



Social Security (Means Test Treatment of Private Trusts — Excluded Trusts) Declaration 2005

I, JEFF HARMER, Secretary of the Department of Family and Community Services, acting under subsection 1207P (4) of the *Social Security Act 1991*:

- (a) revoke the *Social Security (Means Test Treatment of Private Trusts — Excluded Trusts) Declaration 2001*; and
- (b) make this Declaration.

Dated 26 April 2005

J HARMER
Secretary of the Department of Family and Community Services

Section 1

Part 1 Preliminary**1 Name of Declaration**

This Declaration is the *Social Security (Means Test Treatment of Private Trusts — Excluded Trusts) Declaration 2005*.

2 Commencement

This Declaration commences on the day after registration of the Declaration under the *Legislative Instruments Act 2003*.

3 Purpose

This Declaration specifies classes of trusts that are excluded trusts for section 1207P of the Act.

4 Definitions

In this Declaration:

Act means the *Social Security Act 1991*.

community purpose means a purpose that is intended to benefit primarily the members of a particular community or group.

government body includes the following kinds of body:

- (a) a department or agency of the Commonwealth;
- (b) a department or agency of a State or Territory;
- (c) a municipal corporation or other local government body;
- (d) a body corporate in which the Commonwealth, a State or a Territory body holds a controlling interest.

income has the same meaning as in subsection 1207P (7) of the Act.

indigenous-held land has the same meaning as in section 4B of the *Aboriginal and Torres Strait Islander Commission Act 1989*.

reference time means 7.30 pm, standard time in the Australian Capital Territory, on 9 May 2000.

Part 2 Specified classes of trusts

5 Community trusts are excluded trusts

- (1) Each trust that is a community trust is an excluded trust for section 1207P of the Act.
- (2) A *community trust* is a trust that has the sole or dominant purpose of:
 - (a) receiving, managing or distributing property transferred directly to it, or through an interposed entity, by a government body for a community purpose; or
 - (b) holding, managing or disposing of indigenous-held land, for a community purpose; or
 - (c) receiving, managing or distributing income that:
 - (i) has been generated from indigenous-held land; and
 - (ii) is applied for a community purpose.

6 Fixed trusts created before reference time are excluded trusts

- (1) Each trust that is a fixed trust created before the reference time is an excluded trust for section 1207P of the Act.
- (2) However, a trust referred to in subsection (1) is not an excluded trust, if after the reference time:
 - (a) the trust has been varied under the trust deed; or
 - (b) there has been a transfer of property (other than income generated by the trust) to the trust.