Australian Government

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

Instrument 2014 No. R62

I, Michael Ronaldson, Minister for Veterans' Affairs, approve, under subsection 105(3) of the *Veterans' Entitlements Act 1986*:

(a) the revocation by the Repatriation Commission of the *Vehicle Assistance Scheme* (Instrument 1997 No. 1); and

(b) the preparation by the Repatriation Commission of the *Vehicle Assistance Scheme* (Instrument 2014 No. R66) in Schedule 1.

Dated this 20th day of January ~~2014~~ 2015

Michael Ronaldson…..

MICHAEL RONALDSON

The Repatriation Commission:

(a) under subsection 105(2) of the *Veterans' Entitlements Act 1986* revokes the *Vehicle Assistance Scheme* (Instrument 1997 No. 1) and, under subsection 105(1) of the *Veterans' Entitlements Act 1986*, prepares the *Vehicle Assistance Scheme* (Instrument 2014 No. R66) in Schedule 1.

(b) under section 52ZZZQ of the *Veterans' Entitlements Act 1986*:

(i) revokes the *Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2001* made by the Repatriation Commission on 5 February 2001 and formulates the *Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2001* (Instrument 2014 No. R67) in Schedule 2;

(ii) revokes the *Veterans' Entitlements (Attribution of Assets) Principles 2001* made by the Repatriation Commission on 20 December 2001 and formulates the *Veterans' Entitlements (Attribution of Assets) Principles 2001* (Instrument 2014 No. R68) in Schedule 3;

(iii) revokes the *Veterans' Entitlements (Attribution of Income) Principles 2002* made by the Repatriation Commission on 11 February 2002 and formulates the *Veterans'*

Entitlements (Attribution of Income) Principles 2002 (Instrument 2014 No. R69) in Schedule 4;

(iv) revokes the *Veterans' Entitlements (Modification of Asset Deprivation Rules) Principles* made by the Repatriation Commission on 11 February 2002 and formulates the *Veterans' Entitlements (Modification of Asset Deprivation Rules) Principles* (Instrument 2014 No. R76) in Schedule 5;

(v) revokes the *Veterans' Entitlements (Modification of Income Deprivation Rules) Principles 2002* made by the Repatriation Commission on 11 February 2002 and formulates the *Veterans' Entitlements (Modification of Income Deprivation Rules) Principles 2002* (Instrument 2014 No. R77) in Schedule 6;

(vi) revokes the *Veterans' Entitlements (Primary Production Concession) Principles 2001* made by the Repatriation Commission on 20 December 2001 and formulates the *Veterans' Entitlements (Primary Production Concession) Principles 2001* (Instrument 2014 No. R78) in Schedule 7.

(c) under section 52ZZ0, and subsection 52ZZZ0(3), of the *Veterans' Entitlements Act 1986*, revokes the *Veterans' Entitlements (Attribution of Income – Ineligible Deductions) Determination 2001* made by the Repatriation Commission on 20 December 2001 and determines the *Veterans' Entitlements (Attribution of Income – Ineligible Deductions) Determination 2001* (Instrument 2014 No. R70) in Schedule 8.

(d) under paragraph 5H(12)(c) of the *Veterans' Entitlements Act 1986* revokes the *Veterans' Entitlements Income (Exempt Lump Sum - Compensation) Determination* No. R18 of 2004 and determines the *Veterans' Entitlements Income (Exempt Lump Sum - Compensation) Determination* (Instrument 2014 No. R73) in Schedule 9.

(e) under paragraph 5H(12)(c) of the *Veterans' Entitlements Act 1986* revokes the *Veterans' Entitlements Income (Exempt Lump Sum—income received after end of market-linked income stream term) Determination No. R25 of 2004* and determines the *Veterans' Entitlements Income (Exempt Lump Sum—income received after end of market-linked income stream term) Determination* (Instrument 2014 No. R74) in Schedule 10.

(f) under subsection 52ZZA(5) of the *Veterans' Entitlements Act 1986*, revokes the *Veterans' Entitlements (Means Test Treatment of Private Companies — Excluded Companies) Declaration 2001* made by the Repatriation Commission on 10 August 2001 and makes the *Veterans' Entitlements (Means Test Treatment of Private Companies — Excluded Companies) Declaration 2001* (Instrument 2014 No. R75) in Schedule 11.

Dated this 16th day of December 2014

The Seal of the)
Repatriation Commission)SEAL
is affixed hereto in the)
presence of:)

Simon Lewis Jennifer Collins Major General Mark Kelly

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SIMON LEWIS	**JENNIFER COLLINS**	**MAJOR GENERAL MARK KELLY AO DSC**
PRESIDENT	**ACTING DEPUTY PRESIDENT**	**COMMISSIONER**

Name

[1] This instrument is the *Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014*.

Commencement

[2] This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Saving Provisions

[3] A process commenced under a legislative instrument revoked and re-made by this instrument but not completed at the time this instrument takes effect, continues under the legislative instrument as re-made.

[4] Nothing in this instrument affects any right or liability in a person under a legislative instrument revoked and re-made by this instrument and that right or liability continues under the legislative instrument as re-made.

Note: see also, as a complementary provision, s.7 of the *Acts Interpretation Act 1901* in conjunction with s.13(1)(a) of the *Legislative Instruments Act 2003*.

Schedule 1

Note: the reference to Schedule 1 is not part of the instrument in Schedule 1.

Vehicle Assistance Scheme

Instrument 2014 No. R66

made under the

Veterans' Entitlements Act 1986

Vehicle Assistance Scheme

CONTENTS

Vehicle Assistance Scheme

Repatriation Commission

Section 105
Veterans' Entitlements Act 1986

PART 1 —COMMENCEMENT

1.1 Commencement

1.1.1 This instrument commences when the *Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* commences.

PART 2 — INTRODUCTION

2.1 Purpose of the Vehicle Assistance Scheme

2.1.1 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 this Scheme.

2.2 Interpretation

2.2.1 Definitions

2.2.1 For the purposes of this instrument, unless the contrary intention appears:

"the Act" means the *Veterans' Entitlements Act 1986* as amended from time to time;

"Commission" means the Repatriation Commission continued in existence by section 179 of the Act;

“Department” means the Commonwealth Department of Veterans’ Affairs

“derive benefit from assistance” has the meaning given by paragraph 3.2.1, 3.2.2 or 3.2.3 of the Scheme;

“eligible veteran” means a veteran who is eligible to participate in the Scheme because of incapacity from war-caused injury or disease as specified in sub-sections 105 (5) and 105 (7) of the Act;

Note 1: Subsections 105 (5) and 105 (7) provide:

105 (5) A veteran is, subject to subsection (7), eligible to participate in the Vehicle Assistance Scheme if the veteran is incapacitated from war-caused injury or war-caused disease by reason of:

(a) amputation of both legs above the knee;

(b) amputation of one leg above the knee and, in addition:

(i) amputation of the other leg at or above the ankle and amputation of one arm at or above the wrist; or

(ii) amputation of both arms at or above the wrists;

(c) complete paraplegia resulting in the total loss of voluntary power in both legs to the extent that there is insufficient power for purposeful use for stance or locomotion; or

(d) a condition that, in the opinion of the Commission, is similar in effect or severity to a condition described in paragraph (a) or (b).

105 (7) For the purposes of subsection (5):

(a) a leg that has been rendered permanently and wholly useless above the knee shall be treated as if it had been amputated above the knee;

(b) a veteran shall not be taken to be incapacitated by reason of the disability described in paragraph (5) (c) unless the disability is such that surgical or other therapeutic measures are not reasonably capable of restoring power for purposeful use for stance or locomotion; and

(c) a reference to the Vehicle Assistance Scheme shall, unless the contrary intention appears, be read as a reference to:

(i) the Vehicle Assistance Scheme prepared under subsection (1) and approved by the Minister, but not being such a Scheme that has been revoked; or

(ii) if that Scheme has been varied under subsection (2) by an instrument approved by the Minister—that Scheme as so varied.

Note 2: Section 96 of the Act provides that for the purposes of this Scheme "veteran" is to be read as including a reference to a member of the Forces or a member of a Peacekeeping Force as defined in section 68 of the Act.

"**former Scheme**" means the *Vehicle Assistance Scheme* (Instrument 1997 No. 1);

"initial motor vehicle" means a motor vehicle for the purchase of which the Commission has granted financial assistance to a veteran under paragraph 4.1.1 of the Scheme;

"previous motor vehicle" means the last motor vehicle for the purchase of which the Commission has granted financial assistance to a veteran under this Scheme;

"replacement motor vehicle" means a motor vehicle for the purchase of which the Commission has granted financial assistance to a veteran under paragraph 6.1.1 of the Scheme;

"running and maintenance allowance" means an allowance paid annually under paragraph 5.1.1 of the Scheme to an eligible veteran to assist with the cost of running and maintaining a motor vehicle provided under the Scheme;

"Scheme" means this Vehicle Assistance Scheme, determined by the Commission and approved by the Minister in accordance with section 105 of the Act;

"war-caused" includes "defence-caused" as provided for in section 96 of the Act.

2.2.2 Notes

2.2.2 In this Scheme if a Note follows a paragraph or subparagraph, the Note is taken to be part of that paragraph or subparagraph, as the case may be.

2.2.3 References to provisions

2.2.3 In this Scheme, any reference to a Part, paragraph, subparagraph or schedule shall, unless a contrary intention appears, be taken to be a reference to that Part, paragraph, subparagraph or schedule of the Scheme.

2.3 General operation of the Scheme

2.3.1 Scope of the Scheme

2.3.1 This Scheme permits the Commission, in specified circumstances, to grant an eligible veteran:

(a) financial assistance to purchase an initial motor vehicle; or

(b) financial assistance to purchase a replacement motor vehicle; and
(c) in respect of an initial or replacement motor vehicle:

  (i) a running and maintenance allowance; and
  (ii) one or more driving devices and modifications grants.

2.4 Application for approval to participate in the Scheme

2.4.1 Who may participate in the Scheme

2.4.1 A veteran who satisfies the eligibility criteria in paragraph 3.1.1 may apply to participate in the Scheme by making an application in writing and in accordance with a form approved by the Commission for that purpose.

2.4.2 When an application is taken to be made

2.4.2 For the purpose of this Scheme, an application will only be taken to have been made when it is received at an office of the Department in Australia.

2.4.3 Documents to accompany application

2.4.3 The application must be accompanied by such certificates and other documentation as are required to be furnished by this Scheme.

2.4.4 Commission must consider all relevant matters

2.4.4 When the application is submitted to the Commission, the Commission must consider all matters that are relevant to the application and must then determine the application.

2.4.5 Commission may require an undertaking

2.4.5 The Commission may require a veteran who is provided with any assistance under the Scheme to give a written undertaking to comply with the conditions set out in the Scheme.

2.4.6 Compliance with the Scheme

2.4.6 The conditions set out in the Scheme must be complied with notwithstanding that a written undertaking has not been given in accordance with paragraph 2.4.5.

2.5 Failure to comply with provisions of the Scheme

2.5.1 Disqualification from receiving assistance under the Scheme

2.5.1 Where a veteran has failed, without reasonable excuse, to comply with a provision of the Scheme, the veteran shall be disqualified from receiving any assistance under the Scheme for a period of ten years from the time of the failure to comply.

PART 3 — ELIGIBILITY

3.1 Eligibility

3.1.1 A veteran is eligible for assistance under this Scheme only if the Commission is satisfied that the veteran is:

(a) an eligible veteran; and
(b) the veteran can **derive benefit from assistance** under the Scheme.

Note: Whether a veteran can "derive benefit" is determined under paragraph 3.2.1, 3.2.2 or 3.2.3 of the Scheme.

3.2 Capacity to derive benefit from assistance

3.2.1 Criteria to "derive benefit" if veteran can drive

3.2.1 For the purposes of determining an application for financial assistance towards an initial motor vehicle or a replacement motor vehicle, if an eligible veteran can personally drive the motor vehicle, the Commission will be satisfied that the veteran can **derive benefit from assistance** under the Scheme only if the veteran:

(a) will benefit directly from using the motor vehicle; and
(b) holds a valid driver's licence; and
(c) will be able to drive the motor vehicle in reasonable comfort and safety; and
(d) will drive the motor vehicle regularly.

3.2.2 Criteria to "derive benefit" for initial grant if veteran cannot drive

3.2.2 For the purposes of determining an application for financial assistance towards an initial motor vehicle, if an eligible veteran cannot personally drive the motor vehicle, the Commission will be satisfied that the veteran can **derive benefit from assistance** under the Scheme only if:

(a) the veteran has a partner or carer who:
  (i) holds a valid driver's licence; and
  (ii) is willing and able to drive the motor vehicle; and
(b) the veteran is capable of being readily transported in the motor vehicle; and
(c) the veteran will be transported in the motor vehicle regularly by the person referred to in subparagraph (a).

3.2.3 Criteria to "derive benefit" for a replacement motor vehicle if veteran cannot drive

3.2.3 For the purposes of determining an application for financial assistance towards a replacement motor vehicle, if an eligible veteran cannot personally drive the motor vehicle the Commission will be satisfied that the veteran can **derive benefit from assistance** under the Scheme only if:

(a) the veteran has a partner or carer who:
   (i) holds a valid driver's licence; and
   (ii) is willing and able to drive the motor vehicle; and

either:

(b) the veteran will be regularly transported in the motor vehicle and in reasonable comfort and safety; or
(c) the partner or carer will regularly drive the motor vehicle to visit the eligible veteran at the veteran's permanent or temporary place of residence (not being the residence of the partner or carer).

PART 4 — CONDITIONS APPLICABLE TO THE PROVISION OF AN INITIAL MOTOR VEHICLE

4.1 Provision of an initial motor vehicle

4.1.1 Grant of financial assistance

4.1.1 Subject to paragraphs 4.1.2 to 4.1.4 and the conditions set out in Schedule One, the Commission may grant financial assistance to an eligible veteran to purchase an initial motor vehicle of the veteran's own choice.

4.1.2 Initial motor vehicle to meet certain requirements

4.1.2 An initial motor vehicle:

(a) must be a new motor vehicle; and
(b) must be registered under the relevant law of the State or Territory in which the veteran resides in the name of the veteran to whom financial assistance is granted; and
(c) must not be provided to a veteran who has previously been provided with financial assistance to purchase an initial motor vehicle under the Scheme.

Note: Paragraph 9.1.1 of the Scheme deems a veteran who has been provided with an initial motor vehicle under the former Scheme to have been provided with that motor vehicle under this Scheme.

4.1.3 Amount of grant

4.1.3 The financial assistance payable in respect of an initial motor vehicle is an amount calculated in accordance with the procedure set out in Schedule One and is granted subject to the conditions of this Scheme, including the conditions set out in that Schedule.

4.1.4 Motor vehicle from another scheme

4.1.4 A veteran is not to be granted financial assistance to purchase an initial motor vehicle under this Scheme if the veteran has received, or has an enforceable claim to receive, a motor vehicle under any other scheme of compensation or in settlement of a claim for damages.

4.2 General conditions

4.2.1 Requirements when granted an initial motor vehicle

4.2.1 A veteran who has obtained an initial motor vehicle under the Scheme must:

(a) register the motor vehicle; and

(b) comprehensively insure the motor vehicle to its full market value.

Note: The requirements for registration are set out in subparagraph 4.1.2(b)

4.2.2 Ownership of motor vehicle

4.2.2 Upon compliance with paragraph 4.2.1, the Commonwealth is taken to be divested of any and every interest in the initial motor vehicle.

4.2.3 Ineligibility for further assistance

4.2.3 The Commission may determine that a veteran is ineligible for further assistance under the Scheme if:

(a) the eligible veteran ceases to derive benefit from assistance that has been granted under the Scheme unless the Commission is satisfied that there are exceptional circumstances justifying the provision of continued assistance under the Scheme to the veteran; or

Note: To determine if a veteran has ceased to derive benefit from assistance under the Scheme refer to paragraphs 3.2.1, 3.2.2 and 3.2.3.

(b) the veteran sells or otherwise disposes of an initial motor vehicle and no replacement motor vehicle grant is provided under Part 6; or

(c) the motor vehicle is stolen or destroyed and the veteran was at fault, in whole or in part, in causing or permitting the vehicle to be stolen or destroyed.

4.2.4 Eligibility following theft or destruction of the motor vehicle

4.2.4 If a motor vehicle provided to a veteran has been stolen or destroyed through no fault of the veteran, the veteran is eligible to apply for a replacement motor vehicle grant under the Scheme.

4.2.5 Expenses relating to the sale of motor vehicle

4.2.5 If a veteran sells a motor vehicle acquired under the Scheme, the Commonwealth shall not be liable for any expenses relating to that sale.

PART 5 — RUNNING AND MAINTENANCE ALLOWANCE

5.1 General conditions

5.1.1 Grant of running and maintenance allowance

5.1.1 The Commission may grant an annual running and maintenance allowance to an eligible veteran who has been provided with an initial or replacement motor vehicle under the Scheme.

Note: For provisions relating to replacement motor vehicles see Part 6 of the Scheme.

5.1.2 Purpose of the allowance

5.1.2 The purpose of the running and maintenance allowance is to assist eligible veterans with the cost of motor registration, motor vehicle insurance, and other incidental costs related to the running and maintenance of motor vehicles for which assistance has been granted under the Scheme.

5.1.3 Documents to be provided each year

5.1.3 A veteran to whom a running and maintenance allowance has been granted must present to the Department, each year, a currently valid:

(a) motor vehicle registration certificate; and

(b) compulsory third party motor vehicle insurance certificate; and

(c) comprehensive motor vehicle insurance certificate specifying that the motor vehicle is insured for its full market value; and

(d) driver's licence in the name of the person who regularly drives the motor vehicle.

5.1.4 Documents to be provided upon request

5.1.4 If a running and maintenance allowance has been granted to an eligible veteran under the Scheme, the veteran must, if requested, provide to the Department the following:

(a) documentary evidence showing that the purposes and conditions of the allowance have been and will continue to be met; and

(b) documentary evidence of the actual expenditure incurred on items for which the allowance was made.

5.1.5 Rate of allowance

5.1.5 The maximum rate of running and maintenance allowance is set out in Schedule Two.

5.1.6 Not eligible for allowance if in receipt of other mobility benefits

5.1.6 A running and maintenance allowance is not to be granted or paid under this Part if the veteran is receiving:

(a) a Mobility Allowance paid in accordance with Part 2.21 of the *Social Security Act 1991*; or

(b) a payment or any other benefit for mobility related disabilities under any other law or contract.

PART 6 — GRANTS

6.1 General conditions

6.1.1 Grants that may be provided

6.1.1 Subject to this Part, the Commission may grant to an eligible veteran either or both:

(a) a driving devices and modifications grant; and

(b) a replacement motor vehicle grant.

6.1.2 Amount of grant

6.1.2 The amount of the grant that may be made under paragraph 6.1.1 is an amount that the Commission considers is reasonable, in all the circumstances of the case, having regard to all relevant matters, which may include:

(a) the nature of the incapacity of the veteran from war-caused injury, or war-caused disease, or both; and

(b) the nature of the proposed driving devices or modifications; and

(c) whether there are alternative suitable driving devices or modifications that are reasonably available and cost effective; and

(d) whether there are alternative providers of suitable driving devices or modifications that are reasonably accessible and cost effective.

6.1.3 Documents to be provided

6.1.3 If a grant has been made to an eligible veteran under the Scheme, the veteran must, if requested, provide to the Department the following:

(a) documentary evidence showing that the purposes and conditions of the grant have been and will continue to be met; and

(b) documentary evidence of the actual expenditure incurred on items for which the grant was made.

6.2 Driving devices and modifications grant

6.2.1 Purpose of the grant

6.2.1 The purpose of a driving devices and modifications grant is to enable the purchasing and fitting of necessary driving devices and other modifications to an initial or replacement motor vehicle provided to a veteran under the Scheme.

6.2.2 Requirements to be satisfied before grant made

6.2.2 The Commission may grant an eligible veteran a driving devices and modifications grant only if the proposed driving devices and modifications are necessary to enable the veteran to drive safely, or be transported safely in the motor vehicle, in reasonable comfort.

6.2.3 Direct payment to motor vehicle dealer

6.2.3 The Commonwealth shall pay the supplying motor vehicle dealer directly for the provision and fitting of any necessary driving devices and modifications that the Commission has approved.

6.2.4 Grant not to be approved if benefit received under other law or contract

6.2.4 The Commission shall not approve the payment of necessary driving devices and modifications on any motor vehicle provided under the Scheme if the veteran has received a benefit under any other law or contract which provides for the fitting of such devices or modifications.

6.3 Replacement motor vehicle grant

6.3.1 Purpose of the grant

6.3.1 The purpose of a replacement motor vehicle grant is to make some financial contribution towards the cost of a motor vehicle purchased to replace either an initial motor vehicle or a replacement motor vehicle for which assistance has been granted to a veteran under the Scheme.

6.3.2 Grant may be made two years after initial motor vehicle grant

6.3.2 Subject to paragraph 4.2.4, a replacement motor vehicle grant may only be made after the two years immediately following the provision of an initial motor vehicle or a replacement motor vehicle grant under the Scheme and must be registered in the name of the veteran to whom financial assistance has been granted.

Note: Paragraph 4.2.4 provides that if a motor vehicle provided to a veteran has been stolen or destroyed through no fault of the veteran, the veteran is eligible to apply for a replacement motor vehicle grant under the Scheme.

6.3.3 Trade-in or sale of previous motor vehicle

6.3.3 Unless the previous motor vehicle was stolen or destroyed, a replacement motor vehicle grant may be granted to a veteran only if:

(a) a veteran trades-in or sells:

(i) an initial motor vehicle in respect of which financial assistance has been granted under the Scheme; or

(ii) a replacement motor vehicle; and

(b) documentary evidence of the trade-in valuation for the motor vehicle traded-in is provided to the Department; and

(c) the full trade-in value or sale price is offset against the cost of the replacement motor vehicle.

6.3.4 Replacement motor vehicle grant if previous motor vehicle stolen or destroyed

6.3.4 If the previous motor vehicle was stolen or destroyed, a veteran may be provided with a replacement motor vehicle grant only if:

(a) documentary evidence of the amount of the insurer's write-off payment is provided to the Department; and

(b) the full amount of the insurer's write-off payment is used towards the cost of the replacement motor vehicle.

6.3.5 Not eligible for grant if received another motor vehicle

6.3.5 A replacement motor vehicle grant is not to be made under this Part if the veteran has, since obtaining the initial motor vehicle, received:

(a) a payment for the purchase of a motor vehicle; or

(b) a motor vehicle;

under any other law or contract.

PART 7 — REVIEW OF DECISIONS

7.1 Review by the Commission

7.1.1 Who may seek a review

7.1.1 If a veteran is dissatisfied with any decision of the Commission in respect of a claim for assistance under the Scheme, the veteran may apply for review of that decision by the Commission.

7.1.2 Making a request for review

7.1.2 An application for review of a decision under the Scheme must be made in writing and lodged at an office of the Department in Australia within three months after the veteran has been served with a copy of the written decision, but not otherwise.

7.1.3 Review by the Commission of its own motion

7.1.3 If the Commission is of the opinion that sufficient reason exists for reviewing any decision under this Scheme, the Commission may, in its absolute discretion, do so.

7.1.4 Delegate must not review own decision

7.1.4 If the Commission has delegated its powers under this Scheme to the person who made the decision under review, that person must not review the decision.

PART 8 — DETERMINATION OF CLAIMS AND DELEGATION OF POWERS

8.1 Determination of claims and applications for review

8.1.1 The Commission must determine all claims for assistance under the Scheme, including claims for grants and allowances, and must determine all applications for review of decisions made under this Scheme.

8.2 Delegation of powers

8.2.1 Delegation

8.2.1 The Commission may, generally or as otherwise provided by instrument in writing, delegate to an officer or employee of the Department, any of its powers under this Scheme, except this power to delegate.

8.2.2 Power exercised by delegate

8.2.2 A power delegated by the Commission under paragraph 8.2.1, when exercised by the delegate, shall, for the purposes of this Scheme, be deemed to have been exercised by the Commission.

8.2.3 Commission may exercise power itself

8.2.3 A delegation of a power under paragraph 8.2.1 does not prevent the exercise of a power by the Commission.

PART 9 — TRANSITIONAL PROVISIONS

9.1 Transitional provisions

9.1.1 Eligible veterans under the former Scheme

9.1.1 An eligible veteran who has obtained a motor vehicle, or has received a grant or allowance under the former Scheme is taken to have been provided with that motor vehicle, grant or allowance under this Scheme and is subject to the conditions and provisions of this Scheme.

9.1.2 Transfer of the Commonwealth's interest in a motor vehicle

9.1.2 Upon the commencement of this Scheme, any interest that the Commonwealth had, immediately before the commencement of this Scheme, in a motor vehicle in the possession of a veteran who:

(a) obtained it under the former Scheme; and

(b) has not contravened any provision of the former Scheme; and

(c) at the commencement of this Scheme, remained able to **derive benefit from assistance** (as defined in paragraph 3.2.1, 3.2.2 or 3.2.3);

is taken to have passed from the Commonwealth to the eligible veteran, notwithstanding anything to the contrary in the former Scheme.

9.1.3 Obligations under the former Scheme

9.1.3 If an eligible veteran was under an obligation under the former Scheme, and a provision of this Scheme provides for an equivalent obligation to apply to an eligible veteran, the veteran is taken to be under that obligation under this Scheme.

Schedule One

Financial Assistance for an Initial Motor Vehicle

Maximum value of an initial motor vehicle

1. Subject to paragraph 4 of this Schedule, the maximum value of an initial motor vehicle that may be purchased under the Scheme is $39,810.

Placing the order and authorisation of payment

2. If the Commission has determined that a veteran is eligible for assistance under this Scheme, the veteran may place the order for an initial motor vehicle of his or her own choice directly with the supplying motor vehicle dealer and, subject to paragraph 3 of this Schedule, the Commission shall authorise payment of an amount equivalent to the retail price of the motor vehicle direct to the supplying dealer.

Retail price greater than maximum value

3. Subject to paragraph 4 of this Schedule, if the retail price of the initial motor vehicle chosen by the veteran is more than the amount specified in paragraph 1 of this Schedule, the Commission shall only authorise payment to the supplying motor vehicle dealer of the amount specified in paragraph 1 of this Schedule.

Where more than the maximum value can be authorised

4. If the Commission is satisfied that the provision of a more expensive motor vehicle is necessary due to the nature of the veteran's incapacity from war-caused injury or war-caused disease, or both, the Commission may authorise payment of the whole or part of the difference in cost between the amount specified in paragraph 1 of this Schedule, and the actual purchase price of the initial motor vehicle.

Payment by Commonwealth only a contribution

5. Subject to paragraph 4 of this Schedule, any amount authorised by the Commission to be paid to the supplying motor vehicle dealer is only a contribution towards the purchase of the initial motor vehicle and the Commonwealth is not liable to pay the supplying dealer either in whole or in part the difference between that contribution and the price of the motor vehicle.

Schedule Two

Running and Maintenance Allowance

Rate of the allowance

1. The running and maintenance allowance is paid annually in advance, and is equal to 26 times the rate of Recreation Transport Allowance, set out in item 1 of the Table in subsection 104 (1) of the Act, that applies at the date of payment of the allowance.

Note : Section 198D of the Act provides for indexation of the rate of Recreation Transport Allowance.

Schedule Three

Replacement Motor Vehicle Grant

Maximum replacement motor vehicle grant

1. The maximum **replacement motor vehicle grant** that may be paid to a veteran is an amount representing the difference between the trade-in value or sale price of the previous motor vehicle and the purchase price of the replacement motor vehicle, but, subject to paragraph 3, cannot be greater than $19,905.

Placing the order for the replacement motor vehicle

2. If the Commission has determined that a veteran is eligible for a replacement motor vehicle under this Scheme, the veteran may place the order for a replacement motor vehicle directly with the supplying motor vehicle dealer, but no grant can be made until after a statement from a motor dealer has been received at an office of the Department in Australia certifying the trade-in value or the sale price of the previous motor vehicle (if the previous motor vehicle was not stolen or destroyed).

Where price of replacement motor vehicle exceeds maximum grant

3. Subject to paragraph 4 of this Schedule, if the difference between:

(a) the trade-in value, the sale price, or the insurer's write-off payment, as the case may be; and

(b) the purchase price of the replacement motor vehicle;

exceeds the amount specified in paragraph 1 of this Schedule, the Commission shall only authorise payment to the supplying motor vehicle dealer of an amount equivalent to the amount set out in paragraph 1 of this Schedule.

Where more than the maximum grant can be authorised

4. If the Commission is satisfied that the provision of a more expensive motor vehicle is necessary because of the veteran's incapacity from the war-caused injury or war-caused disease, or both, the Commission may authorise payment of the whole or part of the difference in cost between the amount specified in paragraph 1 of this Schedule and the actual purchase price of the replacement motor vehicle.

Payment by Commonwealth only a contribution

5. Subject to paragraph 4 of this Schedule, any amount authorised by the Commission to be paid to the supplying motor vehicle dealer is only a contribution towards the purchase of the replacement motor vehicle and the Commonwealth is not liable to pay the supplying dealer either in whole or in part the difference between that contribution and the full price of the motor vehicle.

Schedule 2

Note: the reference to Schedule 2 is not part of the instrument in Schedule 2.

Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2001

Instrument 2014 No. R67

Contents

Part 1 Preliminary

1 Name of Principles

These Principles are the:

Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2001.

2 Commencement

These Principles commence when the *Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* commences.

3 Definitions

In these Principles:

Act means the *Veterans' Entitlements Act 1986*.

Commission means the Repatriation Commission continued in existence by section 179 of the ***Act***.

company means a controlled private company.

contribution means:

(a) 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

(b) any other kind of contribution:

  (i) in the case of a company — to either the capital or income of the company; and

  (ii) in the case of a trust — to either the corpus or income of the trust.

trust means a controlled private trust.

4 Purpose

These Principles set out decision-making principles with which the ***Commission*** must comply in making a determination, under section 52ZZJ of the ***Act***, that:

(a) an individual is not an attributable stakeholder of a company or trust; or

(b) a specified percentage, lower than 100%, is the asset attribution percentage, or income attribution percentage, of an attributable stakeholder of a company or 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:

(a) the reason why, but for a determination, the individual would be an attributable stakeholder; and

(b) 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 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:

(a) circumstances arising from the legal structure of the company or trust;

(b) circumstances arising from the administrative arrangements of the company or trust;

(c) 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:

(a) the value of the contribution; and

(b) 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

(c) the effect of the contribution on the financial position of the company or trust; and

(d) 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:

(a) the value of the benefit; and

(b) if the individual has received a benefit on more than 1 occasion, the frequency with which the individual has received benefits.

(3) For this section, a ***distribution*** includes distributions:

(a) in the case of a distribution by a company — of the capital or income, or both, of the company; and

(b) 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:

(a) the constituent documents of the company; or

(b) documents, if any, establishing the terms of the trust.

(4) For this section, a ***distribution*** includes distributions:

(a) in the case of a distribution by a company — of the capital or income, or both, of the company; and

(b) 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***:

(a) is not limited to a benefit to which the individual has a legal or equitable entitlement; and

(b) includes benefits received or derived in the form of property or services.

12 Existing attribution to individual

(1) The ***Commission*** must consider whether the individual is:

(a) under the ***Act*** — an attributable stakeholder of any other company or trust; or

(b) under the *Social Security Act 1991* — an attributable stakeholder of the company or trust, or of any other company or trust.

(2) If subsection (1) applies, the ***Commission*** must also consider:

(a) the asset attribution percentage attributed to the individual, if any; and

(b) 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:

(a) circumstances arising from the legal structure of the company or trust;

(b) circumstances arising from the administrative arrangements of the company or trust;

(c) 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:

(a) the value of the contribution; and

(b) 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

(c) the effect of the contribution on the financial position of the company or trust; and

(d) 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:

(a) the value of the benefit; and

(b) if the individual has received a benefit on more than 1 occasion, the frequency with which the individual has received benefits.

(3) For this section, a ***distribution*** includes distributions:

(a) in the case of a distribution by a company — of the capital or income, or both, of the company; and

(b) 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:

(a) the constituent documents of the company; or

(b) documents, if any, establishing the terms of the trust.

(4) For this section, a ***distribution*** includes distributions:

(a) in the case of a distribution by a company — of the capital or income, or both, of the company; and

(b) 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***:

(a) is not limited to a benefit to which the individual has a legal or equitable entitlement; and

(b) includes benefits received or derived in the form of property or services.

21 Existing attribution to individual

(1) The ***Commission*** must consider whether the individual is:

(a) under the ***Act*** — an attributable stakeholder of any other company or trust; or

(b) under the *Social Security Act 1991* — an attributable stakeholder of the company or trust, or of any other company or trust.

(2) If subsection (1) applies, the ***Commission*** must also consider:

(a) the asset attribution percentage attributed to the individual, if any; and

(b) 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:

(a) circumstances arising from the legal structure of the company or trust;

(b) circumstances arising from the administrative arrangements of the company or trust;

(c) 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:

(a) the value of the contribution; and

(b) 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

(c) the effect of the contribution on the financial position of the company or trust; and

(d) 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:

(a) the value of the benefit; and

(b) if the individual has received a benefit on more than 1 occasion, the frequency with which the individual has received benefits.

(3) For this section, a ***distribution*** includes distributions:

(a) in the case of a distribution by a company — of the capital or income, or both, of the company; and

(b) 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:

(a) the constituent documents of the company; or

(b) documents, if any, establishing the terms of the trust.

(4) For this section, a ***distribution*** includes distributions:

(a) in the case of a distribution by a company — of the capital or income, or both, of the company; and

(b) 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***:

(a) is not limited to a benefit to which the individual has a legal or equitable entitlement; and

(b) 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:

(a) under the ***Act*** — an attributable stakeholder of any other company or trust; or

(b) under the *Social Security Act 1991* — an attributable stakeholder of the company or trust, or of any other company or trust.

(2) If subsection (1) applies, the ***Commission*** must also consider:

(a) the asset attribution percentage attributed to the individual, if any; and

(b) 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.

Schedule 3

Note: the reference to Schedule 3 is not part of the instrument in Schedule 3.

Instrument 2014 No. R68

Veterans' Entitlements (Attribution of Assets) Principles 2001

Contents

Part 1 Preliminary

1 Name of Principles

These Principles are the *Veterans' Entitlements (Attribution of Assets) Principles 2001.*

2 Commencement

These Principles commence when the *Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* commences.

3 Definition

In these Principles:

Act means the *Veterans' Entitlements Act 1986*;

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

4 Purpose

These Principles set out decision-making principles with which the Commission must comply for the purposes of making a determination under subsection 52ZZR (2), 52ZZT (6) or 52ZZU(1) of the Act.

Part 2 Excluded assets

5 Purpose of Part 2

This Part sets 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

This Part sets 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

This Part sets 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.

Schedule 4

Note: the reference to Schedule 4 is not part of the instrument in Schedule 4.

Veterans' Entitlements (Attribution of Income) Principles 2002

Instrument 2014 No. R69

Contents

Part 1 Preliminary

1 Name of Principles

These Principles are the *Veterans' Entitlements (Attribution of Income) Principles 2002*.

2 Commencement

These Principles commence when the *Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* commences.

3 Definitions

In these Principles:

Act means the *Veterans' Entitlements Act 1986*.

attributable income, in relation to an individual who is an attributable stakeholder of a company or trust, means income that the individual is taken to receive during an attribution period of the company or trust.

distribution, in relation to a trust, includes an amount credited by a trust to a beneficiary of the trust.

4 Purpose

These Principles set out decision-making principles with which the Commission must comply in making the following determinations:

(a) a determination under subsection 52ZZK (2) of the Act that, for the purposes of the application of subsection 52ZZK (1) of the Act to a specified individual and a specified company or trust, a specified amount is excluded income;

(b) a determination under section 52ZZL of the Act that the ordinary income of an individual does not include the amount or value of a distribution, or a part of the amount or value of a distribution, to the individual by a company or trust;

(c) a determination under section 52ZZP of the Act that a specified period is a derivation period of a company or trust for the purposes of the application of Subdivision G of Division 11A of Part 111B of the Act to a specified individual and to a specified company or trust;

(d) a determination under section 52ZZQ of the Act that a specified period is an attribution period for the purposes of the application of Division 11A of Part 111B of the Act to a specified individual and to a specified company or trust.

Part 2 Determination about excluded income (Act s 52ZZK)

Division 2.1 No double counting — both members of couple are attributable stakeholders of company or trust

5 Application of Division 2.1

This Division applies if, in respect of an individual, the following circumstances exist:

(a) the individual is a member of a couple;

(b) the individual and the individual's partner are attributable stakeholders of a company or trust;

(c) during a derivation period of the company or trust, the individual:

(i) may, or may not, receive a distribution from the company or trust; but

(ii) is taken to receive an amount of attributable income during the attribution period that relates to the derivation period;

(d) during the derivation period mentioned in paragraph (c), the individual's partner:

(i) receives a distribution from the company or trust; and

(ii) is taken to receive an amount of attributable income during the attribution period that relates to the derivation period.

6 Sum of distributions is the same as sum of attributable income

(1) This section applies if:

(a) the sum of the distributions mentioned in subparagraphs 5 (c) (i) (if any) and 5 (d) (i) is the same as the sum of the attributable income mentioned in subparagraphs 5 (c) (ii) and 5 (d) (ii); but

(b) the amount of the distribution mentioned in subparagraph 5 (d) (i) is greater than the amount of attributable income mentioned in subparagraph 5 (d) (ii).

(2) The Commission must consider determining that the difference between the amounts referred to in paragraph (1) (b) is excluded income in relation to the attributable income of the individual mentioned in paragraph 5 (c).

7 Sum of distributions is less than sum of attributable income

(1) This section applies if:

(a) the sum of the distributions mentioned in subparagraphs 5 (c) (i) (if any) and 5 (d) (i) is less than the sum of the attributable income mentioned in subparagraphs 5 (c) (ii) and 5 (d) (ii); but

(b) the amount of the distribution mentioned in subparagraph 5 (d) (i) is greater than the amount of attributable income mentioned in subparagraph 5 (d) (ii).

(2) The Commission must consider determining that the difference between the amounts referred to in paragraph (1) (b) is excluded income in relation to the attributable income of the individual mentioned in paragraph 5 (c).

8 Sum of distributions is greater than sum of attributable income

(1) This section applies if:

(a) the sum of the distributions mentioned in subparagraphs 5 (c) (i) (if any) and 5 (d) (i) is greater than the sum of the attributable income mentioned in subparagraphs 5 (c) (ii) and 5 (d) (ii); but

(b) the amount of the distribution mentioned in subparagraph 5 (c) (i) (if any) is less than the amount of attributable income mentioned in subparagraph 5 (c) (ii).

(2) The Commission must consider determining that the difference between the amounts referred to in paragraph (1) (b) is excluded income in relation to the attributable income of the individual mentioned in paragraph 5 (c).

Division 2.2 No double counting — one member of couple is not attributable stakeholder

9 Distribution made to partner who is not attributable stakeholder

(1) This section applies if, in respect of an individual, the following circumstances exist:

(a) the individual is a member of a couple;

(b) the individual is an attributable stakeholder of a company or trust, but the individual's partner is not an attributable stakeholder of the company or trust;

(c) during a derivation period of the company or trust, the individual:

(i) may, or may not, receive a distribution from the company or trust; but

(ii) is taken to receive an amount of attributable income during the attribution period that relates to the derivation period;

(d) during the derivation period mentioned in paragraph (c), the individual's partner receives a distribution from the company or trust.

(2) The Commission must consider determining that an amount equal to the amount of the distribution received by the partner is excluded income in relation to the attributable stakeholder.

Division 2.3 Investor makes genuine transfer and receives distribution or credit

10 Application of Division 2.3

This Division applies if:

(a) an individual (the ***investor***) makes a genuine transfer of capital to a company or trust of which the investor is not an attributable stakeholder; and

(b) during a derivation period of the company or trust, the investor receives a distribution from the company or trust.

11 Genuine transfer of capital

For section 10, a transfer of capital is a genuine transfer of capital if:

(a) 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

(b) the investor has a legal or equitable right to a share of the capital of the company or trust; and

(c) the investor has a legal or equitable right to receive dividends or distributions in accordance with the constituent documents of the company or the terms of the trust; and

(d) the investor is over 18 years of age.

12 Excluded income

(1) This section applies if:

(a) an individual who is an attributable stakeholder of a company or trust is taken to receive attributable income in accordance with subsection 52ZZK (1) of the Act; and

(b) the attributable income of the individual is taken to include additional ordinary income in the circumstances mentioned in section 10.

(2) The Commission must consider determining that the amount of additional ordinary income worked out in

accordance with subsection (3) is excluded income in relation to the attributable stakeholder.

(3) The amount of excluded income is worked out by multiplying the amount of the distribution mentioned in paragraph 10 (b) by the income attribution percentage of the attributable stakeholder.

Part 3 Determination about excluded income (Act s 52ZZL)

Division 3.1 No double counting of attributed income — general

13 No double counting of attributed income — general

(1) For paragraphs 52ZZL (1) (d) and (e) and (2) (d) and (e) of the Act, the Commission must have regard to the ordinary income of the individual received during the relevant attribution period and consider if the individual is an attributable stakeholder of:

(a) more than 1 controlled private company; or

(b) more than 1 controlled private trust; or

(c) at least 1 controlled private company and 1 controlled private trust.

(2) For paragraphs 52ZZL (1) (d) and (e) and (2) (d) and (e) of the Act, the Commission must also consider if a company or trust mentioned in subsection (1) has derived an amount, directly or indirectly, by way of dividend or other distribution from another controlled private company or controlled private trust.

14 No double counting if ordinary income significantly diminished

(1) This section applies if:

(a) a company or trust makes a distribution to an individual who is an attributable stakeholder of the company or trust; and

(b) the individual would, but for this section, be taken to receive an amount of ordinary income over a period of 12 months in accordance with section 46A of the Act; and

(c) the ordinary income of the individual derived from the company or trust during an attribution period has ceased, or is significantly diminished, because the company or trust:

(i) has been wound-up or otherwise ceased to exist; or

(ii) has been subject to circumstances adversely affecting its profitability.

(2) For paragraphs 52ZZL (1) (d) and (e) and (2) (d) and (e) of the Act, the Commission must consider:

(a) whether, in all the circumstances, the application of section 46A of the Act would be unfair or unreasonable in relation to the individual; and

(b) if section 46A applies unfairly or unreasonably in relation to the individual, determining that the ordinary income of the individual does not include the whole or part of the amount or value distributed to the individual.

Division 3.2 Distributions by companies

15 No double counting of attributed income — distribution by company to all attributable stakeholders

(1) This section applies if:

(a) during a particular derivation period of a company, an individual receives a distribution of capital from the company (the ***distribution***); and

(b) the individual is an attributable stakeholder of the company during an attribution period that corresponds with the derivation period of the company; and

(c) the distribution made to the attributable stakeholder is part of a distribution to all attributable stakeholders of the company (the ***total distribution***); and

(d) the proportion that the distribution to each attributable stakeholder bears to the total distribution, expressed as a percentage, is the same as each attributable stakeholder's asset attribution percentage in relation to the company.

(2) For paragraph 52ZZL (1) (d) of the Act, the Commission must consider determining that the ordinary income of the individual received during the attribution period does not include the distribution if, but for this section, the amount or value of the distribution would be included in the ordinary income of the individual for that period.

(3) For paragraph 52ZZL (1) (e) of the Act, the Commission must consider determining that the ordinary income of the individual received during the attribution period does not include any part of the amount or value of the distribution if, but for this section, any part of the amount or value of the distribution would be included in the ordinary income of the individual for that period.

16 No double counting of attributed income — other distributions by a company

(1) This section applies if:

(a) during a particular derivation period of a company, an individual receives a distribution of capital or profits from the company (the ***distribution***); and

(b) the individual is an attributable stakeholder of the company during an attribution period that corresponds with the derivation period of the company; and

(c) the distribution is made in circumstances other than those mentioned in section 14 and paragraphs 15 (1) (c) and (d); and

(d) the individual is taken to receive additional ordinary income during that attribution period in accordance with subsection 52ZZK (1) of the Act.

(2) For paragraph 52ZZL (1) (d) of the Act, if the amount of the distribution is less than, or equal to, the additional ordinary income that the individual is taken to receive in accordance with subsection 52ZZK (1) of the Act during the attribution period, the Commission must consider determining that the ordinary income of

the individual received during that period does not include the amount of that distribution.

(3) For paragraph 52ZZL (1) (e) of the Act, if the amount of the distribution exceeds the additional ordinary income that the individual is taken to receive in accordance with subsection 52ZZK (1) of the Act during the attribution period, the Commission must consider determining that the ordinary income of the individual received during that period does not include so much of the amount of the distribution that equals the additional ordinary income that the individual is taken to receive in accordance with subsection 52ZZK (1) of the Act.

Division 3.3 Distributions by trusts

17 No double counting of attributed income — distribution by trust to all attributable stakeholders

(1) This section applies if:

(a) during a particular derivation period of a trust, an individual receives a distribution of corpus from the trust (the ***distribution***); and

(b) the individual is an attributable stakeholder of the trust during an attribution period that corresponds with the derivation period of the trust; and

(c) the distribution made to the attributable stakeholder is part of a distribution to all attributable stakeholders of the trust (the ***total distribution***); and

(d) the proportion that the distribution to each attributable stakeholder bears to the total distribution, expressed as a percentage, is the same as the attributable stakeholder's asset attribution percentage in relation to the trust.

(2) For paragraph 52ZZL (2) (d) of the Act, the Commission must consider determining that the ordinary income of the individual received during the attribution period does not include the amount or value of the distribution if, but for this section, the

distribution would be included in the ordinary income of the individual for that period.

(3) For paragraph 52ZZL (2) (e) of the Act, the Commission must consider determining that the ordinary income of the individual received during the attribution period does not include any part of the amount or value of the distribution if, but for this section, any part of the amount or value of the distribution would be included in the ordinary income of the individual for that period.

18 No double counting of attributed income — other distributions by trust

(1) This section applies if:

(a) during a particular derivation period of a trust, an individual receives a distribution of corpus or income from the trust (the ***distribution***); and

(b) the individual is an attributable stakeholder of the trust during an attribution period that corresponds with the derivation period of the trust; and

(c) the distribution is made in circumstances other than those mentioned in section 14 and paragraphs 17 (1) (c) and (d); and

(d) the individual is taken to receive additional ordinary income, during that attribution period, in accordance with subsection 52ZZK (1) of the Act.

(2) For paragraph 52ZZL (2) (d) of the Act, if the amount of the distribution is less than, or equal to, the additional ordinary income that the individual is taken to receive in accordance with subsection 52ZZK (1) of the Act during the attribution period, the Commission must consider determining that the ordinary income of the individual received during that period does not include the amount of that distribution.

(3) For paragraph 52ZZL (2) (e) of the Act, if the amount of the distribution exceeds the additional ordinary income that the individual is taken to receive in accordance with subsection 52ZZK (1) of the Act during the attribution period, the Commission must consider determining that the ordinary income of the individual received during that period does not include so much of the amount of the distribution that equals

the additional ordinary income that the individual is taken to receive in accordance with subsection 52ZZK (1) of the Act.

Part 4 Determination of derivation period (Act s 52ZZP)

19 Derivation period must reflect typical income

(1) This section applies to the determination of a specified period as the derivation period of a specified company or trust in relation to an attributable stakeholder of the company or trust.

(2) The derivation period must be a period that is determined having regard to the following matters:

(a) the ordinary income of the company or trust for a derivation period referred to in subsection 52ZZP (1) of the Act;

(b) the ordinary income of the company or trust for any other period or periods that may reasonably be regarded as typical earning periods for the company or trust;

(c) any circumstances affecting the company or trust during the periods referred to in paragraphs (a) and (b);

(d) whether, having regard to any circumstances referred to in paragraph (c), it is appropriate to use a derivation period different from the derivation period referred to in subsection 52ZZP (1) of the Act.

Part 5 Determination of attribution period (Act s 52ZZQ)

20 Attribution period must reflect typical circumstances

(1) This section applies to the determination of an attribution period in relation to:

(a) a specified individual who is an attributable stakeholder of a specified company or trust; and

(b) a specified derivation period of the company or trust.

(2) The attribution period must be a period that is determined having regard to the following matters:

(a) the ordinary income of the attributable stakeholder for the derivation period;

(b) the ordinary income of the attributable stakeholder for any other period or periods that may reasonably be regarded as typical earning periods for the attributable stakeholder;

(c) any circumstances affecting the attributable stakeholder during the periods referred to in paragraphs (a) and (b);

(d) any circumstances that may reasonably be regarded as likely to affect the ordinary income of the attributable stakeholder.

Schedule 5

Note: the reference to Schedule 5 is not part of the instrument in Schedule 5.

Veterans' Entitlements (Modification of Asset Deprivation Rules) Principles 2002

Instrument 2014 No. R76

Contents

Part 1 Preliminary

1 Name of Principles

These Principles are the *Veterans' Entitlements (Modification of Asset Deprivation Rules) Principles 2002*.

2. Commencement

These Principles commence when the *Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* commences.

3 Definitions

In these Principles:

Act means the *Veterans' Entitlements Act 1986*.

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

4 Purpose

These Principles set out decision-making principles with which the Commission must comply for the purposes of making a determination under subsection 52ZZW (1), 52ZZX (3), 52ZZZ (1) or 52ZZZA (1) 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 52ZZW (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, before or after the transfer; or

(b) both members of the couple were the only attributable stakeholders of the company or trust, 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 a 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 a 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 asset 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 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.

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

(1) 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.

(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.

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.

Schedule 6

Note: the reference to Schedule 6 is not part of the instrument in Schedule 6.

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

Instrument 2014 No. R77

Contents

Page

Part 1 Preliminary

1 Name of Principles

These Principles are the *Veterans' Entitlements (Modification of Income Deprivation Rules) Principles 2002*.

2 Commencement

These Principles commence when the *Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* commences.

3 Definitions

In these Principles:

Act means the *Veterans' Entitlements Act 1986*.

4 Purpose

These Principles set out decision-making principles with which the Commission must comply for the purposes of making a determination under subsection 52ZZZB (1), 52ZZZC (3), 52ZZZD (1) or 52ZZZE (1) of the Act.

Part 2 Disposal of ordinary income (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 52ZZZB (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 52ZZZB (1) of the Act.

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 recipient company or recipient 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 income attribution percentage of each attributable stakeholder of the company or trust, before and after the transfer of the property.

Part 3 Disposal of ordinary income (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 52ZZZC (3) of the Act.

12 Disposal to attributable stakeholder

The Commission must take into account whether, in relation to a transfer of ordinary income of a company or trust in accordance with subsection 52ZZZC (1) of the Act, the transfer is to an individual who is an attributable stakeholder of the company or trust.

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

13 Purpose of Part 4

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

14 Definitions

In this Part:

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

15 Application of Division 7 of Part IIIB of Act where value of property same or greater

(1) This section applies if:

(a) property is transferred by an individual to a company or trust; and

(b) on 1 January 2002, the property is owned or controlled by the company or trust; and

(c) on 1 January 2002, the value of the property is the same as, or greater than, it was at the time of its transfer.

(2) The Commission must consider whether, in all the circumstances, the application of Division 7 of Part IIIB of the Act would be unfair or unreasonable in relation to the individual.

16 Application of Division 7 of Part IIIB of Act where value of property decreased after transfer

(1) This section applies if:

(a) property is transferred by an individual to a company or trust; and

(b) on 1 January 2002, the property is owned or controlled by the company or trust; and

(c) on 1 January 2002, the value of the property is less than it was at the time of its transfer; and

(d) the decrease in the value of the property 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 Division 7 of Part IIIB of the Act would be unfair or unreasonable in relation to the individual.

17 Application of Division 7 of Part IIIB of Act where company or trust retains value of transferred property

(1) This section applies if:

(a) property is transferred by an individual to a company or trust; and

(b) before 1 January 2002, the company or trust transferred the property 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 Division 7 of Part IIIB of the Act would be unfair or unreasonable in relation to the individual.

18 Transfer by member of couple

(1) This section applies if:

(a) an individual, who is a member of a couple, transfers property 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.

(2) The Commission must consider whether, in all the circumstances, the application of Division 7 of Part IIIB of the Act would be unfair or unreasonable in relation to the individual.

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

19 Purpose of Part 5

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

20 Definitions

In this Part:

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

21 Application of Division 7 of Part IIIB of Act where value of property same or greater

(1) This section applies if:

(a) property is transferred by an individual to a company or trust; and

(b) on 1 January 2002, the property is owned or controlled by the company or trust; and

(c) on 1 January 2002, the value of the property is the same as, or greater than, it was at the time of its transfer.

(2) The Commission must consider whether, in all the circumstances, the application of Division 7 of Part IIIB of the Act would be unfair or unreasonable in relation to the individual.

22 Application of Division 7 of Part IIIB of Act where value of property decreased after disposal

(1) This section applies if:

(a) property is transferred by an individual to a company or trust; and

(b) on 1 January 2002, the property is owned or controlled by the company or trust; and

(c) on 1 January 2002, the value of the property is less than it was at the time of its transfer; and

(d) the decrease in the value of the property 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 Division 7 of Part IIIB of the Act would be unfair or unreasonable in relation to the individual.

23 Application of Division 7 of Part IIIB of Act where company or trust retains value of transferred property

(1) This section applies if:

(a) property is transferred by an individual to a company or trust; and

(b) before 1 January 2002, the company or trust transferred the property 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 Division 7 of Part IIIB of the Act would be unfair or unreasonable in relation to the individual.

Schedule 7

Note: the reference to Schedule 7 is not part of the instrument in Schedule 7.

Veterans' Entitlements (Primary Production Concession) Principles 2001

Instrument 2014 No. R78

Contents

Part 1 Preliminary

1 Name of Principles

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

2 Commencement

These Principles commence when the *Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* commences.

3 Definitions

In these Principles, unless the contrary intention appears:

Act means the *Veterans' Entitlements Act 1991*.

company means a controlled private company.

trust means a controlled private trust.

4 Purpose of Determination

These Principles set out decision-making principles with which the Commission must comply in making the following determinations:

(a) a determination under paragraph 52ZZZF (1) (f) of the Act that that paragraph applies to an individual and a trust that is a controlled private trust in relation to the individual;

(b) a determination under subsection 52ZZZH (2) of the Act that the value of a specified asset owned by a company or a trust is to be reduced by the whole or a specified part of a specified liability;

(c) a determination under subsection 52ZZZJ (2) of the Act that, for the purposes of Subdivision K of Division 11A of Part IIIB of the Act, an asset that is owned by a company that is a controlled private company in relation to an individual, or a trust that is a controlled private trust in relation to an individual, is taken not to be controlled by the individual;

(d) a determination under subparagraph 52ZZZK (2) (a) (ii) or (b) (ii) of the Act that a specified percentage, lower than 100%, is the adjusted net value of an asset controlled by an individual;

(e) a determination under subparagraph 52ZZZL (1) (b) (ii) of the Act that, for a particular tax year, a specified percentage, lower than 100%, of the net income of a primary production enterprise carried on by a company that was a controlled private company in relation to an individual throughout that tax year is to apply in relation to the individual and the enterprise for that tax year;

(f) a determination under subparagraph 52ZZZL (1) (c) (ii) of the Act that, for a particular tax year, a specified percentage, lower than 100%, of the net income of a primary production enterprise carried on by a trust that was a controlled private trust in relation to an individual throughout that tax year is to apply in relation to the individual and the enterprise for that tax year.

Part 2 Determination of application of paragraph 52ZZZF (1) (f) of Act

5 Purpose of Part 2

This Part sets out decision-making principles with which the Commission must comply in making a determination under paragraph 52ZZZF (1) (f) of the Act that that paragraph applies to an individual and a trust that is a controlled private trust in relation to the individual.

6 Long-term connection with primary production

(1) The Commission must consider whether the individual has had a long-term connection with primary production, in relation to which, for some reason, there has been an interruption in the period of 3 years immediately before the test time, with the result that, at that time, the requirements of subparagraphs 52ZZZF (1) (e) (i), (ii) and (iii) of the Act are not able to be satisfied in relation to the individual.

(2) For subsection (1), an individual is taken to have had a long-term connection with primary production if, for a period of 20 years (whether the period is continuous or is made up of 2 or more periods that total 20 years), the individual, or the individual's spouse:

(a) has been involved in the carrying on of one or more primary production enterprises; and

(b) has contributed a significant part of his or her labour to the carrying on of those primary production enterprises; and

(c) has derived, either directly or indirectly, a significant part of his or her income from those primary production enterprises.

(3) For the purposes of the application of subsection (2) to an individual at a particular time, a reference to the ***individual's spouse*** is a reference to a person who was the spouse of the individual at that time (whether or not the person is the spouse of the individual at the test time).

(4) For paragraph (2) (c), an individual, or an individual's spouse, is taken to have derived income indirectly from a primary production enterprise if the income was derived from a company, trust or business partnership that carried on the primary production enterprise.

7 Net income of primary production enterprise

(1) This section applies in relation to the individual if, at any time during the period of 3 years that ended before the test time, the first primary production enterprise was being carried on by an entity, other than:

(a) the individual or the individual's spouse; or

(b) a company that was a controlled private company in relation to the individual or the individual's spouse; or

(c) a trust that was a controlled private trust in relation to the individual or the individual's spouse; or

(d) a business partnership of which the individual, or the individual's spouse, was a partner.

(2) The Commission must consider:

(a) the amount that is the average of the following amounts in relation to the first primary production enterprise:

(i) the net income (if any) of the enterprise for the last tax year that ended before the test time;

(ii) the net income (if any) of the enterprise for the tax year that preceded the tax year mentioned in subparagraph (i);

(iii) the net income (if any) of the enterprise for the tax year that preceded the tax year mentioned in subparagraph (ii); and

(b) any reductions or adjustments that might have been made to the amounts mentioned in subparagraphs (a) (i), (ii) and (iii) if the entity that had carried on the first primary production enterprise in the tax years mentioned in those subparagraphs had been:

(i) the individual or the individual's spouse; or

(ii) a company that was a controlled private company in relation to the individual or the individual's spouse; or

(iii) a trust that was a controlled private trust in relation to the individual or the individual's spouse; or

(iv) a business partnership of which the individual, or the individual's spouse, was a partner.

(3) In this section:

first primary production enterprise means the first primary production enterprise mentioned in paragraph 52ZZZF (1) (b) of the Act.

tax year, in relation to a primary production enterprise, means a tax year of the entity that carried on the enterprise.

test time means the test time in relation to the individual mentioned in subsection 52ZZZF (1).

Part 3 Determination of reduction of value of specified asset

8 Purpose of Part 3

This Part sets out decision-making principles with which the Commission must comply in making a determination under subsection 52ZZZH (2) of the Act that the value of a specified asset owned by a company or a trust is to be reduced by the whole or a specified part of a specified liability.

9 Liability arising from genuine arms-length transaction

(1) The Commission must consider whether the specified liability arose from a genuine arm's length transaction between the company or trust that owns the specified asset and another entity.

(2) A transaction is taken to be a genuine arm's length transaction for the purposes of subsection (1) if the transaction:

(a) relates to an arrangement that relates to the specific business activities of the company or trust; and

(b) is not with, or does not relate to an arrangement with, a person who is a minor; and

(c) is made under a written agreement that is signed by each party to the agreement and witnessed by an independent person.

(3) Provided the requirements in subsection (2) are met in relation to a transaction, the transaction may be a transaction between the company or trust that owns the specified asset and an individual who is the sole attributable stakeholder of the company or trust.

(4) In this section:

minor means a person who has not turned 18, but does not include a person (other than a student) who:

(a) has turned 16; and

(b) is engaged on a full-time basis in an occupation, including an office, employment, trade, business, profession, vocation or calling.

student means a person who has turned 16, but has not turned 18, who is enrolled in a full-time course of study at a school, college, university or similar educational institution.

Part 4 Determination that asset is not controlled by individual

10 Purpose of Part 4

This Part sets out decision-making principles with which the Commission must comply in making a determination under subsection 52ZZZJ (2) of the Act that, for the purposes of Subdivision K of Division 11A of Part IIIB of the Act, an asset that is owned by a company that is a controlled private company in relation to an individual, or a trust that is a controlled private trust in relation to an individual, is taken not to be controlled by the individual.

11 Is the individual an attributable stakeholder?

(1) The Commission must consider whether it is likely that the individual would be considered to be an attributable stakeholder of the company or trust that owns the asset.

(2) If the asset is owned by a trust that is a concessional primary production trust in relation to the individual, the Commission must consider whether it is likely that, but for the fact that the trust is a concessional primary production trust in relation to the individual, the individual would be considered to be an attributable stakeholder of the trust.

(3) In considering the matters mentioned in subsections (1) and (2), the Commission must have regard to the decision-making principles set out in Part 2 of the *Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2001*.

Part 5 Determination of adjusted net value of asset controlled by individual

12 Purpose of Part 5

This Part sets out decision-making principles with which the Commission must comply in making a determination under subparagraph 52ZZZK (2) (a) (ii) or (b) (ii) of the Act that a specified percentage, lower than 100%, is the adjusted net value of an asset controlled by an individual.

13 Is the individual an attributable stakeholder?

(1) The Commission must consider whether it is likely that the individual would be considered to be an attributable stakeholder of the company or trust that owns the asset.

(2) If the asset is owned by a trust that is a concessional primary production trust in relation to the individual, the Commission must consider whether it is likely that, but for the fact that the trust is a concessional primary production trust in relation to the individual, the individual would be considered to be an attributable stakeholder of the trust.

(3) If the Commission considers that it is likely that the individual would be considered to be an attributable stakeholder of the company or trust that owns the asset, the Commission must consider the percentage that would be likely to be the individual's asset attribution percentage in relation to the company or trust.

(4) In considering the matters mentioned in subsections (1) and (2), the Commission must have regard to the decision-making principles set out in Part 2 of the *Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2001*.

(5) In considering the matter mentioned in subsection (3), the Commission must have regard to the decision-making principles set out in Part 3 of the *Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2001*.

Part 6 Determination of percentage of net income of primary production enterprise for tax year

14 Purpose of Part 6

This Part sets out decision-making principles with which the Commission must comply in making:

(a) a determination under subparagraph 52ZZZL (1) (b) (ii) of the Act that, for a particular tax year, a specified percentage, lower than 100%, of the net income of a primary production enterprise carried on by a company that was a controlled private company in relation to an individual throughout that tax year is to apply in relation to the individual and the enterprise for that tax year; or

(b) a determination under subparagraph 52ZZZL (1) (c) (ii) of the Act that, for a particular tax year, a specified percentage, lower than 100%, of the net income of a primary production enterprise carried on by a trust that was a controlled private trust in relation to an individual throughout that tax year is to apply in relation to the individual and the enterprise for that tax year.

15 Is the individual an attributable stakeholder?

(1) The Commission must consider whether it is likely that the individual would be considered to be an attributable stakeholder of the company or trust that carries on the primary production enterprise.

(2) If the primary production enterprise is carried on by a trust that is a concessional primary production trust in relation to the individual, the Commission must consider whether it is likely that, but for the fact that the trust is a concessional primary production trust in relation to the individual, the individual would be considered to be an attributable stakeholder of the trust.

(3) If the Commission considers that it is likely that the individual would be considered to be an attributable stakeholder of the company or trust that carries on the primary production enterprise, the Commission must consider the percentage that would be likely to be the individual's income attribution percentage in relation to the company or trust.

(4) In considering the matters mentioned in subsections (1) and (2), the Commission must have regard to the decision-making principles set out in Part 2 of the *Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2001*.

(5) In considering the matter mentioned in subsection (3), the Commission must have regard to the decision-making principles set out in Part 4 of the *Veterans' Entitlements (Attributable Stakeholders and Attribution Percentages) Principles 2001*.

Part 2 Disposal of ordinary income (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 52ZZZB (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 52ZZZB (1) of the Act.

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 recipient company or recipient 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 income attribution percentage of each attributable stakeholder of the company or trust, before and after the transfer of the property.

Part 3 Disposal of ordinary income (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 52ZZZC (3) of the Act.

12 Disposal to attributable stakeholder

The Commission must take into account whether, in relation to a transfer of ordinary income of a company or trust in accordance with subsection 52ZZZC (1) of the Act, the transfer is to an individual who is an attributable stakeholder of the company or trust.

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

13 Purpose of Part 4

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

14 Definitions

In this Part:

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

15 Application of Division 7 of Part IIIB of Act where value of property same or greater

(1) This section applies if:

(a) property is transferred by an individual to a company or trust; and

(b) on 1 January 2002, the property is owned or controlled by the company or trust; and

(c) on 1 January 2002, the value of the property is the same as, or greater than, it was at the time of its transfer.

(2) The Commission must consider whether, in all the circumstances, the application of Division 7 of Part IIIB of the Act would be unfair or unreasonable in relation to the individual.

16 Application of Division 7 of Part IIIB of Act where value of property decreased after transfer

(1) This section applies if:

(a) property is transferred by an individual to a company or trust; and

(b) on 1 January 2002, the property is owned or controlled by the company or trust; and

(c) on 1 January 2002, the value of the property is less than it was at the time of its transfer; and

(d) the decrease in the value of the property 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 Division 7 of Part IIIB of the Act would be unfair or unreasonable in relation to the individual.

17 Application of Division 7 of Part IIIB of Act where company or trust retains value of transferred property

(1) This section applies if:

(a) property is transferred by an individual to a company or trust; and

(b) before 1 January 2002, the company or trust transferred the property 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 Division 7 of Part IIIB of the Act would be unfair or unreasonable in relation to the individual.

18 Transfer by member of couple

(1) This section applies if:

(a) an individual, who is a member of a couple, transfers property 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.

(2) The Commission must consider whether, in all the circumstances, the application of Division 7 of Part IIIB of the Act would be unfair or unreasonable in relation to the individual.

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

19 Purpose of Part 5

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

20 Definitions

In this Part:

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

21 Application of Division 7 of Part IIIB of Act where value of property same or greater

(1) This section applies if:

(a) property is transferred by an individual to a company or trust; and

(b) on 1 January 2002, the property is owned or controlled by the company or trust; and

(c) on 1 January 2002, the value of the property is the same as, or greater than, it was at the time of its transfer.

(2) The Commission must consider whether, in all the circumstances, the application of Division 7 of Part IIIB of the Act would be unfair or unreasonable in relation to the individual.

22 Application of Division 7 of Part IIIB of Act where value of property decreased after disposal

(1) This section applies if:

(a) property is transferred by an individual to a company or trust; and

(b) on 1 January 2002, the property is owned or controlled by the company or trust; and

(c) on 1 January 2002, the value of the property is less than it was at the time of its transfer; and

(d) the decrease in the value of the property 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 Division 7 of Part IIIB of the Act would be unfair or unreasonable in relation to the individual.

23 Application of Division 7 of Part IIIB of Act where company or trust retains value of transferred property

(1) This section applies if:

(a) property is transferred by an individual to a company or trust; and

(b) before 1 January 2002, the company or trust transferred the property 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 Division 7 of Part IIIB of the Act would be unfair or unreasonable in relation to the individual.

Schedule 8

Note: the reference to Schedule 8 is not part of the instrument in Schedule 8.

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

Instrument 2014 No. R70

Contents

Part 1 Preliminary

1 Name of Determination

This Determination is the *Veterans' Entitlements (Attribution of Income – Ineligible Deductions) Determination 2001*.

2 Commencement

This Determination commences when the *Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* commences.

3 Definitions

In this Determination:

Act means the *Veterans' Entitlements Act 1986*.

assessable income means assessable income for the purposes of *ITAA 1936* or *ITAA 1997*.

ITAA 1936 means the *Income Tax Assessment Act 1936*.

ITAA 1997 means the *Income Tax Assessment Act 1997*.

Part 2 Ineligible deductions and ineligible parts of deductions

Division 2.1 Ineligible deductions

4 Ineligible deductions — *ITAA 1936* and *ITAA 1997*

(1) For subsection 52ZZO (3) of the Act:

(a) an allowable deduction for the purposes of a provision of *ITAA 1936* mentioned in an item in Part 1 of Schedule 1 is an ineligible deduction; and

(b) an allowable deduction for the purposes of a provision of *ITAA 1997* mentioned in an item in Part 2 of Schedule 1 is an ineligible deduction.

(2) For subsection 52ZZZO (3) of the Act:

(a) an allowable deduction for the purposes of a provision of *ITAA 1936* mentioned in an item in Part 1 of Schedule 2 is an ineligible deduction; and

(b) an allowable deduction for the purposes of a provision of *ITAA 1997* mentioned in an item in Part 2 of Schedule 2 is an ineligible deduction.

Division 2.2 Ineligible parts of deductions

5 Ineligible part of certain superannuation contributions

(1) For subsection 52ZZO (5) of the Act, this section applies if a company or a trust makes a superannuation contribution that:

(a) is an allowable deduction in accordance with subsection 82AAC (1) of the *ITAA 1936* (the ***allowable deduction***); and

(b) exceeds the applicable minimum benefit required to be vested in the member by the superannuation fund conditions**.**

(2) For subsection 52ZZZO (5) of the Act, this section applies if an entity that carries on a primary production enterprise makes a superannuation contribution that:

(a) is an allowable deduction in accordance with subsection 82AAC (1) of the *ITAA 1936* (the ***allowable deduction***); and

(b) exceeds the applicable minimum benefit required to be vested in the member by the superannuation fund conditions.

(3) The amount by which the allowable deduction mentioned in subsection (1) or (2) exceeds the relevant applicable minimum benefit is an ineligible part of the allowable deduction.

6 Ineligible part of amount of salary or wages

(1) For subsection 52ZZO (5) of the Act, this section applies if:

(a) a company or a trust pays a wage or salary (the ***amount paid***) to an individual (the ***wage or salary earner***) who is:

(i) an attributable stakeholder of the company or trust; or

(ii) an associate, within the meaning of paragraph 52ZQ (1) (e), (h), (i) or (j) of the Act, of an attributable stakeholder of the company or trust; and

(b) the amount paid is an allowable deduction of a kind mentioned in paragraph 52ZZO (1) (a) of the Act; and

(c) the amount paid exceeds an amount that represents reasonable remuneration for the wage or salary earner having regard to:

(i) the period to which the amount paid relates; and

(ii) the work performed by the wage or salary earner during that period; and

(iii) the relevant qualifications or skills of the wage or salary earner; and

(iv) remuneration paid to individuals, with comparable qualifications or skills, performing work that is comparable to that performed by the wage or salary earner; and

(v) other relevant circumstances affecting the employment of the wage or salary earner.

(2) For subsection 52ZZZO (5) of the Act, this section applies if:

(a) a company or trust that carries on a primary production enterprise pays a wage or salary (the ***amount paid***) to an individual (the ***wage or salary earner***) who is:

(i) an attributable stakeholder of the company or trust; or

(ii) an associate, within the meaning of paragraph 52ZQ (1) (e), (h), (i) or (j) of the Act, of an attributable stakeholder of the company or trust; and

(b) the amount paid is an allowable deduction of a kind mentioned in paragraph 52ZZZO (1) (a) of the Act; and

(c) the amount paid exceeds an amount that represents reasonable remuneration for the wage or salary earner having regard to:

(i) the period to which the amount paid relates; and

(ii) the work performed by the wage or salary earner during that period; and

(iii) the relevant qualifications or skills of the wage or salary earner; and

(iv) remuneration paid to individuals, with comparable qualifications or skills, performing work comparable to that performed by the wage or salary earner; and

(v) other relevant circumstances affecting the employment of the wage or salary earner.

(3) The amount by which the amount paid, referred to in paragraph (1) (a) or (2) (a), exceeds the reasonable remuneration referred to in paragraph (1) (c) or (2) (c), is an ineligible part of the relevant allowable deduction.

7 Ineligible part of amount of interest on borrowings

(1) For subsection 52ZZO (5) of the Act, this section applies if:

(a) a company or a trust borrows money for the purposes of carrying on a business; and

(b) the interest payable on the money borrowed is an allowable deduction of a kind mentioned in paragraph 52ZZO (1) (a) of the Act; and

(c) the interest paid exceeds an amount that represents a reasonable rate of interest on the money borrowed having regard to:

(i) the terms and conditions of the loan; and

(ii) standard commercial interest rates at the time that the loan was made; and

(iii) the kind of business carried on, or the way in which assessable income is gained or produced by the business.

(2) For subsection 52ZZZO (5) of the Act, this section applies if:

(a) an entity that carries on a primary production enterprise borrows money for the purposes of carrying on a business; and

(b) the interest payable on the money borrowed is an allowable deduction of a kind mentioned in paragraph 52ZZZO (1) (a) of the Act; and

(c) the interest paid exceeds an amount that represents a reasonable rate of interest on the money borrowed having regard to:

(i) the terms and conditions of the loan; and

(ii) standard commercial interest rates at the time that the loan was made; and

(iii) the kind of business carried on, or the way in which assessable income is gained or produced by the business.

(3) The amount by which the interest paid, referred to in paragraph (1) (c) or (2) (c), is greater than the reasonable rate of interest referred to in that paragraph, is an ineligible part of the relevant allowable deduction.

8 Trading stock of business — election under s 70-45 of *ITAA 1997*

(1) For subsection 52ZZO (5) of the Act, this section applies if:

(a) a company or trust values trading stock of a business owned or controlled by the company or trust using:

(i) a valuation method at the start of an income year, giving an amount (the ***first valuation***); and

(ii) a different valuation method in accordance with an election made under section 70-45 of the *ITAA 1997* at the end of the income year, giving an amount (the ***second valuation***); and

(b) the first valuation exceeds the second valuation; and

(c) the ordinary income of the company or trust from the business is reduced by the amount of any excess of the first valuation over the second valuation (the ***allowable deduction***); and

(d) the allowable deduction exceeds the difference (if any) in the value of the trading stock if its value at the end of the income year were worked out by using the same valuation method used for the first valuation.

(2) The amount by which the allowable deduction, referred to in paragraph (1) (c), is greater than the difference in the value of the trading

stock, referred to in paragraph (1) (d), is an ineligible part of the allowable deduction.

9 Trading stock of primary production enterprise — election under s 70-45 of *ITAA 1997*

(1) For subsection 52ZZZO (5) of the Act, this section applies if:

(a) an entity carrying on a primary production enterprise values trading stock of the enterprise using:

(i) a valuation method at the start of an income year, giving an amount (the ***first valuation***); and

(ii) a different valuation method in accordance with an election made under section 70-45 of the *ITAA 1997* at the end of the income year, giving an amount (the ***second valuation***); and

(b) the first valuation exceeds the second valuation; and

(c) the entity's income from the enterprise is reduced by the amount of any excess of the first valuation over the second valuation (the ***allowable deduction***); and

(d) the allowable deduction exceeds the difference (if any) in the value of the trading stock if its value at the end of the income year were worked out by using the same valuation method used for the first valuation.

(2) The amount by which the allowable deduction, referred to in paragraph (1) (c), is greater than the difference in the value of the trading stock, referred to in paragraph (1) (d), is an ineligible part of the allowable deduction.

10 Trading stock of business — election under s 70-50 of *ITAA 1997*

(1) For subsection 52ZZO (5) of the Act, this section applies if:

(a) a company or a trust values trading stock of a business owned or controlled by the company or trust using:

(i) a valuation method at the start of an income year, giving an amount (the ***first valuation***), that is the same valuation method used to value the trading stock at the end of the preceding income year; and

(ii) a different valuation method in accordance with an election made under section 70-50 of the *ITAA 1997* at the end of the income year, giving an amount (the ***second valuation***); and

(b) the first valuation exceeds the second valuation; and

(c) the ordinary income of the company or trust is reduced by the amount of any excess of the first valuation over the second valuation (the ***allowable deduction***); and

(d) the allowable deduction exceeds the difference (if any) in the value of the trading stock if its value at the end of the income year were worked out by using the same valuation method used for the first valuation.

(2) The amount by which the allowable deduction, referred to in paragraph (1) (c), is greater than the difference in the value of the trading

stock, referred to in paragraph (1) (d), is an ineligible part of the allowable deduction.

11 Trading stock of primary production enterprise — election under s 70-50 of *ITAA 1997*

(1) For subsection 52ZZZO (5) of the Act, this section applies if:

(a) an entity carrying on a primary production enterprise values trading stock using:

(i) a valuation method at the start of an income year, giving an amount (the ***first valuation***), that is the same valuation method used to value the trading stock at the end of the preceding income year; and

(ii) a different valuation method in accordance with an election made under section 70-50 of the *ITAA 1997* at the end of the income year, giving an amount (the ***second valuation***); and

(b) the first valuation exceeds the second valuation; and

(c) the entity's income from the enterprise is reduced by the amount of any excess of the first valuation over the second valuation (the ***allowable deduction***); and

(d) the allowable deduction exceeds the difference (if any) in the value of the trading stock if its value at the end of the income year were worked out by using the same valuation method used for the first valuation.

(2) The amount by which the allowable deduction, referred to in paragraph (1) (c), is greater than the difference in the value of the trading stock, referred to in paragraph (1) (d), is an ineligible part of the allowable deduction.

Schedule 1 Ineligible deductions for section 52ZZO of the Act

(subsection 4 (1))

Part 1 Ineligible deductions: ITAA 1936

Item	Provision	General description
101	Section 266-25 of Schedule 2F	Fixed trust may be denied tax loss deduction
102	Section 266-35 of Schedule 2F	Fixed trust may be denied debt deduction
103	Section 266-50 of Schedule 2F	Fixed trust — deducting part of a tax loss
104	Section 267-20 of Schedule 2F	Non-fixed trust may be denied tax loss deduction
105	Section 267-50 of Schedule 2F	Non-fixed trust — deducting part of a tax loss

Part 2 Ineligible deductions: ITAA 1997

Item	Provision	General description
201	Section 25-25	Borrowing expenses
202	Section 25-30	Expenses of discharging a mortgage
203	Section 30-15	Table of gifts or contributions that you can deduct
204	Section 32-20	Fringe benefits
205	Section 32-25	Deductions for losses and outgoings relating to entertainment
206	Section 36-15	How to deduct tax losses of earlier income years
207	Section 36-40	Deductions for amounts paid for debts incurred before bankruptcy
208	Section 40-25	Deducting amounts for depreciating assets
209	Section 40-285	Capital allowances — balancing adjustments
210	Section 40-335	Deduction for in-house software where you will never use it
211	Section 40-370	Balancing adjustments where there has been use of different car expense methods
212	Section 40-455	In-house software — how to work out your deduction
213	Section 40-645	Electricity and telephone lines
214	Section 40-730	Mining and quarrying — deduction for expenditure on exploration or prospecting
215	Section 40-735	Deduction for expenditure on mining site rehabilitation
216	Section 40-750	Deduction for payments of petroleum resource rent tax

Item	Provision	General description
217	Section 40-755	Environmental protection activities
218	Section 40-830	Project pools
219	Section 40-880	Business related costs
220	Section 43-10	Deductions for capital works
221	Section 43-40	Deduction for destruction of capital works
222	Section 70-120	Trading stock — capital costs of acquiring trees
223	Section 165-10	Changing ownership or control of a company — deducting tax losses
224	Section 165-20	Changing ownership or control of a company — deducting part of tax loss
225	Section 165-96	Changing ownership or control of a company — when company cannot apply a net capital loss
226	Section 170-20	Treatment of company groups — who can deduct transferred loss

Schedule 2 Ineligible deductions for section 52ZZZO of the Act

(subsection 4 (2))

Part 1 Ineligible deductions: ITAA 1936

Item	Provision	General description
101	Section 266-25 of Schedule 2F	Fixed trust may be denied tax loss deduction
102	Section 266-35 of Schedule 2F	Fixed trust may be denied debt deduction
103	Section 266-50 of Schedule 2F	Fixed trust — deducting part of a tax loss
104	Section 267-20 of Schedule 2F	Non-fixed trust may be denied tax loss deduction
105	Section 267-50 of Schedule 2F	Non-fixed trust — deducting part of a tax loss

Part 2 Ineligible deductions: ITAA 1997

Item	Provision	General description
201	Section 25-25	Borrowing expenses
202	Section 25-30	Expenses of discharging a mortgage
203	Section 30-15	Table of gifts or contributions that you can deduct
204	Section 32-20	Fringe benefits
205	Section 32-25	Deductions for losses and outgoings relating to entertainment
206	Section 36-15	How to deduct tax losses of earlier income years
207	Section 36-40	Deductions for amounts paid for debts incurred before bankruptcy
208	Section 40-25	Deducting amounts for depreciating assets
209	Section 40-285	Balancing adjustments
210	Section 40-335	Deduction for in-house software where you will never use it
211	Section 40-370	Balancing adjustments where there has been use of different car expense methods
212	Section 40-455	In-house software — how to work out your deduction
213	Section 40-515	Water facilities, grapevines and horticultural plants
214	Section 40-565	Extra deduction for destruction of a horticultural plant or grapevine
215	Section 40-630	Landcare operations
216	Section 40-645	Electricity and telephone lines
217	Section 40-755	Environmental protection activities

Item	Provision	General description
218	Section 40-830	Project pools
219	Section 40-880	Business related costs
220	Section 43-10	Deductions for capital works
221	Section 43-40	Deduction for destruction of capital works
222	Section 70-120	Trading stock — capital costs of acquiring trees
223	Section 165-10	Changing ownership or control of a company — deducting tax losses
224	Section 165-20	Changing ownership or control of a company — deducting part of tax loss
225	Section 165-96	Changing ownership or control of a company — when company cannot apply a net capital loss
226	Section 170-20	Treatment of company groups — who can deduct transferred loss

Schedule 9

Note: the reference to Schedule 9 is not part of the instrument in Schedule 9.

Commonwealth of Australia

Veterans' Entitlements Act 1986

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

<u>Instrument 2014 No.R73</u>

The Repatriation Commission, pursuant to paragraph 5H(12)(c) of the *Veterans' Entitlements Act 1986* (VEA) determine that an amount specified in Part 2 of the Schedule is an exempt lump sum for the purposes of the definition of "ordinary income" in subsection 5H(1) of the VEA.

SCHEDULE

Part 1: Preliminary and Interpretation

1. EXPLANATION

1.1 Paragraph 5H(12)(c) of the *Act* enables the *Repatriation Commission* to determine that an amount, or one of a class of amounts, is an exempt lump sum - the consequence of which is that the amount, or class of amounts, is not ordinary income for the purposes of the *Act*.

1.2 NAME OF DETERMINATION

1.2.1 This Determination is the *Veterans' Entitlements Income (Exempt Lump Sum - Compensation) Determination.*

1.3 COMMENCEMENT OF DETERMINATION

1.3.1 This Determination takes effect when the *Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* commences.

1.4 DEFINITIONS

1.4.1 In this Determination:

"Act" means the *Veterans' Entitlements Act 1986.*

"compensation payment" means a payment under the Compensation for Detriment Caused by Defective

Administration scheme (CDDA) or a payment known as an "Act of Grace payment" made under section 65 of the *Public Governance, Performance and Accountability Act 2013*.

Note: CDDA is an administrative scheme established under the Commonwealth's inherent constitutional powers and by Cabinet Decision 24 October 1995 to enable Commonwealth agencies to compensate persons who have been adversely affected by the 'defective' actions or inaction of such agencies, but who have no other avenues to seek redress.

"Family Assistance law" means the *A New Tax System (Family Assistance) Act 1999* or the *A New Tax System (Family Assistance) (Administration) Act 1999*.

"service pension" has the meaning given in subsection 5Q(1) of the *Act*.

"income support supplement" means the payment called the income support supplement payable under Part IIIA of the *Act*.

"partner" has the meaning given in subsection 5E(1) of the Act.

PART 2: EXEMPT LUMP SUM

2.1 If:

(a) a person has received a *compensation payment*; and

(b) the *compensation payment* was paid:

(i) to reimburse expenses or compensate for other financial loss incurred by a person due to an administrative error made by an employee of, or contractor to, the Department of Veterans' Affairs, or by the Repatriation Commission or Military Rehabilitation and Compensation Commission; or

(ii) in lieu of an amount payable under the *Act;* and

(c) the person is eligible for, or in receipt of, a *service pension* or *income support supplement*;

then any amount received by the person, as a *compensation payment*, is an exempt lump sum.

2.2 If:

(a) a person (VEA-person) or the partner of a VEA-person (partner) has received a *compensation payment*; and

(b) the *compensation payment* was paid:

(i) to reimburse expenses or other financial loss incurred by the VEA-person or the partner due to an administrative error made by an employee of, or contractor to, the Department of Human Services or the Department of Veterans' Affairs; or

(ii) in lieu of an amount payable to the VEA-person or to the partner under the *Social Security Act 1991,* the *Family Assistance law* or the *Veterans' Entitlements Act 1986*; and

(c) the VEA-person is eligible for, or in receipt of, a *service pension* or *income support supplement*;

then the amount received by the VEA-person or the partner, as a *compensation payment*, is an exempt lump sum.

PART 3 APPLICATION – EXEMPT LUMP SUMS

3.1 A compensation payment that is an exempt lump sum under Part 2 is an exempt lump sum on and from the date the payment was received - being a date not before the commencement of this Determination.

Schedule 10

Note: the reference to Schedule 10 is not part of the instrument in Schedule 10.

Repatriation Commission

Veterans' Entitlements Act 1986

Veterans' Entitlements Income (Exempt Lump Sum—income received after end of market-linked income stream term) Determination

Instrument 2014 No. R74

The Repatriation Commission determines, under paragraph 5H(12)(c) of the *Veterans' Entitlements Act 1986* (VEA), that an amount specified in Part 2 of the Schedule as an exempt lump sum is an exempt lump sum for the purposes of the definition of "ordinary income" in subsection 5H(1) of the VEA.

SCHEDULE

Part 1: Preliminary and Interpretation

1.1 NAME OF DETERMINATION

This determination is the *Veterans' Entitlements Income (Exempt Lump Sum—income received after end of market-linked income stream term) Determination*.

1.2 COMMENCEMENT

This Determination commences when the *Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* commences.

1.3 DEFINITIONS

In this Determination:

"market-linked income stream" means an *asset-test exempt income stream* which meets the requirements of subsection 5JBA(1) of the VEA.
"service pension" has the meaning given in subsection 5Q(1) of the VEA.
"income support supplement" means the payment called the income support supplement payable under Part IIIA of the VEA.

Part 2: Amount determined to be an exempt lump sum

2.1 AMOUNT OR CLASS OF AMOUNTS

2.1.1 Paragraph 5H(12)(c) of the VEA provides that the Commission may determine that an amount or class of amounts received by a person, is an exempt lump sum.

2.1.2 If:

(a) a person is a beneficiary of a market-linked income stream; and
(b) after the payment of the final year's annual payment from that market-linked income stream there is a residual balance in the relevant account; and
(c) clause 3 of Schedule 6 of the *Superannuation Industry (Supervision) Regulations 1994* requires that the residual balance in the account of the market-linked income stream is to be paid to the beneficiary within 28 days of the end of the market-linked income stream's term; and

(d) the person is in receipt of service pension or income support supplement;

then any amount paid by the market-linked income stream to the person, in accordance with paragraph (c) above, is an exempt lump sum.

2.2 APPLICATION—EXEMPT LUMP SUMS

2.2.1 An amount referred to in paragraph 2.1.2(c) received by a person referred to in section 2.1.2 is an exempt lump sum for the purposes of paragraph 5H(12)(c) of the *VEA* from the date that the amount was received.

Schedule 11

Note: the reference to Schedule 11 is not part of the instrument in Schedule 11.

Veterans' Entitlements (Means Test Treatment of Private Companies — Excluded Companies) Declaration 2001

Instrument 2014 No.R75

Part 1 Preliminary

1 Name of Declaration

This Declaration is the *Veterans' Entitlements (Means Test Treatment of Private Companies – Excluded Companies) Declaration 2001*.

2 Commencement

This Declaration commences when the *Veterans' Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* commences.

3 Purpose

This Declaration specifies a class of companies that are excluded companies for section 52ZZA of the Act.

4 Definitions

In this Declaration:

Act means the *Veterans' Entitlements Act 1986*.

community purpose means a purpose that is intended to benefit primarily the members of a particular community or group.

government body includes the following kinds of body:

(a) a department or agency of the Commonwealth;

(b) a department or agency of a State or Territory;

(c) a municipal corporation or other local government body;

(d) a body corporate in which the Commonwealth, a State or a Territory body holds a controlling interest.

income means income within the ordinary meaning of that expression.

indigenous-held land has the same meaning as in section 4B of the *Aboriginal and Torres Strait Islander Act 2005*.

Part 2 Specified class of companies

5 Companies with community purpose are excluded companies

(1) Each company that meets the requirements in subsection (2) is an excluded company for section 52ZZA of the Act.

(2) The company must have the sole or dominant purpose of receiving, managing and distributing:

(a) property transferred directly to it, or to it through an interposed entity, by a government body for a community purpose; or

(b) income generated from the use of indigenous-held land.