

The Secretary  
Community Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Dear Secretary

### **Inquiry into Special Disability Trusts**

When I announced the new measures to enable the setting up of Special Disability Trusts as then Minister for Family and Community Services in 2005, I advised that an Advisory Group had been established to help refine the finer details of the policy. I resigned from the Ministry in January 2006 and, therefore, was not involved in the consultation process or subsequently in the refining of the policy. However, I continued to keep a personal interest and have received many representations from groups and individuals regarding the new measures.

While most appreciate the intent of the legislation and the spirit in which it was drafted, a number of representations have stated that the Special Disability Trusts measures, as they are currently defined are, unfortunately, of limited value.

- It has been brought to my attention on many occasions that, despite the intention being to define eligibility in such a way that it reduced, as much as possible, the need for further assessments, the current criteria are too rigid.

For example, one family, whose son works in a business service and is on a disability pension, had to have further assessments because his parents had not applied for a Carer Allowance because they in fact did not realise they were eligible. For them to qualify for a disability trust involved two visits to a doctor and three visits to Centrelink. It is my opinion that the intention was to make it easy for genuine applicants to qualify and I would respectfully suggest that the Committee considers a slight relaxing of the criteria for qualification so that older parents and carers do not have to jump through interminable hoops.

- Carers have also voiced their frustrations that trust income can only be used for 'care and accommodation' and as such they may need to set up two trusts. It is my recommendation that the trust income guidelines be reviewed and made more flexible so as to include such things as day-to-day living expenses including food, medical and dental expenses, clothing and/or household furniture.

- I also recommend review of the tax laws pertaining to the establishment of the trust and propose:
  - The property, which is to be placed into the trust, be exempt from both Capital Gains tax (a Commonwealth tax) and Stamp Duty (a State tax) in its initial sale. Similarly, if a property in a disability trust is sold either to release cash to the fund or to buy another property that this should not attract Capital Gains Tax or Stamp Duty. It was the intention of the initiative that the trust would be in lieu of a principal place of residence or that the trust could purchase a principal place of residence. In any other circumstances where a person has testamentary capacity and owns his/her own home and lives in it, it is exempt from capital gain. A person with a disability should not be disadvantaged because he/she is incapable of managing his/her own affairs and therefore unable to own, in his/her own name, a principal place of residence.
  - Consideration of donations made to the trust being made tax deductible.
  - Income from the trust be taxed as income of the beneficiary rather than taxed at trust rates.
  
- Consideration could also be given to ways in which superannuation could be leveraged to assist people with a disability. For example any income from the trust not reinvested in the trust and/or spent on approved services should be able to be contributed, on a pre-tax basis, to a superannuation fund for the benefit of the individual with a disability.
  
- I would also recommend the Committee look into the role played by state guardianship boards and their effect on the establishment and management of the trusts. A number of carers, in NSW in particular, have stated that guardianship boards are currently acting as a disincentive in being able to use and benefit from the measure.

I trust that following the public consultation process and the Committee's subsequent recommendations, the Special Disability Trust measures will be able to be utilised by a greater number of people with a disability and their carers and, hopefully, the original intent of the measure to help put ageing carers' minds at ease will be realised.

Yours sincerely

The Hon Dr Kay Patterson  
2<sup>nd</sup> July, 2008