EXPLANATORY STATEMENT

Veterans’ Entitlements (Special Disability Trust — Discretionary Spending) Determination 2014

Summary

The Veterans’ Entitlements (Special Disability Trust — Discretionary Spending) Determination 2014 is made under subsection 52ZZZWEA(3) of the Veterans’ Entitlements Act 1986 (the Act) and provides that under section 33(3) of the Acts Interpretation Act 1901 the Veterans’ Entitlements (Special Disability Trust — Discretionary Spending) Determination 2013 is revoked.

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 2014.

Section 3 provides definitions of terms used in the Determination.

Section 4 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 eleven thousand dollars ($11,000) in the 2014-2015 financial year.

Consultation

The Department of Social Services (DSS) was consulted (by e-mail) in the making of the attached Determination. DSS proposed a virtual identical instrument to the one attached and the Department of Veterans’ Affairs (DVA) consulted DSS (the leading agency in the exercise) from the viewpoint of ensuring a co-ordinated approach in terms of the content and timing of the relevant instruments. No issues arose in the course of that consultation.

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 infringed because
the instrument is benevolent in nature i.e. it increases the maximum amount
from the Disability Trust's existing earnings that can be expended on
discretionary spending.

Regulation Impact Statement

A Regulation Impact Statement is not required for the Determination because
the Determination is not regulatory in nature, will not impact on business
activity and will have no, or minimal, compliance costs or 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 2014

The Determination is compatible with the human rights and freedoms
recognised or declared in the international instruments listed in section 3 of

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 eleven
thousand dollars ($11,000) in the 2014-2015 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.

**Repatriation Commission**

**Rule Maker**