSTRALIAN GOVERNMENT RESPONSE

to the report by the

Senate Standing Committee on Community Affairs

Building trust: Supporting families through Disability Trusts

May 2009

AUSTRALIAN GOVERNMENT RESPONSE TO THE SENATE STANDING COMMITTEE ON COMMUNITY AFFAIRS' REPORT

Building trust: Supporting families through Disability Trusts

This is the Australian Government's response to the Senate Standing Committee on Community Affairs Inquiry into Special Disability Trusts, *Building trust: Supporting families through Disability Trusts*, as tabled on 16 October 2008.

The Government welcomed this inquiry and acknowledges the importance of the Committee's findings in highlighting ways that Special Disability Trusts could be enhanced to more readily assist those families who are in a position to make private financial provision for a family member with severe disability.

The Government has engaged extensively with carers and people with disability, and it is aware of the concerns of parents and carers about what will happen to their family member with disability when they are no longer able to continue their caring role. Given that the Australian Bureau of Statistics reported 6,400 parent carers aged over 65 and a further 44,400 in the age group 45 to 64 in its 2003 *Survey of Disability, Ageing and Carers*, it is critical that we find ways to support carers and families in their caring role and to help them plan for the future care needs of their family member with disability.

The Special Disability Trust measure was introduced to allow aged parents/carers, who had the capacity to do so, to contribute to the current and future care of their family member with severe disability without these contributions impacting on their income support payments. The rules around Special Disability Trusts were intended to ensure maximum protection of the beneficiary's interests and peace of mind for the parents/carers that their arrangements for the future care and accommodation of their family member would be carried out as they intended. Nonetheless it was anticipated that a greater number of *inter vivos* Special Disability Trusts would have been established within the first two years of the measure's introduction.

Over the past 12 months, the Government has progressed a range of significant initiatives to support people with disability, their families and carers. These initiatives have involved national consultation on the development of a National Disability Strategy, a national policy statement which will maximise inclusion and set the directions and priorities for the development of legislation, policy and financing of services that respond to the needs of people with disability, their families and carers. It has also included working collaboratively with State and Territory governments to develop a National Disability Agreement from 1 January 2009 which will see significant reforms to the disability services system and a Commonwealth investment of \$5.3 billion over the next five years.

In April 2008 the Parliamentary Secretary for Disabilities and Children's Services, the Hon Bill Shorten MP, established the Disability Investment Group to explore innovative ideas from the private sector that will help people with disability and their families access greater support and plan for the future.

The Government is considering changes to Special Disability Trusts within the context of the Disability Investment Group's report and other work the Government is currently undertaking to support people with disability, their families and carers, such as consultations in developing the National Disability Strategy.

AUSTRALIAN GOVERNMENT RESPONSE TO THE SENATE STANDING COMMITTEE ON COMMUNITY AFFAIRS' REPORT

Building trust: Supporting families through Disability Trusts

Recommendation 1

The committee recommends that the special disability trust eligibility requirements in section 1209M of the *Social Security Act 1991* be amended to:

- (i) Remove section 1209M(b);
- (ii) Include eligibility requirements which effectively enable those with intellectual disabilities or mental illnesses to become beneficiaries of special disability trusts.

Response

The Government agrees to give further consideration to an amendment to section 1209M of the *Social Security Act 1991* and section 52ZZZWA of the *Veterans' Entitlements Act 1986* to make it easier for people with intellectual disability and/or mental illness to be eligible as beneficiaries for a Special Disability Trust.

Recommendation 2

The committee recommends that the asset value limit for special disability trusts in section 1209Y of the *Social Security Act 1991* be increased to \$1,000,000 and annually indexed according to a rate which reflects ordinary investment returns or the Consumer Price Index whichever is greater.

Response

The Government agrees to give further consideration to an amendment to section 1209Y of the *Social Security Act 1991* and section 52ZZZWK of the *Veterans' Entitlements Act 1986* to increase the assets concessional limit in the context of the overall taxation and social security concessions applying to Special Disability Trusts.

The Government notes however that the original limit of \$500,000 is indexed and currently stands at \$532,000 at 1 July 2008. As the principal residence of the beneficiary is exempt as an assessable asset, consistent with the assets test under social security and veterans' entitlement provisions, Special Disability Trust assets can currently exceed \$1 million and remain within the current concessional limit.

In addition to the principal residence exemption, there is an assets test free area of up to \$171,750 for a single homeowner or \$243,500 for couples who are homeowners and \$296,250 for a single non-homeowner or \$368,000 for couples who are non-homeowners.

Increasing the assets concessional limit significantly, may raise issues relating to the equity of income support for people with disability and the need to balance equity considerations with the encouragement of private investment by those who can afford to contribute toward the cost of their own care.

Recommendation 3

The committee recommends that the provisions relating to the special disability trust gifting concession be amended to annually index the gifting concession limit to the rate applied to the special disability trust asset value limit.

Response

The Government does not agree to this recommendation. The non-indexation of the current gifting concession aligns with broader social security gifting provisions. Any change to include indexation of the gifting concession for Special Disability Trusts would therefore have broader implications.

Recommendation 4

The committee recommends that, if after adoption of the recommendations in this report there is no improvement in the uptake of special disability trusts after two years, options to expand eligibility for the gifting concession should be reviewed.

Response

The Government agrees in-principle to this recommendation. It notes that there would be no budgetary impact given that the current \$500,000 concession would be shared by a larger pool of contributors. The Government also notes that a low take-up, despite the implementation of other recommendations, may not be attributable to the current restriction of the gifting concession to immediate family members.

Recommendation 5

The committee recommends that the tax arrangements applying to SDTs be changed so that:

- the sale of a property that is owned by a special disability trust and used by the beneficiary as their principal place of residence be treated the same as any other person's principal place of residence, that is, exempt of capital gains tax;
- the transfer of property and other assets to a special disability trust is exempt from capital gains tax and stamp duty;
- unexpended special disability trust income is taxed at the beneficiary's personal income tax rate.

Response

The Government agrees in part to this recommendation.

The Government agrees to the recommendation to extend the capital gains tax main residence exemption to properties held in a Special Disability Trust that are used by the beneficiary as their main residence. The Government will amend the *Income Tax Assessment Act 1997*.

The Government does not agree with the recommendation to provide a capital gains tax exemption on the transfer of property and other assets to a Special Disability Trust. To provide an exemption would mean that the capital gains tax law would treat taxpayers who transfer property and other assets to a Special Disability Trust differently from those who contribute using other sources of taxed income, such as wages.

Stamp duty is not an Australian Government tax and is a matter for State and Territory Governments to consider. The Government notes that the Western Australian Government provides an exemption from stamp duty for properties transferred to a Special Disability Trust. In addition, it has granted an exemption from land tax for families providing a residence for a family member with disability as well as concessions to land and water rates for such properties.

The Government agrees to the recommendation to tax unexpended income of a Special Disability Trust at the beneficiary's personal income tax rate rather than the top personal rate of tax plus Medicare Levy. The Government will amend the *Income Tax Assessment Act 1936*.

Recommendation 6

The committee recommends that the allowable uses of special disability trusts be expanded to include all day-to-day living expenses that are met to maximise the beneficiary's health, wellbeing, recreation and independence.

Response

The Government will request relevant portfolio Secretaries to revise the *Social Security (Special Disability Trust) (FaHCSIA) Guidelines 2008*, the *Social Security (Special Disability Trust) (DEEWR) Guidelines 2008* and the *Veterans' Entitlements (Special Disability Trust) Guidelines 2008*, within the provisions of the current legislation, to expand the list of examples of reasonable care and accommodation needs.

The Government agrees to give further consideration to amendments to the *Social Security Act 1991* and *Veterans' Entitlements Act 1986* to expand what is a reasonable care or accommodation need.

The Government notes that the Disability Support Pension is provided to support a person's day-to-day living expenses. Any substantial opening up of the beneficiary eligibility criteria and allowable uses of Special Disability Trust funds may raise issues relating to the equity of income support for people with disability.

Recommendation 7

The committee recommends that unexpended income from a special disability trust be able to be contributed, on a pre-tax basis, to a superannuation fund for the trust beneficiary.

Response

The Government does not agree with this recommendation to enable a Special Disability Trust to contribute to a superannuation fund for the trust beneficiary as a "concessional contribution", with the trust being able to claim a tax deduction for that contribution.

The Government notes that a change to implement that part of recommendation five above to tax the unexpended income of a Special Disability Trust at the beneficiary's personal income tax rate will mean that a Special Disability Trust may, in any event, pay less than the 15 per cent tax imposed on contributions made to superannuation.

It also notes that superannuation may not be the most appropriate vehicle for supporting beneficiaries of Special Disability Trusts as superannuation is designed for retirement purposes.

Recommendation 8

The committee recommends that when a special disability trust is used to purchase a first home for the trust beneficiary, the First Home Owner Grant should apply and be payable to the trust.

Response

The Government does not agree with this recommendation for the following reasons:

- One of the principles of the First Home Owners Scheme is that the applicant must be a natural person, which a Special Disability Trust is not. This eligibility criterion was agreed to by all State and Territory governments and is provided for in each State and Territory's enacting legislation.
- The First Home Owners Scheme is administered and funded by the States and Territories consistent with the principles originally outlined in the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* and now contained in the *Intergovernmental Agreement on Federal Financial Relations*. A change to the principles in the Intergovernmental Agreement requires the agreement of all States and Territories as well as requiring each State and Territory to amend its enabling legislation.
- To provide Special Disability Trusts with access to the First Home Owners Scheme grant may set a precedent for Special Disability Trusts to be given access to other concessions available only to natural persons.

The Government notes that the 'natural person' requirement of the Scheme does not necessarily preclude a beneficiary of a Special Disability Trust from accessing the grant. Where beneficiaries are able to acquire property in their own name, they may apply for the grant themselves, or if subject to a power of attorney or a financial management/administration order, the grant may be applied for by the person holding the power of attorney on behalf of the beneficiary or managing their affairs under the financial management/administration order.

Recommendation 9

The committee recommends that the government review appropriate options to provide additional assistance to families establishing and maintaining a special disability trust including low cost legal and financial advice, as well as funding for development of long-term planning.

Response

The Government agrees to give further consideration to this recommendation.

Recommendation 10

The committee recommends that requests for audits of a special disability trust be restricted to one external audit per financial year unless the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs determines this restriction should be waived.

Response

The Government's initial response to this recommendation is that it may have unintended consequences for families and beneficiaries in implementation. The Government agrees to give further consideration to mechanisms for implementing this recommendation through amendments to the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* and/or amendments to the *Social Security (Special Disability Trust – Trust Deed, Reporting and Audit Requirements) (FaCSIA) Determination 2006*, the *Veterans' Entitlements (Special Disability Trust – Trust Deed, Reporting and Audit Requirements) Determination 2006*, the *Social Security (Special Disability Trust - Trust Deed, Reporting and Audit Requirements) (DEST) Determination 2006* and the *Social Security (Special Disability Trust - Trust Deed, Reporting and Audit Requirements) (DEWR) Determination 2006*.

Recommendation 11

The committee recommends that the single trust rule in Section 1209M (6) of the *Social Security Act 1991* be amended to allow two trusts for each beneficiary.

Response

The Government does not agree to this recommendation. The change would apply to very few families. It would add complexity and compliance costs for Centrelink administration as well as create additional costs for families, given the significant costs of maintaining two trusts. It would also create additional compliance cost for the Australian Taxation Office given the Government's agreement to extend the capital gains tax main residence exemption to properties held in a Special Disability Trust that are used by the beneficiary as their main residence.

Recommendation 12

The committee recommends that Centrelink be designated as the agency responsible and accountable for ensuring that special disability trusts are promoted and understood among families caring for members with disability.

Response

The Government agrees to give further consideration to this recommendation. It notes that Centrelink has not had prime responsibility for promotion or education of special disability trusts to date. Additional costs of promoting awareness of Special Disability Trusts through Centrelink will need to be considered.

Recommendation 13

The committee recommends that the Department of Families, Housing, Community Services and Indigenous Affairs in partnership with industry bodies and peak carer associations develop a training package for financial and legal advisers focussed on future planning for carers of people with disability, including special disability trusts.

Response

The Government agrees to give further consideration to this recommendation.

The Department of Families, Housing, Community Services and Indigenous Affairs is examining ways to better partner with industry bodies and peak carer associations within current resources.

Recommendation 14

The committee recommends that the government consider changing the name of special disability trusts, for example to disability support trusts.

Response

The Government agrees to give further consideration to this recommendation.