



Veterans' Entitlements (Attribution of Assets) Principles 2025

The Repatriation Commission makes the following instrument.

Dated 19 February 2025

The Seal of the
Repatriation Commission
was affixed to this instrument
in the presence of:

Alison Frame

President

Gwen Cherne

Commissioner

Mark Brewer
AM CSC and Bar
Deputy President

Kahlil Fegan
DSC AM
Commissioner

Part 1 Preliminary

1 Name

This instrument is the *Veterans' Entitlements (Attribution of Assets) Principles 2025*.

2 Commencement

This instrument commences on the day after the day it is registered.

3 Authority

This instrument is made under section 52ZZZQ of the *Veterans' Entitlements Act 1986*.

3A Repeal

Schedule 3 to the *Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* is repealed.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) arm's length amount (see section 52ZO);
- (b) attributable stakeholder – of a company or trust (see section 52ZZJ);
- (c) Commission (see section 5Q);
- (d) company (see section 52ZO);
- (e) trust (see section 52ZO of the Act).

In this instrument, unless the contrary intention appears:

Act means the *Veterans' Entitlements Act 1986*.

social security entitlement has the same meaning it has in the *Social Security Act 1991*.

Part 2 Excluded assets

5 Purpose of Part 2

The purpose of this Part is to set out decision-making principles with which the Commission must comply for the purposes of making a determination under subsection 52ZZR(2) of the Act.

6 Excluded asset — capital transfer by genuine investor

- (1) This section applies if an individual (the *investor*), who is not an attributable stakeholder of a company, makes a genuine transfer of capital to the company for shares in the company.
- (2) This section also applies if an individual (the *investor*), who is not an attributable stakeholder of a trust, makes a genuine transfer of capital to the trust for units in the trust.
- (3) For subsections (1) and (2), a transfer of capital is a genuine transfer of capital if:
 - (a) the investor is over 18 years; and
 - (b) the investor receives, as consideration for the transfer, shares in the company, or units in the trust, of a value that is equivalent to the value of the capital transferred; and
 - (c) the investor has a legal or equitable right to a share of the capital on the winding-up of the company or trust; and
 - (d) the investor has a legal or equitable right to receive dividends or distributions under the constituent documents of the company or the terms of the trust.
- (4) The Commission must consider the extent to which capital transferred in accordance with subsection (3) should be determined to be an excluded asset in relation to an attributable stakeholder of the company or trust, having regard to:
 - (a) the value of the capital transferred to the company or trust; and
 - (b) the value of shares or units received by the investor; and
 - (c) the extent, if any, to which the value of the capital would not be required to be disregarded by any express provision of the Act.

Part 3

Excluded charge or encumbrance

7 Purpose of Part 3

The purpose of this Part is to set out decision-making principles with which the Commission must comply for the purposes of making a determination under subsection 52ZZT (6) of the Act.

8 Determination that charge or encumbrance is excluded

In relation to a charge or encumbrance, the Commission must take into account:

- (a) whether a transaction that gave rise to the charge or encumbrance was an arm's length transaction, having regard to the criteria described in section 9; and
- (b) the matters referred to in section 10.

9 Criteria for arm's length transaction

(1) For paragraph 8 (a), a transaction is an arm's length transaction if:

- (a) the transaction is for the purposes of the business activities of the company or trust; and
- (b) the transaction is made under a written agreement that is signed by each party to the agreement, and witnessed by an individual who is not a party to the transaction; and
- (c) each party to the transaction is:
 - (i) at least 18 years old; or
 - (ii) at least 16 years old and engaged in a full-time occupation; or
 - (iii) at least 16 years old and receiving a social security entitlement; and
- (d) the transaction is made for an arm's length amount.

(2) For subparagraph (1) (c) (ii), a **full-time occupation**:

- (a) includes any employment, trade, business, profession, vocation or calling; and
- (b) does not include a course of education at a school, college, university or similar institution.

10 Other matters

For paragraph 8 (b), the Commission must also take into account, in relation to the transaction that gave rise to the charge or encumbrance:

- (a) whether the individual is the sole attributable stakeholder, or a member of a couple both members of which are the only 2 attributable stakeholders of the company or trust; and
- (b) the commercial, social and familial relationships (if any) between the parties to the transaction; and
- (c) the nature and circumstances of the transaction.

Part 4 **Effect of loan not secured by charge or encumbrance over asset of company or trust**

11 Purpose of Part 4

The purpose of this Part is to set out decision-making principles with which the Commission must comply in making a determination under subsection 52ZZU (1) of the Act.

12 Effect of unsecured loan on value of assets

In relation to an unsecured loan, the Commission must take into account:

- (a) whether a transaction that gave rise to the loan was an arm's length transaction, having regard to the criteria described in section 13; and
- (b) the matters referred to in section 14.

13 Criteria for arm's length transaction

(1) For paragraph 12 (a), a transaction is an arm's length transaction if:

- (a) the transaction is for the purposes of the business activities of the company or trust; and
- (b) the transaction is made under a written agreement that is signed by each party to the agreement, and witnessed by an individual who is not a party to the transaction; and
- (c) each party to the transaction is:
 - (i) at least 18 years old; or
 - (ii) at least 16 years old and engaged in a full-time occupation; or
 - (iii) at least 16 years old and receiving a social security entitlement; and
- (d) the transaction is made for an arm's length amount.

(2) For subparagraph (1) (c) (ii), a **full-time occupation**:

- (a) includes any employment, trade, business, profession, vocation or calling; and
- (b) does not include a course of education at a school, college, university or similar institution.

14 Other matters

For paragraph 12 (b), the Commission must also take into account, in relation to the transaction that gave rise to the charge or encumbrance:

- (a) whether the individual is the sole attributable stakeholder, or a member of a couple both members of which are the only 2 attributable stakeholders of the company or trust; and
- (b) whether the loan is secured by a charge or encumbrance over an asset other than an asset described in paragraph 52ZZU (1) (b) of the Act; and
- (c) the commercial, social and familial relationships (if any) between the parties to the transaction; and
- (d) the nature and circumstances of the transaction.