

## **EXPLANATORY STATEMENT**

### **Veterans' Entitlements (Special Disability Trust – Discretionary Spending) Determination 2018** (Instrument 2018 No. R73)

#### **EMPOWERING PROVISION**

Subsection 52ZZZWEA(3) of the *Veterans' Entitlements Act 1986* (VEA).

#### **PURPOSE**

The attached instrument (2018 No. R73) replaces the *Veterans' Entitlements (Special Disability Trust – Discretionary Spending) Determination 2017* (Instrument 2017 No. R18).

The purpose of the instrument 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 for the primary purposes of a special disability trust which is to meet reasonable care and accommodation needs of the beneficiary).

A special disability trust is a private trust, established by family members, to provide primarily for the reasonable care and accommodation needs of a family member with a severe disability.

The instrument is designed to allow a certain amount of trust income and assets (known as “the discretionary spending amount”) to be used for the benefit of the principal beneficiary for purposes other than the primary purposes of the trust, while retaining the “special disability trust” status.

This instrument increases the discretionary spending amount from \$11,750 to \$12,000, in line with CPI changes, for the 2018 /19 financial year, with effect from 1 July 2018. Increasing the amount will mean that more of the income of a person with a disability will be excluded for income support assessment purposes under the VEA.

The authority to revoke the earlier determination is found in subsection 33(3) of the *Acts Interpretation Act 1901* which provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

## **CONSULTATION**

Section 17 of the *Legislation Act 2003* requires a rule-maker to be satisfied, before making a legislative instrument that any consultation the rule-maker considered appropriate and reasonably practicable, has been undertaken.

The Department of Social Services (DSS) and the Department of Veterans' Affairs (DVA) have virtually identical legislative instruments in place relating to special disability trusts. DSS was consulted in the course of this exercise to ensure a consistent approach to the increase of the discretionary spending amount. The nature of consultation with DSS was by way of email correspondence.

In these circumstances, it is considered that the requirements of section 17 of the *Legislation Act 2003* have been met.

## **RETROSPECTIVITY**

None.

## **DOCUMENTS INCORPORATED-BY-REFERENCE**

No.

## **REGULATORY IMPACT**

Nil.

## **HUMAN RIGHTS STATEMENT**

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

The attached 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 promotes the right to social security and the right to an adequate standard of living for those people whose entitlements under the VEA are affected by receiving income from a special disability trust. The rights will be promoted by increasing the amount of discretionary use of special disability trust funds before the trust loses its status as a 'special disability trust'.

*Conclusion*

The attached instrument is compatible with human rights, relevantly, the right to social security and the right to an adequate standard of living.

Emma Bowe  
Acting Director Benefits and Payments, Policy Support Branch, as delegate of the  
Repatriation Commission

Rule-Maker

**FURTHER EXPLANATION OF PROVISIONS**

See: [Attachment A](#)

## **FURTHER EXPLANATION OF PROVISIONS**

**Section 1** sets out the name of the instrument – the *Veterans’ Entitlements (Special Disability Trust – Discretionary Spending) Determination 2018*.

**Section 2** is the commencement provision. It provides for the instrument to commence on 1 July 2018.

**Section 3** revokes the *Veterans’ Entitlements (Special Disability Trust — Discretionary Spending) Determination 2017*.

**Section 4** defines the terms used in section 5 of the instrument.

**Section 5** provides that, for the purposes of subsection 52ZZZWEA(3) of the Act, the maximum value of income and assets that can be applied by a special disability trust for other purposes that are primarily for the benefit of the principal beneficiary (other than purposes that are the primary purpose of the special disability trust) is \$12,000 for the financial year commencing 1 July 2018.