



Social Security (Special Disability Trust — Trust Deed, Reporting and Audit Requirements) (FaHCSIA) Determination 2013

Social Security Act 1991

I, FINN PRATT, Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs, make this Determination under subsections 1209P (2), 1209S (4) and 1209T (7) of the *Social Security Act 1991*.

Dated 13 June 2013

Finn Pratt

Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs

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Part 1 Preliminary

1.1 Name of Determination

This Determination is the *Social Security (Special Disability Trust — Trust Deed, Reporting and Audit Requirements) (FaHCSIA) Determination 2013*.

1.2 Commencement

This Determination commences on 1 July 2013.

1.3 Revocation

The *Social Security (Special Disability Trust – Trust Deed, Reporting and Audit Requirements) (FaHCSIA) Determination 2011* is revoked.

1.4 Definitions

In this Determination:

Act means the *Social Security Act 1991*.

Australian Accounting Standards means the accounting standards issued by the Australian Accounting Standards Board.

Australian Auditing Standards means the auditing and assurance standards issued by the Auditing and Assurance Standards Board.

model trust deed means the document titled 'Model Trust Deed for Special Disability Trusts' published by the Department of Families, Housing, Community Services and Indigenous Affairs, as existing on 1 January 2011.

Note The 'Model Trust Deed for Special Disability Trusts' is available on the Internet — see www.fahcsia.gov.au.

relevant financial year means:

- (a) in relation to a reporting requirement — the financial year about which the trustees are required to give financial statements under subsection 1209S (1) of the Act; or
- (b) in relation to an audit requirement — the financial year for which a person has requested an audit.

trustee corporation means each of the bodies corporate listed in Schedule 9 to the *Corporations Regulations 2001*.

1.5 Application of Determination

This Determination applies to special disability trusts established before, on or after commencement of the Determination.

Part 2

Trust deed requirements

2.1 Form of the trust deed

For paragraph 1209P (2) (a) of the Act, the form of the trust deed required for a special disability trust is the model trust deed, in writing.

2.2 Provisions which must be included in the trust deed and the form of those provisions

- (1) For paragraph 1209P (2) (b) of the Act, the provisions which must be included in the trust deed are provisions dealing with the matters mentioned in column 2 of the following table.

Item	Matter	Clause of model trust deed
1	Date on which trust is made	P.1
2	Parties to the trust	P.2
3	Description of the Principal Beneficiary	1.1
4	Declaration of trust	1.2
5	Name of trust	1.3
6	Application of operative provisions	1.4
7	Duration of trust	1.5
8	Exclusion of settlors	1.7
9	Primary and other purposes of the trust	2.1
10	Priority of Principal Beneficiary	2.2
11	Power to accumulate income	2.4
12	Contributions	3.1
13	Non-acceptable contributions	3.2
14	Restrictions on use of trust funds	3.3
15	Prohibition on borrowing	3.4
16	Further prohibitions with regard to related parties	3.5
17	Prohibition on lending to Principal Beneficiary	3.6
18	Donor register	3.7
19	Qualifications of the trustee	5.1

Item	Matter	Clause of model trust deed
20	Extent of trustee responsibility	5.5
21	Powers of trustee	6.1
22	Standard of care	6.2
23	Investment strategy	6.3
24	Requirement to keep accounts	8.1
25	Financial statements and reporting	8.2
26	Audit requirements	8.3
27	Amending the trust	9.2
28	Definitions	9.3
29	Interpretation	9.4
30	Applicable law	9.5
31	Execution	E.1

- (2) For paragraph 1209P (2) (c) of the Act, a provision dealing with a matter mentioned in column 2 of an item of the table in subsection (1) must be in the form of the clause of the model trust deed mentioned in column 3 of that item.

2.3 Provisions which cannot be included in the trust deed

For paragraph 1209P (2) (d) of the Act, the following provisions cannot be included in the trust deed:

- (a) a provision that is inconsistent with a clause of the model trust deed mentioned in the table in subsection 2.2 (1);
- (b) a provision that has the effect of overriding a clause of the model trust deed mentioned in that table.

Part 3

Reporting requirements

3.1 Qualifications of persons preparing financial statements

For paragraph 1209S (2) (a) of the Act, financial statements about the trust must be prepared by a person who:

- (a) is either:
 - (i) a member of CPA Australia, the Institute of Chartered Accountants in Australia or the National Institute of Accountants; or
 - (ii) an employee of a trustee corporation who is engaged by the trustee corporation as an accountant or financial planner; and
- (b) is not an immediate family member of:
 - (i) the principal beneficiary of the trust; or
 - (ii) a residuary beneficiary of the trust; or
 - (iii) a trustee of the trust.

3.2 Information that must be included in financial statements

- (1) For subsection 1209S (3) of the Act, the financial statements about the trust must include:
 - (a) a profit and loss statement for the relevant financial year; and
 - (b) a balance sheet with applicable notes for the relevant financial year; and
 - (c) if necessary, a depreciation schedule for each class of trust assets for the relevant financial year.
- (2) Financial statements given in accordance with section 1209S of the Act and this Part must:
 - (a) give a true and fair view of the trust's financial position and performance as at 30 June of the relevant financial year; and
 - (b) comply with the relevant Australian Accounting Standards.
- (3) The financial statements about the trust must include a statement to the effect that, for the relevant financial year:
 - (a) all amounts paid out of the trust (other than amounts paid for reasonable administration expenses and taxation) were paid:
 - (i) to meet reasonable care and accommodation needs of the principal beneficiary; or

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- (ii) for other 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
 - (iii) for other purposes that are primarily for the benefit of the principal beneficiary; and
- (b) no amount was paid out of the trust for:
- (i) purposes other than those mentioned in subparagraph (a) (i), (ii) or (iii); or
 - (ii) services provided to the principal beneficiary by an immediate family member of the principal beneficiary.

3.3 Income tax returns

- (1) Subject to subsection (2), the financial statements about the trust must be accompanied by a certified copy of the trust's income tax return, completed and lodged in accordance with the *Income Tax Assessment Act 1936* for the relevant financial year.
- (2) If section 95AB of the *Income Tax Assessment Act 1936* applies to the trust's income, a certified copy of the trust's income tax return is not required.

3.4 Statutory Declaration

The financial statements about the trust must be accompanied by a statutory declaration made by all trustees of the trust to the effect that all information given in accordance with section 1209S of the Act and this Part is true and correct in all material particulars.

Part 4

Auditing requirements

4.1 Audit period

For paragraph 1209T (2) (b) of the Act, the audit must relate to the period specified by the person requesting the audit under subsection 1209T (3) of the Act, being a period of 1 to 5 financial years in the period of 5 financial years ending on the 30 June last preceding the request.

4.2 Qualifications of persons preparing audit

For paragraph 1209T (5) (a) of the Act, the audit must be prepared by a person who:

- (a) is a member of:
 - (i) CPA Australia; or
 - (ii) the Institute of Chartered Accountants in Australia; or
 - (iii) the National Institute of Accountants; and
- (b) is not the person who prepared, or is preparing, any of the financial statements about the trust for the relevant financial year; and
- (c) is not an immediate family member of:
 - (i) the principal beneficiary of the trust; or
 - (ii) a residuary beneficiary of the trust; or
 - (iii) a trustee of the trust.

4.3 Information that must be included in audit

- (1) For subsection 1209T (6) of the Act, an audit must include the following information:
 - (a) a statement to the effect that the trust's financial statements give a true and fair view of the trust's financial position and performance as at 30 June of the relevant financial year;
 - (b) if the person requesting the audit under subsection 1209T (3) of the Act requests the audit for the purpose of determining whether the trust has met the requirements of all of the provisions of the trust deed — a statement indicating whether the trust has met the requirements of all of the provisions of the trust deed;

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- (c) if the person requesting the audit under subsection 1209T (3) of the Act requests the audit for the purpose of determining whether the trust has met the requirements of specified provisions of the trust deed — a statement indicating whether the trust has met the requirements of those specified provisions of the trust deed.
- (2) Information mentioned in subsection (1) must comply with the relevant Australian Auditing Standards.