



Committee's Secretary, Community Affairs Committee  
Department of Senate  
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CANBERRA ACT 2600



## SPECIAL DISABILITY TRUSTS

### Barriers to Establishment by Families for Members with Disabilities Senate Enquiry June 2008

#### Executive Summary

I write on behalf of Planned Individual Networks Inc., (PIN) a family led and driven NFP organization which is independent of recurrent Government funding. PIN exists to support families plan and create safe, secure and fulfilling lives for their relatives with disabilities through developing and maintaining viable Networks of support ('circles of friends') who will "look out for" family members with a disability when the parents are no longer able.

PIN commenced its Network Programme in 2004 for Lifetime members and currently twenty are in various stages of development with some of the first Networks now in maintenance mode and flourishing..

Much of the early work done with member families, prior to Network development is focused on future planning, including appropriate, wills, trusts and financial plans for the whole family.

A Special Disability Trust (SDT) should be a "key" tool to assist families in this planning process either as a living trust during the lifetime of the parents or on the death of the last surviving parent as a Testamentary Trust when scarce family resources can be made available.

However the restrictive nature of the SDT, and lack of flexibility to provide a "one stop" Trust for the requirements of Primary Beneficiaries is a disincentive to the widespread adoption of the SDT.

The following comments are designed to assist the Senate Enquiry, and come from first hand experience with many families as they come to grips with the challenging and complex possibilities when looking for a clear direction to a future for their family member with a disability and some peace of mind for themselves.

### **Part 3, 18A of the Social Security Act 1991**

As this section of the Act is specifically enacted to cover the SDT it is appropriate that I address it in some detail.

#### **Beneficial Requirements –Sect 1209M**

Single beneficial rule

Overall we have no major concerns with this section. Obviously families outside the eligible criteria would like to see the conditions of entry as a principal beneficiary widened, but we don't believe there to be any inherent conditions that restrict families commencing a SDT once their family member has satisfied Centrelink that they are eligible.

#### **Trust Purpose Requirements - Sect 1209N**

Sole Purpose – care and accommodation for principal beneficiary

This is one of the “key” areas where the SDT is unattractive as a viable option for families.

Due to the restrictive nature and narrow definition of care and accommodation any family setting up a future planning program for their family member will find the need to have two (2) trusts in place. One for care and accommodation, (a SDT), and one for all other life needs, (An all needs Protective Trust).

This is a burden on families both in cost and understanding of what to most families is a complex part of our legal process; the need to protect vulnerable people for their lifetime by way of a well documented Trust with reliable Trustees in place.

The thought that two Trusts would be required is just too much for most people to comprehend and at a very early stage in the future planning process it is so easy to lose their support and attention

One Trust is difficult enough to manage and comprehend without the need for two. The legal fraternity is quite open about their recommendations to families that two Trusts are required to meet all future needs of people with disabilities, if one of them is to be a SDT.

Clause 3 & 4 under this section gives cause for concern when parents find that The Secretary (Centrelink) is empowered to decide what is and what is not “reasonable care and accommodation needs” for family members with disabilities when no such determination is made in our community about/or for people who don't have disabilities.

#### **Recommendation**

That the “Sole Purpose” for a SDT be deleted and replaced with “*The purpose of a SDT is to support the Principal Beneficiary in all their care, accommodation and living cost,*



*as reasonably required by the Principal Beneficiary and determined in consultation with the Trustees.”*

If there is to be a restriction as to the primary purpose of the use of trust funds, a clause to allocate a minimum of 80% of trust income for care and accommodation could be considered.

**Trust Deed Requirements – Sect 1209P**

Compliance with determination

Few families are comfortable with Centrelink (The Secretary) having such wide compliance powers without recourse to an independent body of review for such a crucial planning tool for their family member with a disability.

**Trustee requirements –Sect 1209Q**

We have no problems with this section, except to comment we would prefer to see at least two Trustees appointed to each SDT.

**Trust property requirements – Sect 1209R**

Assets of the Trust

Clause (1 & 2), we would prefer that the principal beneficiary was able to transfer any or all of their assets to a SDT to acknowledge the broader needs of a person with a disability as outlined in our comments under **Sect 1209N**

Many families have been building an asset base for their family member with a disability for many years in the knowledge that their family member will never have sufficient earning from wages to generate a sufficient “Superannuation” fund to cater for them in the future. This has often come at a cost as the deeming provisions on the assets have impacted negatively on their eligibility to retain the Disability Support Pension as the funds have increased. They now find they are further penalized as the funds so carefully built up (usually at a cost to the parents by reducing their own lifetime savings) are not eligible to be part of the SDT assets. This is a gross injustice and has given families the message that if they try to provide financially for their family member they will be heavily penalized financially. This is behind many families being very wary of the SDT in its current format, which excludes the use of these funds to kick start an asset base for a SDT. Why??

The exclusions under clauses 3 & 4 are acknowledged as essential to the legislation. However I find the inclusion under clause 5 of a “property” where the Primary Beneficiary has a right to accommodation for life in a residence or a life interest, as unrealistic and once again is counter productive to any plans the parents may have of securing lifetime accommodation for their family member with a disability.

**Reporting requirements –Sect 1209S and Sect 1209T**

End of financial year 30<sup>th</sup> June in each year the Trust should comply with similar reporting requirements as a Superannuation Plan where the sole purpose of the funds are set aside for the future support of named individuals (beneficiaries)

Therefore an audit should be mandatory, with the people named in clause 3 & 4 of Sect 1209T able to request a copy.

**Income amounts from special disability trusts -Sect 1209X**

And

**Attribution of Assets -Sect1209Y**

And

**Effect of certain transfers to special disability trusts Sect- 1209Z**

And

**Transfers by the immediate family members prior to reaching pension age etc.- Sect 1209ZB**

These four sections are acknowledged as being an integral part of the SDT legislation

**Summary**

The overall intent of the SDT is a great step forward for people with disabilities, however the very restricted purpose and exclusion of the Primary Beneficiaries' own funds to assist with their future financial security is restricting the uptake of SDT by families.

It is acknowledged that the majority of families may have little choice but to include a provision for an SDT in their wills as a Testamentary Trust, and therefore the uptake of SDT is likely to be slow initially.

It would be good public policy if SDT was effective and simple to operate by supportive trustees for the full benefit of the people who continue to be marginalized through no fault of their own.

Yours faithfully

 5/6/08

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Immediate Past Chairperson  
Planned Individual Networks Inc.

cc Senator Rachel Siewert