Veterans’ Entitlements (Family law affected income stream) Principles

Veterans’ Entitlements Act 1986

The REPATRIATION COMMISSION makes these Principles under sections 46ZC and 52BA of the Veterans’ Entitlements Act 1986.

Dated 4th November 2011

Ian Campbell Shane Carmody Major General Mark Kelly

IAN CAMPBELL PSM SHANE CARMODY MAJOR GENERAL MARK KELLY
President Deputy President AO DSC Commissioner

Federal Register of Legislative Instruments F2011L02396
Part 1 Preliminary

1.1 Name of Principles
These Principles are the Veterans’ Entitlements (Family law affected income stream) Principles 2011.

1.2 Commencement
These Principles commence on the day after they are registered.

1.3 Definitions
(1) In these Principles:
Act means the Veterans’ Entitlements Act 1986.
allocated pension has the meaning given by regulation 3 of the *Family Law (Superannuation) Regulations 2001*.

*asset value* has the meaning given by regulation 3A.05 of the SIS Regulations.

*base amount allocated to the non-member spouse* has the meaning given by regulation 45 of the *Family Law (Superannuation) Regulations 2001*.

*base amount payment split* has the meaning given by subregulation 1.03 (1) of the SIS Regulations.

*Commission* has the same meaning as in section 5A of the Act.

*market linked pension* has the meaning given by regulation 3 of the *Family Law (Superannuation) Regulations 2001*.

*percentage payment split* has the meaning given by subregulation 1.03 (1) of the SIS Regulations.

*reversionary partner* has the meaning given by subsection 5JB (7) of the Act.

*SIS Regulations* means the *Superannuation Industry (Supervision) Regulations 1994*.

*Note* Several other words and expressions used in these Principles have the meaning given by Part I of the Act. For example:

- asset-tested income stream (long term) (subsection 5J (1))
- asset-tested income stream (short term) (subsection 5J (1))
- asset-test exempt income stream (subsection 5J (1) and sections 5JA, 5JB and 5JBA)
- commencement day (subsection 5J (1))
- deductible amount (subsection 5J (1))
- defined benefit income stream (subsections 5J (1) and (1E))
- family law affected income stream (subsection 5J (1) and section 5JC)
- income (subsection 5H (1))
- income stream (subsection 5J (1))
- original family law affected income stream (subsection 5J (1) and section 5JC)
- primary FLA income stream (subsection 5J (1) and section 5JC)
- purchase price (subsection 5J (1))
- relevant number (subsection 5J (1))
- residual capital value (subsection 5J (1))
- secondary FLA income stream (subsection 5J (1) and section 5JC)
- superannuation fund (subsection 5J (1)).

(2) A term used in these Principles and in Part VIII B of the *Family Law Act 1975* has the same meaning in these Principles as it has in that Part.

*Note* See section 90MD of the *Family Law Act 1975* for the meanings of the following terms:

- flag lifting agreement
- member spouse
- non-member spouse
- operative time
- payment split
Section 1.4

- reversionary beneficiary
- RSA
- splittable payment
- splitting order
- superannuation agreement
- superannuation interest
- trustee.

1.4 Purpose of Principles

These Principles set out decision-making principles with which the Commission must comply in making decisions under the following provisions of the Act:
(a) paragraph 46ZA (1) (a);
(b) paragraph 46ZA (1) (b);
(c) paragraph 46ZB (1) (a);
(d) paragraph 46ZB (1) (b);
(e) subsection 52BA (2);
(f) subsection 52BA (3).
Part 2 Income from asset-test exempt income streams

2.1 Application of Part 2
This Part applies to a family law affected income stream that is an asset-test exempt income stream.

2.2 Income stream that is not a defined benefit income stream
(1) This section applies if the family law affected income stream is not a defined benefit income stream.

(2) For section 46ZA of the Act, the Commission must have regard to the following matters in making decisions under paragraph 46ZA (1) (a) of the Act:
   (a) the matters mentioned in items 1 to 10 and 14 to 23 of Schedule 1;
   (b) any other matter that the Commission considers relevant in the circumstances.

(3) If payments are being made from the income stream under more than 1 payment split, the Commission must have regard to each matter mentioned in subsection (2) that applies to each payment split.

2.3 Income stream that is a defined benefit income stream
(1) This section applies if the family law affected income stream is a defined benefit income stream.

(2) For section 46ZA of the Act, the Commission must have regard to the following matters in making decisions under paragraph 46ZA (1) (b) of the Act:
   (a) the matters mentioned in items 1 to 12 and 14 to 23 of Schedule 1;
   (b) any other matter that the Commission considers relevant in the circumstances.

(3) If payments are being made from the income stream under more than 1 payment split, the Commission must have regard to each matter mentioned in subsection (2) that applies to each payment split.
3.1 Application of Part 3

This Part applies to a family law affected income stream that is an asset-tested income stream (long term).

3.2 Income stream that is not a defined benefit income stream

(1) This section applies if the family law affected income stream is not a defined benefit income stream.

(2) For section 46ZB of the Act, the Commission must have regard to the following matters in making decisions under paragraph 46ZB (1) (a) of the Act:

   (a) the matters mentioned in items 1 to 10 and 13 to 23 of Schedule 1;
   (b) any other matter that the Commission considers relevant in the circumstances.

(3) If payments are being made from the income stream under more than 1 payment split, the Commission must have regard to each matter mentioned in subsection (2) that applies to each payment split.

3.3 Income stream that is a defined benefit income stream

(1) This section applies if the family law affected income stream is a defined benefit income stream.

(2) For section 46ZB of the Act, the Commission must have regard to the following matters in making decisions under paragraph 46ZB (1) (b) of the Act:

   (a) the matters mentioned in items 1 to 23 of Schedule 1;
   (b) any other matter that the Commission considers relevant in the circumstances.

(3) If payments are being made from the income stream under more than 1 payment split, the Commission must have regard to each matter mentioned in subsection (2) that applies to each payment split.
Part 4 Asset value of asset-tested income streams

4.1 Application of Part 4
This Part applies to a family law affected income stream that is an asset-tested income stream (long term) or an asset-tested income stream (short term).

4.2 Income stream that is not a defined benefit income stream
(1) This section applies if the family law affected income stream is not a defined benefit income stream.

(2) For section 52BA of the Act, the Commission must have regard to the following matters in making decisions under subsection 52BA (2) of the Act:
   (a) the matters mentioned in items 1 to 23 of Schedule 1;
   (b) any other matter that the Commission considers relevant in the circumstances.

(3) If payments are being made from the income stream under more than 1 payment split, the Commission must have regard to each matter mentioned in subsection (2) that applies to each payment split.

4.3 Income stream that is a defined benefit income stream
(1) This section applies if the family law affected income stream is a defined benefit income stream.

(2) For section 52BA of the Act, the Commission must have regard to the following matters in making decisions under subsection 52BA (3) of the Act:
   (a) the matters mentioned in items 1 to 23 of Schedule 1;
   (b) any other matter that the Commission considers relevant in the circumstances.

(3) If payments are being made from the income stream under more than 1 payment split, the Commission must have regard to each matter mentioned in subsection (2) that applies to each payment split.
## Schedule 1

**Matters to which the Commission must have regard**

(paragraphs 2.2 (2) (a), 2.3 (2) (a), 3.2 (2) (a), 3.3 (2) (a), 4.2 (2) (a) and 4.3 (2) (a))

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<td>The operative time for the payment split under the superannuation agreement, flag lifting agreement or court order</td>
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<td>3</td>
<td>The date when the first splittable payment became payable in respect of the original family law affected income stream of the member spouse</td>
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<td>If the payment split is a percentage payment split — the percentage of the splittable payment that each of the member spouse and non-member spouse is entitled to be paid under the payment split</td>
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<td>22</td>
<td>If the payment split is a base amount payment split:</td>
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<td>(a) the value of the base amount allocated to the non-member spouse for the non-member spouse’s entitlement under the payment split; and</td>
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<td>(b) the value of the superannuation interest, being:</td>
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<td>(i) if a splitting order applies to the superannuation interest — the value determined by the court; or</td>
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<td>(ii) if a superannuation agreement applies to the superannuation interest — the value provided by the trustee of the superannuation fund from which the income stream was acquired or purchased; and</td>
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<td>(c) details of any amounts of income paid from the original family law affected income stream on or after the operative time for the payment split and before the time of the first splittable payment for the payment split; and</td>
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<td>(d) the amount of the first splittable payment from the original family law affected income stream after the operative time for the payment split; and</td>
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<td>(e) the proportion of the first splittable payment paid to each of the member spouse and the non-member spouse from the original family law affected income stream after the operative time for the payment split; and</td>
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<td>(f) details of any second and subsequent payments to the non-member spouse from the original family law affected income stream, after the first splittable payment is made, to give effect to the non-member spouse’s entitlement under the payment split, including lump sum payments and amounts paid from the secondary FLA income stream; and</td>
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<td>(g) details of any payments to the member spouse from the primary FLA income stream; and</td>
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<td>(h) if the income stream is paid as an allocated pension or a market linked pension:</td>
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<td>(i) the value of the original family law income stream immediately before the time of the first splittable payment for the payment split; and</td>
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<td>(ii) the value of the first splittable payment for the payment split to the non-member spouse from the original family law income stream; and</td>
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<td>(iii) the value of the primary FLA income stream immediately after the payment split</td>
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</table>
Item | Matter to which the Commission must have regard
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23 | If the non-member spouse’s entitlement under the payment split is satisfied by the creation of a new interest for the non-member spouse, or the rollover or transfer to another superannuation fund or RSA of an amount to be held for the benefit of the non-member spouse:
   (a) the amount of the first payment to the member spouse from the primary FLA income stream after the new interest is created, or the amount is rolled over or transferred; and
   (b) the amount that would have been payable to the member spouse from the original family law affected income stream if the new interest had not been created, or the amount had not been rolled over or transferred; and
   (c) for an entitlement being paid as an allocated pension — the value of the member spouse’s entitlement from the original family law affected income stream immediately before the new interest was created, or the amount was rolled over or transferred

Note