Submission made by Julia Farr Association

Greater fairness and equity in the taxation of Special Disability Trusts

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1.0 INTRODUCTION

The Julia Farr Association (JFA) wishes to make a submission to the Treasury on the 'Greater fairness and equity in the taxation of Special Disability Trusts'.

JFA and its predecessors have been involved in the disability community for 130 years and holds strong values around personal authority, capacity building and social inclusion. JFA seeks to promote policy and practice to enable people living with disability to exercise greater control over their lives.

2.0 SUPPORTING COMMENTS

JFA supports the Treasury in its proposal to change tax arrangements to Special Disability Trusts. The budget reform proposes to:

- tax a special disability trust at the beneficiary's personal income tax rate rather than at the top personal tax rate plus Medicare Levy; and
- extend the capital gains tax (CGT) main residence exemption to include a residence that is owned by a special disability trust and used by the principal beneficiary of the special disability trust as their main residence.

JFA supports these changes for the following reasons:

- the lower tax rate will ensure that trusts are not as heavily penalised when income is retained to pay for the future care and accommodation needs of the beneficiary, thus improving the quality of life for people living with disability who have a Special Disability Trust;
- there will be greater equity by extending the CGT main residence exemption to Special Disability Trusts; currently a person without disability does not pay CGT, whereas a person who does have a Special Disability Trust does pay CGT if they sell their house. JFA believes this proposed exemption will encourage more families to consider a Special Disability Trust enabling them the opportunity to support their family member with a disability.

3.0 RECOMMENDATIONS

JFA would like to make the following recommendations to Special Disability Trusts:

3.1 <u>Restrictive Eligibility Criteria</u>

The eligibility criteria for a child who is under the age of 16 for a Special Disability Trust is that they have a 'profound disability'[i].

JFA expresses concern that this eligibility criterion is restrictive and does not allow for the needs of children who have a 'moderate' or 'mild' disability. JFA believes it is important for family members who have a child with a 'moderate' or' mild' disability to be given the same opportunity to provide for their child's future support needs as a family who has a child who meets the current criterion of having a 'profound disability'. A family may still experience the same concerns for their child around accommodation and support needs as a family who has a child with a 'profound disability'. Planning is essential to all families.

The eligibility criteria for a person who is over the age of 16 for a Special Disability Trust is that the person has:

- a level of impairment that meets the criteria for a disability support pension (DSP);
- has support needs that would qualify a carer for carer payment or allowance;
- is living in a State funded accommodation service for people with disabilities;
- is unable to work for a wage that is at or above the relevant minimum wage.

JFA believes that there are people who do not meet these criteria and are therefore excluded from the opportunity to plan for their future. With the present inadequacy of the government to meet the support needs of people living with disability it warrants the presence of other measures such as liberalising the eligibility criteria to allow people currently excluded to plan for their future through a Special Disability Trust.

3.2 Restrictive application of the trust

Under the current criteria a Special Disability Trust can only pay for the direct care and accommodation needs of the principal beneficiary.
JFA supports a submission made by Activ Foundation to the Senate Inquiry to Investigate the Low Take up of Special Disability Trusts. Activ Foundation described how families seek more than minimum care and accommodation needs; they want to ensure that their family member's other essential needs and quality of life needs are also being met through recreation, entertainment and clothing[ii]. JFA strongly believes that people who are in receipt of a trust should be entitled to the everyday things in life which most of us take for granted. Many people in receipt of the Disability Support Pension are on a low income, so less restrictive conditions within Special Disability Trust would assist a person living with disability to access other important things in life.

3.3 Special Disability Trust Title

JFA suggests a renaming of the trust from 'Special Disability Trust' to 'Personal Disability Trust'. The word 'special' is defined as 'distinguished or different from what is ordinary or usual.'[iii] The word 'special' implies that the person is recognised as being 'different'. JFA believes that it is important to highlight a person's ability not their disability.

4.0 CONCLUSION

JFA hopes that the recommendations suggested be considered in the inquiry into Special Disability Trusts. While JFA applauds the proposed changes towards the personal income tax rate and capital gains tax it is also strongly supports the further recommendations around eligibility criteria, the application of the trust and the renaming of the trust so that they are in line with assisting a person living with a disability to exercise greater control over their life.

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[i] **Brett Davies Lawyers Tax Lawyers Australia 'Special Disability Trusts Criteria', viewed 14th August 2009, www.taxlawyers.com.au**

[ii] **Activ Foundation; 'Senate Inquiry to Investigate the Low Take Up of Special Disability Trusts', viewed 19th August 2009 http://www.aph.gov.au/SENATE/COMMITTEE/CLAC_CTTE/disability_trusts/submissions/sub09.pdf**

[iii] **Dictionary.com; viewed 19th August 2009 http://dictionary.reference.com/browse/special**