

## **COMMITTEES**

### **Community Affairs Committee Report**

**Senator SIEWERT** (Western Australia) (9.47 a.m.)—I present the report of the Senate Standing Committee on Community Affairs entitled *Building trust: supporting families through disability trusts*, together with the *Hansard* record of proceedings and documents presented to the committee.

It is with great pleasure that I present this report to the Senate. I am actually very pleased to be the one who is presenting the report to the Senate, because it was the Greens that referred this issue to the community affairs committee for inquiry—with very strong support from the coalition and the government, I will add.

The issue of special disability trusts is a very important one for the community, and for the disability community in particular. As we all know, the previous government moved to change the Social Security Act to enable the establishment of special disability trusts. Unfortunately, what has happened is that some fundamental problems have been built into the legislation that have prevented members of the community taking up disability trusts. While there have been a lot of inquiries to FaHCSIA about how to establish trusts, at the time of starting the inquiry only about 26 such trusts had been established. Some of the key things that have been blocking the establishment of these trusts have been, for example, the quite strict eligibility requirement, which has meant that a lot of people have been unable to set up trusts. As I understand it, those people with children who have intellectual disabilities in particular have had quite a bit of trouble setting up trusts. It is important to reiterate why these trusts are important: these trusts are so that parents can set up a financial mechanism to ensure that their children are looked after into the future after they have passed on.

Some of the things that have been preventing these trusts being set up are the eligibility criteria and the very strict limits on what the trusts can be spent on—for example, they are only to be spent on issues that relate specifically to someone's disability. How can you separate someone's general wellbeing and care from their disability?

Other issues relate to capital gains. The rules that operate for these trusts, for example, are quite different from the rules that operate for anybody else who is trying to buy their own home. For example, one of the key areas is to enable somebody to own a home under this trust. If a person with a disability whose home is owned through a trust needs to move and sells their home, they have to pay capital gains tax on it. However, if you or I want to move and are selling our homes, we do not have to pay capital gains. Those are just some of the examples of the problems with the trusts.

I am very pleased to say that the report makes a series of 14 recommendations. The last but by no means least important recommendation—or most important, for that matter—is that we change the name of 'special disability trusts', because people felt that calling them special disability trusts actually stigmatises the trusts. So we think we need to look at renaming them, to something like 'disability support trusts', for example, so it is clear what these trusts are about.

Some of the key recommendations of the report are: changing the eligibility criteria for these trusts and increasing the asset limit. At the moment the asset limit on the trusts is half a million dollars. That is not considered adequate in this day and age—I should point out that this is another unanimous report of the community affairs committee; we strive very strongly for unanimous reports in the community affairs committee—so we are recommending that the limit on the trusts be set at \$1 million. We are also advocating that people do not have to pay capital gains tax on their homes in the trust. There are a set of key recommendations around that.

We are also recommending that what the trust can be spent on is broadened. We recommend:

... that the allowable uses of special disability trusts be expanded to include all day-to-day living expenses that are met to maximise the beneficiary's health, wellbeing, recreation and independence.

This is a very important recommendation. As I touched on before, one of the problems that people have been raising about the trusts is the very limited nature of what you can spend the trust money on. We are saying that it needs to be for the whole of the person's wellbeing—for their recreation, so that people can actually go on a holiday like able-bodied people can. Imagine if you could not go on a holiday—if you could not afford to go on a holiday. A person who is the beneficiary of a trust cannot use their money to go on a holiday. How ridiculous is that? So we are recommending that they be able to use the trust on recreation and—very, very importantly—independence. It is very important for a person to be able to use this money to enable their independence.

We also recommend:

... that unexpended income from a special disability trust be able to be contributed, on a pre-tax basis, to a superannuation fund for the trust beneficiary.

We think that is very important. There are also other issues. Would you believe that a person buying their first home with this trust cannot get the First Home Owner Grant, even though it is their first home? Yes, I see Senator Cormann looking at me, but a person trying to buy their first home through this trust cannot get the First Home Owner Grant. The committee think that is an issue of concern as well, so we are recommending that that also be changed.

There are other issues if the trust earns a little bit of money and it is not expended that year. It has to pay the highest marginal tax rate. Again, we do not think that is fair, considering what we are trying to do here. It seems to me that, when setting up the trusts, we lost sight a little bit of the fact that this is to enable somebody to have a decent life and be supported in living with their disability. So we think that we need to relook at that a little bit to make sure that the trusts are really delivering for the purposes for which they were set up in the first place.

Just before I finish, I would like to very quickly acknowledge ex-Senator Kay Patterson, who established these trusts. She was the minister responsible at the time when we first started discussing setting up these trusts, and she put a great deal of effort into this. She presented very, very valuable evidence to the committee and is very, very keen to see the legislation amended to deliver what was intended in the first place. She was very clear that many of the things that she suggested were what the government at the time was trying to achieve. I would really like to acknowledge her contribution to the debate and her contribution to making these trusts work.

I strongly commend this report to the Senate and to the government. I beg the government, please, to take these recommendations on board now. I know they have the disability expenditure team and review looking at this issue, but we have looked at it. We know what we need to do. Please, government, take on board these amendments and recommendations now. Let us get this fixed so that this facility is actually delivering outcomes for people with disabilities and their parents and carers.