

## **Explanatory Statement**

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

*Social Security Act 1991*

*Social Security (Special Disability Trust — Discretionary Spending) Determination 2024*

### **Purpose**

The *Social Security (Special Disability Trust — Discretionary Spending) Determination 2024 (Determination)* sets out the maximum amount of a special disability trust's income and assets that may be used 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 primary purpose of a special disability trust is described in subsection 1209N(1) of the *Social Security Act 1991 (Social Security Act)*.

The maximum value of the trust's income and assets that can be used for purposes other than the primary purpose is known as the Discretionary Spending Limit. The Discretionary Spending Limit allows special disability trusts greater flexibility to meet additional costs relating to the beneficiary's health, wellbeing, recreation, independence and social inclusion.

The Discretionary Spending Limit is indexed each year on 1 July by the growth in the consumer price index (**CPI**) in the twelve months to the preceding December. The CPI grew by 4.1% in the 12 months to December 2023.

The Discretionary Spending Limit was \$14,000 in the 2023-24 financial year. Applying the growth of 4.1%, rounded to the nearest \$250, the Discretionary Spending Limit for the 2024-25 financial year is \$14,500. This amount is specified in the Determination.

This Determination repeals and replaces the *Social Security (Special Disability Trust - Discretionary Spending) Determination 2023 (2023 Determination)*, which specified the Discretionary Spending Limit for the 2023-24 financial year.

### **Background**

Division 1 of Part 3.18A of the Social Security Act sets out provisions for the private financial provision for certain people with disabilities, which includes special disability trusts. Special disability trusts are defined under section 1209L of the Social Security Act, which sets out certain requirements that must be met in order for a trust to be classified as a special disability trust. Some of these requirements relate to the purpose of the trust and the expenditure of trust assets and income.

The primary purpose of a special disability trust must be to meet reasonable care and accommodation needs of the beneficiary, as set out in subsection 1209N(1) of the Social Security Act. Subsection 1209N(2) states that the trust may have other purposes that are primarily for the benefit of the principal beneficiary. Note 2 to subsection 1209(2) states that the use of trust assets and income for these other purposes is dealt with under section 1209RA.

Subsection 1209RA(1) provides that the total value of the income and assets from a special disability trust that may be used for purposes that are primarily for the benefit of the principal beneficiary, other than the primary purpose, cannot exceed the value specified in a determination made under subsection 1209RA(3) for a financial year.

The Secretary, or delegate, may make a determination under subsection 1209RA(3). The maximum value specified in the determination is generally indexed to the CPI each financial year on 1 July and rounded to the nearest \$250. This is the same rounding base used to determine the assets value limit of special disability trusts under sections 1190, 1191 and 1209Y of the Social Security Act.

This Determination, made under subsection 1209RA(3), provides that the maximum value of income and assets from a special disability trust that may be used in the 2024-25 financial year for purposes that are primarily for the benefit of the principal beneficiary, but are purposes other than the primary purpose, is \$14,500.

## **Repeal**

This Determination repeals the 2023 Determination. This Determination will replace the 2023 Determination on its repeal.

## **Authority**

This Determination is made under subsection 1209RA(3) of the Act. Section 1209RA makes provision for the limit on expenditure of a special disability trust for purposes other than the primary purpose of a special disability trust. A Determination under subsection 1209RA(3) determines the total value of income and assets of a special disability trust in a specified financial year that may be used for purposes other than the primary purpose of the special disability trust.

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

## Commencement

This instrument commences on 1 July 2024.

## Consultation

The indexation of the threshold is government policy and occurs in July each year as per the 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.

## Impact Analysis

The Department of Social Services has a carve-out standing agreement with the Office of Impact Analysis (OIA) regarding this Determination, removing the need for a preliminary assessment to be sent to the OIA for certain types of regulatory change. A carve-out can be used when anticipated regulatory changes are minor and likely to occur on a regular basis. The reference number is OIA 23-25212, and the instrument is listed as an approved carve-out as at 12 March 2024 ([Carve-outs – Office of Impact Analysis \(pmc.gov.au\)](#)).

## Availability of merits review

Under subsection 23(17) of the Social Security Act, legislative instruments made under the Social Security Act form part of the social security law. Decisions made under the Social Security Act that are decisions under the social security law are subject to internal and external merits review under Parts 4 and 4A of the *Social Security (Administration) Act 1999*. A decision as to an individual's rate of social security payment, informed by a decision as to whether a trust is a special disability trust, is reviewable in this manner.

## Explanation of provisions

**Section 1** states that this Determination is the *Social Security (Special Disability Trust – Discretionary Spending) Determination 2024*.

**Section 2** specifies that this Determination commences on 1 July 2024.

**Section 3** provides that this Determination is made under subsection 1209RA(3) of the Social Security Act.

**Section 4** lists the definitions of the terms used in the Determination.

A note alerts the reader that some terms used in the Determination are defined in the Social Security Act.

**Act** means the *Social Security Act 1991*.

**Section 5** provides that each instrument that is specified in a 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 6** provides that for the purposes of subsection 1209RA(3) of the Social Security Act, the maximum value of the special disability 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, is \$14,500 for the 2024-25 financial year.

**Schedule 1** repeals the whole of the *Social Security (Special Disability Trust – Discretionary Spending) Determination 2023*. This instrument specified the amount of the Discretionary Spending Limit for the 2023-24 financial year.

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

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

*Social Security Act 1991*

### ***Social Security (Special Disability Trust – Discretionary Spending) Determination 2024***

The Determination 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 legislative instrument**

The purpose of the *Social Security (Special Disability Trust - Discretionary Spending) Determination 2024* (Determination) is to set out the maximum amount of a special disability trust's income and assets that may be used 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 primary purpose of a special disability trust is set out in subsection 1209N(1) of the *Social Security Act 1991*.

The maximum value of the trust's income and assets that can be used for purposes other than the primary purpose is known as the Discretionary Spending Limit. The Discretionary Spending Limit is indexed each year on 1 July by the growth in the consumer price index (CPI) in the twelve months to the preceding December. The CPI grew by 4.1% in the 12 months to December 2023.

The Discretionary Spending Limit was \$14,000 in the 2023-24 financial year. Applying the growth of 4.1%, rounded to the nearest \$250, the Discretionary Spending Limit for the 2024-25 financial year is \$14,500. This amount is specified in the Determination.

#### **Human rights implications**

This 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.

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

**Branch Manager, Payment Structures and Seniors Branch, delegate of the  
Secretary of the Department of Social Services**