

## EXPLANATORY STATEMENT

### Veterans' Entitlements (Means Test Treatment of Private Trusts—Excluded Trusts) Declaration 2025

#### EMPOWERING PROVISION

The Repatriation Commission (the *Commission*) makes this instrument under section 52ZZB(4) of the *Veterans' Entitlements Act 1986* (the *Act*).

#### PURPOSE

This instrument repeals the *Veterans' Entitlements (Means Test Treatment of Private Trusts — Excluded Trusts) Declaration 2015* and remakes it before it would otherwise sunset on 1 October 2025.

#### OVERVIEW

Section 52ZZB of the Act defines a trust that is a “designated private trust” for the purposes of ascertaining a person’s income or assets for means testing purposes under Division 11A of Part IIIB of the Act. Amongst other things, that definition requires that a designated private trust not be an “excluded trust” as specified by the Commission in a legislative instrument made under subsection 52ZZB(4).

This instrument specifies the following classes of trusts as excluded trusts under the authority of that subsection:

1. Community trusts, that:
  - (a) have the sole or dominant purpose of:
    - i. receiving, managing or distributing property transferred directly to it, or through an interposed entity, by a government body for a community purpose; or
    - ii. holding, managing or disposing of indigenous-held land, for a community purpose; or
    - iii. receiving, managing or distributing income that:
      - i. has been generated from indigenous-held land;
      - ii. and is applied for a community purpose.
2. Fixed trusts that were created before the reference time of 9 May 2000, that have not since been varied under the trust deed nor received a transfer of property.

Private trusts that are community trusts or fixed trusts within the classes specified in this instrument will thus be excluded from the definition of “designated private trust”. The effect of a trust being an excluded trust is that the income and assets of such a trust will not be attributed to an individual for the purposes of ascertaining the person’s income and assets for means testing purposes under Division 11A of Part IIIB of the Act. In other words, the income

and assets from an excluded trust will not be attributed to an individual when calculating income support payments under the Act.

The overall policy objective of the instrument is to apply the same approach taken in the equivalent instrument under the *Social Security Act 1991* (SSA), the *Social Security (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2015* thus maintaining consistency in the application of the assets test for private trusts between income support recipients under the Act and civilian social security recipients under the SSA.

## EXPLANATION OF PROVISIONS

**Section 1** states the name of the instrument.

**Section 2** provides that the instrument commences on the day after it is registered.

**Section 3** sets out the authority for the Repatriation Commission making the instrument, namely section 52ZZB(4) of the Act.

**Section 4** repeals the *Veterans' Entitlements (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2015*.

**Section 5** provides the purpose of the instrument, namely to specify classes of trusts that are excluded trusts for section 52ZZB of the Act.

**Section 6** sets out definitions of terms used in the instrument including, “community purpose”, “government body”, “income”, “indigenous-held land” and “reference time.”

**Section 7 and 8** specifies the classes of excluded trusts for section 52ZZB(4). They are certain community trusts (section 7) and certain fixed trusts created before the reference time (section 8). “Reference time” is defined in section 6 to mean 7.30 pm in the Australian Capital Territory on 9 May 2000.

## Consultation

The Department of Veterans’ Affairs (DVA) consulted with the Department of Social Services (DSS) who administer a similar instrument under the SSA, the *Social Security (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2015*, to obtain agreement to the redrafting of the instrument and ensure policy consistency.

In remaking the instrument, no policy changes have been made. Thus the asset-test exemption for certain classes of private trusts remains unchanged. Consequently, DVA did not consult more broadly in the remaking of this instrument.

## Human rights implications

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment A**.

**Making the instrument**

The instrument is made by the Repatriation Commission.

**Approved by**

Repatriation Commission  
Rule-maker

## **Attachment A**

### **Statement of Compatibility with Human Rights**

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

#### ***Veterans' Entitlements (Means Test Treatment of Private Trusts–Excluded Trusts) Declaration 2025***

This Disallowable Legislative 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* (the ***recognised rights***).

### **Overview of the Disallowable Legislative Instrument**

The *Veterans' Entitlements (Means Test Treatment of Private Trusts–Excluded Trusts) Declaration 2025* (the ***instrument***) repeals the *Veterans' Entitlements (Means Test Treatment of Private Trusts — Excluded Trusts) Declaration 2015* and remakes it before it would otherwise sunset on 1 October 2025. The purpose of the instrument is to specify classes of trusts (namely certain community trusts, and certain fixed trusts created before 9 May 2000) as excluded trusts for the purpose of means testing under the *Veterans' Entitlements Act 1986* (the ***VEA***).

The effect of a trust being an excluded trust is that the assets and income of such a trust will not be attributed to an individual for the purposes of ascertaining a person's income and assets for means testing purposes under Division 11A of Part IIIB of the VEA.

The overall policy objective of the instrument is to apply the same approach taken in the equivalent instrument under the *Social Security Act 1991* (the ***SSA***), the *Social Security (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2015* thus maintaining consistency in the application of means-testing of private trusts between income support recipients under the VEA and civilian social security recipients under the SSA.

### **Human rights implications**

This legislative instrument promotes the right to social security contained in article 9 of the International Covenant on Economic Social and Cultural Rights.

The right to social security is engaged and promoted by the instrument in that it enables certain classes of trusts to be exempt from the pension means-test under the VEA, preventing the income and assets of certain private trusts from being attributed to an individual for means-testing under the VEA.

## **Conclusion**

This legislative instrument is compatible with human rights as it engages with and promotes the right to social security.

Repatriation Commission

Rule-Maker