



Veterans' Entitlements (Special Disability Trust) Guidelines 2011

Instrument R17/2011

made under subsections 52ZZZWB(4) and 52ZZZWH(4) of the

Veterans' Entitlements Act 1986

Compilation No. 2

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Includes amendments up to: F2016L01868

Prepared by the Department of Veterans' Affairs

About this compilation

This compilation

This is a compilation of the *Veterans' Entitlements (Special Disability Trust) Guidelines 2011* that shows the text of the law as amended and in force on 7 December 2016 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1.1 Name of Guidelines

These Guidelines are the *Veterans' Entitlements (Special Disability Trust) Guidelines 2011*

1.2 Commencement

These Guidelines are taken to have commenced on 1 January 2011.

1.3 Revocation

The *Veterans' Entitlements (Special Disability Trust) Guidelines 2008* are revoked.

1.4 Definitions

In these Guidelines:

Act means the *Veterans' Entitlements Act 1986*.

approved provider has the same meaning as in the *Aged Care Act 1997*.

approved fees means fees that:

- (a) are:
 - (i) charged for the daily care of the principal beneficiary; or
 - (ii) itemised fees that are additional to the fees mentioned in paragraph (i) and are related to the principal beneficiary's care and accommodation; and
- (b) are charged by:
 - (i) an approved provider who is providing a service to the principal beneficiary in a residential care service; or
 - (ii) an institution, hostel or group home, for which funding is provided (wholly or partly) under an agreement, between the Commonwealth, the States and the Territories, nominated by the *Commission* under subsection 52ZZZWA(3) of the *Act*, in which care and accommodation is provided for the principal beneficiary.

Commission means the Repatriation Commission continued in existence under section 179 of the *Act*.

residential care service has the same meaning as in the *Aged Care Act 1997*.

trust means a trust that would be a *special disability trust* if it were not for a contravention of a requirement of Division 11B of Part IIIB of the *Act* in relation to the trust.

waiver notice has the same meaning as in paragraph 52ZZZWH(1)(a) of the *Act*.

Part 2—Trust purpose requirements

Division 2.1—Primary Purpose—Reasonable care needs

2.1 Guidelines about reasonable care needs

For paragraph 52ZZZWB(4)(a) of the Act, this Division sets out guidelines for deciding what are, and what are not, reasonable care needs for principal beneficiaries of special disability trusts.

2.2 What are reasonable care needs

- (1) A care need is a reasonable care need if:
 - (a) one of the following conditions is satisfied in relation to the need:
 - (i) the need arises as a result of the disability of the principal beneficiary;
 - (ii) the need is for any medical-related or dental costs of the principal beneficiary;
 - (iii) the need is to pay approved fees; and
 - (b) the need is met in Australia.

Division 2.2—Primary Purpose—Reasonable accommodation needs

2.3 Guidelines about reasonable accommodation needs

For paragraph 52ZZZWB(4)(a) of the Act, this Division sets out guidelines for deciding what are, and what are not, reasonable accommodation needs for principal beneficiaries of special disability trusts.

2.4 What are reasonable accommodation needs

- (1) An accommodation need is a reasonable accommodation need if:
 - (a) the need arises as a result of the disability of the principal beneficiary; or
 - (b) the need meets the requirements set out in subsection (2), (3) or (4).
- (2) The need to pay for property, or for an interest in property, is a reasonable accommodation need if the property or interest:
 - (a) is acquired or rented from a person who is not an immediate family member of the principal beneficiary; and
 - (b) either:
 - (i) is acquired or rented for the accommodation needs of the principal beneficiary; or
 - (ii) if subparagraph (i) does not apply – is rented at market value and the income from the rent is used for the benefit of the principal beneficiary.
- (3) The need to pay rates and taxes on a property is a reasonable accommodation need if the property:
 - (a) is owned by a *special disability trust*; and
 - (b) either:
 - (i) is used for the accommodation needs of the principal beneficiary; or
 - (ii) if subparagraph (i) does not apply – is rented at market value and the income from the rent is used for the benefit of the principal beneficiary.
- (4) The need to pay for the maintenance or upkeep on property is a reasonable accommodation need if the property:
 - (a) is owned by a *special disability trust*; and
 - (b) either:
 - (i) is used for the accommodation needs of the principal beneficiary; or
 - (ii) if subparagraph (i) does not apply – is rented at market value and the income from the rent is used for the benefit of the principal beneficiary.

2.5 What are not reasonable accommodation needs

A need that relates to property or an interest in property is not a reasonable accommodation need for the principal beneficiary if the property or interest is

Part 2 Trust purpose requirements

Division 2.2 Primary Purpose—Reasonable accommodation needs

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acquired or rented from a person who is an immediate family member of the principal beneficiary.

Division 2.3—Other Purposes

2.6 Guidelines about other purposes

For paragraph 52ZZZWB(4)(b) of the *Act*, this Division sets out guidelines for deciding what are, and what are not, purposes, other than the primary purpose, that are primarily for the benefit of the principal beneficiary of a special disability trust.

2.7 Other purposes relating to expenditure for the primary benefit of the principal beneficiary

In deciding whether or not purposes relating to expenditure by the special disability trust are other purposes that are primarily for the benefit of the principal beneficiary, the decision-maker must consider whether the expenses:

- (i) are not related to the reasonable care needs and reasonable accommodation needs of the principal beneficiary; and
- (ii) are for the health, wellbeing, recreation, independence and social inclusion of the principal beneficiary.

2.8 Other purposes that are not expenditure for the primary benefit of the principal beneficiary

In deciding that purposes, other than purposes relating to expenditure by the *special disability trust*, are not other purposes that are primarily for the benefit of the principal beneficiary, the decision-maker must consider whether the expenses:

- (a) are for payment to, or on behalf of, a person who is an immediate family member of the principal beneficiary; or
- (b) are for payment to a carer for purposes except for:
 - (i) the reasonable care needs of the principal beneficiary; or
 - (ii) other purposes primarily for the benefit of the principal beneficiary as provided by section 2.7.

Note: The maximum amount that may be spent in a particular financial year for purposes, other than the primary purpose of a special disability trust, that are primarily for the benefit of the principal beneficiary, as provided by paragraph 2.7(b), is as determined by the Commission in the legislative instrument made under subsection 52ZZZWEA(3) of the Act as in force at a particular time.

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Part 3—Waiver of contravention of requirements

3.1 Guidelines about waivers

For subsection 52ZZZWH(4) of the *Act*, this Part sets out guidelines for deciding:

- (a) whether or not to give *waiver notices* to trustees of trusts; and
- (b) what conditions to include in *waiver notices*; and
- (c) the periods during which *waiver notices* are to have effect.

3.2 Whether or not to give waiver notices

- (1) Subject to subsection (2), the *Commission* may decide to give a *waiver notice* to the trustees of a trust if the *Commission* is satisfied of the following matters:
 - (a) the requirement of Subdivision A of Division 11B of Part IIIB of the *Act* that has been contravened in relation to the trust is a requirement in 1 of the following provisions of the *Act*:
 - (i) for a trust created before 20 September 2006 in relation to which the trust deed cannot be varied—section 52ZZZWB, section 52ZZZWC or subsection 52ZZZWF(1) or (3) of the *Act*;
 - (ii) for a trust created on or after 20 September 2006 and before 1 January 2011 in relation to which the trust deed cannot be varied—subsection 52ZZZWB, section 52ZZZWC or subsection 52ZZZWF(1) or (3) of the *Act*;
 - (iii) for any other trust – section 52ZZZWB or subsection 52ZZZWF(1) or (3) of the *Act*;
 - (b) the contravention of the requirement of Subdivision A of Division 11B of Part IIIB of the *Act* to which the *waiver notice* relates does not involve fraudulent conduct;
 - (c) for a contravention of a requirement in subsection 52ZZZWF(1) of the *Act*—the contravention was not caused by the trustees;
 - (d) for 1 or more contraventions of a requirement to only use income that the trust derives and the assets of the trust for the purposes mentioned in subsection 52ZZZWB(1) or (2) of the *Act*:
 - (i) the total use of income that the trust derives and assets of the trust for a purpose other than:
 - (A) to meet reasonable care and accommodation needs of the principal beneficiary; or
 - (B) for purposes, ancillary to meeting the reasonable care and accommodation needs of the principal beneficiary, that are necessary or desirable to facilitate the meeting of those needs; or
 - (C) for other purposes that are primarily for the benefit of the principal beneficiary;

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- does not amount to more than \$5 000 for the financial year during which the contravention or contraventions occurred; and
- (ii) having regard to all the circumstances, including the nature of the contravention or contraventions and the frequency of contraventions, the requirement should be waived.
- (2) The *Commission* may decide to give a *waiver notice* to the trustees of a trust created on or after 20 September 2006 and before 1 January 2011 in relation to which the trust deed cannot be varied, if the *Commission* is satisfied that the trust has complied with section 52ZZZWB of the *Act*.
- (3) Subject to subsection (4), the Commission may decide to give a waiver notice to the trustees of a trust in relation to a contravention of paragraph 52ZZZWE(1)(b) of the *Act* if satisfied:
- (a) the contravention occurred as a result of court proceedings relating to the transferred asset; or
 - (b) the contravention occurred because:
 - (i) the transferor transferred the asset within the timeframe under paragraph 52ZZZWE(1)(b) to a trust intended to be a special disability trust (the first trust); and
 - (ii) the first trust is not a special disability trust because of a contravention of a requirement of Division 11B of Part IIIB of the *Act*; and
 - (iii) the asset is transferred by the transferor to a special disability trust; or.
 - (c) the transferor:
 - (i) transferred the asset to a trust intended to be a special disability trust after the end of the 3 year period mentioned in paragraph 52ZZZWE(1)(b) of the *Act*; and
 - (ii) can show there was an intention to transfer the asset to the trust before the end of that 3 year period.
- (4) The Commission may decide to give a waiver notice to the trustees of a trust in the circumstances set out in subsection (3) if satisfied of the following matters:
- (a) the contravention does not involve fraudulent conduct;
 - (b) the contravention in relation to the first trust does not involve fraudulent conduct;
 - (c) having regard to all the circumstances, including the nature of the contravention in relation to the first trust, the requirement should be waived.
- (5) Sections 3.4 and 3.5 do not apply to this section.

3.3 Conditions to include in waiver notices

- (1) In deciding what conditions to include in a *waiver notice* that is to be given to the trustees of a trust, the *Commission* must consider the need to include a condition that the *waiver notice* ceases to have effect if the trustees cease to comply with a
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condition that is included in the waiver notice after the time or times stated in the waiver notice for complying with the condition.

- (2) In deciding what conditions to include in a waiver notice that is to be given to the trustees of a trust created before 1 January 2011 in relation to which the trust deed cannot be varied, the *Commission* must consider:
 - (a) the need to include a condition requiring the trustees to give the *Commission* a statutory declaration made by the trustees stating the matters mentioned in subsection (3); and
 - (b) if:
 - (i) the trust was created on or after 20 September 2006 and before 1 January 2011; and
 - (ii) the only contravention is due to a breach of the purpose of the trust despite the trust having complied with section 52ZZZWB of the *Act* as in force from time to time before 1 January 2011;the need to include a condition requiring the trustees to give the *Commission* a statutory declaration made by the trustees stating that the trust has complied with section 52ZZZWB of the *Act* as in force from time to time before 1 January 2011.
- (3) A statutory declaration must state the following matters:
 - (a) that the trust is a protective trust;
 - (b) that the trustees will comply with Subdivision A of Division 11B of Part IIIB of the *Act*, including the following requirements:
 - (i) that the trust has no more than 1 beneficiary, not including any residuary beneficiary;
 - (ii) that the beneficiary of the trust meets the requirements of subsection 52ZZZWA(2) or (4) of the *Act*;
 - (iii) that the primary purpose of the trust is to meet reasonable care and accommodation needs of the beneficiary of the trust;
 - (iv) that the other purpose of the trust is primarily for the benefit of the principal beneficiary;
 - (v) that the trust complies with a determination made by the *Commission* under subsection 52ZZZWC(2) of the *Act*.

3.4 Periods during which waiver notices have effect—trusts created before 1 January 2011 with a trust deed that can be varied and all trusts created after 1 January 2011

- (1) This section applies to:
 - (a) a trust created before 1 January 2011 (other than a trust in relation to which the trust deed cannot be varied);
 - (b) a trust created on or after 1 January 2011.
 - (2) The period during which a waiver notice in relation to a trust may have effect is a period of not more than 3 months from the time the period of effect starts under paragraph 52ZZZWH(2) (a) of the *Act*.
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- (3) The *Commission* may, on application made by the trustees of the trust, extend the period of effect of a *waiver notice* (other than a waiver notice given in relation to a contravention of a requirement in subsection 52ZZZWF(1) of the *Act*) for further periods of up to 3 months only if the total period during which the waiver notice would have effect would not exceed 12 months.

3.5 Periods during which waiver notices have effect—trusts created before 1 January 2011 with a trust deed that cannot be varied

- (1) This section applies to a trust created before 1 January 2011 in relation to which the trust deed cannot be varied.
- (2) The period during which a *waiver notice* in relation to a trust (other than a waiver notice given in relation to a contravention of a requirement in subsection 52ZZZWF (1) of the *Act*) may have effect is:
- (a) if the notice does not state a time for the end of its period of effect—an indefinite period from the time the period of effect starts under paragraph 52ZZZWH (2) (a) of the *Act*; or
 - (b) in any other case—from the time the period of effect starts under paragraph 52ZZZWH (2) (a) of the *Act* until the time stated in the notice for the end of its period of effect in accordance with paragraph 52ZZZWH (2) (b) of the *Act*.
- (3) A *waiver notice* given in relation to a trust in respect of a contravention of a requirement in subsection 52ZZZWF (1) of the *Act* may have effect during a period of not more than 3 months from the time the period of effect starts under paragraph 52ZZZWH (2) (a) of the *Act*.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s)
C[x] = Compilation No. x	/sub-subparagraph(s)
Ch = Chapter(s)	pres = present
def = definition(s)	prev = previous
Dict = Dictionary	(prev...) = previously
disallowed = disallowed by Parliament	Pt = Part(s)
Div = Division(s)	r = regulation(s)/rule(s)
ed = editorial change	reloc = relocated
exp = expires/expired or ceases/ceased to have effect	renum = renumbered
F = Federal Register of Legislation	rep = repealed
gaz = gazette	rs = repealed and substituted
LA = <i>Legislation Act 2003</i>	s = section(s)/subsection(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
(md) = misdescribed amendment can be given effect	Sdiv = Subdivision(s)
(md not incorp) = misdescribed amendment cannot be given effect	SLI = Select Legislative Instrument
mod = modified/modification	SR = Statutory Rules
No. = Number(s)	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Veterans' Entitlements (Special Disability Trust) Guidelines 2011	8 June 2011 (F2011L01002)	1 Jan 2011 (s 2)	
Veterans' Entitlements (Special Disability Trust) Amendment Guideline 2015	13 Oct 2015 (F2015L01647)	14 Oct 2015 (s 2)	
Veterans' Entitlements (Special Disability Trust) Amendment Guideline 2016	6 Dec 2016 (F2016L01868)	7 Dec 2016	

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 3	
s 3.2	am F2015L01647
subpara 3.2(3)(b)(iii).	rs F2016L01868
subpara 3.2(3)(b)(iii)	ad F2016L01868