

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.

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.

Senator BERNARDI (South Australia) (10.05 a.m.)—In rising to speak to this report on disability trusts by the Senate Standing Committee on Community Affairs I would like to reflect on the effectiveness of how the committee actually operates. I am not a full member of it; I am a participating member. In my

experience, it is a true model of how cooperation can actually make great outputs and a meaningful difference to people's lives. The members of the committee take their responsibilities very seriously and they work very hard at working together to get the very best possible outcome. One of the issues that the committee deals with is disabilities. They have done so in this report in talking about special disability trusts and working to get an outcome that could potentially make an enormous difference to the lives of the tens of thousands of Australians who do it tough and for the carers who look after them and who are concerned for the future of those with disabilities. We have to recognise that in dealing with disabilities we have to do things better. Governments should continually strive to deliver better services and make available greater options to those who are living with disabilities and their carers.

Special disability trusts will have a continuing and growing importance in how we manage the affairs and the flexibility and the options of those who are affected by them or who could benefit from them. They were a great idea—introduced by Senator Patterson—whose time will come. The initial legislation that was introduced does need to be changed to reflect an enhanced or more beneficial outcome, and that is really what this report does.

The committee have worked very effectively. Their approach to this matter was outstanding. All the witnesses and committee members are passionate about making a difference in the lives of those with a disability and ensuring that we can provide the best possible services for them. The recommendations, as has been canvassed at length by Senator Boyce and Senator Siewert, deal with such important issues as accommodation. We have gone to great lengths in the coalition government, but also I acknowledge it is the Rudd government's intention, to make sure Australians can still own their own home and stay in their own home when they can. The committee want that option to be available for those with a disability. We need to make sure that they benefit from the same sorts of tax benefits or benefits that other Australians do, and particularly where there may be an inequity such as where their assets are controlled through a trust structure like a special disability trust.

The other important thing is that the committee have recommended that compliance be reduced for these trusts. We have based this on the assumption that people do the right thing most often. They want an effective outcome. We should not be looking for the needle in every haystack; we should be assuming that people are going to do the right thing. Through a not onerous but rigorous compliance regime, we can ascertain where any malfeasance occurs. I commend the committee on this report. I think they have done an outstanding job, and I urge the government to enact these recommendations. I seek leave to continue my remarks later.