

Veterans’ Entitlements (Attributable Stakeholders and Attribution Percentages) 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 | Mark Brewer |
|  | AM CSC and Bar |
| President | Deputy President |
| Gwen Cherne | Kahlil Fegan |
|  | DSC AM |
| Commissioner | Commissioner |

Part 1 Preliminary

1 Name

This instrument is the *Veterans’ Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2025.*

2 Commencement

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

3 Authority

This instrument is made under the *Veterans’ Entitlements Act 1986*, paragraph 52ZZZQ(a).

3A Repeal

Schedule 2 to the *Veterans’ Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* is repealed.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:

***Commission***

***Social Security Act***

In this instrument:

***Act*** means the *Veterans’ Entitlements Act 1986*.

***company*** means a controlled private company.

***contribution*** means:

1. a transfer of property or services, to a company or trust, at any time, whether before or after 7.30 pm, by standard time in the Australian Capital Territory, on 9 May 2000; and
2. any other kind of contribution:
3. in the case of a company — to either the capital or income of the company; and
4. in the case of a trust — to either the corpus or income of the trust.

***trust*** means a controlled private trust.

Part 2 Determination that individual is not attributable stakeholder

5  Purpose

This Part sets out decision-making principles with which the Commission must comply in making a determination, under paragraph 52ZZJ(1)(a) or (2)(c) of the Act, that an individual is not an attributable stakeholder of a company or trust.

6  Application

1. This Part applies if, but for a determination by the Commission, the individual would be an attributable stakeholder of the company or trust.
2. The Commission must consider the relationship between the individual and the company or trust, having regard to:
3. the reason why, but for a determination, the individual would be an attributable stakeholder; and
4. the circumstances mentioned in this Part.
5. In particular, the Commission must consider whether the effect of one or more of the circumstances mentioned in this Part, in relation to the individual and the company or trust, provides a sufficient basis on which to determine that the individual is not an attributable stakeholder of the company or trust.

7  Circumstances affecting relationship with company or trust

1. The Commission must consider whether there are relevant circumstances that make it inappropriate for the individual to be an attributable stakeholder of the company or trust.
2. For subsection (1), ***relevant circumstances*** include the extent to which the relationship between the individual and the company or trust is affected by any of the following circumstances:
3. circumstances arising from the legal structure of the company or trust;
4. circumstances arising from the administrative arrangements of the company or trust;
5. whether, having regard to the relationship between the individual and the company or trust, the individual can reasonably be expected to exercise effective control in relation to the company or trust.

8  Contribution to company or trust

If the individual has made a contribution to the company or trust, the Commission must consider the circumstances in which the contribution was made and, in particular:

1. the value of the contribution; and
2. the proportion that the value of the contribution has to the total assets of the company or trust at the time of the contribution; and
3. the effect of the contribution on the financial position of the company or trust; and
4. if the individual received consideration for the contribution, the amount of consideration.

9  Past benefit from distributions by company or trust

1. The Commission must consider whether the individual has received a benefit from a distribution made by the company or trust.
2. If an individual has received a benefit, the Commission must also consider:
3. the value of the benefit; and
4. if the individual has received a benefit on more than 1 occasion, the frequency with which the individual has received benefits.
5. For this section, a distribution includes a distribution:
6. in the case of a distribution by a company — of the capital or income, or both, of the company; and
7. in the case of a distribution by a trust — of the corpus or income, or both, of the trust.

10  Future benefit from distributions by company or trust

1. The Commission must consider whether it is reasonably foreseeable that the individual may receive a benefit from a future distribution by the company or trust.
2. If subsection (1) applies, the Commission must also consider the likely value of the benefit.
3. For this section, the Commission must have regard to:
4. the constituent documents of the company; or
5. documents, if any, establishing the terms of the trust.
6. For this section, a distribution includes a distribution:
7. in the case of a distribution by a company — of the capital or income, or both, of the company; and
8. in the case of a distribution by a trust — of the corpus or income, or both, of the trust.

11  Benefit from assets and income of company or trust

1. The Commission must consider whether the individual receives or derives any kind of benefit (other than a benefit mentioned in section 9 or 10) from the assets or income, or both, of the company or trust.
2. For this section, benefit:
3. is not limited to a benefit to which the individual has a legal or equitable entitlement; and
4. includes a benefit received or derived in the form of property or services.

12  Existing attribution to individual

1. The Commission must consider whether the individual is:
2. under the Act — an attributable stakeholder of any other company or trust; or
3. under the Social Security Act — an attributable stakeholder of the company or trust, or of any other company or trust.
4. If subsection (1) applies, the Commission must also consider:
5. the asset attribution percentage attributed to the individual, if any; and
6. the income attribution percentage attributed to the individual, if any.

13  Other circumstances

The Commission must consider any other circumstance that affects the involvement of the individual with the activities or the administration of the company or trust.

Part 3 Determination of asset attribution percentage

14  Purpose

This Part sets out decision-making principles with which the Commission must comply in making a determination, under subparagraph 52ZZJ(1)(b)(ii) or (2)(d)(ii) of the Act, that an attributable stakeholder’s asset attribution percentage, in relation to a company or a trust, is a specified percentage lower than 100%.

15  Application

1. This Part applies if, but for a determination by the Commission, the asset attribution percentage of the attributable stakeholder, in relation to the company or trust, would be 100%.
2. The Commission must consider the relationship between the individual and the company or trust, having regard to the circumstances mentioned in this Part.
3. In particular, the Commission must consider whether the effect of one or more of the circumstances mentioned in this Part, in relation to the individual and the company or trust, provides a sufficient basis on which to determine a percentage lower than 100% as the asset attribution percentage.

16  Circumstances affecting relationship with company or trust

1. The Commission must consider whether there are relevant circumstances that make it inappropriate for the individual to have an asset attribution percentage of 100%.
2. For subsection (1), ***relevant circumstances*** include the extent to which the relationship between the individual and the company or trust is affected by any of the following circumstances:
3. circumstances arising from the legal structure of the company or trust;
4. circumstances arising from the administrative arrangements of the company or trust;
5. whether, having regard to the relationship between the individual and the company or trust, the individual can reasonably be expected to exercise effective control in relation to the company or trust and, if so, the extent of that control.

17  Contribution to company or trust

If the individual has made a contribution to the company or trust, the Commission must consider the circumstances in which the contribution was made and, in particular:

1. the value of the contribution; and
2. the proportion that the value of the contribution has to the total assets of the company or trust at the time of the contribution; and
3. the effect of the contribution on the financial position of the company or trust; and
4. if the individual received consideration for the contribution, the amount of consideration.

18  Past benefit from distributions by company or trust

1. The Commission must consider whether the individual has received a benefit from a distribution made by the company or trust.
2. If an individual has received a benefit, the Commission must also consider:
3. the value of the benefit; and
4. if the individual has received a benefit on more than 1 occasion, the frequency with which the individual has received benefits.
5. For this section, a ***distribution*** includes a distribution:
6. in the case of a distribution by a company — of the capital or income, or both, of the company; and
7. in the case of a distribution by a trust — of the corpus or income, or both, of the trust.

19  Future benefit from distributions by company or trust

1. The Commission must consider whether it is reasonably foreseeable that the individual may receive a benefit from a future distribution by the company or trust.
2. If subsection (1) applies, the Commission must also consider the likely value of the benefit.
3. For this section, the Commission must have regard to:
4. the constituent documents of the company; or
5. documents, if any, establishing the terms of the trust.
6. For this section, a distribution includes a distribution:
7. in the case of a distribution by a company — of the capital or income, or both, of the company; and
8. in the case of a distribution by a trust — of the corpus or income, or both, of the trust.

20  Benefit from assets and income of company or trust

1. The Commission must consider whether the individual receives or derives any kind of benefit (other than a benefit mentioned in section 18 or 19) from the assets or income, or both, of the company or trust.
2. For this section, ***benefit***:
3. is not limited to a benefit to which the individual has a legal or equitable entitlement; and
4. includes a benefit received or derived in the form of property or services.

21  Existing attribution to individual

1. The Commission must consider whether the individual is:
2. under the Act — an attributable stakeholder of any other company or trust; or
3. under the Social Security Act — an attributable stakeholder of the company or trust, or of any other company or trust.
4. If subsection (1) applies, the Commission must also consider:
5. the asset attribution percentage attributed to the individual, if any; and
6. the income attribution percentage attributed to the individual, if any.

22  Other circumstances

The Commission must consider any other circumstance that affects the involvement of the individual with the activities or the administration of the company or trust.

Part 4 Determination of income attribution percentage

23  Purpose

This Part sets out decision-making principles with which the Commission must comply in making a determination, under subparagraph 52ZZJ(1)(c)(ii) or (2)(e)(ii) of the Act, that an attributable stakeholder’s income attribution percentage, in relation to a company or trust, is a specified percentage lower than 100%.

24  Application

1. This Part applies if, but for a determination by the Commission, the income attribution percentage of the attributable stakeholder, in relation to the company or trust, would be 100%.
2. The Commission must consider the relationship between the individual and the company or trust, having regard to the circumstances mentioned in this Part.
3. In particular, the Commission must consider whether the effect of one or more of the circumstances mentioned in this Part, in relation to the individual and the company or trust, provides a sufficient basis on which to determine a percentage lower than 100% as the income attribution percentage.

25  Circumstances affecting relationship with company or trust

1. The Commission must consider whether there are relevant circumstances that make it inappropriate for the individual to have an income attribution percentage of 100%.
2. For subsection (1), ***relevant circumstances*** include the extent to which the relationship between the individual and the company or trust is affected by any of the following circumstances:
3. circumstances arising from the legal structure of the company or trust;
4. circumstances arising from the administrative arrangements of the company or trust;
5. whether, having regard to the relationship between the individual and the company or trust, the individual can reasonably be expected to exercise effective control in relation to the company or trust and, if so, the extent of that control.

26  Contribution to company or trust

If the individual has made a contribution to the company or trust, the Commission must consider the circumstances in which the contribution was made and, in particular:

1. the value of the contribution; and
2. the proportion that the value of the contribution has to the total assets of the company or trust at the time of the contribution; and
3. the effect of the contribution on the financial position of the company or trust; and
4. if the individual received consideration for the contribution, the amount of consideration.

27  Past benefit from distributions by company or trust

1. The Commission must consider whether the individual has received a benefit from a distribution made by the company or trust.
2. If an individual has received a benefit, the Commission must also consider:
3. the value of the benefit; and
4. if the individual has received a benefit on more than 1 occasion, the frequency with which the individual has received benefits.
5. For this section, a ***distribution*** includes distributions:
6. in the case of a distribution by a company — of the capital or income, or both, of the company; and
7. in the case of a distribution by a trust — of the corpus or income, or both, of the trust.

28  Future benefit from distributions by company or trust

1. The Commission must consider whether it is reasonably foreseeable that the individual may receive a benefit from a future distribution by the company or trust.
2. If subsection (1) applies, the Commission must also consider the likely value of the benefit.
3. For this section, the Commission must have regard to:
4. the constituent documents of the company; or
5. documents, if any, establishing the terms of the trust.
6. For this section, a ***distribution*** includes distributions:
7. in the case of a distribution by a company — of the capital or income, or both, of the company; and
8. in the case of a distribution by a trust — of the corpus or income, or both, of the trust.

29  Benefit from assets and income of company or trust

1. The Commission must consider whether the individual receives or derives any kind of benefit (other than a benefit mentioned in section 27 or 28) from the assets or income, or both, of the company or trust.
2. For this section, ***benefit***:
3. is not limited to a benefit to which the individual has a legal or equitable entitlement; and
4. includes benefits received or derived in the form of property or services.

30  Existing attribution to individual

1. The Commission must consider whether the individual is:
2. under the Act — an attributable stakeholder of any other company or trust; or
3. under the Social Security Act — an attributable stakeholder of the company or trust, or of any other company or trust.
4. If subsection (1) applies, the Commission must also consider:
5. the asset attribution percentage attributed to the individual, if any; and
6. the income attribution percentage attributed to the individual, if any.

31  Other circumstances

The Commission must consider any other circumstance that affects the involvement of the individual with the activities or the administration of the company or trust.