

**National
Council on
Intellectual
Disability**

Broken Trust

Special Disability Trusts continue to fail people with disability

31 August 2009

The National Council on Intellectual Disability (NCID) was established over 50 years ago by parents and friends, in an endeavour to improve the quality of life of people with intellectual disability and to fill the need for national unity and information.

The Council is the recognised national peak body with the single focus on intellectual disability, ie, our actions and priorities centre on issues that affect the lives of people with intellectual disability and their families. Our mission is to work to make the Australian community one in which people with intellectual disability are involved and accepted as equal participating members.

NCID has over 5,000 members representing all 8 States and Territories. In addition to having people with intellectual disability on its Board, NCID receives policy advice from Our Voice. Our Voice is a committee the membership of which is exclusively people with intellectual disability representing all States and Territories.

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National Council on Intellectual Disability opposes the taxation of the surpluses of Special Disability Trusts and recommends that the Australian Government apply its general taxation policy consistently.

The taxation of surpluses of Special Disability Trusts is discriminatory and is in violation of the equal treatment provisions of the UN Convention of the Rights of Persons with Disability.

Special Disability Trusts - taxation of income

From their inception there has been confusion about the purpose of Special Disability Trusts and this change does not address this confusion. Put simply is the purpose of Special Disability Trusts to generate income (like other forms of trusts) or does it have a special purpose?

The government appears to want to have it both ways - to tax Special Disability Trusts as an income trust and yet to place severe restrictions on their expenditure (support and housing) such that it can not be treated as income by the beneficiary.

The severe restrictions placed on the Special Disability Trusts makes it obvious that any surplus, including unexpended surpluses, will either fund support and housing in the year it is gained or accumulate to build capital to provide for the support and housing of the beneficiary with disability at a later time.

All funds generated by Special Disability Trusts, including surpluses, are not income as generally accepted by the Australian community and hence must not be taxed as income.

It is acknowledged that when the beneficiary dies the trust may revert to the 'donor(s)' and if the income has not been taxed then there is a chance that they will get tax free income. But, this situation can be fixed by treating the difference between the sum initially provided and the sum returned as income and taxed.

If the Australian Government wants to treat people with disability with fairness and ensure that the taxation system is equitable then it has 2 choices:

1. treat Special Disability Trusts as income without restriction on types of expenditure and to tax the income at the beneficiary's income taxation rate, or,
2. treat the Special Disability Trusts as non-income, maintain the current expenditure restrictions and not tax trust surpluses.

By creating a trust that has severe restrictions and then imposing an income tax on it gives the impression that the purpose is not the support of the person with disability but government taxation generation. This impression may be a reason why the take up of the Special Disability Trusts has been so poor!

Not many families have the \$500,000 (+) to create a 'full trust account'. For many it will be a matter of putting in a little and then growing it through further contributions and surpluses.

An analogy.

It is though the government introduced a tax on the support funding people with disability and families receive from the Commonwealth or State/Territory governments, a tax tied to the person with disability's income. While this may seem "odd" this is what the tax on the surplus of a Special Disability Trust is. The Special Disability Trust surplus can only be spent on support or housing; exactly the same as as the funding provided by the Commonwealth and State/Territory governments.

The Commonwealth government should explain to people with disability and their families what the difference is; and why it is not reasonable for people with disability and their families to fear a tax on all their support funding - a support GST!

Special Disability Trusts - Capital Gains Taxation

National Council on Intellectual Disability supports the extension of the capital gains tax main residence exemption to a residence that is owned by a Special Disability Trust and used by the person with disability.

This alignment with the general taxation system for capital gains tax makes the taxing of Special Disability Trusts surpluses all the more mystifying!