

EXPLANATORY STATEMENT

Social Security (Special Disability Trust — Discretionary Spending) Determination 2014

Summary

The *Social Security (Special Disability Trust — Discretionary Spending) Determination 2014* (the Determination) is made under subsection 1209RA(3) of the *Social Security Act 1991* (the Act). The purpose of the Determination is to set out the maximum amount of a special disability trust's income and assets that can be spent for purposes that are primarily for the benefit of the principal beneficiary.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Section 1 sets out the name of the Determination.

Section 2 provides that the Determination commences on 1 July 2014.

Section 3 provides that the *Social Security (Special Disability Trust — Discretionary Spending) (FaHCSIA) Determination 2013*, the *Social Security (Special Disability Trust — Discretionary Spending) (DEEWR) Determination 2013 (No. 1)* and *Social Security (Special Disability Trust — Discretionary Spending) (DIICCSRTE) Determination 2013 (No. 1)* are revoked on the commencement of the Determination. The Determination consolidates the power now vested in the Secretary of the Department of Social Services.

Section 4 provides definitions of terms used in the Determination.

Section 5 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 by the special disability trust for other purposes that are primarily for the benefit of the principal beneficiary (other than the primary purposes of a special disability trust), is eleven thousand dollars (\$11,000) in the 2014-2015 financial year.

Consultation

The Department of Veterans' Affairs was consulted by electronic communication in the making of this Determination, to ensure a coordinated approach.

Regulation Impact Statement

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.

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 2014

The *Social Security (Special Disability Trust – Discretionary Spending) Determination 2014* 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

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

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

The Determination is designed to allow a certain amount of trust income and assets to be used for the benefit of the principal beneficiary but for purposes other than the primary purposes of the trust, while maintaining the 'special disability trust' status in accordance with s 1209L. Increasing the amount will mean that more of the income of a person with a disability will not be considered ordinary income for social security assessment purposes due to the maintenance of 'special disability trust' status.

The maximum amount is eleven thousand dollars (\$11,000) in the 2014-2015 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 (CPRD).

The Determination 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 receiving income from a special disability trust. The rights will be promoted by increasing the amount of discretionary use of special disability trust funds before the trust loses its status as a 'special disability trust'.

Conclusion

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

Finn Pratt, Secretary, Department of Social Services