

EXPLANATORY STATEMENT

Veterans' Entitlements (Special Disability Trust – Limit on Expenditure for Other Purposes) Determination 2024

Empowering provision

Subsection 52ZZZWEA(3) of the *Veterans' Entitlements Act 1986* (the *VEA*).

Purpose

The *Veterans' Entitlements (Special Disability Trust—Limit on Expenditure for Other Purposes) Determination 2024* (the **Determination**) is made under subsection 52ZZZWEA(3) of the VEA.

The Determination revokes and replaces the *Veterans' Entitlements (Special Disability Trust – Discretionary Spending) Determination 2022* (the **earlier determination**).

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 for the primary purposes of a special disability trust which are to meet reasonable care and accommodation needs of the beneficiary).

A special disability trust is a private trust, established by family members, to provide primarily for the reasonable care and accommodation needs of a family member with a severe disability.

The Determination sets a limit on the amount of trust income and assets (the **discretionary spending limit**) to be used for the benefit of the principal beneficiary for purposes other than the primary purposes of the trust, while retaining the “special disability trust” status.

The Determination raises the discretionary spending limit from \$13,000 for the 2022-2023 financial year, to \$14,500 to take effect from 1 July 2024. This increase is a consequence of two increases to CPI over the past two years.

The authority to revoke the earlier determination is provided for in subsection 33(3) of the *Acts Interpretation Act 1901*. The subsection 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.

Rule-maker

Subsection 52ZZZWEA(3) of the VEA confers on the Repatriation Commission the power to determine, by legislative instrument, the discretionary spending limit (the **determining power**). Under Instrument of Delegation No. R1 of 2019 made under section 213 of the VEA, the Repatriation Commission has delegated the determining power to an APS employee performing duties at Executive Level 1 or higher in the Department of Veterans' Affairs (the **Department**). The person who made the Determination was an APS employee performing duties in a position at Senior Executive Band 1 in the Department, namely Acting Assistant Secretary of Benefits Policy Branch, Policy Division.

Consultation

Section 17 of the *Legislation Act 2003* requires a rule-maker to be satisfied, before making a legislative instrument that any consultation the rule-maker considered appropriate and reasonably practicable, has been undertaken.

The Department of Social Services (DSS) and the Department have virtually identical legislative instruments in place relating to special disability trusts. The Payment Structures and Seniors Branch at DSS was consulted during this exercise to ensure a consistent approach in the preparation of the instrument to set the discretionary spending amount. The nature of consultation with DSS was by way of email correspondence.

In these circumstances, it is considered that the requirements of section 17 of the *Legislation Act 2003* have been met.

Retrospectivity

The Determination does not have any retrospective application.

Documents incorporated by reference

The Determination does not incorporate any document by reference.

Regulatory impact

A Regulation Impact Statement is not required for this Determination, which is made on an annual basis, because the OBPR has previously advised that this Determination is not regulatory in nature, will not impact on business activity, and will have no, or minimal, compliance costs or competition impact.

Further explanation of provisions

See [Attachment A](#).

Approved by:

Brian Eastman
Acting Assistant Secretary, Benefits Policy Branch
Policy Division
Department of Veterans' Affairs

Rule-Maker

STATEMENT OF COMPATIBILITY
prepared under
subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Overview

The *Veterans' Entitlements (Special Disability Trust—Limit on Expenditure for Other Purposes) Determination 2024* (the **Determination**) is a legislative instrument made under subsection 52ZZZWEA(3) of the *Veterans' Entitlements Act 1986*.

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

The maximum amount for the 2024-2025 tax year is \$14,500.

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.

The Determination promotes the right to social security and the right to an adequate standard of living for those people whose entitlements under the VEA are affected by receiving income from a special disability trust. The rights are promoted by providing for an amount of \$14,500 as the limit for the discretionary use of special disability trust funds before the trust loses its status as a 'special disability trust'.

Conclusion

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

FURTHER EXPLANATION OF PROVISIONS

Section 1

This section sets out the name of the instrument—the *Veterans' Entitlements (Special Disability Trust—Limit on Expenditure for Other Purposes) Determination 2024*.

Section 2

This section provides the Determination commences on the day after the day it is registered.

Section 3

This section provides that the authority for making the instrument is subsection 52ZZZWEA(3) of the VEA.

Section 4

This section defines the terms used in the Determination.

Section 5

The section is a standard provision giving effect to the terms of Schedule 1. In the Determination, Schedule 1 repeals the *Veterans' Entitlements (Special Disability Trust – Discretionary Spending) Determination 2022*.

Section 6

This section imposes a limit of \$14,500 on expenditure for other purposes for the 2024-2025 tax year.

Schedule 1

This section provides that the instrument for the 2022-2023 financial year, the *Veterans' Entitlements (Special Disability Trust – Discretionary Spending) Determination 2022*, is revoked on the commencement of this instrument.