

**SUNNYFIELD SUBMISSION**

**SENATE COMMUNITY AFFAIRS  
COMMITTEE**

**INQUIRY INTO**

**SPECIAL DISABILITY TRUSTS**



6 August 2008

## **Special Disability Trusts**

Sunnyfield, the people with disabilities that we support and their families welcome the inquiry by the Community Affairs Committee of the Senate into Special Disability Trusts.

We would also like to thank the Committee for allowing our late submission for your consideration.

## **Background**

Sunnyfield has been making dreams of independence a reality for people with intellectual disabilities for the last 57 years. We are committed to being a person centred organisation where meeting the needs and wants of the people we support is uppermost in our plans and our actions. We provide over 1500 services each day for people with a disability across the spectrum of care and support needed and wanted by the people we support and their families.

Sunnyfield is one of the top providers of services to people in NSW. We operate across all of the Sydney metropolitan area, the Central Coast, New England and western NSW. We provide housing, day programs, employment, training programs, early intervention and aged care for people with an intellectual disability. We employ 853 people including 323 people with a disability.<sup>1</sup>

Sunnyfield's ability to continue and, just as importantly expand, the support we provide to people with a disability is dependent upon certainty of funding. Funding for the support we provide is sourced from

- government
- generous corporate sponsors,
- financial support from the community

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<sup>1</sup> Further information about Sunnyfield is available at [sunnyfield.com.au](http://sunnyfield.com.au)

and, most importantly

- families

We all want the people we support to realise their potential and to have access to the funds they need to make their dreams come true. Some families have the financial resources to meet some of, or the entire gap between, the disability support pension received by many of the people we support and the cost of meeting all of their daily needs and wants, although these families often make these resources available at great personal cost. When families cannot fill the gap, Sunnyfield with the help of our supporters and government strives to provide the funds need to make independence a reality instead of just a dream.

Sunnyfield has made recommendations in this submission which, if adopted through this inquiry by the Community Affairs Committee of the Senate, would place Special Disability Trusts as a key component of our future plans for making dreams of independence a reality for people with a disability and their families.

## EXECUTIVE SUMMARY

Sunnyfield proposes both general and specific recommendations which will address the reasons why more families of dependents with disabilities are not making use of the current provisions to establish Special Disability Trusts (SDT).

### General Recommendations

- 1) In order to maximise the number of families establishing a trust to support the current and future needs of their family member with a disability and to redress the discrimination in tax treatment under the present tax schemes, all contributions to an SDT should be tax deductible to the family member contributing it.
- 2) To reduce the complexity of the SDT, remove the current scheme and incorporate the asset and income tax exemptions of the SDT into the rules for discretionary trusts for people with disabilities.

### Specific Recommendations on Special Disability Trusts

- 1) SDTs should be available to all people with a disability and their families. People with a disability who cannot work for minimum wages would benefit from the income available from the SDT immediately. People with a disability able to work for wages would benefit from the future income from the SDT when their income can no longer support their lifestyle due to skill deterioration or ageing.
- 2) The rules for the use of funds from SDTs should acknowledge the right of people with disabilities to make their own decisions about their lives, and what is important to fulfilling their dreams. The use of income from an SDT should be determined by the person with a disability with the support of family and carers, subject to the requirement that all of the income of the SDT should be used for the current and future needs of the person with a disability. The removal of the current “reasonable

care and accommodation” restriction will also remove the imposition of unnecessary and significant fees on service providers such as Sunnyfield in supporting people with disabilities who have access to funds through an SDT.

- 3) Income accumulated in an SDT should be exempt from income tax.
- 4) All assets sold to place funds in a SDT and/or assets transferred into a SDT should be exempt from capital gains tax.
- 5) The restrictions on the use of distributions from SDTs, and the tax penalties on funds retained in the SDT, should be removed to reduce the number of variables in the determination of future income and in so doing make it possible for a reasonable estimate to be made of the future income needs of people with a disability.
- 6) SDTs should be able to accept compensation payments that have been paid to or held in trust for a person with a disability, and property contributed by the person with a disability
- 7) The asset limit should be removed or significantly increased to at least \$1 million.

The indexing factor for the calculation of the amount of assets allowable in the trust should be changed from the CPI to the official cash rate. The official cash rate is a more relevant measure of return on funds prudently invested by a trustee and does not create a disincentive to the accumulation of income in the SDT.

Both the amount of assets allowable in the trust and the gifting concession should be indexed equally.

- 8) An STD should be allowed to provide for more than one beneficiary when there is more than one family member with a disability. This will remove the inequitable requirement for that family of incurring separate costs for two separate STDs. The limit on the amount of assets that

are exempt from the “asset test” where there is more than one beneficiary with a disability should be the maximum limit of a SDT with one beneficiary multiplied by the number of beneficiaries with disability

- 9) SDTs should be permissible with one family trustee, to make SDTs possible for families that are sole parents or one sibling families and to reduce the drain on income from the trust in payment of trustee fees. We would also recommend that family members wishing to be trustees of a SDT be provided with access to information on the roles and responsibility of trustees
- 10) The SDT reporting and audit requirements should be normalised to comply with other trust reporting requirements, to reduce the unnecessary drain on income. We have no objection to bi annual reviews of the accounts of SDT by one government agency.

The removal of these barriers will ensure that people with a disability will have access to the income they need to live fulfilling and independent lives and will give families some of the certainty they have sought for many years that the income their family member needs for their care and support will be available today and more importantly in the future.

For Sunnyfield, SDTs (amended as per this submission) that provide the additional income that people with a disability need will allow us to improve and widen the services we provide to all people with a disability today and in the future. SDTs will be a key component in our planning to provide more person centred support for people with a disability.

## **SUBMISSION**

### **(A) General Recommendations for Special Disability Trusts**

Prior to considering the issues relating to the current SDTs, Sunnyfield suggests two matters for the consideration of the Senate Committee:

#### **Tax benefits to contributors to trusts**

Other than Government funding, there are generally two sources of funds available to Sunnyfield – funds raised from the community, and funds contributed by families.

Under the current tax scheme, a member of the public can contribute funds to support a person with a disability and claim a tax deduction for the contribution, but the family of that person with a disability contributing the same amount receives no such deduction. The SDTs perpetuate this inequitable treatment of families, who incur considerable costs throughout the life of their disabled family member through no fault other than the lottery of birth.

In order to maximise the number of families establishing a trust to support the current and future needs of their family member with a disability and to redress the discrimination in tax treatment under the present tax schemes, all contributions to an SDT or other trust arrangement should be tax deductible to the family member contributing it.

#### **Complexity of the SDT Arrangements – an alternative option**

The complexity of the SDT arrangements is a major disincentive for families seeking to make provision for their family member with a disability. A simpler alternative would be to incorporate the asset and income tax exemptions of the SDT into the rules for discretionary trusts for people with disabilities.

**(B) Why More Families of Dependents with Disabilities are Not Making Use of the Current Provisions to Establish Special Disability Trusts**

The major barriers to be removed to make Special Disability Trusts a workable solution for people with a disability and their families are:-

**Barrier 1 Limiting Special Disability Trust to People with a Severe Disability**

Not everyone with a disability is eligible to benefit from a SDT. SDTs are limited to people with a severe disability which is an undefined term.<sup>2</sup>

Many of the people we support at Sunnyfield would fit the definition of severe disability. There are, however, many people with a disability that we support in their quest for greater independence that may not qualify and are precluded from the benefits of a SDT. These include but are not limited to people with a disability that have the capacity today to be employed at or above the minimum wage. Whilst they may be able to earn sufficient income to meet their needs and wants today, it is highly probable that they will find it difficult to earn sufficient income to meet their future needs as their capacity to work diminishes due to their disability or as they age.

SDTs (amended as recommended in this submission) are one of the only ways that families of people with a disability can provide for the future care and support of their family member. Beneficiaries of an SDT lessen the number of people wholly dependent upon government revenue for all of their care and support. Fortunately people with a disability are leading much fuller and longer lives than in the past. As for the non disabled community, it is expected that the cost of support for people with a disability will increase as they age. The non disabled community is being encouraged to provide for their own future through savings. Government policy encourages saving by way of enhanced tax treatment of superannuation schemes thereby allowing people without a disability to contribute to their future income needs<sup>1</sup> - why are

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<sup>2</sup> By way of policy only, a Definition can found on Page 13 of the publication Special Disability Trusts - Getting Things Sorted



we limiting the ability of the families of people with a disability to provide for the financial future of their family member with a disability.

The current limitation discriminates against people with a disability that do not meet the SDT definition of severe disability. Removal of this limitation would provide an opportunity to comply with the United Nations Convention on the Rights of People with a Disability which was ratified by Australia on 18 July, 2008.<sup>3</sup>

### Recommendation

Open the eligibility for SDT to all people with a disability. People with a disability who cannot work for minimum wages would benefit from the income available from the SDT. People with a disability able to work for wages would benefit from the future income from the SDT.

### **Barrier 2 Unreasonable “Reasonable Accommodation and Care Expenses”**

At Sunnyfield, we know that people with disabilities, even severe disabilities, are able to express their needs and desires, and that they should be able to participate in determining the use of the funds from an SDT rather than have that use dictated to them. Limitations on the use of the funds in the SDT to “reasonable accommodation and care expenses” perpetuate a paternalistic view toward people with disabilities which is not appropriate in the contemporary environment.

The “reasonable accommodation and care expenses” as defined in the Booklet Special Disability Trusts – Getting Things Sorted and the Social Security (Special Disability Trust) (FaCSIA) Guidelines 2006 are not reasonable. They are proscriptive, onerous and prescriptive. Of all of the restrictions built into SDT, the Guidelines are the greatest barrier to families establishing a SDT for their family member with a disability.

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<sup>3</sup> Article 12 - Equal recognition before the law is an appendix to this submission

In addition, the “reasonable care and accommodation expenses” barrier discriminates against people with a disability. Beneficiaries of a trust are free to decide how they use their distribution from the trust. SDTs take away this right to decide from people with a disability. Removing this barrier provides an opportunity for the government to comply with the United Nations Convention on the Rights of People with a Disability which was ratified by Australia on 18 July, 2008.

We have attempted to illustrate the unreasonableness of the “reasonable accommodation and care expenses” guidelines by applying them to the support needs of one of the people we support at Sunnyfield. This person has an intellectual disability and requires moderate to high support to help her to be independent.

To ensure that the use of the income from a SDT established by her family complies with the regulations, Sunnyfield, as the provider of the support she needs, will have to provide the trustee of her SDT with a very detailed and itemised list of her individual expenditure. For example, Sunnyfield will need to separately account for each of the following basic expenses that are not deemed to be “reasonable care and accommodation expenses:-

- all personal care items including but not limited to the cost of soap, toothpaste, toilet paper and sanitary items,
- food other than food specified by a doctor as essential for the principal beneficiary’s health
- medical needs that are not required because of their disability. The decision as to whether medical needs are caused by the disability is not a simple one. In this case, seizures due to uncontrolled epilepsy can be triggered by a simple chest infection. Can the trustee use the income from the trust to purchase prescribed antibiotics or is this cost excluded because her disability was not the cause of her suffering from a chest infection?

- her share of the maintenance costs on the building that is her home
- her share of the utilities (gas, electricity, water, council rates)
- maintenance costs on the vehicles they use for transport, petrol, registration and insurance
- recreation activities
- holidays accompanied by a carer
- her share of telephone rental and call costs

and

- anything else that is not stated as an example in the guidelines. (Refer pages 5, 6, 7 and 8 of the guidelines for examples of excluded items)<sup>4</sup>

#### Implications for People with a Disability and their Families

Sunnyfield is a person centred organisation supporting people with intellectual disability. This means that a cornerstone of our reason to exist is the development of person centred plans. In this way we help the people we support make to turn their dreams into reality. So many of the dreams of the people we support would not qualify as “reasonable care and accommodation costs”. Their dreams are about living with their friends, visiting friends and families, learning to use a mobile phone, going to the football and holidays to name just a few. None of the income in an SDT could be used to fund these dreams.

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<sup>4</sup> Complying with the guidelines is made more difficult by internal inconsistencies in the accommodation and care costs in the Guidelines and those documented in the Guide to Social Security Law 4.14.3.30 Special Disability Trusts - Care & Accommodation. In the Guidelines ‘ordinary maintenance and upkeep of the principal beneficiary’s place of residence’ (page 8 Guidelines) are not reasonable accommodation and care costs. In the following excerpt from the Guide to Social Security Law 4.14.3.30 Special Disability Trusts - Care & Accommodation, maintenance costs are deemed to be reasonable accommodation costs

When the SDT is the only source of funds available to fill the gap between the disability support pension and the cost of living for a person with a disability, the restrictions on the use of the funds will negatively impact on the quality of life for that person. They cannot, for example, ask the trustees of their SDT for money for:

- new clothes for the Sunnyfield Christmas Party – clothes are not deemed “reasonable care and accommodation costs”,
- for a holiday - holidays are not deemed “reasonable care and accommodation costs”,
- buy a birthday present for their best friend - birthday presents are not deemed “reasonable care and accommodation costs”
- for the fees for a new craft class – fees for craft classes are not deemed “reasonable care and accommodation costs”.

We are absolutely certain that none of the families with a family member receiving support from Sunnyfield would want to establish an SDT where the trust is not able to provide their son, daughter, brother or sister such simple pleasures.

#### Implications for Sunnyfield (and other service providers)

In their present form, SDTs increase the administrative and compliance demands on Sunnyfield and other service providers. Sunnyfield will need to replace one monthly invoice containing one amount for board and lodgings, one amount for pharmacy items and other details of any other expenditure incurred on behalf of this person with a detailed and voluminous itemised list of accommodation and care costs that comply with the Guidelines and those that do not. This is the only way that we can provide the trustees with the information they need to meet the reporting requirements of SDT. If they do not comply with all of the regulations of SDTs the trust is not valid for the purpose and this person’s disability support pension would be at risk.

At Sunnyfield we are constantly struggling to maximise the resources we devote to the care and support we provide to people with a disability and minimise the resources used in administration.<sup>5</sup> If we had to account for costs we incur for providing the full ambit of services we provide for people with a disability to the degree required by the guidelines, it is estimated that we would need to incur approximately \$200,000 per annum in additional finance staff if 25% of the people we support with housing and / or day programmes had to comply with the regulations of SDTs. To place this amount in context, and how we think about the limited funds available to Sunnyfield, we could employ 3 full time experienced carers for the cost of 2 finance staff.

### Recommendation

The rules for the use of funds from SDTs should acknowledge the right of people with disabilities to make their own decisions about their lives, and what is important to fulfilling their dreams. The use of income from a SDT should be determined by the person with a disability with the support of family and carers, subject to the requirement that all of the income of the SDT should be used for the current and future needs of the person with a disability.

### **Barrier 3 Tax Implications of Accumulating Income in a Special Disability Trust**

Implicit in planning for our financial future is the need to save income earned today to meet our needs in the future. In Clause 2.4 of the sample Special Disability Trust Deed (page 25) this need at first appears to be recognised as the trustees “may, in any accounting period, accumulate and retain as much of the income of the Trust Fund, if any, as is required to achieve the sole or ancillary purposes of the trust during that accounting period, as an addition to the Trust Fund.”

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<sup>5</sup> Each day at Sunnyfield we provide over 1 500 services to people with a disability in NSW

Unfortunately there is a sting in the accompanying commentary on page 26. “There may be tax issues relating to the accumulation of income so the trustee should get professional advice before making a decision.”

The tax rules for trusts are that

- a trust is a separate tax entity
- income not distributed or used by the beneficiary in any financial year is taxable income
- trusts are not entitled to the tax-free threshold
- income retained in trusts can be taxed at the top marginal tax rate of 45%

Sunnyfield notes that the tax treatment of Private Prescribed Trusts is more generous than for SDTs, yet serve no greater charitable or benevolent purpose. The popularity of Private Prescribed Trusts stems in part at least from the ability for individuals or families to establish a trust for which they obtain tax deductions. The model trust deed is simpler than the legislation governing SDTs.

The DGR status granted to Private Prescribed Trusts allows gifts to the trust to be tax deductible. It also has the benefit of being able to accumulate capital (within limits) and limited concessions for income earned by the trust and capital gain.

Taxing income retained in a SDT for the future care and support of someone with a disability creates a barrier to the use of SDT. Why should families who are trying to provide for the future needs of their family member(s) with a disability be penalised by having to pay tax at the maximum personal tax rate of 45% on all income retained in Trust? It is imperative that any income over and above that needed to meet current needs is retained and reinvested in the SDT to meet the future and possibly increasing cost of the care and support needed by the person with a disability.

Please consider this anomaly:-

- Retained income in an SDT to provide for the future needs of people with a disability is taxed at the top marginal tax rate.
- Some contributions to superannuation are tax deductible.

#### Recommendation

Income accumulated in a SDT should be exempt from income tax. This change in the regulations would:-

- maximise the income available for the future care of people with a disability and in so doing reduce the call on government current and future resources
- motivate families to plan for the future financial needs of their family member with a disability now rather than wait until they die.

#### **Barrier 4 Capital Gains Tax**

The liability for capital gains tax on assets sold to place funds in an SDT or on the transfer of assets into an SDT is not clear. The rules for SDTs must be consistent with the intent to maximise the amount of funds available to meet the current and future needs of people with a disability.

#### Recommendation

All assets sold to place funds in an SDT and/or assets transferred into an SDT should be exempt from capital gains tax.

#### **Barrier 5 Determining Future Income for People with a Disability**

In establishing an SDT, families face the challenging task of determining the amount of additional income their son, daughter, sister and brother will need so that they can continue to enjoy life.

It is possible to make an estimate of future income requirements by families who have access to expert financial planning advice. Future income streams can be measured when there are only a few variables (such as longevity, increasing disability and interest rates). However, calculating future income requirements that ensure compliance with SDT regulations is impossible. There are simply too many variables to enable a reliable estimate of future income needs.

#### Recommendation

The restrictions on the use of distributions from SDTs, and the tax penalties on funds retained in the SDT, should be removed to reduce the number of variables in the determination of future income and is so doing make it possible for a reasonable estimate to be made of the future income needs of people with a disability.

#### **Barrier 6 Restrictions on Assets that can be Gifted to a Special Disability Trust**

SDTs can not receive compensation payments that have been paid to or held in trust for a person with a disability. Neither can property be contributed by the person with a disability unless it was received under a Will or from a superannuation death benefit within 3 years before it is transferred to the trust.

Both these restrictions prevent people with a disability benefiting from an SDT. We struggle to understand why people with a disability who have received some financial compensation for injuries that have caused their disability are precluded from placing some or all of the payment into a SDT. Of even greater concern is the exclusion of assets given to the disabled person by a family member during the life time of that family member (often a parent or sibling) for the purpose of generating income to provide for some of their current and perhaps future needs.

#### Recommendation



SDTs should be able to accept:

- compensation payments that have been paid to or held in trust for a person with a disability, and
- property contributed by the person with a disability.

## **Barrier 7 Asset Limitation and Indexing**

### Asset Limitation

The limitation of \$500,000 in assets to the SDT underestimates the costs of the gap between the disability support pension, and the cost of living for the people we support at Sunnyfield, particularly in the expensive Sydney property market. There seems to be no logical reason why families should be limited in the amount they wish to provide to support their family member with a disability, but if a limitation is required, then it must be significantly increased to at least \$1 million.

### CPI Indexing

We question the validity of indexing the maximum amount of assets that can be held in a SDT in line with the Consumer Price Index. Trust assets greater than \$500,000 CPI indexed are subject to the Centrelink assessable assets test. If the trustee accumulates a surplus of income over expenses in the SDT for the future care of the beneficiary with a disability (as shown in the following example), then over time the disability support pension may be reduced or lost if the accumulated surpluses exceed the amount of CPI indexing.

Trust Asset	\$	500,000
Income Earned in 1 year	\$	35,000

Less Distributions in 1 year	\$ 5,000
Net Income Retained in the Special Disability Trust	<u>\$ 30,000</u>
Balance of Trust Asset at end of year	<u>\$ 530,000</u>
Percentage Increase in Trust Asset	6.0%
Adjusted June 2008 CPI pa	3.3%
Trust Assets CPI Indexed	\$ 516,500
Excess Trust Asset	\$ 13,500

A more appropriate indexing factor would be the Official Cash Rate which is a closer proxy for the prudent investment returns a trustee should be striving to achieve for the beneficiary of the trust.

#### Gifts Concession

“Gifts to the trust from the parents or immediate family members will not affect the donor’s Age Pension or Department of Veterans’ Affairs Service Pension. The \$500,000 limit will be increased annually in line with the Consumer Price Index.” This indexing only applies to assets in the trust. It does not apply to the gifting concession. The gifting concession is permanently limited to \$500,000.

#### Recommendation

- A. The asset limitation should be removed or increases significantly to at least \$1 million.
- B. Change the indexing factor for the calculation of the maximum amount of assets allowable in the SDT that is exempt from the asset test from the CPI to the official cash rate. The official cash rate is a more relevant

measure of return on funds prudently invested by a trustee and does not create a disincentive to the accumulation of income in the SDT.

- C. Index equally both the amount of assets allowable in the trust and the gifting concession.

### **Barrier 8 Individual Special Disability Trusts**

SDTs can only be established for one person with a severe disability. This restriction unfairly impacts upon families that have more than one family member with a disability. For example, it will cost \$2,000 to establish a trust with a further \$2,000 per year to cover the cost of accounting for the trust. Multiply these costs by the number of family members with a disability (say a multiplier of 2 by way of example), then \$4,000 in one off costs and \$4,000 in ongoing costs are deducted from the income in the SDT. Assets totalling \$65,000 would have to be invested at an interest rate of 6%pa to generate sufficient income to pay the ongoing management costs of the 2 trusts of \$4,000pa.

#### Recommendation

An SDT should be allowed to provide for more than one beneficiary whenever there is more than one family member with a disability. The limit on the amount of assets that are exempt from the “asset test” where there is more than one beneficiary with a disability should be the maximum limit of a SDT with one beneficiary multiplied by the number of beneficiaries with disability (for example Asset Limit of \$500,000 \* 2 beneficiaries – Asset Test limit of \$1mln on current asset limitations.)

### **Barrier 9 Number of Trustees**

The SDT requires that there must be at least two trustees or one professional trustee (a lawyer, the Public Trustee or a company regulated by the Trustee

Corporations Act). Not all families may have two family members to act as trustees (for example sole parent, aging parent or one sibling). Engaging a professional trustee incurs the payment of a trustee fee which reduces the income available for the person with a disability.

### Recommendation

STDs should be permissible with one family trustee to make SDTs possible for families that are sole parents or one sibling families and to reduce the drain on income from the trust in payment of trustee fees. We would also recommend that family members wishing to be trustees of an SDT be provided with access to information on the roles and responsibility of trustees.

### **Barrier 10 Reporting Requirements**

The “Social Security (Special Disability Trust – Trust Deed, Reporting and Audit Requirements) (FaCSIA)” requires that the trustees must have the financial statements of the SDT prepared by either “a member of CPA Australia, the Institute of Chartered Accountants in Australia or the National Institute of Accountants” or “an employee of a trustee corporation who is engaged by the trustee corporation as an accountant or financial planner”. Family members acting as trustees or any other family member are specifically excluded from preparing the financial statements of the SDT.

“The person(s) who prepared the financial statements are required to certify that “all amounts paid out of the trust (other than amounts paid for reasonable administration expenses and taxation) were paid:

- to meet reasonable care and accommodation needs of the beneficiary not defined, but see the Social Security (Special Disability Trust) (FaCSIA) Guidelines 2006) or

- for purposes, ancillary to meeting the reasonable care and accommodation needs of the primary beneficiary, that are necessary or desirable to facilitate the meeting of these needs

and that no amount was paid out of the trust for:

- purposes other than those mentioned in 1 and 2 above, or
- services provided to the principal beneficiary by an immediate family member of the beneficiary.”

The cost to families of finding an accountant that would be able to assess and certify that all of the costs of care paid for by the SDT are reasonable and allowable under the Guidelines would be a significant drain on the income of the SDT.

The implication for people with a disability of the reporting requirements is that less income will be available from the SDT to meet their needs and wants. It is not acceptable for income provided for the needs of people with a disability to be used to pay fees to accountants, tax advisers, financial planners and solicitors when we should be doing everything possible to maximise the amount of income from the trust available to ensure that as many people with a disability as possible have funds available so that they, like us, can lead happy, enjoyable and fulfilling lives.

### Recommendation

SDT reporting and audit requirements should rest upon the usual reporting for trusts. We have no objection to bi annual reviews of the accounts of SDT by one government agency.

### **Conclusion**

The intent that drove the introduction of SDTs – helping families of people with a disability to establish private trusts for the future care of their family

members - is as welcome today by people with a disability, their families and Sunnyfield as it was when first announced nearly 3 years ago.

We all want a SDT that recognises the right of every person with a disability to decide how they want to use their income and the rights of their families to provide as best they can for their needs and wants today and in the future.

**The answer to the Senate Community Affairs Committee question**

**“Why more families of dependents with disabilities are not making use of the current provisions to establish Special Disability Trusts”**

**is to remove all of the barriers documented in our submission.**

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## Convention on the Rights of Persons with Disabilities

### Article 12 - Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

The Convention on the Rights of Persons with Disabilities was ratified by the Australian government on 18 July, 2008