



12 June, 2008

The Secretary
Senate Community Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir / Madam

Senate Inquiry to investigate the low take up of Special Disability Trusts

Activ Foundation is a not-for-profit organization dedicated to promoting a better life for people with disability and their families.

Activ Foundation applauds the decision of the Senate to refer the matter of special disability trusts to the Community Affairs Committee.

The families of people with disability, particularly parents planning for their own retirement, tell us that planning and providing for the future of their family member with disability is their greatest concern. They seek peace of mind; they want to be assured that their family member will be well cared for when they are no longer in a position to supervise or provide that care. Some are motivated by a desire to ensure that any financial burden of care is not carried by the siblings of their child. Some are motivated to ensure continuity of care whatever the policy on disability funding of future governments. All are motivated by love for their child.

The families are not necessarily “well off”; although some may be. Most families are average working Australians who have accumulated their assets through a lifetime of hard work. They want to leverage these assets to provide for their family member, who cannot provide for themselves.

Special disability trusts (SDT) were created in response to this need for families to make long term provision for their family members with disability. The fact that only 22 trusts have been established indicates that in its current form,

“I provided for the future of my able children by supporting them through university. They have established their careers and can look after themselves. I now want to make sure that my son, who has an intellectual disability, is also provided for for the rest of his life.”

SDT legislation did not properly address this need; it contains too many hurdles and restrictions to provide a viable solution for parents and family members of people with disability.

1.0 Why families of dependents with disabilities are not making use of the current provisions to establish Special Disability Trusts

1.1 The criteria for eligibility is too restrictive

The current SDT legislation limits the eligibility for a beneficiary of a SDT to a person with a severe disability. Currently the beneficiary must:

- Have a disability that would, if the person had a sole carer, qualify the carer for carer payment or carer allowance; or
- Be living in an institution, hostel or group home in which care is provided for people with disabilities, and for which funding is provided (wholly or partly) under an agreement, between the Commonwealth, the States and the Territories....

“My son has a moderate disability, and so doesn’t qualify for government support. But he lacks the management and planning skills to ever be able to look after his own affairs. I need something like a special disability trust to make sure he is cared for, but he doesn’t qualify.”

However a large number of disabled people have a level of disability that does not qualify them for government funding, but is nonetheless at a level that means that they lack the management, planning and self care skills necessary to look after themselves, without the supervision of a family member.

Families of people with a moderate level of disability, require a mechanism to plan for the care and supervision of their disabled family member, despite the level of the disability not being of an adequate level of severity to reach the funding level.

1.2 Restrictive application of the trust

A SDT can only pay for the direct care and accommodation of the person with disability. However, when establishing these trusts, families are seeking to ensure that more than minimum care and accommodation is provided; they want to ensure that their family member’s other essential needs (such as clothing and dental) and quality of life benefits (such as recreation and entertainment) are met as well.

“People supported by the trust should be entitled to the things in life we all take for granted.”

Generally, other essential needs and quality of life benefits are allowed in protective trusts; it seems that it is only from SDT that these priorities excluded.

1.3 Income tax rate is high

The legislation applies a high taxation on unused income generated by the trust - taxing that income at 46.5%. This high rate of taxation is perceived to be a significant barrier to families considering the option of establishing a SDT. Whilst the high tax rate may be a valid mechanism to restrict tax avoidance in other protective trusts or schemes, there is no need, and no place, for such a mechanism in the case of the provision for a person with disability. The opportunity and likelihood of people taking advantage of a SDT from a tax perspective is minimal and the current mechanisms in place are so restrictive that it is counter productive to the intent of establishing a SDT.

1.4 Capital Gains Tax rules are unjust

Capital gains tax is payable on assets transferred to a SDT. This is a significant disincentive for families, particularly when there has been no real capital gain.

Further, should the beneficiary have to relocate and sell the property, capital gains tax is payable. This seems unjust when one considers that for most Australian citizens their home is exempt from capital gains tax.

"If I help my other children to buy a house, and they live in it for a few years, then sell it they aren't hit by capital gains tax. But if I provide a house for my child who is intellectually disabled, and at some stage in the future they have to move and buy another house, they have to pay capital gains on the house that I gave them. Tell me how that is fair!"

2.0 Valuable aspects of the current legislation

While the legislation in its current form is restrictive, it is important not to lose sight of the positive aspects in considering any future amendments:

- The value of property (place of residence of the beneficiary) can be held in a SDT and does not count toward the \$500,000 limit;
- Exemptions allowing the maintenance of eligibility for Veterans Affairs and Centelink income and assets means tested pension concessions for the beneficiary;
- Living donors to a SDT may be exempt from Centrelink Gifting Rules.

These aspects of the current legislation are valued by families and should remain in future amendments of the legislation.

3.0 Considerations for amendment to the relevant legislation

The following suggestions are presented for consideration for amendment of the SDT legislation:

- Funds donated to the trust are either a tax deductible item for the donor, or taxed in the same manner as contributions to superannuation.
- Capital gains tax is not applied to property donated to, and held by, a SDT.
- Apply a reduced rate of tax rate for excess income generated by a SDT.
- Ease the restrictions of monies generated by the trust to allow families to provide for other essential needs and quality of life via the SDT in addition to direct care and accommodation.
- Broaden the eligibility criteria to allow family members of people with moderate disability to establish a SDT.
- Maintain the income and asset concessions.

It is suggested that the Terms of Reference of the Inquiry be adequately broad to allow for consideration of a registered disability savings plan (as is available in Canada), either in addition to, or instead of, SDT legislation.

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