EXPLANATORY STATEMENT

Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2025

EMPOWERING PROVISION

The Repatriation Commission makes this instrument under paragraph 52ZZZQ(a) of the *Veterans' Entitlements Act 1986* (the Act).

PURPOSE

This instrument revokes schedule 2 to the Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014 (the 2014 Instrument) and remakes it as a new standalone instrument ahead of its sunsetting date. Schedule 2 contains the Veterans' Entitlements (Attributable Stakeholders and Attribution Principles) Principles 2001.

The instrument has been re-made with no substantive changes from Schedule 2 to the 2014 Instrument.

OVERVIEW

Section 52ZZZQ of the 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 Act, including section 52ZZJ.

This instrument sets out decision-making principles that the Commission must comply with in making determinations under section 52ZZJ of the Act. Such determinations relate to the way in which the assets and liabilities of a company or trust are attributed or not attributed to an individual under the means test for income support payments. An equivalent instrument exists under the *Social Security Act 1991* (Social Security Act).

Part IIIB of the Act specifies the means test treatment of private companies and private trusts. The provisions in Part IIIB aim to ensure that people who hold their assets in private companies or private trusts receive comparable treatment under the means test to those who hold their assets directly. The assets and income of the structure will be attributed to the person or persons who control the company or trust, or to the person or persons who were the source of the capital or corpus of the company or trust.

Section 52ZZJ of the Act states that where a company is a controlled private company in relation to an individual, or a trust is a controlled private trust in relation to an individual, then, unless the Commission otherwise determines, the individual will be attributed with 100% of the assets and income of the controlled structure. These decision-making principles will assist the Commission in determining whether an individual should not, in fact, be attributed with any of the assets or income of the controlled structure, or should be attributed with a percentage of the assets and income of the structure which is less than 100%.

The following minor technical changes have been made to the drafting of schedule 2 to the 2014 Instrument:

- an authority provision is added—new section 2;

- the purpose provision in section 4 of schedule 2 to the 2014 Instrument is removed—the purpose provision is redundant, and its removal preserves numbering consistency with the equivalent Social Security Act instrument;
- a repeal provision is added as new section 3A—noting this section will be automatically repealed under section 48C of the *Legislation Act 2003*. Again, this is intended to preserve consistency with the numbering in the Social Security Act instrument.

EXPLANATION OF PROVISIONS

Part 1 consists of sections 1, 2, 3, 3A and 4 and deals with preliminary matters.

Section 1 provides that the name of the instrument is the Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2025.

Section 2 provides that the instrument commences on the day after the day it is registered.

Section 3 sets out the authority for the Repatriation Commission making the instrument, namely paragraph 52ZZZQ(a) of the Act.

Section 3A repeals schedule 2 to the 2014 Instrument.

Section 4 is the definition section. It signposts terms used in the instrument that have a defined meaning in the Act. It also defines other terms used in the instrument.

Part 2 consists of sections 5, 6, 7, 8, 9, 10, 11, 12 and 13 which deal with determining that ***the individual is not an attributable stakeholder.***

Section 5 sets out the purpose of Part 2 of the instrument, which is to provide decision-making principles that must be used in making a determination, under paragraph 52ZZJ(1)(a) or 52ZZJ(2)(c), that an individual is not an attributable stakeholder of a trust or company.

Section 6 provides that Part 2 applies if an individual would be an attributable stakeholder unless the Commission made a determination by under this Part. The Commission must consider the relationship between the individual and the company or trust, having regard to the circumstances mentioned in this Part and also the reason why, without a determination under this Part, the individual would be an attributable stakeholder of the company or trust. Taking these considerations into account, the Commission must consider whether there is a sufficient basis to determine that an individual should not be an attributable stakeholder of the company or trust.

Section 7 provides that the Commission must consider whether there are relevant circumstances that make it inappropriate for an individual to be an attributable stakeholder of a company or trust. In particular, the Commission must consider the effect of circumstances arising from the legal structure of the company or trust, the administrative arrangements of the company or trust, and whether the individual can reasonably be expected to exercise effective control in relation to the company or trust.

Authorised Version Explanatory Statement registered 28/02/2025 to F2025L00251

Section 8 provides that where an individual has made a contribution to a company or trust, the Commission must consider the circumstances in which that contribution was made. Those circumstances include the value of the contribution, the proportion that the value of the contribution has to the total assets of the company or trust, the effect of the contribution on the financial position of the company or trust, and the amount of any consideration received by the individual for the contribution.

Section 9 requires the Commission to consider past distributions from the company or trust to the individual, including the number of times, and frequency, that distributions have been made to the individual and the value of those distributions. For the purposes of this section "distribution" is defined to include a distribution of capital or income of a company, or the corpus or income of a trust.

Section 10 requires the Commission to consider the reasonable foreseeability of the individual receiving future distributions from the company or trust, and the likely value of those distributions. In considering this matter the Commission must have regard to the constituent documents of the company or trust. For the purposes of this section "distribution" is defined as for section 9.

Section 11 requires the Commission to consider whether an individual receives any other kind of benefit from the company or trust. For the purposes of this section "benefit" is defined to include a benefit received or derived in the form of property or services but is not limited to a benefit to which the individual has a legal or equitable entitlement.

Section 12 requires the Commission to consider whether an individual has been assessed as an attributable stakeholder of any other company or trust under the or as an attributable stakeholder of any company or trust under the *Social Security Act 1991*, and, if so, the Commission must then consider the asset and income attribution percentages applied to the individual in relation to any of those companies or trusts.

Section 13 requires the Commission to consider any other circumstances that affect the individual's involvement with the activities or administration of the company or trust.

Part 3 consists of sections 14, 15, 16, 17, 18, 19, 20, 21 and 22 which deal with determining the ***asset attribution percentage.***

Section 14 sets out the purpose of Part 3 of the instrument, which is to provide decision-making principles that must be used in making a determination under subparagraph 52ZZJ(1)(b)(ii) or 52ZZJ(2)(d)(ii) of the Act that an individual has an asset attribution percentage, in relation to the company or trust, of less than 100%.

Section 15 provides that this Part applies if an individual would, without a determination by the Commission under this Part, have an asset attribution percentage of 100%. The Commission must consider the relationship between the individual and the company or trust, having regard to the circumstances mentioned in this Part and whether any of those circumstances provide a sufficient basis to determine that the individual should have an asset attribution percentage of less than 100%.

Authorised Version Explanatory Statement registered 28/02/2025 to F2025L00251

Section 16 requires the Commission to consider whether there are relevant circumstances that make it appropriate for an individual to have an asset attribution percentage of less than 100% in regard to the company or trust. In particular, the Commission must consider the effect of circumstances arising from the legal structure of the company or trust, the administrative arrangements of the company or trust, and whether the individual can reasonably be expected to exercise effective control, and, if so, the extent of that control, in relation to the company or trust.

Section 17 requires that where an individual has made a contribution to a company or trust, the Commission must consider the circumstances in which that contribution was made. Those circumstances include the value of the contribution, the proportion that the value of the contribution has to the total assets of the company or trust, the effect of the contribution on the financial position of the company or trust, and the amount of any consideration received by the individual for the contribution.

Section 18 requires the Commission to consider past distributions from the company or trust to the individual, including the number of times, and frequency, that distributions have been made to the individual and the value of those distributions. For the purposes of this section "distribution" is defined to include a distribution of capital or income of a company, or the corpus or income of a trust.

Section 19 requires the Commission to consider the reasonable foreseeability of the individual receiving future distributions from the company or trust, and the likely value of those distributions. In considering this matter the Commission must have regard to the constituent documents of the company or trust. For the purposes of this section "distribution" is defined as for section 18.

Section 20 requires the Commission to consider whether an individual receives any other kind of benefit from the company or trust. For the purposes of this section "benefit" is defined to include a benefit received or derived in the form of property or services and is not limited to a benefit to which the individual has a legal or equitable entitlement.

Section 21 requires the Commission to consider whether an individual has been assessed as an attributable stakeholder of any other company or trust under the Act, or as an attributable stakeholder of any company or trust under the Social Security Act and, if so, the Commission must then consider the asset and income attribution percentages applied to the individual in relation to any of those companies or trusts.

Section 22 requires the Commission to consider any other circumstances that affect the individual's involvement with the activities or administration of the company or trust.

Part 4 consists of sections 23, 24, 25, 26, 27, 28, 29, 30 and 31 which deal with determining ***income attribution percentage.***

Section 23 sets out the purpose of Part 4 of the instrument, which is to provide decision-making principles that must be used in making a determination under subparagraph 52ZZJ(1)(c)(ii) or 52ZZJ(2)(e)(ii) that an individual has an income attribution percentage, in relation to the company or trust, of less than 100%.

Authorised Version Explanatory Statement registered 28/02/2025 to F2025L00251

Section 24 states that this Part applies if an individual would, without a determination by the Commission under this Part, have an income attribution percentage of 100%. The Commission must consider the relationship between the individual and the company or trust, having regard to the circumstances mentioned in this Part and whether any of those circumstances provide a sufficient basis to determine that the individual should have an income attribution percentage of less than 100%.

Section 25 requires the Commission to consider whether there are relevant circumstances that make it appropriate for an individual to have an income attribution percentage of less than 100% in regard to the company or trust. In particular, the Commission must consider the effect of circumstances arising from the legal structure of the company or trust, the administrative arrangements of the company or trust, and whether the individual can reasonably be expected to exercise effective control, and, if so, the extent of that control, in relation to the company or trust.

Section 26 states that where an individual has made a contribution to a company or trust, the Commission must consider the circumstances in which that contribution was made. Those circumstances include the value of the contribution, the proportion that the value of the contribution has to the total assets of the company or trust, the effect of the contribution on the financial position of the company or trust, and the amount of any consideration received by the individual for the contribution.

Section 27 requires the Commission to consider past distributions from the company or trust to the individual, including the number of times, and frequency, that distributions have been made to the individual and the value of those distributions. For the purposes of this section "distribution" is defined to include a distribution of capital or income of a company, or the corpus or income of a trust.

Section 28 requires the Commission to consider the reasonable foreseeability of the individual receiving future distributions from the company or trust, and the likely value of those distributions. In considering this matter the Commission must have regard to the constituent documents of the company or trust. For the purposes of this section "distribution" is defined as for section 27.

Section 29 requires the Commission to consider whether an individual receives any other kind of benefit from the company or trust. For the purposes of this section "benefit" is defined to include a benefit received or derived in the form of property or services but is not limited to a benefit to which the individual has a legal or equitable entitlement.

Section 30 requires the Commission to consider whether an individual has been assessed as an attributable stakeholder of any other company or trust under the Act, or as an attributable stakeholder of any company or trust under the Social Security Act and, if so, the Commission must then consider the asset and income attribution percentages applied to the individual in relation to any of those companies or trusts.

Section 31 requires the Commission to consider any other circumstances that affect the individual's involvement with the activities or administration of the company or trust.

Authorised Version Explanatory Statement registered 28/02/2025 to F2025L00251

CONSULTATION

The Department did not consult directly with individuals likely to be affected by the remake of this instrument. This was not considered necessary given the remake is administrative in nature to prevent the instrument from arbitrarily sunsetting on 1 April 2025. The remaking of this instrument will maintain the same policy intent and treatment to set out decision-making principles that the Commission must comply with in making determinations under section 52ZZJ of the Act. These determinations relate to modifying the way in which Division 11A of Part IIIB of the Act would otherwise maintain the assets and liabilities of a company or trust against an individual receiving a means tested income support payment.

HUMAN RIGHTS IMPLICATIONS

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment A.**

Approved by the rule-maker:

The Repatriation Commission

Authorised Version Explanatory Statement registered 28/02/2025 to F2025L00251

Attachment A

Statement of Compatibility with Human Rights

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

Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2025

This disallowable legislative instrument 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 Disallowable Legislative Instrument

The Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2025 (the instrument) repeals schedule 2 to the Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014 and remakes it as a standalone instrument ahead of its sunsetting date of 1 April 2025.

Section 52ZZJ of the *Veterans' Entitlements Act 1986* (the *Act*) provides that an individual who is a controller of a controlled private trust or controlled private company, then a person is attributed with 100 per cent of its income and assets, or a lesser amount as determined by the Commission.

The instrument specifies the matters that the Commission must consider when deciding whether a person's attribution percentage should be less than 100 per cent.

The purpose of a determination under section 52ZZJ is to ensure that a person's attribution percentage accurately reflects their degree of control over the trust or company. The matters specified in the instrument determine whether there are multiple controllers, and if the person's attribution percentage should be reduced to reflect the proportion of control they hold relative to the other controllers.

The income support payment means test measures a person's current capacity to contribute towards their own support. As such, the person should only be attributed with as much of the income and assets as they could draw on for their own support.

Human rights implications

This disallowable legislative instrument engages and promotes the right to social security contained in Article 9 of the International Covenant on Economic Social and Cultural Rights. The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system.[1]

The instrument is compatible with human rights as it ensures a person's current resources are appropriately assessed for the purposes of ascertaining the person's assessable income and assets for means testing purposes under Part IIIB of the Act.

[1] Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The right to social security (art. 9)*, 39th sess, UN Doc E/C.12/GC/19 (4 February 2008) [11].

Authorised Version Explanatory Statement registered 28/02/2025 to F2025L00251

Conclusion

This disallowable legislative instrument is compatible with human rights as it engages and promotes the right to social security by ensuring that rules designed to assess pensions under the Act are applied flexibly and fairly.

Repatriation Commission
Rule-Maker

Authorised Version Explanatory Statement registered 28/02/2025 to F2025L00251