



Veterans' Entitlements (Modification of Asset Deprivation Rules) 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

Mark Brewer
AM CSC and Bar
Deputy President

Gwen Cherne

Commissioner

Kahlil Fegan
DSC AM
Commissioner

Part 1 Preliminary

1 Name

This instrument is the *Veterans' Entitlements (Modification of Asset Deprivation Rules) Principles 2025*.

2 Commencement

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

3 Authority

This instrument is made under the paragraphs 52ZZZQ(f) and (g) of the *Veterans' Entitlements Act 1986*.

3A Repeal

Schedule 5 to the *Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* is repealed.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

member of a couple

In this instrument:

Act means the *Veterans' Entitlements Act 1986*.

asset disposal provisions means Subdivision B of Division 11 of Part IIIB and section 45UT of the Act.

Part 2 Disposal of asset (on or after 1 January 2002) by individual

5 Purpose of Part 2

This Part sets out decision-making principles with which the Commission must comply in making a determination for subsection 52ZZW(1) of the Act.

6 Definitions

In this Part:

individual means an individual who transfers property to a company or trust in accordance with subsection 52ZZWB(1) of the Act.

transfer of property means a transfer of property by way of capital contribution.

7 Transferor as sole attributable stakeholder

- (1) This section applies to an individual who is not a member of a couple.
- (2) The Commission must take into account whether the individual was the only attributable stakeholder of the company or trust, either before or after the transfer.

8 Transferor as member of couple

- (1) This section applies to an individual who is a member of a couple.
- (2) The Commission must take into account whether:
 - (a) the individual was the only attributable stakeholder of the company or trust, either before or after the transfer; or
 - (b) both members of the couple were the only attributable stakeholders of the company or trust, either before or after the transfer.

9 Transfer to company or trust with 2 or more attributable stakeholders

- (1) This section applies if, in relation to a transfer of property to a company or trust:
 - (a) the transfer is made by an attributable stakeholder of the company or trust; and
 - (b) before the transfer, there were 2 or more attributable stakeholders of the company or trust.
- (2) This section also applies if, in relation to a transfer of property to a company or trust:
 - (a) the transfer is made by an attributable stakeholder of the company or trust; and
 - (b) after the transfer, there were 2 or more attributable stakeholders of the company or trust.
- (3) The Commission must take into account the income attribution percentage of each attributable stakeholder of the company or trust, before and after the transfer of the property.

10 Transfer to company or trust by individual who becomes attributable stakeholder

- (1) This section applies if, in relation to a transfer of property to a company or a trust:
 - (a) the transfer is made by an individual who is not an attributable stakeholder of the company or trust; and
 - (b) as a result of the transfer, the individual is an attributable stakeholder.

- (2) The Commission must take into account the asset attribution percentage of each attributable stakeholder of the company or trust, before and after the transfer of the property.

Part 3 Disposal of asset (on or after 1 January 2002) by company or trust

11 Purpose of Part 3

This Part sets out decision-making principles with which the Commission must comply in making a determination for subsection 52ZZX(3) of the Act.

12 Disposal to individual by company or trust

- (1) This section applies if:
 - (a) a company pays a dividend to an individual who is an attributable stakeholder of the company; and
 - (b) the asset disposal provisions apply, and are taken to have applied, as if the individual had disposed of an asset of the individual.
- (2) This section also applies if:
 - (a) a trust makes a distribution to an individual who is an attributable stakeholder of the trust; and
 - (b) the asset disposal provisions apply, and are taken to have applied, as if the individual had disposed of an asset of the individual.
- (3) The Commission must consider whether the amount of the dividend or the value of the distribution is reasonable, having regard to the individual's asset attribution percentage, in relation to the company or trust, before and after the disposal of the asset.

13 Disposal by way of dividend or distribution to genuine investor

- (1) This section applies if:
 - (a) during a derivation period of a company, the company pays a dividend to an individual who is not an attributable stakeholder of the company; and
 - (b) the individual has, before or during the derivation period, made a genuine transfer of capital to the company.
- (2) This section also applies if:
 - (a) during a derivation period of a trust, the trust makes a distribution to an individual who is not an attributable stakeholder of the trust; and
 - (b) the individual has, before or during the derivation period, made a genuine transfer of capital to the trust.
- (3) For subsections (1) and (2), a transfer of capital is a ***genuine transfer of capital*** if:
 - (a) the individual 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
 - (b) the individual has a legal or equitable right to a share of the capital on the winding-up of the company or trust; and
 - (c) the individual has a legal or equitable right to receive dividends or distributions in accordance with the constituent documents of the company or under the terms of the trust; and
 - (d) the individual is over 18 years.

- (4) The Commission must consider whether the amount of the dividend or the value of the distribution is reasonable, having regard to the proportion of the value of the capital transferred by the individual to the total value of the assets owned by the company or trust at the time of the transfer.

Part 4 Disposal of asset (before 1 January 2002) by attributable stakeholder

14 Purpose of Part 4

This Part sets out decision-making principles with which the Commission must comply in making a determination for subsection 52ZZZ(1) of the Act.

15 Definitions

In this Part:

individual means an individual who transfers property to a company or trust in accordance with subsection 52ZZZ(1) of the Act.

16 Application of asset disposal provisions where value of asset same or greater

- (1) This section applies if:
 - (a) an asset is disposed by an individual to a company or trust; and
 - (b) on 1 January 2002, the asset is owned by the company or trust; and
 - (c) on 1 January 2002, the value of the asset is the same as, or greater than, it was at the time of its disposal.
- (2) The Commission must consider whether, in all the circumstances, the application of the asset disposal provisions would be unfair or unreasonable in relation to the individual.

17 Application of asset disposal provisions where value of asset decreased after disposal

- (1) This section applies if:
 - (a) an asset is disposed of by an individual to a company or trust; and
 - (b) on 1 January 2002, the asset is owned by the company or trust; and
 - (c) on 1 January 2002, the value of the asset is less than it was at the time of its disposal; and
 - (d) the decrease in the value of the asset is not attributable to any conduct that the Commission reasonably believes was intended to avoid the operation, or minimise the effect, of Division 11A of Part IIIB of the Act.
- (2) The Commission must consider whether, in all the circumstances, the application of the asset disposal provisions would be unfair or unreasonable in relation to the individual.

18 Application of asset disposal provisions where company or trust retains value of transferred asset

- (1) This section applies if:
 - (a) an asset is disposed of by an individual to a company or trust; and
 - (b) before 1 January 2002, the company or trust transferred the asset to another individual or other entity in consideration of an arm's length amount; and
 - (c) the company or trust retained the amount or value of the consideration.

- (2) The Commission must consider whether, in all the circumstances, the application of the asset disposal provisions would be unfair or unreasonable in relation to the individual.

19 Transfer by member of couple

- (a) This section applies if:
 - (a) an individual, who is a member of a couple, disposes of an asset to a company or trust before 1 January 2002; and
 - (b) as a result of the transfer:
 - (i) the individual is the only attributable stakeholder, on 1 January 2002, of the company or trust; or
 - (ii) both members of the couple are the only attributable stakeholders, on 1 January 2002, of the company or trust.
- (b) The Commission must consider whether, in all the circumstances, the application of the asset disposal provisions would be unfair or unreasonable in relation to the individual.

Part 5 Disposal of asset (before 1 January 2002) by individual whose spouse is attributable stakeholder

20 Purpose of Part 5

This Part sets out decision-making principles with which the Commission must comply in making a determination for subsection 52ZZZA(1) of the Act.

21 Definitions

In this Part:

individual means an individual who transfers property to a company or trust in accordance with subsection 52ZZZA(1) of the Act.

22 Application of asset disposal provisions where value of asset same or greater

- (1) This section applies if:
 - (a) an asset is disposed of by an individual to a company or trust; and
 - (b) on 1 January 2002, the asset is owned by the company or trust; and
 - (c) on 1 January 2002, the value of the asset is the same as, or greater than, it was at the time of its disposal.
- (2) The Commission must consider whether, in all the circumstances, the application of the asset disposal provisions would be unfair or unreasonable in relation to the individual.

23 Application of asset disposal provisions where value of asset decreased after disposal

- (1) This section applies if:
 - (a) an asset is disposed of by an individual to a company or trust; and
 - (b) on 1 January 2002, the asset is owned by the company or trust; and
 - (c) on 1 January 2002, the value of the asset is less than it was at the time of its disposal; and
 - (d) the decrease in the value of the asset is not attributable to any conduct that the Commission reasonably believes was intended to avoid the operation, or minimise the effect, of Division 11A of Part IIIB of the Act.
- (2) The Commission must consider whether, in all the circumstances, the application of the asset disposal provisions would be unfair or unreasonable in relation to the individual.

24 Application of asset disposal provisions where company or trust retains value of transferred asset

- (1) This section applies if:
 - (a) an asset is disposed of by an individual to a company or trust; and
 - (b) before 1 January 2002, the company or trust transferred the asset to another individual or other entity in consideration of an arm's length amount; and
 - (c) the company or trust retained the amount or value of the consideration.

- (2) The Commission must consider whether, in all the circumstances, the application of the asset disposal provisions would be unfair or unreasonable in relation to the individual.