

EXPLANATORY STATEMENT

Veterans' Entitlements (Special Disability Trust – Discretionary Spending) Determination 2021

Instrument 2021 No. R6

EMPOWERING PROVISION

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

PURPOSE

The *Veterans' Entitlements (Special Disability Trust – Discretionary Spending) Determination 2021* (Instrument 2021 No. R6) (the Determination) is made under subsection 52ZZZWEA(3) of the VEA. The Determination replaces the *Veterans' Entitlements (Special Disability Trust – Discretionary Spending) Determination 2020* (Instrument 2020 No. R25).

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 for the primary purposes of a special disability trust which are 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 Determination 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.

The Determination maintains the discretionary spending amount at \$12,500 for the 2020-2021 financial year, with the Determination to take effect from 1 July 2021. The lack of an increase in the amount is a consequence of the low CPI increase over the past year.

The authority to revoke the earlier determination is found in subsection 33(3) of the *Acts Interpretation Act 1901*. The subsection 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. The Social Security and Families Team at DSS were consulted in the course of this exercise to ensure a consistent approach in the preparation of the instrument to set the discretionary spending amount. The nature of consultation with DSS was by way of email correspondence.

DSS advise that the indexation of the threshold is government policy and occurs in July each year and that Services Australia was consulted during the preparation of their proposed instrument, the *Social Security (Special Disability Trust – Discretionary Spending) Determination 2021*.

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

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

FURTHER EXPLANATION OF PROVISIONS

See: [Attachment A](#)

HUMAN RIGHTS STATEMENT

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

Overview

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 which are to meet reasonable care and accommodation needs of the beneficiary).

The maximum amount is twelve thousand, five hundred dollars (\$12,500) in the 2021-2022 financial year.

Human rights implications

The Determination 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.

The Determination 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 providing for an amount of \$12,500 as the limit for the discretionary use of special disability trust funds before the trust loses its status as a 'special disability trust'.

Conclusion

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

Wendy Cummings

Director - Benefits and Payments Policy Section, Policy Development Branch, as delegate of the Repatriation Commission

Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

Section 1

This section sets out the name of the instrument – the *Veterans' Entitlements (Special Disability Trust – Discretionary Spending) Determination 2021*.

Section 2

This section provides the Determination commences on 1 July 2021.

Section 3

This section provides that the instrument for the 2020-2021 financial year, the *Veterans' Entitlements (Special Disability Trust – Discretionary Spending) Determination 2021*, will be revoked on the commencement of this instrument.

Section 4

This section provides that the authority for making the instrument is subsection 52ZZZWEA(3) of the Act.

Section 5

This section defines the terms used in the Determination.

Section 6

This section provides that, for the purposes of subsection 52ZZZWEA(3) of the *Veterans' Entitlements 1986*, 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 \$12,500 for the financial year commencing on 1 July 2021.