EXPLANATORY STATEMENT

Veterans’ Entitlements (Special Disability Trust Beneficiary Requirements) Nomination of Agreement 2015

The Veterans’ Entitlements (Special Disability Trust Beneficiary Requirements) Nomination of Agreement 2015 (the Instrument) is made under subsection 52ZZZWA(3) of the Veterans’ Entitlements Act 1986 (the Act).

The purpose of the Instrument is to enable the Repatriation Commission (the Commission) to nominate an Agreement for the purposes of subparagraph 52ZZZWA (2)(b)(ii) of the Act.

In order for a Trust to be recognised under the Act as a Special Disability Trust it must satisfy a number of requirements. The requirement that is relevant in relation to the Instrument is that the beneficiary of the Trust must satisfy the criteria for “a beneficiary” in the “special disability trust provisions” of the Act.

One criterion that will enable a beneficiary to be recognised as a “special disability trust beneficiary” is that the person is living in an institution for people with a disability that is funded under a Commonwealth and State/Territory agreement that is nominated by the Repatriation Commission in a legislative instrument. The attached instrument nominates several relevant agreements.

If a beneficiary of a Trust satisfies the criteria for a “special disability trust beneficiary” and the Trust satisfies other criteria necessary to establishing a Trust as a Special Disability Trust then the income the beneficiary receives from the Special Disability Trust will not be assessed as income in the means test for the beneficiary’s pension meaning that more of the pension will be available to the beneficiary than would otherwise be the case.

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

This instrument commenced on the day after registration.

RETROSPECTIVITY

None.

CONSULTATION

The Department of Social Services (DSS) was consulted by electronic communication in respect of the attached Instrument. DSS has made a virtually identical instrument. No issues arose in the course of that consultation.
HUMAN RIGHTS

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 Beneficiary Requirements) Nomination of Agreement 2015

The Veterans’ Entitlements (Special Disability Trust Beneficiary Requirements) Nomination of Agreement 2015 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 Instrument

The Instrument is made under subsection 52ZZZWA of the Veterans’ Entitlements Act 1986 (the Act).

The purpose of the Instrument is to enable the Repatriation Commission (Commission) to nominate Commonwealth and State/Territory agreements (nominated agreement) for the purposes of subparagraph 52ZZZWA(2)(b)(ii) of the Act.

A person who is a beneficiary under a Trust and who lives in an institution, hostel or group home in which care is provided for people with disabilities and for which funding is provided (in whole or part) under a nominated agreement satisfies one of the criteria for being the beneficiary of a Trust which, if other criteria are satisfied, would result in the Trust being recognised as a Special Disability Trust. The income from the Special Disability Trust is not assessed in the means-test for the beneficiary’s pension which means the beneficiary receives more pension than would otherwise be the case.

Human rights implications

The Instrument engages the following human rights:

- the right to social security as recognised in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- the right to an adequate standard of living as recognised in Article 11 of ICESCR and Article 28 of the Convention on the Rights of Persons with Disabilities (CPRD).

The Instrument will promote the right to social security and the right to an adequate standard of living. The Instrument promotes these rights by nominating agreements for the purposes of the beneficiary requirements under the Act in relation to qualification of a Trust as a Special Disability Trust.
The effect of a Trust being considered a Special Disability Trust under the Act is that income from the Trust can be used for the benefit of the principal beneficiary while not being considered ordinary income for veterans’ entitlements assessment purposes. This means that the beneficiary of the Trust will potentially have more income to meet their needs before it affects their entitlement.

**Conclusion**

The Instrument is compatible with human rights because it promotes the right to social security and the right to an adequate standard of living.

Repatriation Commission
Rule-Maker

**REGULATION IMPACT STATEMENT**

A Regulation Impact Statement is not required for the Instrument because the Instrument is not regulatory in nature, will not impact on business activity or affect competition and will impose minimal compliance requirements on beneficiaries.

**INCORPORATED DOCUMENT**

The attached Instrument incorporates-by-reference the agreements mentioned in Schedule 1 to the instrument. The agreements are incorporated in the version in which they existed at the time the Instrument commenced and not in the version in which the agreements may exist from time to time. Details of these agreements are available on the Internet at:

- National Disability Agreement

- Intergovernmental Agreement for the National Disability Insurance Scheme (NDIS) Launch

- National Partnership Agreement on Trial of My Way Sites

- National Health Reform Agreement