

**Social Security and Veterans' Affairs  
Legislation Amendment (Retirement  
Assistance for Farmers) Act 1998**

**No. 84, 1998**



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Assistance for Farmers) Act 1998**

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**An Act to amend the *Social Security Act 1991* and  
the *Veterans' Entitlements Act 1986*, and for related  
purposes**



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## Contents

1	Short title.....	1
2	Commencement .....	1
3	Schedule(s).....	2
<b>Schedule 1—Amendment of the Social Security Act 1991</b>		<b>3</b>
<b>Schedule 2—Amendment of the Veterans’ Entitlements Act 1986</b>		<b>24</b>



# **Social Security and Veterans' Affairs Legislation Amendment (Retirement Assistance for Farmers) Act 1998**

**No. 84, 1998**

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**An Act to amend the *Social Security Act 1991* and  
the *Veterans' Entitlements Act 1986*, and for related  
purposes**

*[Assented to 2 July 1998]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Social Security and Veterans' Affairs  
Legislation Amendment (Retirement Assistance for Farmers) Act  
1998*.

## **2 Commencement**

This Act is taken to have commenced on 15 September 1997.

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*Social Security and Veterans' Affairs Legislation Amendment (Retirement Assistance for  
Farmers) Act 1998      No. 84, 1998      1*

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### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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2        *Social Security and Veterans' Affairs Legislation Amendment (Retirement Assistance for Farmers) Act 1998*    No. 84, 1998



## Schedule 1—Amendment of the Social Security Act 1991

### 1 Section 3 (index)

Insert in their appropriate alphabetical position, determined on a letter-by-letter basis:

eligible descendant	17A(1)
eligible former partner of a qualifying farmer	17A(2)
farm	17A(1)
farm enterprise	17A(1)
proprietary company	17A(1)
qualifying farmer	17A(3) and (4)
qualifying interest	17A(5) and (6)
relevant farm asset	17A(1)
relevant State land law	17A(1)
transfer	17A(7), (8), (9), (10) and (11)

### 2 Subsection 9(1)

Insert:

*deprived asset* has the meaning given by subsection (4).

### 3 Before subsection 9(5)

Insert:

- (4) For the purposes of this Act, an asset is a *deprived asset* if:
- (a) a person has disposed of the asset; and
  - (b) the value of the asset is included in the value of the person's assets by section 1124A, 1125, 1125A or 1126.

### 4 After subsection 12A(2)

Insert:

(2A) Subsection (2) does not apply:

- (a) to a person to whom Part 3.14A applies because the person has transferred his or her qualifying interest in a farm in accordance with paragraph 1185B(1)(a) or (2)(a); or
  - (b) if the person's partner has transferred by way of gift:
    - (i) to an eligible descendant of the person; or
    - (ii) jointly to an eligible descendant of the person and to the descendant's partner;his or her qualifying interest in a farm—to the person's partner;
- if the person or the person's partner (as the case may be), on so transferring his or her qualifying interest in the farm, has retained a life interest in the dwelling house on the farm, and in the adjacent private land, that constitute his or her principal home.

## 5 After section 17

Insert:

### 17A Retirement assistance for farmers definitions

- (1) In this Act, unless the contrary intention appears:

***eligible descendant***, in relation to a person, means:

- (a) a child, step child or adopted child of the person or of a partner of the person; or
- (b) a descendant in direct line of a child described in paragraph (a); or
- (c) any other person who, in the opinion of the Secretary, should be treated for the purposes of this definition as a person described in paragraph (a) or (b).

***eligible former partner of a qualifying farmer*** has the meaning given by subsection (2).

***farm*** means any land that is used:

- (a) for the purposes of a farm enterprise; or
- (b) in connection with a farm enterprise.

***farm enterprise*** means an enterprise carried on within any of the agricultural, horticultural, pastoral or aquacultural industries.

***proprietary company*** has the meaning that it has in the Corporations Law.

***qualifying farmer*** has the meaning given by subsections (3) and (4).

***qualifying interest*** has the meaning given by subsections (5) and (6).

***relevant farm asset***, in relation to a farm, means any livestock, crop, plant or equipment that is a produce of, or is used for the purposes of, the farm enterprise.

***relevant State land law*** means any of the following laws:

- (a) the *Real Property Act 1900* of New South Wales;
- (b) the **Transfer of Land Act 1958** of Victoria;
- (c) the *Land Title Act 1994* of Queensland;
- (d) the *Transfer of Land Act 1893* of Western Australia;
- (e) the *Real Property Act, 1886* of South Australia;
- (f) the *Land Titles Act 1980* of Tasmania;
- (g) the *Real Property Act 1925* of the Australian Capital Territory;
- (h) the *Real Property Act* of the Northern Territory;
- (i) a law of a Territory (other than the Australian Capital Territory or the Northern Territory) making similar provision for the registration of dealings with land as the laws mentioned above.

***transfer***:

- (a) in relation to a qualifying interest in a farm—has the meaning given by subsections (7), (8), (10) and (11); or
- (b) in relation to a qualifying interest in a relevant farm asset—has the meaning given by subsections (9) and (11).

(2) A person is an ***eligible former partner of a qualifying farmer*** if:

- (a) the person was, but no longer is (whether because of death or any other reason), the partner of another person; and
- (b) on the day on which the person ceased to be the partner of the other person, the other person was a qualifying farmer; and
- (c) after ceasing to be the partner of the other person, the person has not again become a member of a couple; and
- (d) the person has a qualifying interest in a farm or farms in which the other person had a qualifying interest.

Note: For *qualifying interest* see subsection (5).

(3) A person is a *qualifying farmer* if:

- (a) the person has, has not ceased to have, and has continuously had for a period of at least 15 years, a qualifying interest in a farm; and
- (b) during a period of 15 years, the person or the person's partner:
  - (i) has contributed a significant part of his or her labour and capital to the development of a farm or farms; and
  - (ii) has derived a significant part of his or her income from that farm or those farms.

Note: For *qualifying interest* see subsection (5).

(4) A person is also a *qualifying farmer* if:

- (a) the person has a qualifying interest in one or more than one farm; and
- (b) the qualifying interest in the farm, or each of the farms, was acquired by the person before 15 September 1997; and
- (c) the person or the person's partner or former partner has been involved in farming in Australia for a continuous period of 20 years, or for periods that together add up to 20 years, by:
  - (i) contributing a significant part of his or her labour to farm enterprises; and
  - (ii) deriving a significant part of his or her income from farm enterprises.

Note: For *qualifying interest* see subsection (5).

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- (5) A person has a ***qualifying interest*** in a farm if:
- (a) the person has a legal estate or interest in the farm; or
  - (b) the person has a transferable legal right or a transferable licence to occupy the farm for a particular purpose of the farm enterprise; or
  - (c) as the mortgagor of a legal estate or interest in the farm (being an estate or interest that is not registered under a relevant State land law), the person has an equitable estate or interest in the farm; or
  - (d) the person is a shareholder in a proprietary company that has a legal estate or interest in the farm.
- (6) A person has a ***qualifying interest*** in a relevant farm asset if the person:
- (a) has a legal interest in the farm asset; or
  - (b) is a shareholder in a proprietary company that has a legal estate or interest in the farm asset.
- (7) Subject to subsections (8), (10) and (11), a qualifying interest that a person has in a farm is ***transferred*** to another person if, and only if, the qualifying interest:
- (a) ceases to be vested in the person; and
  - (b) becomes vested in the other person.
- (8) To avoid any doubt, it is stated that if a person who transfers a legal estate or interest in a farm to another person is, under a relevant State land law, registered as being the proprietor (whether that word or any other word is used) of that estate or interest, the legal estate or interest in the farm is taken not to have become vested in the other person unless and until the transfer is registered in accordance with that law.
- Note: For ***relevant State land law*** see subsection (1).
- (9) Subject to subsection (11), a qualifying interest that a person has in a relevant farm asset is ***transferred*** to another person if, and only if, the qualifying interest:
- (a) ceases to be vested in the person; and
  - (b) becomes vested in the other person.
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- (10) If, as the mortgagor of a legal estate or interest in a farm (see paragraph (5)(c)), a person has a qualifying interest in the farm, the person is taken to have *transferred* that qualifying interest in the farm to another person only if the person:
- (a) has, under a relevant State land law, become registered as the proprietor (whether that word or any other word is used) of the legal estate or interest in the farm; and
  - (b) has then transferred that legal estate or interest to the other person.
- (11) If a person has a qualifying interest in a farm or a relevant farm asset because (see paragraphs (5)(d) and (6)(b)) the person is a shareholder in a proprietary company that has a legal estate or interest in the farm, or a legal interest in the relevant farm asset (as the case may be), the person is taken to have *transferred* to another person his or her qualifying interest in the farm or relevant farm asset only if the person:
- (a) has acquired the company's legal estate or interest in the farm or the company's legal interest in the relevant farm asset; and
  - (b) has then transferred it to the other person.

## 6 Subsection 23(1) (definition of *pension age*)

Repeal the definition, substitute:

*pension age*:

- (a) when used in Part 3.14A in relation to a person who is a veteran (within the meaning of the Veterans' Entitlements Act)—has the meaning that it has in section 5QA of that Act; or
- (b) otherwise—has the meaning given by subsections (5A), (5B), (5C) or (5D).

## 7 At the end of subsection 1074(2)

Add:

Note: Different provisions apply when working out a person's ordinary income from a farm to find whether the person satisfies the farmers'

income test for the purposes of Part 3.14A (see subparagraph 1185K(3)(a)(ii) and paragraph 1185K(3)(c)).

**8 At the end of subsection 1075(1)**

Add:

Note: Different provisions apply when working out a person's ordinary income from a farm to find whether the person satisfies the farmers' income test for the purposes of Part 3.14A (see subparagraph 1185K(3)(a)(ii) and paragraph 1185K(3)(c)).

**9 At the end of subsection 1076(1)**

Add:

Note: The whole of Division 1B does not apply when working out a person's ordinary income to find whether the person satisfies the farmers' income test for the purposes of Part 3.14A (see paragraphs 1185K(2)(a) and (3)(a)).

**10 At the end of subsection 1077(1)**

Add:

Note: The whole of Division 1B does not apply when working out a person's ordinary income to find whether the person satisfies the farmers' income test for the purposes of Part 3.14A (see paragraphs 1185K(2)(a) and (3)(a)).

**11 At the end of subsection 1078(1)**

Add:

Note: The whole of Division 1B does not apply when working out a person's ordinary income to find whether the person satisfies the farmers' income test for the purposes of Part 3.14A (see paragraphs 1185K(2)(a) and (3)(a)).

**12 At the end of subsection 1083(1)**

Add:

Note: When working out a person's ordinary income to find whether the person satisfies the farmers' income test for the purposes of Part 3.14A, actual returns on financial assets are taken to be ordinary income (see paragraphs 1185K(2)(b) and (3)(b)).

**13 At the end of subsection 1123(1)**

Add:

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Note: If Part 3.14A applies in relation to the transfer by a person of a legal estate or interest in a farm or relevant farm asset, that transfer and certain transfers by the person's partner are taken not to be disposal of assets (see section 1185D).

## **14 After Part 3.14**

Insert:

# **Part 3.14A—Retirement assistance for farmers**

## **Division 1—General**

### **1185A Purpose of Part**

This Part deals with the transfer of farming interests to family members of a younger generation. The purpose of the Part is to provide that, if the conditions set out in the Part are met, the value of any such interests transferred by a qualifying farmer, his or her partner, or a former partner of the qualifying farmer, will be disregarded in determining:

- (a) whether a social security payment is payable; or
- (b) at what rate a social security payment is payable.

### **1185B Part to apply to certain transfers of estates in farms etc.**

- (1) Subject to subsection (3), this Part applies to a person if:
  - (a) at any time after 14 September 1992 but before 15 September 2000, the person, being then a qualifying farmer, transferred by way of gift to one, or more than one, eligible descendant (either solely to the eligible descendant or jointly to him or her and his or her partner):
    - (i) his or her qualifying interest in the farm or farms in which he or she had such an interest; and
    - (ii) all the qualifying interests that he or she had in relevant farm assets; and
  - (b) the person, or (if the person is a member of a couple) the person or his or her partner:



- (i) has reached pension age; or
- (ii) will reach pension age before 15 September 2000; and
- (c) the total value for the purposes of this section of the farm or farms, and the relevant farm assets, referred to in paragraph (a) does not exceed \$500,000; and
- (d) during the last 3 years before the transfer was completed, the eligible descendant or each of the eligible descendants:
  - (i) had been actively involved with the farm or any of the farms; or
  - (ii) would, in the opinion of the Secretary, have been so involved but for exceptional circumstances beyond his or her control; and
- (e) if the person is a member of a couple—the person's partner does not have:
  - (i) a legal estate or interest in the farm or farms referred to in subparagraph (a)(i) or in any other farm; or
  - (ii) a legal interest in any relevant farm asset; and
- (f) the person satisfies the farmers' income test for the purposes of this Part.

Note 1: For *qualifying farmer, transfer, eligible descendant, qualifying interest, farm* and *relevant farm assets*, see subsection 17A(1).

Note 2: For *pension age* see subsection 23(1).

Note 3: For the *value for the purposes of this section* of a farm or relevant farm asset see subsection (4) and for *actively involved with a farm* see subsection (5).

Note 4: For the farmers' income test see section 1185K.

- (2) Subject to subsection (3), this Part also applies to a person if:
  - (a) at any time after 14 September 1992 but before 15 September 2000, the person, being then an eligible former partner of a qualifying farmer, transferred by way of gift to one, or more than one, eligible descendant of the farmer (either solely to the eligible descendant or jointly to him or her and his or her partner):
    - (i) his or her qualifying interest in the farm or farms in which he or she had such an interest; and

- (ii) all the qualifying interests that he or she had in relevant farm assets; and
- (b) the person has reached pension age or will reach pension age before 15 September 2000; and
- (c) the total value for the purposes of this section of the farm or farms, and the relevant farm assets, referred to in paragraph (a) does not exceed \$500,000; and
- (d) during the last 3 years before the transfer was completed, the eligible descendant or each of the eligible descendants:
  - (i) had been actively involved with the farm or any of the farms; or
  - (ii) would, in the opinion of the Secretary, have been so involved but for exceptional circumstances beyond his or her control; and
- (e) the person satisfies the farmers' income test for the purposes of this Part.

Note 1: For *eligible former partner of a qualifying farmer, transfer, eligible descendant, qualifying interest, farm*, and *relevant farm assets* see subsection 17A(1).

Note 2: For *pension age* see subsection 23(1).

Note 3: For the *value for the purposes of this section* of a farm or relevant farm asset see subsection (4) and for *actively involved with a farm* see subsection (5).

Note 4: For the farmers' income test see section 1185K.

- (3) This Part does not apply to the person if:
  - (a) immediately before the transfer, the eligible descendant, or one of the eligible descendants, referred to in paragraph (1)(a) or (2)(a) (as the case may be) had a qualifying interest in:
    - (i) the farm or one of the farms referred to in paragraph (1)(a)(i) or (2)(a)(i); or
    - (ii) any relevant farm asset; and
  - (b) the eligible descendant had acquired the qualifying interest in the farm, or in the relevant farm asset, after 14 September 1997; and

- (c) the consideration, or part of the consideration, for the interest so acquired was the wages forgone by the eligible descendant while he or she was working as an employee on the farm or any of the farms.

Note: For *transfer, eligible descendant, qualifying interest, farm* and *relevant farm asset* see subsection 17A(1).

- (4) If a person transfers a qualifying interest that the person has in a farm or a relevant farm asset, then:
- (a) if paragraph (b) does not apply—the *value for the purposes of this section* of the farm or relevant farm asset is its value when the transfer is completed; or
  - (b) if, immediately before the transfer by the person of his or her qualifying interest in the farm or relevant farm asset, the transferee had a qualifying interest in the farm or relevant farm asset—the *value for the purposes of this section* of the farm or relevant farm asset is its value when the transfer is completed less the value of the transferee's qualifying interest in it at that time.
- (5) For the purposes of paragraphs (1)(d) and (2)(d), a person is taken to have been *actively involved with a farm* during a particular period if, during that period, the person:
- (a) has contributed a significant part of his or her labour to the development of the farm; or
  - (b) has undertaken educational studies or training in a field that, in the opinion of the Secretary, is relevant to the development or management of the farm enterprise.

### **1185C How to assess the value of farms etc. subject to a transfer**

*Value of farm affected by previous transaction*

- (1) If:
- (a) a transfer of a kind referred to in paragraph 1185B(1)(a) or (2)(a) is completed after 14 September 1997; and

(b) at any time before the transfer but after 14 September 1997, the person making the transfer entered into a transaction or transactions as a result of which:

- (i) the value of the farm or farms in which the person had a qualifying interest immediately before the transfer is less than the value that that farm or those farms would have had immediately before the transfer if the person had not entered into the transaction or transactions (the *unreduced farm value*); or
- (ii) the value of the relevant farm assets in which the person had a qualifying interest immediately before the transfer is less than the value that those relevant farm assets would have had immediately before the transfer if the person had not entered into the transaction or transactions (the *unreduced assets value*);

then, for the purposes of section 1185B:

- (c) the value of that farm or those farms is taken to be an amount equal to the unreduced farm value; and
- (d) the value of those relevant farm assets is taken to be an amount equal to the unreduced assets value.

*Life interest retained in principal home on farm*

- (2) If, when transferring by way of gift to another person his or her qualifying interest in a farm, a person retains a freehold estate, a leasehold interest or a life interest in the dwelling-house on the farm, and the adjacent private land, that constitute the person's principal home, then, for the purposes of section 1185B:
  - (a) the person is taken to have transferred the whole of his or her qualifying interest in the farm by way of gift; but
  - (b) when assessing the value of the farm, the value of the dwelling-house and the adjacent private land is not to be included.

*General rule*

- (3) Subject to this section, apply section 1121A in working out the value of a farm or farms, and any relevant farm assets, for the purposes of this Division.

Note: For *transfer, qualifying interest, eligible descendant, farm* and *relevant farm asset* see subsection 17A(1).

## **Division 2—Modification of provisions relating to assets test**

### **1185D Transfer of estate in farm etc. not disposal of an asset**

- (1) If this Part applies to a person because of subsection 1185B(1), then, subject to subsections (3) and (5):
- (a) the transfer by the person of his or her qualifying interest in a farm or in a relevant farm asset is taken not to be a disposal of an asset (within the meaning of section 1123); and
  - (b) if the person's partner has also transferred by way of gift to an eligible descendant of the person any qualifying interest in a farm or in a relevant farm asset, that transfer is taken not to be a disposal of an asset (within the meaning of section 1123).
- (2) If this Part applies to a person because of subsection 1185B(2), then, subject to subsections (4) and (5), the transfer by the person of his or her qualifying interest in a farm or in a relevant farm asset is taken not to be a disposal of an asset (within the meaning of section 1123).
- (3) If:
- (a) when the transfer referred to in paragraph (1)(a) was completed; or
  - (b) in the case of such a transfer that was completed before 15 September 1997—on 15 September 1997;
- neither the person making the transfer nor his or her partner had reached pension age, subsection (1) only applies after one of them reaches that age.

(4) If:

- (a) when the transfer referred to in subsection (2) was completed; or
- (b) in the case of such a transfer that was completed before 15 September 1997—on 15 September 1997;

the person making the transfer had not reached pension age, subsection (2) only applies after the person reaches that age.

Note 1: For *transfer, qualifying interest, eligible descendant, farm* and *relevant farm asset* see subsection 17A(1).

Note 2: For *pension age* see subsection 23(1).

(5) Disregard subsections (1) and (2) when working out a rate for the purposes of Division 6 of Part 2.2A.

Note: Part 2.2A provides for the payment of a pension bonus to a person who qualifies for an age pension if the person has deferred claiming that pension for a period of at least one year and the person, or the person's partner, has worked gainfully during that period.

## Division 3—Claims for social security payment

### 1185E Provisional commencement day

If:

- (a) a person, or a person's partner, has reached pension age; and
- (b) this Part applies because of a transfer of qualifying interests by the person or the person's partner; and
- (c) the person makes a claim under this Act for a social security payment;

then, despite any other provision of this Act, the claimant's provisional commencement day is:

- (d) if the transfer was completed before 15 September 1997 and the person makes the claim before 15 September 1998—15 September 1997 or the day on which the person becomes qualified for the social security payment, whichever is later; or

- (e) if the transfer was completed after 14 September 1997 but before 15 September 1998 and the person makes the claim before 15 September 1998:
  - (i) the day on which the transfer was completed; or
  - (ii) the day on which the person becomes qualified for the social security payment;whichever is later; or
- (f) if the transfer was completed after 14 September 1998 but before 15 September 2000 and the person makes the claim during the period of 3 months that starts on the day on which the transfer was completed:
  - (i) the day on which the transfer was completed; or
  - (ii) the day on which the person becomes qualified for the social security payment;whichever is later; or
- (g) in any other case—the day on which the claim is made.

## **Division 4—Requests for increase in rate of social security payment**

### **1185F Application**

- (1) This Division applies if:
  - (a) a person, or a person's partner, has reached pension age; and
  - (b) this Part applies because of a transfer of qualifying interests by the person or the person's partner; and
  - (c) the person is receiving a social security payment under this Act; and
  - (d) the value of the qualifying interests has been included in the value of the person's assets, or the partner's assets, when calculating the rate of the person's social security payment.

### **1185G Request for increase**

If:

- (a) the rate at which a social security payment is being, or has been, paid to a person is less than the rate (the *increased rate*) at which it would be, or would have been, paid if the value of the qualifying interests transferred by the person or the person's partner had not been included in the value of the person's assets, or of the partner's assets, in calculating the rate of the person's social security payment; and
  - (b) the person wants the social security payment to be paid at the increased rate;
- the person must make a request to that effect.

#### **1185H Form of request**

A request under section 1185G must be made in writing and must be in accordance with a form approved by the Secretary.

#### **1185J Determination of request**

- (1) If:
    - (a) a person makes a request under section 1185G in respect of a social security payment; and
    - (b) the Secretary is satisfied that the rate at which the social security payment is being, or has been, paid to the person is less than the rate at which it would be, or would have been, paid if the value of the qualifying interests transferred by the person or the person's partner had not been included in the value of the person's assets, or the partner's assets, when calculating the rate of the person's social security payment;the Secretary must determine that the request is to be granted.
  - (2) The determination takes effect:
    - (a) if the transfer was completed before 15 September 1998 and the person makes the request before that day—on 15 September 1997 or the day on which the transfer was completed, whichever is later; or
    - (b) if the transfer was completed after 14 September 1998 but before 15 September 2000 and the person makes the request during the period of 3 months that starts on the day on which
-



- the transfer is completed—on the day on which the transfer was completed; or
- (c) in any other case—on the day on which the request is made.

## **Division 5—Farmers’ income test**

### **1185K Does a person satisfy the farmers’ income test?**

*How to work out whether the farmers’ income test is satisfied*

- (1) This is how to work out whether a person who has transferred his or her qualifying interest in a farm or farms satisfies the farmers’ income test for the purposes of this Part:

#### *Method statement*

**Step 1.** Work out under subsection (2) the amount of the person’s ordinary income (other than ordinary income from farming) for each of the last 3 financial years before the day on which the transfer was completed (the **income test years**).

If the person was a member of a couple on the day on which the transfer was completed, work out also under subsection (2) the amount of his or her partner’s ordinary income (other than ordinary income from farming) for the 3 income test years.

Add up all the amounts so obtained. The result is called the person’s **total non-farm income**.

**Step 2.** Work out under subsection (3) the amount of the person’s ordinary income from farming for each of the 3 income test years.

If the person was a member of a couple on the day on which the transfer was completed, work out also under

subsection (3) the amount of his or her partner's ordinary income from farming for the 3 income test years.

Add up all the amounts of positive income for both the person and the person's partner and deduct from that total the amounts of negative income (if any) for both the person and the person's partner. The result is called the person's ***total farm income*** (which may be either positive or negative).

*Step 3.* Work out the person's ***total income for the 3 income test years***:

- (a) if the person's total farm income is a positive amount—by adding that amount to the amount of the person's total non-farm income; or
- (b) if the person's total farm income is a negative amount—by deducting that amount from the amount of the person's total non-farm income.

*Step 4.* Work out under subsection (4) the maximum basic rate for age pension applicable to the person. Multiply that rate by 3. The result is called the person's ***maximum basic entitlement***.

*Step 5.* If the person's total income for the 3 income test years is less than the person's maximum basic entitlement, the person satisfies the farmers' income test for the purposes of this Part.

If the person's total income for the 3 income test years equals or exceeds the person's maximum basic entitlement, the person does not satisfy the farmers' income test for the purposes of this Part.

*Person's ordinary income from all sources other than farming*

- (2) For the purpose of working out a person's ordinary income from all sources other than farming during a financial year, the following provisions have effect:
- (a) the provisions of Part 3.10 other than Division 1B apply to the person and so apply as if any reference in Division 1A to a tax year were a reference to that financial year;
  - (b) any return on a financial asset that the person has actually received during the financial year is taken to be ordinary income of the person.

*Person's ordinary income from farming*

- (3) For the purpose of working out a person's ordinary income from farming during a financial year, the following provisions have effect:
- (a) the provisions of Part 3.10 other than Division 1B apply to the person and so apply as if:
    - (i) any reference in subsection 1074(1) to a tax year were a reference to that financial year; and
    - (ii) subsection 1074(2) and section 1075 were omitted;
  - (b) any return on a financial asset that the person has actually received during the financial year and that relates to a farm or a relevant farm asset is taken to be ordinary income of the person from farming;
  - (c) if, at the end of the financial year, the value of all trading stock on hand that relates to a farm is less than the value of all such trading stock on hand at the beginning of that financial year—the amount of the difference is to be deducted from that part of the person's ordinary income from farming for that financial year that is income in the form of profits;
  - (d) there is also to be deducted from the person's ordinary income from farming:
    - (i) losses and outgoings that relate to a farm and are allowable deductions for the purposes of section 51 of

the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997*, as appropriate; and

- (ii) depreciation that relates to a relevant farm asset and is an allowable deduction for the purposes of subsection 54(1) of the *Income Tax Assessment Act 1936* or Division 42 of the *Income Tax Assessment Act 1997*; and
- (iii) amounts that relate to a farm or a relevant farm asset and are allowable deductions under subsection 82AAC(1) of the *Income Tax Assessment Act 1936*;
- (e) if a negative result is obtained after applying paragraphs (c) and (d)—the person's ordinary income from farming for the financial year is a negative income;
- (f) if paragraph (e) does not apply—the person's ordinary income from farming for the financial year is a positive income.

*Person's maximum basic rate for age pension*

- (4) For the purposes of Step 4 in the Method statement in subsection (1), the maximum basic rate for age pension applicable to the person is:
  - (a) if the person was a member of a couple at any time during the 3 years immediately preceding the operative day—an amount equal to twice the amount that was, on the operative day, the maximum basic rate for a partnered person under Module B of Pension Rate Calculator A in section 1064; or
  - (b) if paragraph (a) does not apply—an amount equal to the amount that was, on the operative day, the maximum basic rate for a person who is not a member of a couple under Module B of Pension Rate Calculator A in section 1064.

*Definitions*

- (5) In this section:

**income**, in relation to a person, has the same meaning as in subsection 8(1), except that, in addition to any amount that is not income of the person because of subsection 8(4), (5), (7A) or (8), any payment to the person under:

- (a) the AUSTUDY scheme; or
- (b) the Veterans' Entitlements Act; or
- (c) the *Farm Household Support Act 1992*;

is not income of the person for the purposes of this section.

**operative day** means:

- (a) if the transfer of the person's qualifying interest in the farm or farms was completed before 15 September 1997—that day; or
- (b) otherwise—the day on which the transfer of the person's qualifying interest in the farm or farms was completed.

**ordinary income from farming**, in relation to a person who has a qualifying interest in a farm or farms, means the ordinary income of the person from the farm or farms and any relevant farm assets.

## Schedule 2—Amendment of the Veterans' Entitlements Act 1986

### 1 Section 5 (index)

Insert in their appropriate alphabetical position, determined on a letter-by-letter basis:

eligible descendant	5P(1)
eligible former partner of a qualifying farmer	5P(2)
farm	5P(1)
farm enterprise	5P(1)
proprietary company	5P(1)
qualifying farmer	5P(3) and (4)
qualifying interest	5P(5) and (6)
relevant farm asset	5P(1)
relevant State land law	5P(1)
retirement age	5Q1
transfer	5P(7), (8), (9), (10) and (11)

### 2 After subsection 5MA(2)

Insert:

(2A) Subsection (2) does not apply:

- (a) to a person to whom Division 8 of Part IIIB applies because the person has transferred his or her qualifying interest in a farm in accordance with paragraph 49A(1)(a) or (2)(a); or
- (b) if the person's partner has transferred by way of gift:
  - (i) to an eligible descendant of the person; or
  - (ii) jointly to an eligible descendant of the person and to the descendant's partner;his or her qualifying interest in a farm—to the person's partner;

if the person or the person's partner (as the case may be), on so transferring his or her qualifying interest in the farm, has retained a

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life interest in the dwelling house on the farm, and in the adjacent private land, that constitute his or her principal home.

### **3 Before section 5PA**

Insert:

#### **5P Retirement assistance for farmers definitions**

(1) In this Act, unless the contrary intention appears:

*eligible descendant*, in relation to a person, means:

- (a) a child, step child or adopted child of the person or of a partner of the person; or
- (b) a descendant in direct line of a child described in paragraph (a); or
- (c) any other person who, in the opinion of the Commission, should be treated for the purposes of this definition as a person described in paragraph (a) or (b).

*eligible former partner of a qualifying farmer* has the meaning given by subsection (2).

*farm* means any land that is used:

- (a) for the purposes of a farm enterprise; or
- (b) in connection with a farm enterprise.

*farm enterprise* means an enterprise carried on within any of the agricultural, horticultural, pastoral or aquacultural industries.

*proprietary company* has the meaning that it has in the Corporations Law.

*qualifying farmer* has the meaning given by subsections (3) and (4).

*qualifying interest* has the meaning given by subsections (5) and (6).

**relevant farm asset**, in relation to a farm, means any livestock, crop, plant or equipment that is a produce of, or is used for the purposes of, the farm enterprise.

**relevant State land law** means any of the following laws:

- (a) the *Real Property Act 1900* of New South Wales;
- (b) the **Transfer of Land Act 1958** of Victoria;
- (c) the *Land Title Act 1994* of Queensland;
- (d) the *Transfer of Land Act 1893* of Western Australia;
- (e) the *Real Property Act, 1886* of South Australia;
- (f) the *Land Titles Act 1980* of Tasmania;
- (g) the *Real Property Act 1925* of the Australian Capital Territory;
- (h) the *Real Property Act* of the Northern Territory;
- (i) a law of a Territory (other than the Australian Capital Territory or the Northern Territory) making similar provision for the registration of dealings with land as the laws mentioned above.

**transfer**:

- (a) in relation to a qualifying interest in a farm—has the meaning given by subsections (7), (8), (10) and (11); or
  - (b) in relation to a qualifying interest in a relevant farm asset—has the meaning given by subsections (9) and (11).
- (2) A person is an **eligible former partner of a qualifying farmer** if:
- (a) the person was, but no longer is (whether because of death or any other reason), the partner of another person; and
  - (b) on the day on which the person ceased to be the partner of the other person, the other person was a qualifying farmer; and
  - (c) after ceasing to be the partner of the other person, the person has not again become a member of a couple; and
  - (d) the person has a qualifying interest in a farm or farms in which the other person had a qualifying interest.

Note: For **qualifying interest** see subsection (5).

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(3) A person is a ***qualifying farmer*** if:

- (a) the person has, has not ceased to have, and has continuously had for a period of at least 15 years, a qualifying interest in a farm; and
- (b) during a period of 15 years, the person or the person's partner:
  - (i) has contributed a significant part of his or her labour and capital to the development of a farm or farms; and
  - (ii) has derived a significant part of his or her income from that farm or those farms.

Note: For ***qualifying interest*** see subsection (5).

(4) A person is also a ***qualifying farmer*** if:

- (a) the person has a qualifying interest in one or more than one farm; and
- (b) the qualifying interest in the farm, or each of the farms, was acquired by the person before 15 September 1997; and
- (c) the person or the person's partner or former partner has been involved in farming in Australia for a continuous period of 20 years, or for periods that together add up to 20 years, by:
  - (i) contributing a significant part of his or her labour to farm enterprises; and
  - (ii) deriving a significant part of his or her income from farm enterprises.

Note: For ***qualifying interest*** see subsection (5).

(5) A person has a ***qualifying interest*** in a farm if:

- (a) the person has a legal estate or interest in the farm; or
- (b) the person has a transferable legal right or a transferable licence to occupy the farm for a particular purpose of the farm enterprise; or
- (c) as the mortgagor of a legal estate or interest in the farm (being an estate or interest that is not registered under a relevant State land law), the person has an equitable estate or interest in the farm; or

- (d) the person is a shareholder in a proprietary company that has a legal estate or interest in the farm.
- (6) A person has a **qualifying interest** in a relevant farm asset if the person:
  - (a) has a legal interest in the farm asset; or
  - (b) is a shareholder in a proprietary company that has a legal estate or interest in the farm asset.
- (7) Subject to subsections (8), (10) and (11), a qualifying interest that a person has in a farm is **transferred** to another person if, and only if, the qualifying interest:
  - (a) ceases to be vested in the person; and
  - (b) becomes vested in the other person.
- (8) To avoid any doubt, it is stated that if a person who transfers a legal estate or interest in a farm to another person is, under a relevant State land law, registered as being the proprietor (whether that word or any other word is used) of that estate or interest, the legal estate or interest in the farm is taken not to have become vested in the other person unless and until the transfer is registered in accordance with that law.

Note: For **relevant State land law** see subsection (1).
- (9) Subject to subsection (11), a qualifying interest that a person has in a relevant farm asset is **transferred** to another person if, and only if, the qualifying interest:
  - (a) ceases to be vested in the person; and
  - (b) becomes vested in the other person.
- (10) If, as the mortgagor of a legal estate or interest in a farm (see paragraph (5)(c)), a person has a qualifying interest in the farm, the person is taken to have **transferred** that qualifying interest in the farm to another person only if the person:
  - (a) has, under a relevant State land law, become registered as the proprietor (whether that word or any other word is used) of the legal estate or interest in the farm; and

(b) has then transferred that legal estate or interest to the other person.

(11) If a person has a qualifying interest in a farm or a relevant farm asset because (see paragraphs (5)(d) and (6)(b)) the person is a shareholder in a proprietary company that has a legal estate or interest in the farm, or a legal interest in the relevant farm asset (as the case may be), the person is taken to have **transferred** to another person his or her qualifying interest in the farm or relevant farm asset only if the person:

- (a) has acquired the company's legal estate or interest in the farm or the company's legal interest in the relevant farm asset; and
- (b) has then transferred it to the other person.

#### **4 Subsection 5Q(1)**

Insert:

***retirement age:***

- (a) in relation to a person who is a war widow or a war widower but is not a veteran—means the age that would be the pension age for that person if he or she were a veteran; or
- (b) in relation to any other person—means the pension age for that person.

#### **5 At the end of subsection 46B(2)**

Add:

Note: Different provisions apply when working out a person's ordinary income from a farm to find whether the person satisfies the farmers' income test for the purposes of Division 8 (see subparagraph 49J(3)(b)(ii) and paragraph 49J(3)(e)).

#### **6 At the end of subsection 46C(1)**

Add:

Note: Different provisions apply when working out a person's ordinary income from a farm to find whether the person satisfies the farmers' income test for the purposes of Division 8 (see subparagraph 49J(3)(b)(ii) and paragraph 49J(3)(e)).

**7 At the end of subsection 46D(1)**

Add:

Note: The whole of Division 3 does not apply when working out a person's ordinary income to find whether the person satisfies the farmers' income test for the purposes of Division 8 (see paragraphs 49J(2)(c) and (3)(c)).

**8 At the end of subsection 46E(1)**

Add:

Note: The whole of Division 3 does not apply when working out a person's ordinary income to find whether the person satisfies the farmers' income test for the purposes of Division 8 (see paragraphs 49J(2)(c) and (3)(c)).

**9 At the end of subsection 46K(1)**

Add:

Note: When working out a person's ordinary income to find whether the person satisfies the farmers' income test for the purposes of Division 8, actual returns on financial assets are taken to be ordinary income (see paragraphs 49J(2)(d) and (3)(d)).

**10 At the end of subsection 52E(1)**

Add:

Note: If Division 8 applies in relation to the transfer by a person of a legal estate or interest in a farm or relevant farm asset, that transfer and certain transfers by the person's partner are taken not to be disposal of assets (see section 49C).

**11 After Division 7 of Part IIIB**

Insert:

**Division 8—Retirement assistance for farmers**

**Subdivision 1—General**

**49 Purpose of Division**

This Division deals with the transfer of farming interests to family members of a younger generation. The purpose of the Division is

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to provide that, if the conditions set out in the Division are met, the value of any such interests transferred by a qualifying farmer, his or her partner, or a former partner of the qualifying farmer, will be disregarded in determining:

- (a) whether a service pension or an income support supplement is payable; or
- (b) at what rate a service pension or an income support supplement is payable.

#### **49A Division to apply to certain transfers of estates in farms etc.**

- (1) Subject to subsection (3), this Division applies to a person if:
  - (a) at any time after 14 September 1992 but before 15 September 2000, the person, being then a qualifying farmer, transferred by way of gift to one, or more than one, eligible descendant (either solely to the eligible descendant or jointly to him or her and his or her partner):
    - (i) his or her qualifying interest in the farm or farms in which he or she had such an interest; and
    - (ii) all the qualifying interests that he or she had in relevant farm assets; and
  - (b) the person, or (if the person is a member of a couple) the person or his or her partner:
    - (i) has reached retirement age; or
    - (ii) will reach retirement age before 15 September 2000; and
  - (c) the total value for the purposes of this section of the farm or farms, and the relevant farm assets, referred to in paragraph (a) does not exceed \$500,000; and
  - (d) during the last 3 years before the transfer was completed, the eligible descendant or each of the eligible descendants:
    - (i) had been actively involved with the farm or any of the farms; or
    - (ii) would, in the opinion of the Commission, have been so involved but for exceptional circumstances beyond his or her control; and

- (e) if the person is a member of a couple—the person's partner does not have:
  - (i) a legal estate or interest in the farm or farms referred to in subparagraph (a)(i) or in any other farm; or
  - (ii) a legal interest in any relevant farm asset; and
- (f) the person satisfies the farmers' income test for the purposes of this Division.

Note 1: For *qualifying farmer, transfer, eligible descendant, qualifying interest, farm* and *relevant farm assets*, see subsection 5P(1).

Note 2: For *retirement age* see subsection 5Q(1).

Note 3: For the *value for the purposes of this section* of a farm or relevant farm asset see subsection (4) and for *actively involved with a farm* see subsection (5).

Note 4: For the farmers' income test see section 49J.

- (2) Subject to subsection (3), this Division also applies to a person if:
  - (a) at any time after 14 September 1992 but before 15 September 2000, the person, being then an eligible former partner of a qualifying farmer, transferred by way of gift to one, or more than one, eligible descendant of the farmer (either solely to the eligible descendant or jointly to him or her and his or her partner):
    - (i) his or her qualifying interest in the farm or farms in which he or she had such an interest; and
    - (ii) all the qualifying interests that he or she had in relevant farm assets; and
  - (b) the person has reached retirement age or will reach retirement age before 15 September 2000; and
  - (c) the total value for the purposes of this section of the farm or farms, and the relevant farm assets, referred to in paragraph (a) does not exceed \$500,000; and
  - (d) during the last 3 years before the transfer was completed, the eligible descendant or each of the eligible descendants:
    - (i) had been actively involved with the farm or any of the farms; or

- (ii) would, in the opinion of the Commission, have been so involved but for exceptional circumstances beyond his or her control; and
- (e) the person satisfies the farmers' income test for the purposes of this Division.

Note 1: For *eligible former partner of a qualifying farmer, transfer, eligible descendant, qualifying interest, farm* and *relevant farm assets* see subsection 5P(1).

Note 2: For *retirement age* see subsection 5Q(1).

Note 3: For the *value for the purposes of this section* of a farm or relevant farm asset see subsection (4) and for *actively involved with a farm* see subsection (5).

Note 4: For the farmers' income test see section 49J.

(3) This Division does not apply to the person if:

- (a) immediately before the transfer, the eligible descendant, or one of the eligible descendants, referred to in paragraph (1)(a) or (2)(a) (as the case may be) had a qualifying interest in:
  - (i) the farm or one of the farms referred to in paragraph (1)(a)(i) or (2)(a)(i); or
  - (ii) any relevant farm asset; and
- (b) the eligible descendant had acquired the qualifying interest in the farm, or in the relevant farm asset, after 14 September 1997; and
- (c) the consideration, or part of the consideration, for the interest so acquired was the wages forgone by the eligible descendant while he or she was working as an employee on the farm or any of the farms.

Note: For *transfer, eligible descendant, qualifying interest, farm* and *relevant farm asset* see subsection 5P(1).

(4) If a person transfers a qualifying interest that the person has in a farm or a relevant farm asset, then:

- (a) if paragraph (b) does not apply—the *value for the purposes of this section* of the farm or relevant farm asset is its value when the transfer is completed; or

- (b) if, immediately before the transfer by the person of his or her qualifying interest in the farm or relevant farm asset, the transferee had a qualifying interest in the farm or relevant farm asset—the *value for the purposes of this section* of the farm or relevant farm asset is its value when the transfer is completed less the value of the transferee's qualifying interest in it at that time.
- (5) For the purposes of paragraphs (1)(d) and (2)(d), a person is taken to have been *actively involved with a farm* during a particular period if, during that period, the person:
  - (a) has contributed a significant part of his or her labour to the development of the farm; or
  - (b) has undertaken educational studies or training in a field that, in the opinion of the Commission, is relevant to the development or management of the farm enterprise.

#### **49B How to assess the value of farms etc. subject to a transfer**

##### *Value of farm affected by previous transaction*

- (1) If:
  - (a) a transfer of a kind referred to in paragraph 49A(1)(a) or (2)(a) is completed after 14 September 1997; and
  - (b) at any time before the transfer but after 14 September 1997, the person making the transfer entered into a transaction or transactions as a result of which:
    - (i) the value of the farm or farms in which the person had a qualifying interest immediately before the transfer is less than the value that that farm or those farms would have had immediately before the transfer if the person had not entered into the transaction or transactions (the *unreduced farm value*); or
    - (ii) the value of the relevant farm assets in which the person had a qualifying interest immediately before the transfer is less than the value that those relevant farm assets would have had immediately before the transfer if the



person had not entered into the transaction or transactions (the *unreduced assets value*);

then, for the purposes of section 49A:

- (c) the value of that farm or those farms is taken to be an amount equal to the unreduced farm value; and
- (d) the value of those relevant farm assets is taken to be an amount equal to the unreduced assets value.

*Life interest retained in principal home on farm*

- (2) If, when transferring by way of gift to another person his or her qualifying interest in a farm, a person retains a freehold estate, a leasehold interest or a life interest in the dwelling-house on the farm, and the adjacent private land, that constitute the person's principal home, then, for the purposes of section 49A:
  - (a) the person is taken to have transferred the whole of his or her qualifying interest in the farm by way of gift; but
  - (b) when assessing the value of the farm, the value of the dwelling-house and the adjacent private land is not to be included.

*General rule*

- (3) Subject to this section, apply section 52CA in working out the value of a farm or farms, and any relevant farm assets, for the purposes of this Division.

Note: For *transfer, qualifying interest, eligible descendant, farm* and *relevant farm asset* see subsection 5P(1).

## **Subdivision 2—Modification of provisions relating to assets test**

### **49C Transfer of estate in farm etc. not disposal of an asset**

- (1) If this Division applies to a person because of subsection 49A(1), then, subject to subsections (3) and (5):
  - (a) the transfer by the person of his or her qualifying interest in a farm or in a relevant farm asset is taken not to be a disposal of an asset (within the meaning of section 52E); and

- (b) if the person's partner has also transferred by way of gift to an eligible descendant of the person any qualifying interest in a farm or in a relevant farm asset, that transfer is taken not to be a disposal of an asset (within the meaning of section 52E).
  - (2) If this Division applies to a person because of subsection 49A(2), then, subject to subsections (4) and (5), the transfer by the person of his or her qualifying interest in a farm or in a relevant farm asset is taken not to be a disposal of an asset (within the meaning of section 52E).
  - (3) If:
    - (a) when the transfer referred to in paragraph (1)(a) was completed; or
    - (b) in the case of such a transfer that was completed before 15 September 1997—on 15 September 1997;neither the person making the transfer nor his or her partner had reached retirement age, subsection (1) only applies after one of them reaches that age.
  - (4) If:
    - (a) when the transfer referred to in subsection (2) was completed; or
    - (b) in the case of such a transfer that was completed before 15 September 1997—on 15 September 1997;the person making the transfer had not reached retirement age, subsection (2) only applies after the person reaches that age.
- Note 1: For *transfer, qualifying interest, eligible descendant, farm* and *relevant farm asset* see subsection 5P(1).
- Note 2: For *retirement age* see subsection 5Q(1).
- (5) Disregard subsections (1) and (2) when working out a rate for the purposes of Division 6 of Part IIIAB.
- Note: Part IIIAB provides for the payment of a pension bonus to a person who qualifies for an age service pension if the person has deferred claiming that pension for a period of at least one year and the person, or the person's partner, has worked gainfully during that period.

### **Subdivision 3—Claims for service pension or income support supplement**

#### **49D Provisional commencement day**

If:

- (a) a person, or a person's partner, has reached retirement age; and
- (b) this Division applies because of a transfer of qualifying interests by the person or the person's partner; and
- (c) the person makes a claim under this Act for a service pension or an income support supplement;

then, despite any other provision of this Act, the claimant's provisional commencement day is:

- (d) if the transfer was completed before 15 September 1997 and the person makes the claim before 15 September 1998—15 September 1997 or the day on which the person becomes qualified for the pension or supplement, whichever is later; or
- (e) if the transfer was completed after 14 September 1997 but before 15 September 1998 and the person makes the claim before 15 September 1998:
  - (i) the day on which the transfer was completed; or
  - (ii) the day on which the person becomes qualified for the pension or supplement;whichever is later; or
- (f) if the transfer was completed after 14 September 1998 but before 15 September 2000 and the person makes the claim during the period of 3 months that starts on the day on which the transfer was completed:
  - (i) the day on which the transfer was completed; or
  - (ii) the day on which the person becomes qualified for the pension or supplement;whichever is later; or
- (g) in any other case—the day on which the claim is made.

## **Subdivision 4—Requests for increase in rate of service pension or income support supplement**

### **49E Application**

- (1) This Subdivision applies if:
- (a) a person, or a person's partner, has reached retirement age; and
  - (b) this Division applies because of a transfer of qualifying interests by the person or the person's partner; and
  - (c) the person is receiving a service pension or an income support supplement under this Act; and
  - (d) the value of the qualifying interests has been included in the value of the person's assets, or the partner's assets, when calculating the rate of the person's pension or supplement.

### **49F Request for increase**

If:

- (a) the rate at which a service pension or an income supplement is being, or has been, paid to a person is less than the rate (the *increased rate*) at which it would be, or would have been, paid if the value of the qualifying interests transferred by the person or the person's partner had not been included in the value of the person's assets, or of the partner's assets, in calculating the rate of the person's pension or supplement; and
- (b) the person wants the pension or supplement to be paid at the increased rate;

the person must make a request to that effect.

### **49G Form of request**

A request under section 49F must be made in writing and must be in accordance with a form approved by the Commission.

**49H Determination of request**

- (1) If:
- (a) a person makes a request under section 49F in respect of a service pension or an income support supplement; and
  - (b) the Commission is satisfied that the rate at which the pension or supplement is being, or has been, paid to the person is less than the rate at which it would be, or would have been, paid if the value of the qualifying interests transferred by the person or the person's partner had not been included in the value of the person's assets, or the partner's assets, when calculating the rate of the person's pension or supplement;
- the Commission must determine that the request is to be granted.
- (2) The determination takes effect:
- (a) if the transfer was completed before 15 September 1998 and the person makes the request before that day—on 15 September 1997 or the day on which the transfer was completed, whichever is later; or
  - (b) if the transfer was completed after 14 September 1998 but before 15 September 2000 and the person makes the request during the period of 3 months that starts on the day on which the transfer is completed—on the day on which the transfer was completed; or
  - (c) in any other case—on the day on which the request is made.

**Subdivision 5—Farmers' income test****49J Does a person satisfy the farmers' income test?**

*How to work out whether the farmers' income test is satisfied*

- (1) This is how to work out whether a person who has transferred his or her qualifying interest in a farm or farms satisfies the farmers' income test for the purposes of this Division:

<i>Method statement</i>
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*Step 1.* Work out under subsection (2) the amount of the person's ordinary income (other than ordinary income from farming) for each of the last 3 financial years before the day on which the transfer was completed (the ***income test years***).

If the person was a member of a couple on the day on which the transfer was completed, work out also under subsection (2) the amount of his or her partner's ordinary income (other than ordinary income from farming) for the 3 income test years.

Add up all the amounts so obtained. The result is called the person's ***total non-farm income***.

*Step 2.* Work out under subsection (3) the amount of the person's ordinary income from farming for each of the 3 income test years.

If the person was a member of a couple on the day on which the transfer was completed, work out also under subsection (3) the amount of his or her partner's ordinary income from farming for the 3 income test years.

Add up all the amounts of positive income for both the person and the person's partner and deduct from that total the amounts of negative income (if any) for both the person and the person's partner. The result is called the person's ***total farm income*** (which may be either positive or negative).

*Step 3.* Work out the person's ***total income for the 3 income test years***:

- (a) if the person's total farm income is a positive amount—by adding that amount to the amount of the person's total non-farm income; or

- (b) if the person's total farm income is a negative amount—by deducting that amount from the amount of the person's total non-farm income.

*Step 4.* Work out under subsection (4) the maximum basic rate for age service pension applicable to the person. Multiply that rate by 3. The result is called the person's ***maximum basic entitlement***.

*Step 5.* If the person's total income for the 3 income test years is less than the person's maximum basic entitlement, the person satisfies the farmers' income test for the purposes of this Division.

If the person's total income for the 3 income test years equals or exceeds the person's maximum basic entitlement, the person does not satisfy the farmers' income test for the purposes of this Division.

*Person's ordinary income from all sources other than farming*

- (2) For the purpose of working out a person's ordinary income from all sources other than farming during a financial year, the following provisions have effect:
- (a) Divisions 1, 4, 6 and 7 of this Part apply to the person;
  - (b) Division 2 of this Part applies to the person as if any reference in that Division to a tax year were a reference to that financial year;
  - (c) Division 3 of this Part does not apply to the person;
  - (d) any return on a financial asset that the person has actually received during the financial year is taken to be ordinary income of the person.

*Person's ordinary income from farming*

- (3) For the purpose of working out a person's ordinary income from farming during a financial year, the following provisions have effect:

- (a) Divisions 1, 4, 6 and 7 of this Part apply to the person;
- (b) Division 2 of this Part applies to the person as if:
  - (i) any reference in subsection 46B(1) to a tax year were a reference to that financial year; and
  - (ii) subsection 46B(2) and section 46C were omitted;
- (c) Division 3 of this Part does not apply to the person;
- (d) any return on a financial asset that the person has actually received during the financial year and that relates to a farm or a relevant farm asset is taken to be ordinary income of the person from farming;
- (e) if, at the end of the financial year, the value of all trading stock on hand that relates to a farm is less than the value of all such trading stock on hand at the beginning of that financial year—the amount of the difference is to be deducted from that part of the person's ordinary income from farming for that financial year that is income in the form of profits;
- (f) there is also to be deducted from the person's ordinary income from farming:
  - (i) losses and outgoings that relate to a farm and are allowable deductions for the purposes of section 51 of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997*, as appropriate; and
  - (ii) depreciation that relates to a relevant farm asset and is an allowable deduction for the purposes of subsection 54(1) of the *Income Tax Assessment Act 1936* or Division 42 of the *Income Tax Assessment Act 1997*; and
  - (iii) amounts that relate to a farm or a relevant farm asset and are allowable deductions under subsection 82AAC(1) of the *Income Tax Assessment Act 1936*;
- (g) if a negative result is obtained after applying paragraphs (e) and (f)—the person's ordinary income from farming for the financial year is a negative income;



- (h) if paragraph (g) does not apply—the person's ordinary income from farming for the financial year is a positive income.

*Person's maximum basic rate for age service pension*

- (4) For the purposes of Step 4 in the Method statement in subsection (1), the maximum basic rate for age service pension applicable to the person is:
  - (a) if the person was a member of a couple at any time during the 3 years immediately preceding the operative day—an amount equal to twice the amount that was, on the operative day, the maximum basic rate for a partnered person under Module B in Part 2 of Schedule 6; or
  - (b) if paragraph (a) does not apply—an amount equal to the amount that was, on the operative day, the maximum basic rate for a person who is not a member of a couple under Module B in Part 2 of Schedule 6.

*Definitions*

- (5) In this section:

**income**, in relation to a person, has the same meaning as in subsection 5H(1), except that, in addition to any amount that is not income of the person because of subsection 5H(4), (5) or (8), any payment to the person under:

- (a) the AUSTUDY scheme; or
- (b) the Social Security Act; or
- (c) the *Farm Household Support Act 1992*;

is not income of the person for the purposes of this section.

**operative day** means:

- (a) if the transfer of the person's qualifying interest in the farm or farms was completed before 15 September 1997—that day; or
  - (b) otherwise—the day on which the transfer of the person's qualifying interest in the farm or farms was completed.
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***ordinary income from farming***, in relation to a person who has a qualifying interest in a farm or farms, means the ordinary income of the person from the farm or farms and any relevant farm assets.

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*[Minister's second reading speech made in—  
House of Representatives on 11 March 1998  
Senate on 22 June 1998]*

(18/98)

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44      *Social Security and Veterans' Affairs Legislation Amendment (Retirement Assistance for Farmers) Act 1998*    No. 84, 1998