



**Office of the
Protective Commissioner**
Attorney General's
department of nsw

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Mr Elton Humphery
Secretary
Senate Community Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Humphery

RE: Inquiry into Special Disability Trusts

Thank you for the opportunity to comment on the Committee's Terms of Reference.

The Protective Commissioner is a statutory officer under the Protected Estates Act 1983 (NSW). The Commissioner may be appointed by the Supreme Court of New South Wales, the Guardianship Tribunal or by other tribunals to manage the estates of people who have been found to be incapable of managing their own affairs – referred to in the Act as an “incapable person”. The Commissioner also has the role of authorising and directing other persons who may be appointed manager of the estate of an incapable person. As at 30 June 2007 there were a total of 11,038 persons under management, 8786 of whom are under the direct management of the Protective Commissioner.

Terms of Reference

- (a) why more families of dependents with disabilities are not making use of the current provisions to establish Special Disability Trust;
- (b) the effectiveness of part 3.18A of the Social Security Act 1991;
- (c) barriers on the relevant legislation to the establishment of Special Disability Trust; and
- (d) possible amendments to the relevant legislation.

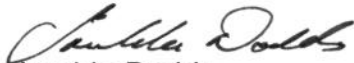
This submission is brief and confines itself to the experience of this office in relation to Special Disability Trusts. So far as I am aware to date none of the persons whose estates are subject to management under the Protected Estates Act, 1983 have made use of the current provisions to establish a Special Disability Trust.

I am informed that this office has dealt with a small number of enquiries relating to Special Disability Trusts. However proposed settlors have decided against it.

Factors which appear to be relevant include the restricted nature of the trust property requirements and the set up costs in establishing the trust and the ongoing trustee costs. The ability to provide a flexible, responsive but well safeguarded financial plan for the lifetime of a person with a disability is paramount. I am advised that those people considering a SDT have found other forms of "secure investment" better able to meet the needs of their family member. This may explain the lack of take up of Special Disability Trusts

A possible amendment to the relevant legislation may be to provide that the trust deed requirements have been satisfied where a manager has been appointed under the Protected Estates Act, 1983 (NSW) thereby recognising that manager as the trustee.

Yours sincerely,



Imelda Dodds

Protective Commissioner and Public Guardian