

INQUIRY INTO SPECIAL DISABILITY TRUSTS

Submission to the
SENATE COMMUNITY AFFAIRS COMMITTEE

Kew Cottages Parents' Association

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Since 1957, **Kew Cottages Parents' Association** has promoted the welfare of residents at Kew Cottages (then Kew Residential Services) through support for families, representation, fundraising and associated activities, and has lobbied the community and Government to secure better services and rights for intellectually disabled people.

In 2008, the Association supports more than 230 individuals or families who have a relative living in DHS Community Residential Unit (shared supported accommodation). In addition, KCPA regularly provides support and advice through a regular newsletter to more than 700 family members, direct care staff, friends and advocates who are supporting a Victorian with an intellectual disability living either in a Community Residential Unit (CRU) or at home.

Kew Cottages Parents' Association responded with interest to the 2006 inclusion of the Special Disability Trusts to Part 3.18A to the *Social Securities Act 1991*.

In the belief that the Special Disability Trusts might offer potential benefits to our members' intellectually disabled relatives, we arranged for representatives of both State Trustees and Moores Legal (Mr. Alan Swan) to attend separate general meetings of our members in order to provide expert advice.

The Association also undertook research into Special Disability Trusts in order to ensure that the information we offered to our membership was accurate.

The following comments reflect the conclusions drawn by the Association regarding the value of the Special Disability Trusts to our membership.

1. Restrictive and limited use for Special Disability Trust funds:

The narrow rules mean that Special Disability Trusts have limited value to our membership due to the exclusive focus on expenses directly relating to the individual's disability and covering only care and accommodation costs.

For KCPA members, their relatives are all living in Department of Human Services Community Residential Units (Shared Supported Accommodation). The fees for this accommodation service are structured in such a way that the actual 'rent' component is very low. This low rent component, however, does not reflect the substantial additional 'household' costs paid by the individuals to live in the accommodation such as utilities, groceries, manchester, gardening, cleaning, and household equipment.

A significant number of our members subsidise their intellectually disabled family member's expenses in one or more of the following areas: holiday, recreational needs, private health insurance, dental treatment, or day programs. Once again, the narrow rules mean that these expenses cannot be covered by a Special Disability Trust.

Without the potential for the Special Disability Trusts to encompass some of the above expenses, there is little or no benefit to our members in establishing such a trust.

In addition the Trust could be subject to income tax at the highest tax rate on the income not expended.

2. Stringent Reporting and Audit Requirements:

The stringent reporting and audit requirements of a Special Disability Trust makes the task of establishing and administering such a trust onerous and potentially costly - in particular the requirement to have at least two trustees or a professional trustee and an annual audit.

Parents or family members who are already Financial Administrators appointed by the Victorian Civil and Administrative Tribunal (VCAT) in particular already have time-consuming and exacting requirements to undertake. Without greater potential benefits from a Special Disability Trust, there is simply insufficient incentive to establish such a trust.

3. The base threshold needed to make the Trust worthwhile is unachievable for the majority of parents:

Our discussions indicate that the minimum amount required to counteract the costs and restrictions associated with a Special Disability Trust is considered to be in the order of \$200,000.

Based on KCPA's membership profile, the percentage of parents able to place this sum or more in a special needs trust for their child is extremely low.

It is important to acknowledge that many parents of children or adults with intellectual disability (whether living in the family home or in supported accommodation) are subject to increased expenses as a result of their child's disability. Such expenses usually continue into adulthood. Not many people eligible to receive the offered gifting concession are likely to be able to contribute the minimum base threshold amount and could need contributions from other donors to reach this threshold. This is not easy to arrange.

4. The Special Disability Trust fails to provide the benefits and values needed to encourage parents to invest in establishing long-term care and accommodation options for their disabled child due to:

- Payment of Capital Gains Tax when a property or assets are transferred into a Special Disability Trust
- A property held by the Trust is not viewed as the personal property or home of the person with a disability as it would be if the property was in the person's name, so that capital gains tax at the highest tax rate is payable if the property is sold.

5. The "All Needs" Trust is possibly more effective/useful:

Despite the potential for the All Needs Trust to affect the individual's Centrelink benefits, it appears to compare more favorably to the Special Disability Trust. It is possible to establish an All Needs Protective Trust at sufficiently low level to meet other fundamental needs and quality of life expenses whilst, in most cases, also ensuring that the principal beneficiary retains eligibility to some Centrelink benefits.