EXPLANATORY STATEMENT

Veterans’ Entitlements (Special Disability Trust — Discretionary Spending) Determination 2012

Summary

The Veterans’ Entitlements (Special Disability Trust — Discretionary Spending) Determination 2012 is made under subsection 52ZZZWEA(3) of the Veterans’ Entitlements Act 1986 (the Act). The purpose of the Determination is to set out the maximum amount of a special disability trust’s income and assets that can be spent for purposes that are primarily for the benefit of the principal beneficiary (other than the primary purposes of a special disability trust).

The Determination is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Section 1 sets out the name of the Determination.

Section 2 provides that the Determination commences, or is taken to have commenced, on 1 July 2012.

Section 3 provides definitions of terms used in the Determination.

Section 4 provides that the Veterans’ Entitlements (Special Disability Trust — Discretionary Spending) Determination 2011 is revoked on the commencement of the determination.

Section 5 provides that, for the purposes of subsection 52ZZZWEA(3) of the Act, the maximum value of the trust’s income and assets that can be spent by the special disability trust for other purposes that are primarily for the benefit of the principal beneficiary (other than the primary purposes of a special disability trust), is ten thousand five hundred dollars ($10,500) in the 2012-2013 financial year.

Consultation

The Department of Families, Housing, Community Services and Indigenous Affairs (which consulted the Department of Education, Employment and Workplace Relations) was consulted (by e-mail) in the making of this Determination, to ensure a co-ordinated approach.

Retrospectivity

The attached instrument could commence before registration. If that occurs subsection 12(2) of the Legislative Instruments Act 2003 (legislative instrument of no effect if it takes effect before registration and disadvantages
a person or imposes liabilities on a person) would not be contravened because the instrument is benevolent in nature.

Regulation Impact Statement

There was no requirement to prepare a Regulation Impact Statement in regard to the Determination, as this measure is not likely to have a direct, or a substantial indirect, effect on business and is not likely to restrict competition.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Veterans’ Entitlements (Special Disability Trust — Discretionary Spending) Determination 2012

The Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Determination

The Determination is made under subsection 52ZZZWEA(3) of the Veterans’ Entitlements Act 1986.

The purpose of the Determination is to set out the maximum amount of the income and assets of a special disability trust that can be spent for purposes that are primarily for the benefit of the principal beneficiary (other than the primary purposes of a special disability trust). The maximum amount is ten thousand and five hundred dollars ($10,500) in the 2012-2013 financial year.

Human rights implications

The Determination engages the following human right:

Right to Social Security

Article 9 of the International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to social security. Article 28 of the Convention on the Rights of Persons with Disabilities recognises the rights of persons with disability to an adequate standard of living and social protection.

The Determination is designed to allow a certain amount of trust income and assets to be used for the benefit of the principal beneficiary but for purposes other than the primary purposes of the trust, while maintaining the ‘Special Disability Trust’ status. Increasing the amount will have positive implications for persons with a disability, as it will mean that more of their income is not considered ordinary income for veterans’ entitlements assessment purposes.
The Determination will promote the right to social security and social protection by increasing the amount of discretionary use of Special Disability Trust funds permitted in line with indexation, before the Trust loses its status and exemption from assessment as income for veterans’ entitlements purposes.

**Conclusion**

This Determination is compatible with human rights as it promotes human rights issues.