

## **EXPLANATORY STATEMENT**

Issued by the authority of the Secretary of the Department of Social Services

*Social Security Act 1991*

*Social Security (Special Disability Trust) Guidelines 2021*

### **Purpose**

The *Social Security (Special Disability Trust) Guidelines 2021* (the Guidelines) are made under subsection 1209M(3), subsection 1209N(4) and subsection 1209U(4) of the *Social Security Act 1991* (the Act). For social security purposes, a decision that a trust is a special disability trust results in the trust receiving social security means test concessions for the beneficiary and eligible contributors. The Guidelines guide such decisions. The purpose of the Guidelines is threefold:

- First, to provide guidelines about what are the reasonable care and accommodation needs of a principal beneficiary of a special disability trust for the purposes of a trust meeting the requirements of subsection 1209N(1) of the Act.
- Second, to provide guidelines about whether or not to provide a waiver notice to the trustees of a trust, the conditions to include in the notice and the period during which the waiver is to have effect. A waiver notice exempts a trust from certain requirements that must normally be met, under Division 1 of Part 3.18A of the Act, for a trust to qualify as a special disability trust.
- Third, it nominates agreements between the Commonwealth and the States and the Territories under which funding (wholly or partly) is provided to institutions, hostels or group homes in which care is provided for people with disabilities, to allow residents of such homes to meet the beneficiary requirements for a special disability trust (under subparagraph 1209M(2)(b)(ii) of the Act).

The Guidelines are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

### **Background**

In 2006, special disability trusts were introduced as a way for families to make private financial provision for the future care and accommodation needs of their family members with severe disabilities, so the most vulnerable of our society could maintain an adequate standard of living.

Special disability trusts provide certainty for families who are concerned that a family member with disability may not have the support they require to take care of their accommodation or care needs when the family is no longer able to care for them. Such trusts must be established solely in order to provide for the current and future care and accommodation needs of the beneficiary.

These Guidelines remake the *Social Security (Special Disability Trust) Guidelines 2011* which are due to sunset on 1 October 2021. The Guidelines have been remade with some amendments.

Division 2 of Part 2 of the Guidelines has been made to clarify that the provision of specialist disability accommodation within the meaning of the National Disability Insurance Scheme (NDIS) meets reasonable accommodation needs and the primary purpose of a special disability trust (subsection 1209N(1) of the Act). Since the previous guidelines were made, specialist disability accommodation has become the default for high needs accommodation for eligible participants under the NDIS. Specialist disability accommodation refers to accommodation for people who require specialist housing solutions, including to assist with the delivery of supports that cater for their extreme functional impairment or very high support needs. The purpose of this amendment to the Guidelines is to avoid doubt that specialist disability accommodation meets reasonable accommodation needs and satisfies the primary purpose of a special disability trust (subsection 1209N(1) of the Act).

In relation to the provision of waiver notices, the Guidelines define frequency of a contravention as the contravention having occurred more than once in the same financial year or consecutive financial years. This clarifies the circumstances in which a decision on whether to provide a waiver notice should have regard to the frequency of any other such contraventions in relation to the trust. If a contravention were sufficient to warrant a notice from Services Australia, then one or more occasions for the same contravention in the same financial year or subsequent financial year warrants additional guidance as to whether or not a waiver should be given.

The Guidelines have been amended to only require trustees to have made reasonable enquiries to determine whether the beneficiary of the trust meets the beneficiary requirements of subsection 1209M(2) or (4) of the Act, as opposed to requiring trustees to declare that the beneficiary meets the beneficiary requirements. Trustees will often not have the professional skills to personally assess the principal beneficiary's current capacity; and this assessment of the principal beneficiary is done by Services Australia. This change removes an unreasonable burden on trustees. Reasonable enquiries may take the form of sighting the letter that Services Australia sends to the beneficiary confirming that the beneficiary of the trust meets the beneficiary requirements for a special disability trust under section 1209M of the Act. However, for clarification, to fulfil the requirement in paragraph 16(3)(b) of the Guidelines, it is not intended that the document produced by Services Australia be incorporated by reference into the Guidelines. Rather, the requirement is met by the trustee having sighted the documentation.

Previously, for the purposes of subparagraph 1209M(2)(b)(ii) of the Act, the Secretary nominated agreements under which funding is provided to an institution, hostel or group home in a separate legislative instrument, the Social Security (Special Disability Trust Beneficiary Requirements) Nomination of Agreement Instrument 2015. Instead, for ease of location, relevant agreements are now nominated in these Guidelines. The list of agreements has been updated to include all the current Commonwealth-State bilateral NDIS agreements.

Subsection 33(3) of the *Acts Interpretation Act 1901* 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. Accordingly, this instrument repeals the existing Guidelines and Nomination of Agreement instruments.

## **Commencement**

The Guidelines commence on the day after registration on the Federal Register of Legislation.

## **Consultation**

The Department has consulted with Services Australia, the National Disability Insurance Agency, the Department of Veterans' Affairs, and the Offices of the Victorian, Queensland, ACT and NSW public trustees. The instrument was drafted by the Office of Parliamentary Counsel.

## **Regulation Impact Statement (RIS)**

This Determination does not require a Regulatory Impact Statement (OBPR Reference: 44153).

## **Availability of independent review**

The Guidelines guide decisions as to whether a trust is a special disability trust, and hence exempt from the social security income and assets test.

Such decisions are subject to internal and external merits review under Parts 4 and 4A of the *Social Security (Administration) Act 1999*.

## **Explanation of the provisions**

### **Part 1 - Preliminary**

**Section 1** provides that the name of the Guidelines is the Social Security (Special Disability Trust) Guidelines 2021.

**Section 2** provides a table setting out the commencement date for the whole of the Instrument. The Instrument commences on the day after it is registered.

**Section 3** provides that the Instrument is made under subsections 1209M(3), 1209N(4) and 1209U(4) of the Act.

**Section 4** provides that an instrument that is specified in the Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Section 5** defines various terms that are used in the Guidelines. These terms are explained in the context of the provision that draws upon the definition.

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

## **Part 2 – Trust purpose requirements**

### *Division 1 Primary purpose for reasonable care needs*

**Section 6** provides that Division 1 sets out guidelines for deciding what are reasonable care needs for a principal beneficiary of a special disability trust, for the purposes of paragraph 1209N(4)(a) of the Act.

**Section 7** sets out guidelines for what is a reasonable care need for the principal beneficiary of a special disability trust. A care need will be a reasonable care need where it arises as a result of the disability of the principal beneficiary, the need is for any medical-related or dental costs of the principal beneficiary or the need is to pay for approved fees. The need must also be met in Australia.

The definition of ‘approved fees’ is in section 5. Approved fees means fees that are either charged for the daily care of the principal beneficiary; or itemised fees that are additional to the fees charged for the daily care of the principal beneficiary and are related to the principal beneficiary’s care and accommodation.

These fees must be charged by an approved provider (within the meaning of the *Aged Care Act 1997*) who is providing a service to the principal beneficiary in a residential care service (within the meaning of that Act); or by an institution, hostel or group home, for which funding is provided (wholly or partly) under an agreement, between the Commonwealth, the States and the Territories, nominated by the Secretary under subsection 1209M(3) of the Act, in which care and accommodation is provided for the principal beneficiary.

For example, reasonable care needs may include, but are not limited to, professional care and case management required for, or because of, the principal beneficiary’s disability; specialised food specified by a medical practitioner as essential for the principal beneficiary’s health; and sleeping and sensory aids required for, or because of, the principal beneficiary’s disability.

Reasonable care needs may also include services by an approved provider in a residential care service for the daily care, or additional to those for the daily care, of the principal beneficiary. These needs may also be reasonable care needs where they are provided by an institution, hostel or group home, for which funding is provided (wholly or partly) under an agreement, between the Commonwealth, the States and the Territories, nominated by the Secretary under subsection 1209M(3) of the Act, in which care and accommodation is provided for the principal beneficiary. A list of these agreements is provided in section 18 of the Guidelines.

#### *Division 2 Primary purpose for reasonable accommodation needs*

**Section 8** provides that Division 2 sets out guidelines for deciding what is, and is not, a reasonable accommodation need of a principal beneficiary of a special disability trust, for the purposes of paragraph 1209N(4)(a) of the Act.

**Section 9** sets out guidelines for what is a reasonable accommodation need for the principal beneficiary of a special disability trust. Generally an accommodation need will be a reasonable accommodation need where it arises as a result of the disability of the principal beneficiary or the need meets the requirements of either subsection 9(2), (3) or (4). For example, reasonable accommodation needs may include, but are not limited to, modification to the principal beneficiary's place of residence arising from his or her disability, and payment of rental for the principal beneficiary's place of residence if the payment is not made to an immediate family member of the principal beneficiary.

**Subsection 9(2)** provides that the need to pay for property, or for an interest in property (which would include a payment of rent in regard to a property), will be a reasonable accommodation need as long as the interest is acquired or rented from a person who is not an immediate family member of the principal beneficiary and is for the accommodation needs of the principal beneficiary. If the property is not for the accommodation needs of the principal beneficiary under subparagraph 9(2)(b)(i), the need to pay for the property or interest will be a reasonable accommodation need if the property is rented at market value and the income from the rent is used for the benefit of the principal beneficiary.

**Subsection 9(3)** provides that the need to pay rates or taxes in regard to a property will be a reasonable accommodation need where the property is owned by the special disability trust and is used for the accommodation of the principal beneficiary. If the property is not used for the accommodation of the principal beneficiary under subparagraph 9(3)(b)(i), the need to pay for rates or taxes will be a reasonable accommodation need if the property is rented at market value and the income from the rent is used for the benefit of the principal beneficiary.

**Subsection 9(4)** provides that the need to pay for the maintenance or upkeep on property will be a reasonable accommodation need where the property is owned by the special disability trust and is used for the accommodation of the principal beneficiary. If the property is not used for the accommodation of the principal beneficiary under subparagraph 9(4)(b)(i), the need to pay for maintenance or upkeep will be a reasonable accommodation need if the property is rented at market value and the income from the rent is used for the benefit of the principal beneficiary.

**Subsection 9(5)** clarifies that a property that is specialist disability accommodation within the meaning of the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* may be a property to which this section applies.

**Section 10** sets out guidelines for what would not be a reasonable accommodation need for the principal beneficiary of a special disability trust. This section provides that a need that relates to property or an interest in property is not a reasonable accommodation need for the principal beneficiary if the property or interest is acquired or rented from a person who is an immediate family member of the principal beneficiary.

### *Division 3 Other purposes*

**Section 11** provides that Division 3 sets out guidelines for deciding what are, and what are not, purposes of a special disability trust, other than the primary purpose, that are primarily for the benefit of the principal beneficiary of a special disability trust, for the purposes of subsection 1209N(4)(b) of the Act.

**Section 12** sets out guidelines for the decision-maker to consider when making a decision about what other purposes relating to expenditure are for the primary benefit of the principal beneficiary. In making a decision, expenses that are unrelated to the reasonable care and accommodation needs of the principal beneficiary and are for the health, wellbeing, recreation, independence and social inclusion of the principal beneficiary would be considered to be other purposes for the primary benefit of the principal beneficiary. For example, these other purposes may include, but are not limited to, expenses for food; household items for the beneficiary; utilities, vehicle registration and insurance; and recreation and leisure activities.

**Section 13** sets out guidelines for the decision-maker to consider when making a decision about what are not other purposes that are for the primary benefit of the principal beneficiary. This section provides that expenses that are for payment to, or on behalf of, a person who is an immediate family member of the principal beneficiary would not be considered to be other purposes primarily for the benefit of the principal beneficiary. In addition, expenses that are for payment to a carer for purposes other than the reasonable care needs of the principal beneficiary or as provided by section 12, would not be considered to be other purposes primarily for the benefit of the principal beneficiary.

The note at the end of section 13 directs the reader to the legislative instrument made by the Secretary under subsection 1209RA(3) of the Act which provides for the maximum amount that may be spent in a particular financial year for purposes, other than the primary purpose of a special disability trust, that are primarily for the benefit of the principal beneficiary (see paragraph 12(b)).

### **Part 3 – Waiver of contravention of requirements**

**Section 14** provides that this Part sets out guidelines for deciding whether or not to give a waiver notice to a trustee of a trust; what conditions to include in that notice; and the periods during which the notice will have effect, for the purposes of subsection 1209U(4) of the Act. A waiver notice may allow a trust that does not comply with all the qualification criteria within Division 1 of Part 3.18A of the Act for a special disability trust to be exempted from those criteria which it does not meet, subject to certain conditions and for certain specified periods. A waiver notice is defined in section 5 as having the same meaning as in paragraph 1209U(1)(a) of the Act.

Trust is defined in section 5. Trust means a trust that would be a special disability trust if it were not for a contravention of a requirement of Division 1 of Part 3.18A of the Act in relation to the trust.

**Section 15** provides the guidelines for deciding whether or not to give a waiver notice to trustees in relation to a trust. Subject to subsection (2), in deciding whether or not to grant a waiver notice, the Secretary must consider the following:

- a) For a trust created before 1 January 2011 a waiver can only be granted in regard to the following items, and only if the trust deed cannot be amended or varied in relation to those items:
  - Section 1209N (the trust must have the primary purpose of providing for the reasonable care and accommodation needs of the principal beneficiary or other purposes that are primarily for the benefit of the principal beneficiary);
  - Section 1209P (the trust deed must be in a certain form and contain, or not contain, certain specified clauses);
  - Subsections 1209S(1) and (3) (the trustees must provide the financial records of the trust to the Secretary each year by 31 March in regard to the last completed financial year and the records must contain all information of the kind specified by the Secretary for the purposes of subsection 1209S(3)).

For a trust created on or after 1 January 2011 a waiver can only be granted in regard to a contravention of section 1209N or subsection 1209S(1) or (3) of the Act.

- b) A waiver cannot be in regard to a contravention involving fraudulent conduct by any party.
- c) Where the relevant contravention is a breach of subsection 1209S(1) of the Act (ie the trustees must provide the financial records of the trust to the Secretary each year by 31 March in regard to the last completed financial year), the contravention cannot have been caused by any or all of the trustees of the trust.

- d) Where the relevant contravention is of a requirement to only use income that the trust derives, and assets of the trust, for purposes that are to meet the reasonable care and accommodation needs of the principal beneficiary of the trust, or are ancillary to meeting those needs or are for other purposes that are primarily for the benefit of the principal beneficiary (subsections 1209N(1) and (2) of the Act). Furthermore, if the amount paid in contravention of those provisions is no more than \$5,000 for the relevant financial year and was for a purpose other than that mentioned in subsection (2), then the Secretary may waive the requirement to comply with those provisions. This may occur if, considering the whole circumstances of the case (including the nature and frequency of any other such contraventions in relation to the trust) the Secretary is satisfied that the requirement should be waived.

**Subsection 15(2)** provides that for the purposes of subparagraph 15(1)(d)(i) of the Guidelines (allowed purposes), the purposes are to meet the reasonable care and accommodation needs of the principal beneficiary of the trust, or are ancillary to meeting those needs and necessary or desirable to facilitate meeting them, or are other purposes that are primarily for the benefit of the principal beneficiary.

**Subsection 15(3)** provides that for the purposes of subparagraph (1)(d)(ii) of the Guidelines, contraventions are considered frequent if Services Australia is proposing to notify the trustees of the trust of a contravention of the same or similar kind either in the same financial year or in the previous financial year.

This is not prescriptive and does not preclude the provision of a waiver even if a contravention is considered frequent.

**Subsection 15(4)** provides that, in relation to a trust created on or after 20 September 2006 and prior to 1 January 2011, where the trust deed cannot be varied or amended, the Secretary may decide to give a waiver notice to the trustees of that trust if the Secretary is satisfied that the trust has complied with section 1209N of the Act.

**Subsection 15(5)** provides that the Secretary may in certain circumstances, decide to give a waiver notice to the trustees of a trust in relation to a contravention of the trust property requirements under paragraph 1209R(1)(b) of the Act, subject to subsection (6). (The trust property requirements are that the assets of the trust must not include any asset transferred to the trust by the principal beneficiary of the trust or their partner, unless the transferrer received the bequest or superannuation death benefit not more than 3 years before transferring the asset.) The Secretary may do so if satisfied that one of paragraphs (a) to (c) applies.

**Paragraph 15(5)(a)** provides that the Secretary may decide to give a waiver notice if satisfied the contravention occurred as a result of court proceedings relating to the transferred asset. For example, this might occur where court proceedings relating to a bequest prevent the beneficiary, or the beneficiary's partner, from dealing with the bequest.



**Paragraph 15(5)(b)** provides that the Secretary may decide to give a waiver notice in circumstances where a receiving trust is not a special disability trust because of a contravention of a requirement of Division 1 of Part 3.18A of the Act (referred to as the 'first trust') and the asset that was transferred to the first trust is subsequently transferred to a special disability trust outside the required timeframe, provided that the asset was transferred to the first trust within the timeframe under paragraph 1209R(1)(b) of the Act.

**Paragraph 15(5)(c)** provides that the Secretary may decide to give a waiver notice where the transferor transferred the asset to a trust intended to be a special disability trust after the 3 year period mentioned in paragraph 1209R(1)(b) of the Act if the transferor can show there was an intention to transfer the asset within that 3 year period.

A waiver notice in this type of situation could enable an asset that is all or part of a bequest, or of a superannuation death benefit, to be transferred to a special disability trust where this is consistent with the policy intention in providing for the creation of special disability trusts, in accordance with the Act, but the transfer of the asset would otherwise be precluded because the transfer of the asset to the first trust was after the timeframe under paragraph 1209R(1)(b).

**Subsection 15(6)** provides that in all cases, a waiver notice under subsection 15(5) must only be given if the Secretary is satisfied of the following matters:

- (a) the contravention does not involve fraudulent conduct;
- (b) the contravention in relation to the first trust does not involve fraudulent conduct;
- (c) having regard to all the circumstances, including the nature of the contravention in relation to the first trust, the requirement should be waived.

Where a waiver notice is given to the trustees under section 16, a trust will not be prevented from being a special disability trust by reason of contravention of the trust property requirements under paragraph 1209R(1)(b) of the Act.

**Subsection 15(7)** provides that section 17 does not apply to a waiver notice given in accordance with this section.

**Subsection 15(8)** provides that section 15 does not limit the circumstances in which the Secretary may decide to give a waiver notice under section 1209U of the Act.

**Section 16** provides for conditions to include in waiver notices.

**Subsection 16(1)** provides that in deciding what conditions to include in a waiver notice, the Secretary must consider the need to include a condition that the waiver notice ceases to have effect if the trustees cease to comply with a condition that is included in the waiver notice after the time or times stated in the waiver notice for complying with the condition.

**Subsection 16(2)** provides that in deciding what conditions to include in a waiver notice that is to be given to the trustees of a trust created before 1 January 2011 in relation to which the trust deed cannot be varied, the Secretary must consider:

- a) the need to include a condition requiring the trustees to give the Secretary a statutory declaration made by the trustees stating the matters mentioned in subsection (3); and
- b) if the trust was created on or after 20 September 2006 and before 1 January 2011; and the only contravention is due to a breach of the purpose of the trust despite the trust having complied with section 1209N of the Act before 1 January 2011; the need to include a condition requiring the trustees to give the Secretary a statutory declaration made by the trustees stating that the trust has complied with section 1209N of the Act before 1 January 2011.

**Subsection 16(3)** provides that for the purposes of paragraph 2(a), if the Secretary requires the trustees of a trust to provide the Secretary with a statutory declaration, then the statutory declaration must state that the trust and the trustees will comply with Division 1 of Part 3.18A of the Act, including the following requirements:

- a) That the trust has no more than one beneficiary, excluding any residuary beneficiary;
- b) That the trustees have made reasonable enquiries to determine whether the beneficiary of the trust meets the requirements of subsection 1209M(2) or (4) of the Act (relating to the age, nature of the impairment, receipt of certain veterans' payments, accommodation arrangements, nature of the beneficiary's disability and their work capacity);
- c) That the primary purpose of the trust is to meet the reasonable care and accommodation needs of the trust's principal beneficiary;
- d) That the other purpose of the trust is primarily for the benefit of the principal beneficiary; and
- e) That the trust complies with a determination made by the Secretary under subsection 1209P(2) of the Act (relating to the form of the trust deed).

**Subsection 16(4)** provides that for the purposes of paragraph (3)(b), reasonable enquiries include requesting and sighting documentation from Services Australia that confirms the beneficiary of the trust meets those requirements.

**Section 17** specifies that for a trust created on or after 1 January 2011 or a trust created prior to that date where the trust deed can be varied or amended, the Secretary may grant a waiver for a period of up to three months from the time the waiver notice has effect under paragraph 1209U(2)(a) of the Act. This period may be extended (except in a case where a contravention of subsection 1209S(1) has occurred, relating to the provision of annual written financial statements) for further periods of up to three months as long as the aggregated total of those periods is no more than 12 months.

For a trust created prior to 1 January 2011, where the trust deed cannot be varied, the Secretary may grant a waiver for a contravention of any matter listed in Division 1 of Part 3.18A of the Act (other than subsection 1209S(1)) for a period starting from the time the waiver notice has effect under paragraph 1209U(2)(a) of the Act for either an indefinite period (if no end date is stated in the waiver notice) or until a specified date. Where the waiver is in regard to a contravention of subsection 1209S(1) of the Act, a waiver can only be granted for a period of no more than three months, starting from such time as the notice has effect under paragraph 1209U(2)(a) of the Act.

#### **Part 4 – Nominated agreements**

**Section 18** provides a list of the nominated agreements for the purposes of subsection 1209M(3) of the Act. These are:

- a) the Bilateral Agreement between the Commonwealth of Australia and the State of New South Wales on the National Disability Insurance Scheme;
- b) the Bilateral Agreement between the Commonwealth of Australia and the State of Victoria on the National Disability Insurance Scheme;
- c) the Bilateral Agreement between the Commonwealth of Australia and the State of Queensland on the National Disability Insurance Scheme;
- d) the Bilateral Agreement between the Commonwealth of Australia and Western Australia for the transition to a National Disability Insurance Scheme in Western Australia;
- e) the Bilateral Agreement between the Commonwealth of Australia and the State of South Australia on the National Disability Insurance Scheme;
- f) the Bilateral Agreement between the Commonwealth of Australia and the State of Tasmania on the National Disability Insurance Scheme;
- g) the Bilateral Agreement between the Commonwealth of Australia and the Australian Capital Territory on the National Disability Insurance Scheme;
- h) the Bilateral Agreement between the Commonwealth of Australia and the Northern Territory on the National Disability Insurance Scheme;
- i) the National Health Reform Agreement.

#### **Part 5 – Application and transitional provisions**

**Section 19** provides that this instrument applies to special disability trusts established before, on or after the commencement of this instrument.

**Section 20** provides a general transitional provision from the repealed Social Security (Special Disability Trust) Guidelines 2011. If a thing was done for a particular purpose under the Social Security (Special Disability Trust) Guidelines 2011 as in force immediately before that instrument was repealed; and the thing could be done for that purpose under this instrument, the thing has effect for the purposes of this instrument as if it had been done for that purpose under this instrument.

Without limiting this general description, a reference to a thing being done includes a reference to a notice, application or other instrument being given or made.

### **Schedule 1 – Repeals**

**Clause 1** repeals the *Social Security (Special Disability Trust) Guidelines 2011* which sunset on 1 October 2021.

**Clause 2** repeals the *Social Security (Special Disability Trust Beneficiary Requirements) Nomination of Agreement Instrument 2015* as the appropriate nominated agreements have been incorporated into these Guidelines.

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

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

### **Social Security (Special Disability Trusts) Guidelines 2021**

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 Disallowable Legislative Instrument**

The Guidelines support the day-to-day administration of Special Disability Trusts (SDTs) by specifying in greater detail the purposes of SDTs and detailing the circumstances in which Services Australia can provide a waiver for contraventions of the SDT rules.

#### **Human rights implications**

This Disallowable Legislative Instrument engages the following rights:

- The Convention on the Rights of Persons with Disabilities
- The right to an adequate standard of living in Article 11 of the International Covenant on Economic, Social and Cultural Rights

SDTs promote human rights by assisting families through social security assets test and gifting rules exemptions. These exemptions allow them to privately provide for the future care and accommodation needs of their children and certain close relatives with severe disabilities when the family is no longer able to care for them. The primary features of SDTs include:

1. *Assets test exemption*: For the person with a severe disability, all assessable trust assets in an SDT, up to \$700,250 (at 1 July 2021), are exempt from the social security assets test. This is in addition to the assets test exemption for the principal home.
2. *Gifting exemption*: A person with a severe disability can have \$500,000 gifted to their SDT by immediate family members without the value being considered “gifted” and affecting the donor’s eligibility for social security.

This Instrument will support the continuing operation of SDTs and the exemptions it provides to trust beneficiaries beyond 1 October 2021 when the current instrument expires.

#### **Conclusion**

This Legislative Instrument is compatible with human rights because it protects the human rights of people with disability.

**Ray Griggs AO CSC, Secretary of the Department of Social Services**