

## **COMMITTEES**

### **Community Affairs Committee Report**

**Senator BOYCE** (Queensland) (9.55 a.m.)—I rise to support wholeheartedly the comments of the Deputy Chair of the Senate Standing Committee on Community Affairs, Senator Siewert, on the report *Building trust: supporting families through disability trusts*. It certainly was through her efforts that this inquiry happened at the rate that it did, and it was desperately needed. I would also like to thank everyone else on the committee for the work that was done and particularly the witnesses, who went to a lot of effort to be involved and to give us their thoughts in a very organised way. I am always particularly grateful when people with disabilities or the parents of people with disabilities can take the time from lives that are often very, very time poor to assist the Senate community affairs committee with its inquiries.

I feel that I was in a somewhat unique position with regard to this legislation. I was a member of the ministerial advisory council established by the then minister, Senator Kay Patterson, to guide how these special disability trusts would be established and the input around them. As Senator Siewert said, it would make a fascinating test case, I think, to look at what can happen to intentions between when they leave the minister's desk and when they arrive as legislation somewhere else.

The ministerial advisory council was composed of people like me, parents of people with disabilities, experts in the field of trust law and public servants, so we had a broad coverage. We were very, very keen to make these trusts as workable and as easy to use as possible. Unfortunately, what we ended up with was very bound around, very constrained legislation that did not fulfil what were considered to be reasonable eligibility requirements, nor did it fulfil what were considered to be reasonable uses to make of the money. As Senator Siewert has pointed out, it was almost impossible for what we ended up with to be of any use, particularly to people with intellectual disabilities. All the allowable uses of the trust money, in the main, ended up being for care and accommodation. Certainly, if you needed specialised equipment or specialised medical services, you could probably use the trust moneys for those, but, if you were not sick but had a disability, there was very little you could do with the funds from the trust. In fact, we heard evidence during the inquiry of situations where the trust had bought a house, a home, for someone but then there was a quibble as to whether the trust funds could be used to purchase the refrigerator for that house because, of course, everyone needs a refrigerator—it is not relying on your disability to need a refrigerator. But where do those funds come from if they cannot come from the trust? We had something that was neither fish nor fowl.

The way this trust legislation ended up working was that it tended to simply reinforce the somewhat paternalistic attitude that governments over years and years have had towards people with disabilities. This was also bound around to ensure that people behaved themselves and that there was no room in there for anyone to behave in an independent fashion. I am always somewhat bemused by the fact that we can give people the dole without being too concerned that they are going to misspend it. We cannot do the same for people with disabilities. We hedge all their funds around because the first assumption—not the last assumption but the first assumption—that is often made is that those who care for people with disabilities will exploit and abuse them. I agree that people with disabilities are vulnerable and they do need protection, but the attitude that is often implied towards people with disabilities and their carers is that they are all

out pretty much full time to rot the system. As I think most of us know that is absolutely not true, and we need to proceed with this matter urgently.

Senator Siewert pointed out that our very first witness was the former minister, Senator Kay Patterson, who pointed out that what had transpired here had certainly not been what she had had in mind in the first place. These trusts would, if our recommendations were accepted, allow people to have up to a million dollars indexed in the trust plus a primary place of residence. Senator Patterson was the one who pointed out the complete and total inequity which under our current laws says that if you do not have the intellectual capacity to own a home in your own right you are penalised for that by having to pay capital gains tax and other duties that no-one else has to pay on their own principal place of residence. This is not reasonable or fair, and we are recommending that that be one of the most urgent changes made.

When the trust laws were first put out, I travelled around sometimes with Senator Patterson telling people about what the possibilities of this trust were and you found that lots of parents and carers of people with disabilities, lots of people with disabilities themselves were blown away at the prospect that they might have to find the limit you can have in the trust—which I think is \$532,000 at the moment. People were saying, 'There is no way known that I will ever have \$532,000.' No, it is 'up to' \$532,000 and we took evidence that \$200,000 would be a starting point for a trust. But then you run into the problem of how do you save up that amount of \$532,000—or we hope it will be a million. You cannot put it in the trust because unexpended income is taxed at the very punitive 46½ per cent rate, so you cannot save it in the trust. If you save it outside the trust you create the situation where you will come to fail the income and asset tests applying to people with disabilities. So again we would set it up as a catch-22 that did not assist people with disabilities.

These changes to the special disability trusts are very positive if we can have the principle accepted that irrespective of your ability to own your principal place of residence in your own name it should not be subject to capital gains tax. If we accept the principle that people who receive the disability support pension meet those criteria are eligible to take on the trusts, we will vastly improve the situation—also, if we accept that this money can be used by the trustees to build a good life, irrespective of what that means. I am not quite sure why we are always not quite so concerned about people with disabilities having good lives rather than okay, average, bread and butter, never anything more lives. There seems to be almost a punitive attitude in some areas towards people with disabilities enjoying the sorts of things that everyone else has a right to enjoy. The way we need to function on these trusts is to see them almost like a form of superannuation for people with disabilities. We do not object to superannuants having the capacity to have a bit more than people just on the pension. I do not see why we cannot apply it to this situation and I would support Senator Siewert in pointing out that getting this legislation through and changing these trusts so they are taken up by families is urgent.