

# EXPLANATORY STATEMENT

## Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014

### EMPOWERING PROVISIONS

The *Veterans' Entitlements Act 1986* (the Act or the VEA) – sections 105; 52ZZ0; 52ZZZ0; 52ZZZQ; 5H(12)(c); 52ZZA(5).

### PURPOSE

The attached instrument (2014 No.R62) revokes and re-makes a number of legislative instruments under the VEA for the purposes of the sunseting exercise. On 1 April 2015 the instruments in question will “sunset” (expire) unless they are re-made.

The Department of Veterans' Affairs (DVA) has performed preliminary reviews of the instruments to ascertain if they are still required and found the instruments are still required. Accordingly the instruments have been re-made and apart from technical, legal updating, the instruments are the same in substance as the instruments they replace.

It should be noted that subsection 26(1B) of the *Legislative Instruments Act 2003* (as it was known on 1 October 2014) provides that the requirement for an explanatory statement to explain the purpose and operation of an instrument may be met by an explanation that the instrument replaces a specified earlier legislative instrument or a specified provision of an earlier legislative instrument and is the same in substance as the specified instrument or provision.

As a result of the preliminary assessment of the instruments, in particular whether they are “fit-for-purpose”, it is envisaged that some of the instruments will be more comprehensively reviewed in the future.

The main purpose, therefore, of the attached instrument is to save the legislative instruments in question from sunseting and thereby preserve entitlements of the men and women who have served in Australia's Defence Force.

The Schedules in the attached instrument contain the following legislative instruments, as re-made. A description of the instruments is given in Attachment A:

*Vehicle Assistance Scheme*

*Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages)*

*Principles*

*Veterans' Entitlements (Attribution of Assets) Principles 2001*

*Veterans' Entitlements (Attribution of Income) Principles 2002*

*Veterans' Entitlements (Modification of Asset Deprivation Rules) Principles*

*Veterans' Entitlements (Modification of Income Deprivation Rules) Principles 2002*

*Veterans' Entitlements (Primary Production Concession) Principles 2001.*

*Veterans' Entitlements (Attribution of Income – Ineligible Deductions) Determination 2001*

*Veterans' Entitlements Income (Exempt Lump Sum - Compensation) Determination*

*Veterans' Entitlements Income (Exempt Lump Sum—income received after end of market-linked income stream term) Determination*  
*Veterans' Entitlements (Means Test Treatment of Private Companies — Excluded Companies) Declaration 2001*

## **CONSULTATION**

Yes – Department of Social Services.

Noting that paragraph 26(1A)(d) of the *Legislative Instruments Act 2003* requires an Explanatory Statement for a legislative instrument to contain a description of the nature of any consultation, the nature of the consultation for the proposal in this case was communication by electronic mail.

## **RETROSPECTIVITY**

None.

## **DOCUMENTS INCORPORATED-BY-REFERENCE**

No.

## **HUMAN RIGHTS STATEMENT**

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

The attached legislative instrument does engage an applicable right or freedom. It relates to the Right to Health, contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights, the Right to Social Security, contained in article 9 of the International Covenant on Economic Social and Cultural Rights and the Right to Full and Effective Participation in Society, on an equal basis with others, by people with a disability (Right to Full and Effective Participation in Society), contained in the Convention on the Rights of Persons with Disabilities .

The Right to Health and the Right to Full and Effective Participation in Society is engaged and promoted by the attached instrument in that the Vehicle Assistance Scheme enables severely disabled veterans to have the use of a motor vehicle (whether as a modified vehicle or as driven by a carer).

The instrument promotes the right to health of the veterans in question because the provision of a motor vehicle could, due to the convenience, encourage the veterans to visit health care providers more regularly.

The instrument promotes the Right to Full and Effective Participation in Society by people with a disability because the provision of a motor vehicle undoubtedly improves their quality of life and enables them to engage in some of the pursuits enjoyed by people without a disability.

The Right to Social Security is engaged and promoted by the attached instrument in that the instrument re-makes a number of instruments that relate to private trusts and companies (“private trusts and companies instruments”).

Under the *Veterans' Entitlements Act 1986* the income and assets of a private trust or private company that benefits a pensioner may be attributed to the pensioner with the result that less pension is payable to the person.

However there are circumstances where it would be unfair if the relevant provisions were applied strictly and accordingly a discretion is vested in the Repatriation Commission (Commission) to apply the rules in a flexible manner. The attached private trusts and companies instruments are concessionary in nature and set out guidelines for the Commission for the exercise of its discretion in the relevant circumstances.

The private trusts and companies instruments engage and promote the right to social security by providing guidance to the Commission in a situation where the Commission is proposing to temper the application of rules that result in a reduction in pension. But for the instruments (guidelines), the Commission might not exercise its discretion as appropriately as it could which could result in a pensioner suffering an unnecessary pension-reduction. By providing a safeguard against this scenario and ensuring a pensioner receives as much pension to which he or she is entitled, the private trusts and companies instruments promote the right to social security.

## Conclusion

The attached legislative instrument is considered to be compatible with the human right to health, the human right to full and effective participation in society by people with a disability and the human right to social security because, firstly, it preserves certain benefits that enhance a person's well-being (provision of motor vehicles, including modified motor vehicles) and, secondly, ensures rules designed to reduce pension in certain circumstances are applied flexibly with the result that people do not unfairly miss out on pension.

Rule-Makers:

Michael Ronaldson  
(Minister for Veterans' Affairs)

The Repatriation Commission

## **FURTHER EXPLANATION OF NEW PROVISIONS**

See: [Attachment A](#)

## Attachment A

### **Section [1]**

This section sets out the name of the instrument - *Veterans' Affairs (Legislative Instrument Re-Making Exercise) Instrument 2014*.

### **Section [2]**

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

### **Sections [3] [4]**

These sections are saving provisions. Uncompleted processes (requests, claims etc) under an instrument revoked by the attached instrument may be finalised under the instrument that replaces the revoked instrument and the revocation of an instrument by the attached instrument is not to affect any right or liability under the revoked instrument.

### **Schedule 1**

This Schedule contains the re-made *Vehicle Assistance Scheme*.

The purpose of the Vehicle Assistance Scheme is to assist eligible veterans with the provision of a suitable motor vehicle and to assist with the running, maintenance, and replacement of a motor vehicle that has been provided under the Scheme.

### **Schedule 2**

This Schedule contains the re-made *Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2001*.

The *Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2001* is made under section 52ZZZQ of the *Veterans' Entitlements Act 1986* (the Veterans' Entitlements Act).

Section 52ZZZQ provides that the Repatriation Commission (the Commission) may make an instrument formulating principles to be complied with by it when making decisions (determinations) under a number of sections of the Veterans' Entitlements Act, including section 52ZZJ. Pursuant to section 52ZZZQ the Commission made the instrument in Schedule 2 of the attached instrument.

The purpose of the instrument in Schedule 2 is to set out decision-making principles that the Commission must comply with in making determinations under section 52ZZJ of the Veterans' Entitlements Act.

Such determinations relate to whether an individual should not be assessed as an attributable stakeholder of a trust or company and, if they are to be assessed, the asset and income attribution percentages that are applicable.

### **Schedule 3**

This Schedule contains the re-made *Veterans' Entitlements (Attribution of Assets) Principles 2001*.

The *Veterans' Entitlements (Attribution of Assets) Principles 2001* is made under

section 52ZZZQ of the *Veterans' Entitlements Act 1986* (the Veterans' Entitlements Act).

Section 52ZZZQ provides that the Repatriation Commission may formulate principles to be complied with by the Commission when making decisions under a number of sections of the Veterans' Entitlements Act, including sections 52ZZR(2), 52ZZT(6) and 52ZZU(1).

The purpose of the instrument in Schedule 3 of the attached instrument is to set out decision-making principles that the Commission must comply with in making determinations under sections 52ZZR, 52ZZT and 52ZZU of the Veterans' Entitlements Act.

These determinations relate to modifying the way in which Division 11A of Part IIIB of the Veterans' Entitlements Act would otherwise maintain the assets and liabilities of a company or trust against a Veterans' Entitlements income support pensioner.

#### **Schedule 4**

This Schedule contains the re-made *Veterans' Entitlements (Attribution of Income) Principles 2002*.

The *Veterans' Entitlements (Attribution of Income) Principles 2002* is made under section 52ZZZQ of the *Veterans' Entitlements Act 1986* (the Veterans' Entitlements Act).

Section 52ZZZQ provides that the Repatriation Commission (Commission) may formulate principles to be complied with by it when making decisions under a number of provisions of the Veterans' Entitlements Act, including subsections 52ZZK(2), 52ZZL(1), 52ZZP(2) and 52ZZQ(1).

The purpose of the instrument in Schedule 4 of the attached instrument is to set out decision-making principles that the Commission must comply with in making determinations under sections 52ZZK, 52ZZL, 52ZZP and 52ZZQ of the Veterans' Entitlements Act.

The determinations under section 52ZZK and 52ZZL relate to preventing the double counting of attribution and distribution income from a company or trust in relation to an attributable stakeholder of that entity and also the appropriate treatment of capital distributions.

The determinations made under sections 52ZZP and 52ZZQ relate to finding appropriate derivation and attribution periods for the company or trust and the attributable stakeholders so that the typical earnings of the company or trust are fairly attributed to an affected income support pensioner.

#### **Schedule 5**

This Schedule contains the re-made *Veterans' Entitlements (Modification of Asset Deprivation Rules) Principles 2002* (Instrument 2014 No. R76).

Section 52ZZZQ of the *Veterans' Entitlements Act 1986* (the Veterans' Entitlements Act) provides that the Repatriation Commission may formulate principles to be

complied with by it when making decisions under a number of provisions of the Veterans' Entitlements Act, including subsections 52ZZW(1), 52ZZX(3), 52ZZZ(1) and 52ZZZA(1).

The purpose of the *Veterans' Entitlements (Modification of Asset Deprivation Rules) Principles* in Schedule 5 of the attached instrument is to set out decision-making principles that the Repatriation Commission must comply with in making determinations under sections 52ZZW, 52ZZX, 52ZZZ and 52ZZZA of the Veterans' Entitlements Act.

These determinations relate to modifying the way in which the standard 'disposal of asset' rules would affect an individual.

### **Schedule 6**

This Schedule contains the re-made *Veterans' Entitlements (Modification of Income Deprivation Rules) Principles 2002* (Instrument 2014 No. R77).

The purpose of the *Veterans' Entitlements (Modification of Income Deprivation Rules) Principles 2002* in Schedule 6 of the attached instrument is to set out decision-making principles that the Repatriation Commission must comply with in making determinations under sections 52ZZW, 52ZZX, 52ZZZ and 52ZZZA of the *Veterans' Entitlements Act 1986*.

These determinations relate to modifying the way in which the standard 'disposal of asset' rules would affect an individual.

### **Schedule 7**

This Schedule contains the re-made *Veterans' Entitlements (Primary Production Concession) Principles 2001* (Instrument 2014 No. R78).

Section 52ZZZQ of the *Veterans' Entitlements Act 1986* (the Veterans' Entitlements Act) provides that the Repatriation Commission may formulate principles to be complied with by the Commission when making decisions under a number of sections of the Veterans' Entitlements Act, including paragraph 52ZZZF(1)(f), 52ZZZH, subsection 52ZZZJ(2), and sections 52ZZZK and 52ZZZL.

The purpose of the *Veterans' Entitlements (Primary Production Concession) Principles 2001* in Schedule 7 of the attached instrument is to set out decision-making principles that the Repatriation Commission must comply with in making determinations under these provisions.

These determinations relate to the way in which the trusts and companies measure affects primary production businesses.

### **Schedule 8**

This Schedule contains the re-made *Veterans' Entitlements (Attribution of Income – Ineligible Deductions) Determination 2001* (Instrument 2014 No. R70).

Sections 52ZZO and 52ZZZO of the *Veterans' Entitlements Act 1986* (the Veterans' Entitlements Act) provide that to calculate the income of a company or trust, for the

purposes of Subdivision G of Division 11A of Part IIIB of the Veterans' Entitlements Act, any deductions allowable under the Income Tax Assessment Act 1936 or Income Tax Assessment Act 1997 can be deducted from the gross income of the company or trust, unless the Repatriation Commission has determined that they are an ineligible deduction, or part of a deduction.

The purpose of the *Veterans' Entitlements (Attribution of Income – Ineligible Deductions) Determination 2001* in Schedule 8 of the attached instrument is for the Commission to determine those tax deductions that are ineligible to be applied against the gross income of a company or trust for Veterans' Entitlements purposes.

### **Schedule 9**

This Schedule contains the re-made *Veterans' Entitlements Income (Exempt Lump Sum - Compensation) Determination* (Instrument 2014 No.R73).

The *Veterans' Entitlements Income (Exempt Lump Sum - Compensation) Determination* in Schedule 9 of the attached instrument provides that where a person or a person's partner receives a compensation payment under the Commonwealth's Defective Administration or Act-of-Grace Schemes for financial loss caused by the Department of Veterans' Affairs, the Repatriation Commission, Military Rehabilitation and Compensation Commission or the Department of Human Services and the person is eligible for or receives a service pension or income support supplement under the *Veterans' Entitlements Act 1986* (VEA), then the compensation payment received by the person or the person's partner is an "exempt lump sum" for the purposes of the VEA meaning it is not ordinary income under the VEA and therefore not taken into account in relevant means-tests.

### **Schedule 10**

This Schedule contains the re-made *Veterans' Entitlements Income (Exempt Lump Sum—income received after end of market-linked income stream term) Determination* (Instrument 2014 No.R74).

The *Veterans' Entitlements Income (Exempt Lump Sum—income received after end of market-linked income stream term) Determination* in Schedule 10 of the attached instrument provides that where a market-linked income stream has a residual balance which is to be paid to a beneficiary after the end of the income stream's term and the beneficiary receives a service pension or income support supplement under the *Veterans' Entitlements Act 1986*, then the amount paid is an exempt lump sum.

### **Schedule 11**

This Schedule contains the re-made *Veterans' Entitlements (Means Test Treatment of Private Companies — Excluded Companies) Declaration 2001* (Instrument 2014 No.R75).

Subsection 52ZZA(5) of the *Veterans' Entitlements Act 1986* (the Act) provides that the Repatriation Commission (the Commission) may, by writing, declare that a company in a specified class of companies is an excluded company for the purposes of section 52ZZA.

Pursuant to subsection 52ZZA(5) the Commission made the *Veterans' Entitlements (Means Test Treatment of Private Companies — Excluded Companies) Declaration 2001* in Schedule 11 of the attached instrument.

The *Veterans' Entitlements (Means Test Treatment of Private Companies — Excluded Companies) Declaration 2001* specifies a class of companies within which a company is an "excluded company".

The effect of a company being an excluded company is that the assets and income of such a company will not be attributed to an individual for the purposes of ascertaining the person's assets or income for means-testing purposes under the Act.