

## **EXPLANATORY STATEMENT**

### *Social Security Act 1991* *Social Security (Special Disability Trust — Discretionary Spending) Determination* *2022*

#### **Purpose and Background**

The purpose of the *Social Security (Special Disability Trust — Discretionary Spending) Determination 2022* (this instrument) is to set out the maximum amount of a special disability trust's income and / or assets that can be spent for purposes that are primarily for the benefit of the principal beneficiary, but are purposes other than the primary purpose of the special disability trust (the Discretionary Spending Limit) described in subsection 1209N(1) of the *Social Security Act 1991* (the Act).

The Discretionary Spending Limit was initially set at \$10,000 on 1 January 2011. Since then, the Discretionary Spending Limit has been indexed according to the consumer price index (CPI) every financial year on 1 July. The CPI growth over the year to December 2021 was 3.5%.

The 2021-22 limit was \$12,500. As such, with 3.5% growth applied (to the nearest \$250), the Discretionary Spending Limit is determined to be \$13,000 for the financial year of 2022-2023.

#### **Repeal**

This instrument repeals the *Social Security (Special Disability Trust – Discretionary Spending) Determination 2021* (the 2021 instrument). This instrument is in substantially the same terms as, and will replace, the 2021 instrument from the day this instrument commences (discussed below).

#### **Authority**

This instrument is made under subsection 1209RA(3) of the Act. If a determination is made under subsection 1209RA(3) of the Act, under subsection 1209RA(1), where a special disability trust has one or more purposes, other than its primary purpose, that are primarily for the benefit of the intended beneficiary, the total value of the income and assets of the trust applied for those other purposes in a financial year must not exceed the value specified in the determination for that year.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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 is 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.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. This instrument is disallowable.

## Commencement

This instrument commences on 1 July 2022.

## Consultation

The indexation of the threshold is government policy and occurs in July each year as per Social Security Guide page [4.14.3.35 Special disability trusts - discretionary spending](#). Services Australia was consulted during the preparation of this instrument in relation to informing trustees with a Special Disability Trust that the discretionary spending threshold will be increased.

## Regulation Impact Statement

The instrument does not require a Regulatory Impact Statement. The instrument is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact. (OBPR ID: 22-02392)

## Explanation of the provisions

**Section 1** provides that the name of this instrument is the *Social Security (Special Disability Trust — Discretionary Spending) Determination 2022*.

**Section 2** provides that this instrument commences on 1 July 2022.

**Section 3** provides that the authority for making this instrument is subsection 1209RA(3) of the Act.

**Section 4** provides definitions of terms used in this instrument.

**Act** is defined to mean the *Social Security Act 1991*.

**special disability trust** has the same meaning given by section 1209L of the Act.

**Section 5** operates to repeal the 2021 instrument, which is set out in Schedule 1.

**Section 6** provides that, for the purposes of subsection 1209RA(3) of the Act, the maximum value of the trust's income and assets that can be spent for purposes that are primarily for the benefit of the principal beneficiary (other than the primary purpose of a special disability trust), is \$13,000 for the 2022-2023 financial year.

## Schedule 1

**Clause 1** repeals the 2021 instrument.

**Caitlin Delaney, Branch Manager, Older Australians Branch, Delegate of the  
Secretary of the Department of Social Services**

## Statement of Compatibility with Human Rights

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

### **Social Security (Special Disability Trust — Discretionary Spending) Determination 2022**

This instrument 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 Determination**

This instrument is made under subsection 1209RA(3) of the *Social Security Act 1991* (The Act).

The purpose of this instrument is to set out the maximum amount of the income and / or assets of a special disability trust that may 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 is to meet reasonable care and accommodation needs of the beneficiary).

This instrument is designed to allow a certain amount of trust income and / or assets to be used for the benefit of the principal beneficiary for purposes other than the primary purposes of the trust, while maintaining the ‘special disability trust’ status in accordance with section 1209L of the Act. Determining an amount means the trustee can undertake discretionary spending that is not directly related to the care and accommodation needs of the person with disability.

The total value of the income and / or assets determined under subsection 1209RA(3) of the Act for the 2022-2023 financial year is \$13,000.

#### **Human rights implications**

This 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 recognized in Article 11 of ICESCR and Article 28 of the Convention on the Rights of Persons with Disabilities.

This instrument will promote the right to social security and the right to an adequate standard of living for those people whose social security entitlements are affected by the receipt of income from a special disability trust. The rights will be promoted by determining the amount of discretionary use of special disability trust funds before the trust loses its status as a ‘special disability trust’.

**Conclusion**

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

**Caitlin Delaney, Branch Manager, Older Australians Branch, Delegate of the  
Secretary of the Department of Social Services**