

# **Social Security Act 1991**

**Act No. 46 of 1991 as amended**

**VOLUME 8** includes: sections 1068 – 1157

## **Chapter 3—General provisions relating to payability and rates**



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## **Part 3.6—Benefit Rate Calculator B**

### **1068 Rate of widow allowance, Newstart allowance (18 or over) sickness allowance (18 or over) partner allowance, and mature age allowance under Part 2.12B**

1068(1) The rate of:

- (a) newstart allowance; or
- (b) sickness allowance; or
- (c) partner allowance;

is to be calculated in accordance with the Rate Calculator at the end of this section; or

- (ca) mature age allowance under Part 2.12B; or
- (d) widow allowance.

Note: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

1068(2) If:

- (a) a person has a relationship with a person of the opposite sex (*other person*); and
- (b) the relationship between them is a marriage-like relationship in the Secretary's opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including, in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A));
- (c) the other person is under the age of consent applicable in the State or Territory in which the person is living;

the person's benefit rate is not to exceed the rate at which it would be payable to the person if the other person were the person's partner.

Note: this provision has the effect of taking into account the ordinary income and assets of the partner in applying the ordinary income test and assets test respectively.

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*Rate of benefit limited for certain armed services widows*

1068(3) If:

- (a) an armed services widow is receiving a pension under Part II or IV of the Veterans' Entitlements Act at a rate determined under or by reference to subsection 30(1) of that Act; and
- (b) the widow has been receiving a payment referred to in paragraph (a) continuously since before 1 November 1986; and
- (c) before 1 November 1986 the widow was also receiving a social security benefit;

the rate of benefit payable to the widow is not to be increased:

- (d) if, immediately before 1 November 1986, the widow was receiving a social security benefit at a rate less than \$124.90 per fortnight—to a rate greater than \$124.90 per fortnight; or
- (e) if, immediately before 1 November 1986, the widow was receiving a social security benefit at a rate equal to or greater than \$124.90 per fortnight—to a rate greater than the rate at which it was payable immediately before 1 November 1986.

Note 1: a benefit is not payable to a widow who starts to get a payment referred to in subsection (3) after 1 November 1986—see sections 408CF, 532, 614, 660YCF, 675 and 771HI.

Note 2: for *armed services widow* see subsection 4(1).

## **Benefit Rate Calculator B**

### **Module A—Overall rate calculation process** [see Note 12]

*Method of calculating rate*

1068-A1 The rate of benefit is a daily rate. That rate is worked out by dividing the fortnightly rate calculated according to this Rate Calculator by 14.

*Method statement*

*Step 1.* Work out the person's *maximum basic rate* using MODULE B below.

- Step 2.* Work out the amount per year (if any) of pharmaceutical allowance using MODULE D below.
- Step 3.* Work out the applicable amount (if any) for rent assistance (using MODULE F).
- Step 4.* Add up the amounts obtained in Steps 1 to 4: the result is called the **maximum payment rate**.
- Step 5.* Apply the income test using MODULE G below to work out the income reduction.
- Step 6.* Take the income reduction away from the maximum payment rate: the result is called the **provisional fortnightly payment rate**.
- Step 7.* The **rate of benefit** is the amount obtained by:
- (a) subtracting from the provisional fortnightly payment rate any special employment advance deduction (see Part 3.16B); and
  - (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
  - (c) except where the person is a CDEP Scheme participant in respect of the whole or a part of the period for which the rate of benefit is being worked out, adding any amount payable by way of remote area allowance (see Module J).

Note 1: if a person's rate is reduced under Step 8, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1210 (maximum basic rate first, then rent assistance).

Note 2: in some circumstances a person may also be qualified for a pharmaceutical allowance under Part 2.22.

Note 3: an amount of remote area allowance is to be added under Step 8 only if the person's rate of benefit after Step 5 is greater than nil.

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**Module B—Maximum basic rate [see Appendix for CPI adjusted figures]**

*Maximum basic rate*

1068-B1 The maximum basic rate of a person other than a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out is worked out using Table B. Work out the person’s family situation and whether the person has a dependent child or not. The maximum basic rate is the corresponding amount in the *rate* column. The maximum basic rate of a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out is nil (see sections 408CG, 614A, 660YCH and 771HK).

<b>Table B—Maximum basic rates</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	
		<b>Rate</b>	
<b>Item</b>	<b>Person’s family situation</b>	<b>Column 3A</b>	<b>Column 3B</b>
		<b>Person with dependent child</b>	<b>Person without dependent child</b>
3.	Not member of couple and person: (a) receives sickness allowance; and (b) has not turned 60	\$326.10	\$301.50

<b>Table B—Maximum basic rates</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	
		<b>Rate</b>	
<b>Item</b>	<b>Person's family situation</b>	<b>Column 3A Person with dependent child</b>	<b>Column 3B Person without dependent child</b>
4.	Not member of couple and person: (a) receives sickness allowance; and (b) has turned 60; and (c) has not been receiving one, or a combination, of social security pension, social security benefit or job search allowance, service pension or income support supplement for a continuous period of at least 9 months	\$326.10	\$301.50
4A.	Not member of couple and person: (a) receives newstart allowance or widow allowance; and (b) has not turned 60	\$326.10	\$301.50
4B.	Not member of couple and person: (a) receives newstart allowance or widow allowance; and (b) has turned 60; and (c) has not been receiving one, or a combination, of social security	\$326.10	\$301.50

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<b>Table B—Maximum basic rates</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	
		<b>Rate</b>	
<b>Item</b>	<b>Person's family situation</b>	<b>Column 3A Person with dependent child</b>	<b>Column 3B Person without dependent child</b>
	pension, social security benefit or job search allowance or service pension or income support supplement for a continuous period of at least 9 months		
5.	Not member of couple and person: (a) has turned 60; and (b) has been receiving one, or a combination, of social security pension, social security benefit or job search allowance or service pension or income support supplement for a continuous period of at least 9 months	\$326.10	\$326.10
5A.	Not member of a couple and person receives mature age allowance under Part 2.12B	\$326.10	\$326.10
7.	Partnered	\$272.00	\$272.00
9.	Member of illness separated couple	\$326.10	\$326.10
11.	Partnered (partner in gaol)	\$326.10	\$326.10

- Note 1: For *member of couple, partnered, illness separated couple* and *partnered (partner in gaol)* see section 4.
- Note 2: for *dependent child* see section 5.
- Note 4: the item 1, 2, 6 and 8 rates in column 3B are indexed annually in line with CPI increases (see sections 1191 to 1194).
- Note 5: the other rates are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).
- Note 6: if the person has been receiving the benefit since 20 September 1990 and item 6 applies to the person, the person's maximum basic rate may be the amount specified in column 3A rather than the amount specified in column 3B: see clause 31 in Schedule 1A.
- Note 7: some dependent children will not be taken into account in working out a person's maximum basic rate (see point 1068-B2).

*Secretary may increase rates to give effect to indexation*

1068-B1AA(1) If the Secretary determines in writing, for the purposes of column 3A or 3B of an item in Table B, a higher amount in substitution for an amount (the *existing amount*) set out in that column of that item, the higher amount is taken, from and including 1 July 1996, to be substituted for the existing amount.

1068-B1AA(2) A determination under subpoint (1) is a disallowable instrument.

*Certain children who are not young persons are to be treated as dependent children*

1068-B1A If:

- (a) a person is not a member of a couple; and
  - (b) the person has at least one natural or adopted child who has turned 16 but has not turned 18; and
  - (c) either:
    - (i) a social security benefit is payable to the child; or
    - (ii) if the person is receiving newstart allowance—a disability support pension is payable to the child; and
  - (d) the child is substantially dependent on the person;
- the person's maximum basic rate is worked out as if the person had a dependent child.

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*Certain dependent children to be disregarded*

1068-B2 For the purposes of items 1, 2, 3, 4 and 5 of Table B in point 1068-B1, if:

- (a) a person has a dependent child; and
- (b) the child has turned 18; and
- (c) the child is a prescribed student child;

the child is to be disregarded in working out the person's maximum basic rate under that point.

Note: For *prescribed student child* see section 5.

1068-B3 On 20 March 1994 the amounts specified in items 3, 4, 4A and 4B in column 3B of Table B in point 1068-B1 are increased by \$6.00. The increase is to be made after the indexation of the amounts on that day has occurred.

1068-B4 The amounts in items 3, 4, 4A and 4B in columns 3A and 3B of Table B in point 1068-B1 are to be indexed on 20 September 1993 and 20 March 1994 under section 1192 as if Part 2 of the *Social Security Amendment Act (No. 2) 1993* had commenced on 1 September 1993.



**Module D—Pharmaceutical allowance**  
**[see Appendix for CPI adjusted figures]**

*Qualification for pharmaceutical allowance*

- 1068-D1 Subject to points 1068-D4, 1068-D5, 1068-D6 and 1068-D8, an additional amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if:
- (a) the person is an Australian resident; and
  - (c) one of the following subparagraphs applies:
    - (i) the person is receiving sickness allowance;
    - (ia) the person is receiving mature age allowance under Part 2.12B;
    - (ii) the person is receiving widow allowance, newstart allowance or partner allowance and point 1068-D2 (incapacity for work—newstart allowance recipients), point 1068-D2A (incapacity for work—widow allowance and partner allowance recipients) or point 1068-D3 long term recipients over 60) applies to the person.

*Incapacity for work—job search allowance and newstart allowance*

- 1068-D2 This point applies to a person if:
- (c) if the person is receiving job search allowance—the person is, under Subdivision BAA of Division 1 of Part 2.11, exempt from the activity test; and
  - (d) if the person is receiving newstart allowance—the person is, under Subdivision BA of Division 1 of Part 2.12, exempt from the activity test.

*Incapacity for work—widow allowance and partner allowance recipients*

- 1068-D2A This point applies to a person who is receiving widow allowance or partner allowance if the person is incapacitated for work.

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*Long term recipients over 60*

1068-D3 This point applies to a person if the person:

- (a) has turned 60; and
- (b) has been receiving income support payments in respect of a continuous period of at least 9 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this paragraph).

Note 1: For *income support payment* see subsection 23(1).

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

*No pharmaceutical allowance if person receiving pharmaceutical allowance under the Veterans' Entitlements Act*

1068-D4 Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person is receiving pharmaceutical allowance under the Veterans' Entitlements Act.

*No pharmaceutical allowance if partner receiving pharmaceutical allowance under the Veterans' Entitlements Act and not a service pensioner*

1068-D5 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person is a member of a couple; and
- (b) the person's partner is receiving pharmaceutical allowance under the Veterans' Entitlements Act; and
- (c) the person's partner is not receiving a service pension.

Note: if paragraphs (a), (b) and (c) apply to the person's partner, the partner is receiving pharmaceutical allowance under the VEA at the higher rate (rather than the person and the person's partner each receiving pharmaceutical allowance at the lower rate).

*No pharmaceutical allowance before advance payment period ends*

1068-D6 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person has received an advance pharmaceutical allowance under:
  - (i) Part 2.23 of this Act; or
  - (ii) Division 2 of Part VIIA of the Veterans' Entitlements Act; and
- (b) the person's advance payment period has not ended.

Note: for *advance payment period* see point 1068-D7.

*Advance payment period*

1068-D7 A person's advance payment period:

- (a) starts on the day on which the advance pharmaceutical allowance is paid to the person; and
- (b) ends after the number of paydays worked out using the following formula have passed:

$$\frac{\text{Amount of advance} \times 26}{\text{Pharmaceutical allowance rate}}$$

where:

*amount of advance* is the amount of the advance paid to the person;

*pharmaceutical allowance rate* is the fortnightly amount of pharmaceutical allowance which would be added to the person's maximum basic rate in working out the social security benefit instalment for the day on which the advance is paid if a social security benefit were payable to the person and pharmaceutical allowance were to be added to the person's maximum basic rate on that day.

Note: the person may have come on social security benefit after having been a pension recipient and have received an advance while a pension recipient.

*No pharmaceutical allowance if annual limit reached*

1068-D8 Pharmaceutical allowance is not be added to a person's maximum basic rate if:

- (a) the person has received an advance pharmaceutical allowance during the current calendar year; and
- (b) the total amount paid to the person for that year by way of:

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- (i) pharmaceutical allowance; and
- (ii) advance pharmaceutical allowance;

equals the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note 1: for the amount *paid* to a person by way of pharmaceutical allowance see subsections 19A(2) to (6).

Note 2: the annual limit is affected by:

- how long during the calendar year the person was on pension or benefit;
- the rate of pharmaceutical allowance the person attracts at various times depending on the person's family situation.

*VEA payments taken into account*

1068-D9 In points 1068-D7 and 1068-D8:

***advance pharmaceutical allowance*** includes advance pharmaceutical allowance under the Veterans' Entitlements Act.

***pharmaceutical allowance*** includes pharmaceutical allowance under the Veterans' Entitlements Act.

*Amount of pharmaceutical allowance*

1068-D10 The amount of pharmaceutical allowance is the amount per fortnight worked out using the following Table:

<b>Pharmaceutical allowance amount table</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Person's family situation</b>	<b>Amount per fortnight</b>
1.	Not member of couple	\$5.20
2.	Partnered	\$2.60
4.	Member of illness separated couple	\$5.20
5.	Member of respite care couple	\$5.20
6.	Partnered (partner getting service pension)	\$2.60
7.	Partnered (partner in gaol)	\$5.20

Note 1: For *member of couple, partnered, illness separated couple, respite care couple* and *partnered (partner in gaol)* see section 4.

Note 2: The amounts in column 3 are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194 and 1206A).

### **Module F—Rent assistance** [see Note 5]

[see Appendix for CPI adjusted figures]

#### *Rent assistance*

1068-F1 Subject to points 1068-F3 and 1068-F4, an amount to help cover the cost of rent is to be added to a person's maximum basic rate for a period if:

- (a) the person is not an ineligible homeowner; and
- (aa) column 3B item 1 of Table B in point 1068-B1 of this Benefit Rate Calculator does not apply to the person; and
- (ab) the person is not an aged care resident; and
- (b) the person pays, or is liable to pay, rent (other than Government rent) in respect of the period; and
- (c) the rent is payable at a rate of more than the rent threshold rate; and
- (d) the rent is in respect of premises in Australia throughout the period.
- (e) the person does not have a partner with a rent increased pension; and
- (f) either of the following applies:
  - (i) if the person is not a member of a couple, or is a member of an illness separated couple, a respite care couple or a temporarily separated couple and is entitled to be paid family tax benefit—the person's maximum Part A rate of family tax benefit does not include rent assistance;
  - (ii) if the person is a member of a couple other than an illness separated couple, a respite care couple or a temporarily separated couple, and the person or the person's partner is entitled to be paid family tax benefit—the maximum Part A rate of family tax benefit of the person, or the person's partner, does not include rent assistance.

Note 1: for *rent, Government rent* and *ineligible homeowner* see section 13.

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Note 2: for *rent threshold rate* see point 1068-F1A.

*Rent threshold rate*

1068-F1A A person's rate threshold rate depends on the person's family situation. Work out which family situation in Table FA applies to the person. The rent threshold rate is the corresponding amount in column 3.

<b>Table FA</b>		
<b>Rent threshold rates</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Person's family situation</b>	<b>Amount per fortnight</b>
1.	Not member of couple	\$60.00
2.	Partnered—partner does not have rent increased benefit	\$100.00
3.	Partnered—partner has rent increased benefit	\$100.00
5.	Partnered—member of illness separated couple	\$60.00
7.	Partnered—member of respite care couple	\$60.00
9.	Partnered—member of temporarily separated couple	\$60.00
10.	Partnered (partner in gaol)	\$60.00

Note 1: for *member of couple, illness separated couple, respite care couple, temporarily illness separated couple* and *partnered* see section 4.

Note 2: for *partner with rent increased benefit* see point 1068-F14.

Note 3: the column 3 amounts are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

*Partner with rent increased pension*

1068-F2 A person has a partner with a rent increased pension, for the purposes of point 1068-F1, if:

- (a) the partner is living with the person in their home; and
- (b) the partner is receiving a social security or, service pension or income support supplement; and

- (c) the rate of pension or supplement is increased to take account of rent.

Note: For *social security pension* see subsection 23(1).

*Age test applies to some people*

1068-F4 If a person:

- (b) is not a member of a couple; and
- (c) is not living permanently or indefinitely away from the principal home of a parent of the person;

an amount is not to be added to the person's maximum basic rate under point 1068-F1 unless the person has turned 25.

*Parent*

1068-F5 For the purposes of point 1068-F4 a step-parent or guardian is to be taken to be a parent.

Note: *parent*, when used in this Act, does not normally include a step-parent or guardian (see subsection 5(1)).

*Factors affecting rate of rent assistance*

1068-F12 The rate of rent assistance depends on:

- (a) the fortnightly rent paid or payable by the person; and
- (c) whether or not the person has a partner who has a rent increased benefit.

*Partner with rent increased benefit*

1068-F14 A person's partner has a **rent increased benefit** for the purposes of this Module if the partner:

- (a) is living with the person in their home; and
- (b) either:
  - (i) is receiving a social security benefit or youth training allowance the rate of which is increased to take account of rent; or
  - (ii) would be receiving such an allowance but for the amount of the person's ordinary income reduction under point 1068-G14.

Note: for the treatment of rent paid by a member of a couple see point 1068-F17.

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*Rate of rent assistance*

1068-F15 The rate of rent assistance per fortnight is worked out using Table F. Work out the person's family situation and calculate Rate A for the person using the corresponding formula in column 3. This will be the person's rate of rent assistance but only up to the person's maximum rent assistance rate. If the person is not a single person sharing accommodation, the person's maximum rent assistance rate is Rate B for the person worked out using column 4 of the Table. If the person is a single person sharing accommodation, the person's maximum rent assistance rate is two-thirds of the rate that would otherwise have been Rate B for the person.

**Table F**

**Rate of rent assistance**

<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Rate A</b>	<b>Column 4 Rate B</b>
1.	Not member of couple	$3 \times \frac{\text{Fortnightly rent} - \$60.00}{4}$	\$67.20
2.	Partnered—partner does not have rent increased benefit	$3 \times \frac{\text{Fortnightly rent} - \$100.00}{4}$	\$63.20
3.	Partnered—partner has rent increased benefit	$3 \times \frac{\text{Fortnightly rent} - \$100.00}{8}$	\$31.60
5.	Partnered—member of illness separated couple	$3 \times \frac{\text{Fortnightly rent} - \$60.00}{4}$	\$67.20



**Table F**

**Rate of rent assistance**

<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Rate A</b>	<b>Column 4 Rate B</b>
7.	Partnered— member of respite care couple	$3 \times \frac{\left[ \begin{array}{c} \text{Fortnightly} \\ \text{rent} \end{array} - \$60.00 \right]}{4}$	\$67.20
9.	Partnered— member of temporarily separated couple	$3 \times \frac{\left[ \begin{array}{c} \text{Fortnightly} \\ \text{rent} \end{array} - \$60.00 \right]}{4}$	\$63.20
10.	Partnered (partner in gaol)	$3 \times \frac{\left[ \begin{array}{c} \text{Fortnightly} \\ \text{rent} \end{array} - \$60.00 \right]}{4}$	\$67.20

Note 1: For *member of couple, partnered, illness separated couple, respite care couple, temporarily separated couple* and *partnered (partner in gaol)* see section 4.

Note 1A: For *single person sharing accommodation* see section 5A.

Note 2: for partner with a *rent increased benefit* see point 1068-F14.

Note 3: the rent threshold amounts in column 3 are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Note 4: the Rate B amounts are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

*Fortnightly rent*

1068-F16 **Fortnightly rent** means the fortnightly rent paid or payable by the person whose widow allowance, job search allowance, newstart allowance, sickness allowance or partner allowance is being calculated.

*Rent paid by a member of a couple*

1068-F17 If a person is a member of a couple and the person's partner is living with the person in their home, any rent that the person's

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partner pays or is liable to pay in respect of the home is to be treated as paid or payable by the person.

Note: for *member of a couple* see section 4.

*Rent paid by a member of an illness separated couple*

1068-F18 If a person is a member of an illness separated couple, any rent that the person's partner pays or is liable to pay in respect of the premises or lodgings occupied by the person is to be treated as paid or payable by the person.

Note: for *illness separated couple* see section 4.

## Module G—Income test

*Effect of ordinary income on maximum payment rate* [see Note 18]

1068-G1 This is how to work out the effect of a person's ordinary income, and the ordinary income of a partner of the person, on the person's maximum payment rate:

### *Method statement*

**Step 1.** Work out the amount of the person's ordinary income on a fortnightly basis.

Note 1: For the treatment of the ordinary income of a partner who is receiving a social security pension or a service pension see point 1068-G2.

Note 2: for the treatment of amounts received from friendly societies see point 1068-G4.

**Step 2.** If the person is a member of a couple, work out the partner income free area using point 1068-G9.

Note: The partner income free area is the maximum amount of ordinary income the person's partner may have without affecting the person's benefit.

**Step 3.** Use paragraphs 1068-G10(a), (b) and (c) to work out whether the person has a partner income excess.

**Step 4.** If the requirements of paragraphs 1068-G10(a), (b) and (c) are not satisfied then the person's partner income excess is nil.

**Step 5.** If the requirements of paragraphs 1068-G10(a), (b) and (c) are satisfied, the person's partner income excess is the partner's ordinary income less the partner income free area.

**Step 6.** Use the person's partner income excess to work out the person's **partner income reduction** using point 1068-G11.

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*Step 7.* Work out whether the person's ordinary income exceeds the person's ordinary income free area under point 1068-H12.

Note: A person's ordinary income free area is the maximum amount of ordinary income the person may have without affecting the person's benefit rate.

*Step 8.* If the person's ordinary income does not exceed the person's ordinary income free area, the person's ordinary income excess is nil.

*Step 9.* If the person's ordinary income exceeds the person's ordinary income free area, the person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.

*Step 10.* Use the person's ordinary income excess to work out the person's **ordinary income reduction** using points 1068-G14, 1068-G15 and 1068-G16.

*Step 11.* Add the person's partner income reduction and ordinary income reduction: the result is the person's **income reduction** referred to in Step 5 of point 1068-A1.

Note 1: for **ordinary income** see section 8.

Note 2: see point 1068-A1 (Steps 6 to 9) for the significance of the person's income reduction.

Note 3: the application of the ordinary income test is affected by provisions concerning:

- the general concept of ordinary income (sections 1072 and 1073);
- business income (sections 1074 and 1075);
- deemed income from financial assets (sections 1076 to 1084);
- income from income streams (sections 1095 to 1099D);
- disposal of income (sections 1106 to 1112).

*Ordinary income of members of certain couples*

1068-G2 Subject to point 1068-G3, if a person is a member of a couple and the person's partner is receiving a social security pension, a service pension, income support supplement or a rehabilitation allowance, the person's ordinary income is taken to be one half of the sum of:

- (a) the amount that would be the person's ordinary income if he or she were not a member of a couple; and
- (b) the amount that would be the ordinary income of the person's partner if the partner were not a member of a couple.

*Friendly society amounts*

1068-G4 The ordinary income of a person:

- (a) to whom, or to whose partner, sickness allowance is payable; or
- (c) to whom, or to whose partner, newstart allowance is payable and who, or whose partner, under Subdivision BA of Division 1 of Part 2.12, is not required to satisfy the activity test;

is not to include any amount received by the person or partner from an approved friendly society in respect of the incapacity because of which the person or partner is qualified for the sickness allowance or is not required to satisfy the activity test, as the case may be.

*Ordinary income includes certain periodical payments from relatives*

1068-G5 Subject to point 1068-G6, in this Module, a person's ordinary income includes a periodical payment or benefit by way of gift or allowance from the father, mother, son, daughter, brother or sister of the person.

Note: point 1068-G5 reverses paragraph 8(8)(z) which excludes these amounts.

*Board and lodging*

1068-G6 A person's ordinary income is not to include a payment to the person for board or lodging provided by the person to the person's father, mother, son, daughter, brother or sister.

*Termination payments*

1068-G7 Subject to points 1068-G7AF to 1068-G7AR (inclusive), if:

- (a) a person's employment has been terminated; and

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(b) as a result the person is entitled to a lump sum payment from the person's former employer;

the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

*Ordinary income to include certain sick leave entitlements*

1068-G7AA If a person is a person who is qualified for sickness allowance, the person's ordinary income is taken to include an amount equal to the amount in respect of sick leave worked out under points 1068-G7AB, 1068-G7AC and 1068-G7AD.

1068-G7AB If:

(a) a person has sick leave entitlements on a day that the person is incapacitated for work; and

(b) the person has the right to claim payment from the person's employer by way of sick leave payment in respect of that day; and

(c) the person's employer is able to pay the person the person's sick leave payment in respect of that day;

(d) the person is not receiving a leave payment (other than a sick leave payment) in respect of that day;

the person is, for the purposes of this point, taken to have received a sick leave payment equal to the person's sick leave entitlements in respect of that day, assuming that the person does not exercise any rights the person may have in relation to the amount to be paid in respect of that day.

1068-G7AC If point 1068-G7AB has applied to a person in respect of a day, then, for the purposes of any subsequent consecutive applications of the point, the person's sick leave entitlements are to be taken to be reduced by a day.

1068-G7AD A person's ordinary income is not to include a payment received by the person in respect of sick leave to the extent that an amount equal to the payment has been included in the person's ordinary income under point 1068-G7AA.

1068-G7AE If:

(a) point 1068-G7AA has applied to a person while the person was qualified for sickness allowance; and

- (b) that allowance has been cancelled; and
- (c) at least 6 weeks after the day on which the sickness allowance was cancelled, the person is granted sickness allowance again;

point 1068-G7AA applies to the person in respect of the person's sick leave entitlements.

*Roll-over of lump sum leave payments*

1068-G7AF If:

- (a) a person's employment has been terminated; and
- (b) as a result the person is entitled to a lump sum leave payment from the person's former employer; and
- (c) the person rolls over the lump sum leave payment into an approved deposit fund, a superannuation fund or a deferred annuity;

the lump sum leave payment is to be disregarded in working out the ordinary income of the person for the purposes of Module G of section 1068.

*Certain leave payments taken to be ordinary income—employment continuing*

1068-G7AG If:

- (a) a person is employed; and
- (b) the person is on leave for a period; and
- (c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of a leave period;

the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the leave period to which the leave payment entitlement relates.

*Certain leave payments taken to be ordinary income—employment terminated*

1068-G7AH If:

- (a) a person's employment has been terminated; and

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- (b) the person receives a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the leave period to which the payment relates.

*More than one leave payment on a day*

1068-G7AJ If:

- (a) the person is covered by point 1068-G7AH; and
  - (b) the person receives more than one leave payment on a day;
- the income maintenance period is worked out by adding the leave periods to which the payments relate.

*Start of income maintenance period—employment continuing*

1068-G7AK If the person is covered by point 1068-G7AG, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

*Start of income maintenance period—employment terminated*

1068-G7AKA Subject to point 1068-G7AKC, if the person is covered by point 1068-G7AH, the income maintenance period starts, subject to point 1068-G7AKB, on the day the person is paid the leave payment.

*Commencement of income maintenance period where there is a second leave payment—employment terminated*

1068-G7AKB If a person who is covered by point 1068-G7AH is subject to an income maintenance period (the *first period*) and the person is paid another leave payment during that period (the *second leave payment*), the income maintenance period for the second leave payment commences the day after the end of the first period.

*Start of income maintenance period where liquid assets test waiting period applies*

1068-G7AKC If a person to whom point 1068-G7AKA applies is subject to a liquid assets test waiting period, the income maintenance period is



taken to have started on the day on which the liquid assets test waiting period started.

*Leave payments in respect of periods longer than a fortnight*

- 1068-G7AL Subject to points 1068-G7AA to 1068-G7AE (inclusive), if:
- (a) a person receives a leave payment; and
  - (b) the payment is in respect of a period of leave greater than a fortnight;
- the person is taken to receive in a payment fortnight or part of a payment fortnight an amount calculated by:
- (c) dividing the amount received by the number of days in the period of leave to which the payment relates (the *daily rate*); and
  - (d) multiplying the daily rate by the number of days in the payment fortnight that are also in the period of leave.

1068-G7AM If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple) and 19C(3) (person who is a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

Note 3: If an income maintenance period applies to a person, then, during that period:

- (a) the allowance claimed may not be payable to the person; or
- (b) the amount of the allowance payable to the person may be reduced.

*When a person receives a leave payment*

- 1068-G7AN For the purposes of points 1068-G7AB and 1068-G7AD to 1068-G7AM (inclusive), a person (the *first person*) is taken to receive a leave payment if the payment is made to another person:
- (a) at the direction of the first person or a court; or
  - (b) on behalf of the first person; or
  - (c) for the benefit of the first person; or

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- (d) the first person waives or assigns the first person's right to receive the payment.

*Single payment in respect of different kinds of leave—employment terminated*

1068-G7AP If a person who is covered by point 1068-G7AH receives a single payment in respect of different kinds of leave, then, for the purposes of the application of points 1068-G7AF to 1068-G7AN (inclusive), each part of the payment that is in respect of a different kind of leave is taken to be a separate payment and the income maintenance period in respect of the single payment is worked out by adding the leave periods to which the separate payments relate.

*Definitions*

1068-G7AQ In points 1068-G7AF to 1068-G7AP (inclusive):

**payment fortnight** means a fortnight in respect of which a sickness allowance or a newstart allowance, as the case requires, is paid, or would be paid, apart from the application of an income maintenance period, to a person.

**roll-over**, in relation to a lump sum leave payment, has the same meaning as roll-over in 27D of the *Income Tax Assessment Act 1936* in relation to an eligible termination payment.

1068-G7AR In points 1068-G7AA to 1068-G7AQ (inclusive):

**leave payment** includes a payment in respect of sick leave, annual leave, maternity leave and long service leave.

*Ordinary income generally taken into account when first earned, derived or received*

1068-G7A Subject to points 1068-G7B, 1068-G7C, 1068-G8 and 1068-G8A and section 1073, ordinary income is to be taken into account in the fortnight in which it is first earned, derived or received.

*Claimant or recipient receives lump sum amount for remunerative work*

- 1068-G7B If a person whose claim for an allowance has been granted receives a lump sum amount after the claim was made that:
- (a) is paid to him or her in relation to remunerative work; and
  - (b) is not a payment to which point 1068-G8 applies; and
  - (c) is not an exempt lump sum;
- the person is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount.

*Partner of claimant or recipient receives lump sum amount for remunerative work*

- 1068-G7C If:
- (a) a person whose claim for an allowance has been granted is a member of a couple; and
  - (b) after the person has made the claim, the person's partner receives a lump sum amount that:
    - (i) is paid to him or her in relation to remunerative work; and
    - (ii) is not a payment to which point 1068-G8 applies; and
    - (iii) is not an exempt lump sum;
- the partner is, for the purposes of this Module, taken to receive one fifty-second of that amount as ordinary income during each week in the 12 months commencing on the day on which the partner becomes entitled to receive that amount.

*Reference to allowance*

- 1068-G7D A reference in point 1068-G7B or 1068-G7C to an **allowance** is a reference to an allowance the rate of which is calculated under this Rate Calculator.

*Operation of points 1068-G7B and 1068-G7C*

- 1068-G7E Points 1068-G7B and 1068-G7C have effect even if the person who has made the claim:

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- (a) has to serve an ordinary waiting period or a liquid assets test waiting period in respect of the allowance claimed; or
  - (b) is subject to an income maintenance period in respect of the allowance claimed; or
  - (c) is subject to a seasonal work preclusion period;
- during the period of 12 months referred to in those points.

*Ordinary income received at intervals longer than one fortnight*

1068-G8 Subject to points 1068-G7AF to 1068-G7AR (inclusive), if:

- (a) a person receives a number of ordinary income payments; and
- (b) each payment is in respect of a period (in this point called the **work period**) that is greater than a fortnight; and
- (c) there is reasonable predictability or regularity as to the timing of the payments; and
- (d) there is reasonable predictability as to the quantum of the payments;

the person is taken to receive in a fortnight falling within, or overlapping with, a work period an amount calculated by:

- (e) dividing the amount received by the number of days in the work period (the result is called the **daily rate**); and
- (f) multiplying the daily rate by the number of days in the fortnight that are also within the work period.

**EXAMPLE OF HOW ORDINARY INCOME RECEIVED AT INTERVALS LONGER THAN A FORTNIGHT IS ALLOCATED TO FORTNIGHTLY PERIODS**

*Facts:* Fred receives \$600 each 25 days from remunerative work. The social security benefit becomes payable to Fred such that the first 25 days of his earnings that are counted as ordinary income for the purposes of the ordinary income test are spread over 3 social security benefit payment fortnights as follows:

- 5 days of the first fortnight;
- all of the second fortnight;
- 6 days of the third fortnight.

In this example, it is assumed that Fred remains qualified for the social security benefit during the three fortnights and that nothing prevents it from being payable to him. The problem is then to work out what proportion of Fred's earnings to allocate to each fortnight for ordinary income testing purposes.

*Application:* To work out the amount that Fred is taken to receive in the first fortnight first divide the total amount received for the 25 day work period (\$600) by the number of days in the work period (25). This gives a daily rate. The daily rate is:

$$\frac{\$600}{25} = \$24$$

Then multiply the daily rate (\$24) by the number of days in the fortnight that are also within the work period. The result is:

$$\$24 \times 5 = \$120$$

For the second fortnight the calculation is:

$$\$24 \times 14 = \$336$$

For the third fortnight the calculation is:

$$\$24 \times 6 = \$144$$

plus

$$\$24 \times 8 = \frac{\$192}{\$336}$$

Note that the amount of \$192 added for the third fortnight comes from the given fact that Fred receives \$600 each 25 days. So, for as long as there is reasonable predictability as to the timing and quantum of Fred's ordinary income from remunerative work where receipt is at intervals longer than a fortnight, then this provision should be used to allocate that income to fortnightly periods for the purposes of the ordinary income test.

*Payment of arrears of periodic compensation payments*

1068-G8A If:

- (a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving newstart allowance, sickness allowance, or mature age allowance under Part 2.12B; and
- (b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive in a fortnight falling within, or overlapping with, the periodic payments period, an amount calculated by:

- (c) dividing the amount received by the number of days in the periodic payments period (the result is called the *daily rate*); and

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- (d) multiplying the daily rate by the number of days in the fortnight that are also within the periodic payments period.

Note: for *periodic payments period* see section 17.

*Partner income free area*

1068-G9 The partner income free area for a person is:

- (a) if the person's partner is not receiving a social security benefit and has not turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which youth allowance would not be payable to the partner if the partner were qualified for a youth allowance and were not undertaking full-time study (see section 541B); or
- (b) if the person's partner is not receiving a social security benefit and has turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which newstart allowance would not be payable to the partner if the partner were qualified for a newstart allowance; or
- (c) if the person's partner is receiving a social security benefit—the amount of income of the partner (rounded up to the nearest dollar) beyond which that benefit would not be payable to the partner.

*Partner income excess*

1068-G10 If:

- (a) a person is a member of a couple; and
- (b) the person's partner is not receiving a social security pension, a service pension, income support supplement or a rehabilitation allowance; and
- (c) the partner's ordinary income exceeds the partner income free area for the partner;

then:

- (d) the person has a partner income excess; and
- (e) the person's partner income excess is the amount by which the partner's ordinary income exceeds the partner income free area.

*Partner income reduction*

1068-G11 If a person has a partner income excess, the person's partner income reduction is an amount equal to 70% of the part of the partner's ordinary income that exceeds the partner income free area.

*Example:*

*Facts:* Susan's partner Colin has an ordinary income of \$470. Assume that the partner income free area under point 1068-G9 is \$462.

*Application:* Colin's ordinary income exceeds the partner income free area. He therefore has a partner income excess under point 1068-G10 of  $\$470 - \$462 = \$8$ .

Susan's partner income reduction under point 1068-G11 is therefore 70% of \$8 = \$5.60.

*Ordinary income free area*

1068-G12 A person's ordinary income free area is \$62.

*Note:* The income free area is used in the ordinary income test in relation to fortnightly income.

*Ordinary income excess*

1068-G13 If a person's ordinary income exceeds the person's ordinary income free area:

- (a) the person has an ordinary income excess; and
- (b) the person's ordinary income excess is the amount by which the person's ordinary income exceeds the person's ordinary income free area.

*Ordinary income reduction*

1068-G14 If a person has an ordinary income excess, the person's ordinary income reduction is the sum of:

- (a) the person's lower range reduction (see point 1068-G15); and
- (b) the person's upper range reduction (if any) (see point 1068-G16).

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*Lower range reduction*

1068-G15 The person's lower range reduction is an amount equal to 50% of the part of the person's ordinary income excess that does not exceed \$80.

*Upper range reduction*

1068-G16 The person's upper range reduction is an amount equal to 70% of the part (if any) of the person's ordinary income excess that exceeds \$80.

**Module J—Remote area allowance**

*Remote area allowance—person physically in remote area*

1068-J1 An amount by way of remote area allowance is to be added to a person's rate if:

(aa) either:

(i) the person's rate of benefit apart from this point is greater than nil; or

(ii) apart from this point the person's rate of benefit would be nil merely because an advance pharmaceutical allowance has been paid to the person under:

(A) Part 2.23 of this Act; or

(B) Division 2 of Part VIIA of the Veterans' Entitlements Act; and

(a) the person's usual place of residence is situated in the remote area; and

(b) the person is physically present in the remote area.

Note 1: for *remote area* see subsection 14(1).

Note 2: a person may be considered to be physically present in a remote area during temporary absences—see subsection 14(2).

*Rate of remote area allowance*

1068-J3 The rate of remote area allowance payable to a person is worked out using Table J. Work out which family situation in the Table applies to the person. The rate of remote area allowance is the corresponding amount in column 3 plus an additional



corresponding amount in column 4 for each FTB child of the person.

<b>Column 1</b> <b>Item</b>	<b>Column 2</b> <b>Person's family situation</b>	<b>Column 3</b> <b>Basic allowance</b>	<b>Column 4</b> <b>Additional allowance for each FA child</b>
1.	Not member of couple	\$18.20	\$7.30
2.	Partnered	\$15.60	\$7.30
3.	Member of illness separated couple	\$18.20	\$7.30
5.	Partnered (partner in gaol)	\$18.20	\$7.30

*Meaning of remote area allowance*

1068-J4 In Table J, **remote area allowance** means:

- (a) an amount added to a person's social security pension or benefit by way of remote area allowance; or
- (b) a remote area allowance payable under point SCH6-G1 of the VEA.

*In remote area*

1068-J5 For the purposes of Table J in point 1068-J3, a person is **in the remote area** if:

- (a) the person's usual place of residence is in the remote area; and
- (b) the person is physically present in the remote area.

*Special rule where partner has an FTB child but is not receiving a pension*

1068-J7 If:

- (a) a person who is a member of a couple is qualified for an amount by way of additional allowance; and
- (b) the person's partner is not receiving a pension or benefit; and

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(c) the person's partner has an FTB child;  
the child is taken, for the purposes of this Module, to be an FTB child of the person.

*Special rule where partner has an FTB child but is not receiving additional allowance for the FTB child*

1068-J8 If:

(a) a person who is a member of a couple is qualified for an amount by way of remote area allowance; and  
(b) the person's partner has an FTB child; and  
(c) the person's partner is not receiving additional allowance for the FTB child;  
the child is taken, for the purposes of this Module, to be an FTB child of the person.

*Special rule dealing with the death of an FTB child*

1068-J9 If an FTB child of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child during that 14 weeks.

## Part 3.6A—Parenting Payment Rate Calculator

### 1068A Rate of parenting payment—pension PP (single)

- (1) If a person is not a member of a couple, the person's rate of parenting payment is the pension PP (single) rate.
- (2) The pension PP (single) rate is worked out in accordance with the rate calculator at the end of this section.

Note: For rate of a person who is a member of a couple see section 1068B.

- (3) If:
  - (a) a person has a relationship with a person of the opposite sex (the *other person*); and
  - (b) the relationship between them is a marriage-like relationship in the Secretary's opinion (formed after the Secretary has had regard to all the circumstances of the relationship, including, in particular, the matters referred to in paragraphs 4(3)(a) to (e) and subsection 4(3A)); and
  - (c) either or both of them are under the age of consent applicable in the State or Territory in which they are living; the person's pension PP (single) rate is not to exceed the benefit PP (partnered) rate which would be payable to the person if the other person were the person's partner.
- (4) If the Secretary determines in writing a higher amount in substitution for an existing amount in the rate calculator at the end of this section, the higher amount is taken, from and including 20 March 1998, to be substituted for the existing amount. A determination under this subsection is a disallowable instrument.

- (5) In subsection (4):

*existing amount* means an amount referred to in any of the following:

- (a) point 1068A-B1;

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- (b) point 1068A-C7;
- (c) paragraph 1068A-D1(d)
- (d) Table D of point 1068A-D3.

## **Pension PP (Single) Rate Calculator**

### **Module A—Overall rate calculation process**

*Method of calculating rate*

1068A-A1 The rate of pension PP (single) is a daily rate. That rate is worked out by dividing the annual rate calculated according to this Rate Calculator by 364 (fortnightly rates are provided for information only).

*Method statement*

- Step 1.* Work out the person's **maximum basic rate** using Module B below.
- Step 1A.* Work out the amount of pension supplement using Module BA below.
- Step 2.* Work out the amount per year (if any) of pharmaceutical allowance using Module C below.
- Step 3.* Work out the amount per year (if any) for rent assistance using Module D below.
- Step 4.* Add up the amounts obtained in Steps 1, 1A, 2 and 3: the result is called the **maximum payment rate**.
- Step 5.* Apply the ordinary income test using Module E below to work out the income reduction.
- Step 6.* Take the income reduction away from the maximum payment rate: the result is called the **provisional annual payment rate**.

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- Step 7.* The **rate of pension PP (single)** is the amount obtained by:
- (a) subtracting from the provisional annual payment rate any special employment advance deduction (see Part 3.16B); and
  - (b) if there is any amount remaining, subtracting from that amount any advance payment deduction (see Part 3.16A); and
  - (c) adding any amount payable by way of remote area allowance (see Module F).

Note 1: If a person's rate is reduced under Step 6, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1210 (maximum basic rate first, then rent assistance, then pharmaceutical allowance).

Note 2: In some circumstances a person may also be qualified for a pharmaceutical allowance under Part 2.22.

Note 3: An amount of remote area allowance is to be added under Step 7 only if the person's provisional payment rate under Step 6 is greater than nil.

**Module B—Maximum basic rate [see Appendix for CPI adjusted figures]**

*Maximum basic rate*

1068A-B1 A person's maximum basic rate is \$9,042.80 per year (\$347.80 per fortnight).

Note: The maximum basic rate is indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

**Module BA—Pension supplement**

*Pension supplement*

1068A-BA1 The amount of a person's pension supplement depends on the person's maximum basic rate.

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*Amount of pension supplement*

1068A-BA2 The amount of a person's pension supplement is worked out by:

- (a) calculating the amount (the *provisional supplement amount*) that is 4% of the person's 1 July 2000 maximum basic rate; and
- (b) rounding off the provisional supplement amount in accordance with points 1068A-BA4 to 1068A-BA6.

Note: The pension supplement amount is indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

1068A-BA3 A person's *1 July 2000 maximum basic rate* is the maximum basic rate that would have been the person's maximum basic rate if the rate had not changed since 1 July 2000.

*Rounding off of provisional supplement amount*

1068A-BA4 If a provisional supplement amount is a multiple of \$2.60, the amount of the pension supplement is the provisional supplement amount.

1068A-BA5 If a provisional supplement amount is not a multiple of \$2.60, the amount of the pension supplement is the provisional supplement amount rounded up or down to the nearest multiple of \$2.60.

1068A-BA6 If a provisional supplement amount is not a multiple of \$2.60, but is a multiple of \$1.30, the amount of the pension supplement is the provisional supplement amount rounded up to the nearest multiple of \$2.60.

**Module C—Pharmaceutical allowance**  
**[see Appendix for CPI adjusted figures]**

*Qualification for pharmaceutical allowance*

1068A-C1 Subject to points 1068A-C2, 1068A-C3 and 1068A-C5, an additional amount by way of pharmaceutical allowance is to be added to a person's maximum basic rate if the person is an Australian resident.

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*No pharmaceutical allowance if person receiving pharmaceutical allowance under the Veterans' Entitlements Act*

1068A-C2 Pharmaceutical allowance is not to be added to a person's maximum basic rate if the person is receiving pharmaceutical allowance under the Veterans' Entitlements Act.

Note: A person can receive both:

- (a) a disability pension under the VEA; and
  - (b) a payment under this Act;
- and pharmaceutical allowance might be built into the disability pension rate.

*No pharmaceutical allowance before advance payment period ends*

1068A-C3 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person has received an advance pharmaceutical allowance under:
  - (i) Part 2.23 of this Act; or
  - (ii) Division 2 of Part VIIA of the Veterans' Entitlements Act; and
- (b) the person's advance payment period has not ended.

Note: For *advance payment period* see point 1068A-C4.

*Advance payment period*

1068A-C4(1) A person's advance payment period starts on the day on which the advance pharmaceutical allowance is paid to the person.

(2) The period ends after the number of paydays worked out using the following formula have passed:

$$\frac{\text{Amount of advance} \times 26}{\text{Pharmaceutical allowance rate}}$$

where:

**amount of advance** is the amount of the advance paid to the person.

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***pharmaceutical allowance rate*** is the yearly amount of pharmaceutical allowance which would be added to the person's maximum basic rate in working out the person's rate of pension PP (single) on the day on which the advance is paid if pharmaceutical allowance were to be added to the person's maximum basic rate on that day.

*No pharmaceutical allowance if annual limit reached*

1068A-C5 Pharmaceutical allowance is not to be added to a person's maximum basic rate if:

- (a) the person has received an advance pharmaceutical allowance during the current calendar year; and
- (b) the total amount paid to the person for that year by way of:
  - (i) pharmaceutical allowance; and
  - (ii) advance pharmaceutical allowance;

equals the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note 1: For the amount paid to a person by way of pharmaceutical allowance see subsections 19A(2) to (7).

Note 2: The annual limit is affected by the following:

- (a) how long during the calendar year the person was on pension or benefit;
- (b) the rate of pharmaceutical allowance the person attracts at various times depending on the person's family situation.

*VEA payments taken into account*

1068A-C6 In points 1068A-C4 and 1068A-C5:

***advance pharmaceutical allowance*** includes advance pharmaceutical allowance under the Veterans' Entitlements Act.

***pharmaceutical allowance*** includes pharmaceutical allowance under the Veterans' Entitlements Act.

*Amount of pharmaceutical allowance*

1068A-C7 The amount of pharmaceutical allowance is \$140.40 per year (\$5.40 per fortnight).



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Note: The annual amount is adjusted annually in line with CPI increases (see section 1206A).

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**Module D—Rent assistance [see Appendix for CPI adjusted figures]**

*Qualification for rent assistance*

- 1068A-D1 An additional amount to help cover the cost of rent is to be added to a person's maximum basic rate if:
- (a) the person is not an ineligible homeowner; and
  - (b) the person is not an aged care resident; and
  - (c) the person pays, or is liable to pay, rent (other than Government rent); and
  - (d) the rent is payable at a rate of more than \$1,861.60 per year (\$71.60 per fortnight); and
  - (e) the rent is in respect of premises in Australia; and
  - (f) if the person is entitled to be paid family tax benefit—the person's maximum Part A rate of family tax benefit does not include rent assistance.

Note 1: For *rent*, *Government rent* and *ineligible homeowner* see section 13.

Note 2: The amount in paragraph (d) is indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

*Annual rent affects rate of rent assistance*

- 1068A-D2 The rate of rent assistance depends on the annual rent paid or payable by the person.

*Rate of rent assistance*

- 1068A-D3 The rate of rent assistance per fortnight is worked out using Table D. Calculate Rate A for the person using the formula in Column 2. This will be the person's rate of rent assistance but only up to the person's maximum rent assistance rate. If the person is not a single person sharing accommodation, the person's maximum rent assistance rate is Rate B in Column 3 of the table. If the person is a single person sharing accommodation, the person's maximum rent assistance rate is two-thirds of Rate B.

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**Table D—Rate of rent assistance**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Rate A</b>	<b>Rate B</b>
1	$3 \times \left[ \frac{\text{Annual rent} - \$1,861.60}{4} \right]$	\$1,944.80

Note 1: For *single person sharing accommodation* see section 5A.

Note 2: The amounts in Column 2 and Column 3 are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

*Annual rent*

1068A-D4 Annual rent is the annual rent paid or payable by the person.

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**Module E—Ordinary income test**

*Effect of income on maximum payment rate*

1068A-E1 This is how to work out the effect of a person's ordinary income on the person's maximum payment rate:

*Method statement*

*Step 1.* Work out the amount of the person's ordinary income on a yearly basis.

*Step 2.* Work out the person's ordinary income free area (see points 1068A-E14 to 1068A-E18 below).

Note: A person's ordinary income free area is the amount of ordinary income that the person can have without any deduction being made from the person's maximum payment rate.

*Step 3.* Work out whether the person's ordinary income exceeds the person's ordinary income free area.

*Step 4.* If the person's ordinary income does not exceed the person's ordinary income free area, the person's ordinary income excess is nil.

*Step 5.* If the person's ordinary income exceeds the person's ordinary income free area, the person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.

*Step 6.* Use the person's ordinary income excess to work out the person's reduction for ordinary income using points 1068A-E19 and 1068A-E20 below.

Note 1: See point 1068A-A1 (Steps 5 and 6) for the significance of the person's reduction for ordinary income.

Note 2: The application of the ordinary income test is affected by provisions concerning the following:

- (a) the general concept of ordinary income (sections 1072 and 1073);

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- (b) business income (sections 1074 and 1075);
- (c) deemed income from financial assets (sections 1076 to 1084);
- (d) income from income streams (sections 1095 to 1099D);
- (e) disposal of income (sections 1106 to 1112).

*Roll-over of lump sum leave payments*

1068A-E2 If:

- (a) a person's employment has been terminated; and
- (b) as a result the person is entitled to a lump sum leave payment from the person's former employer; and
- (c) the person rolls over the lump sum leave payment into an approved deposit fund, a superannuation fund or a deferred annuity;

the lump sum leave payment is to be disregarded in working out the ordinary income of the person for the purposes of this Module.

*Certain leave payments taken to be ordinary income—employment continuing*

1068A-E3 If:

- (a) a person is employed; and
- (b) the person is on leave for a period; and
- (c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of the leave period;

the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the leave period to which the leave payment entitlement relates.

*Certain leave payments taken to be ordinary income—employment terminated*

1068A-E4 If:

- (a) a person's employment has been terminated; and
- (b) the person receives a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

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the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the leave period to which the payment relates.

*More than one leave payment on a day*

1068A-E5 If:

- (a) the person is covered by point 1068A-E4; and
  - (b) the person receives more than one leave payment on a day;
- the income maintenance period is worked out by adding the leave periods to which the payments relate.

*Start of income maintenance period—employment continuing*

1068A-E6 If the person is covered by point 1068A-E3, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

*Start of income maintenance period—employment terminated*

1068A-E7 If the person is covered by point 1068A-E4, the income maintenance period starts, subject to point 1068A-E8, on the day the person is paid the leave payment.

*Commencement of income maintenance period where there is a second leave payment—employment terminated*

1068A-E8 If a person who is covered by point 1068A-E4 is subject to an income maintenance period (the *first period*) and the person is paid another leave payment during that period (the *second leave payment*), the income maintenance period for the second leave payment commences on the day after the end of the first period.

1068A-E9 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For *in severe financial hardship* see subsection 19C(2) (person who is not a member of a couple).

Note 2: For *unavoidable or reasonable expenditure* see subsection 19C(4).

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- Note 3: If an income maintenance period applies to a person, then, during that period:
- (a) the pension PP (single) claimed may not be payable to the person; or
  - (b) the amount of the pension PP (single) payable to the person may be reduced.

*When a person receives a leave payment*

1068A-E10 For the purposes of points 1068A-E2 to 1068A-E9 (inclusive), a person (the **first person**) is taken to receive a leave payment if the payment is made to another person:

- (a) at the direction of the first person or a court; or
- (b) on behalf of the first person; or
- (c) for the benefit of the first person; or

the first person waives or assigns the first person's right to receive the payment.

*Single payment in respect of different kinds of leave—employment terminated*

1068A-E11 If a person who is covered by point 1068A-E4 receives a single payment in respect of different kinds of leave, then, for the purposes of the application of points 1068A-E2 to 1068A-E10 (inclusive), each part of the payment that is in respect of a different kind of leave is taken to be a separate payment and the income maintenance period in respect of the single payment is worked out by adding the leave periods to which the separate payments relate.

*Definitions*

1068A-E12 In points 1068A-E2 to 1068A-E12 (inclusive):

**leave payment** includes a payment in respect of sick leave, annual leave, maternity leave and long service leave.

**roll-over**, in relation to a lump sum leave payment, has the same meaning as **roll-over** in section 27D of the *Income Tax Assessment Act 1936* in relation to an eligible termination payment.

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*Payment of arrears of periodic compensation payments*

1068A-E13 If:

- (a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving a compensation affected payment; and
- (b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive, on each day in the periodic payments period, an amount calculated by dividing the amount received by the number of days in the periodic payments period.

Note: For *compensation affected payment* and *periodic payments period* see section 17.

*How to calculate a person's ordinary income free area*

1068A-E14 A person's ordinary income free area is worked out using Table E. The ordinary income free area is the amount in Column 2 plus the additional amount in Column 4 for each dependent child of the person.

**Table E—Ordinary income free area**

<b>Column 1 Item</b>	<b>Column 2 Basic free area per year</b>	<b>Column 3 Basic free area per fortnight</b>	<b>Column 4 Additional free area per year</b>	<b>Column 5 Additional free area per fortnight</b>
1	\$2,600	\$100	\$639.60	\$24.60

Note 1: For *dependent child* see section 5 and point 1068A-E21.

Note 2: The basic free area per year is indexed annually in line with CPI increases (see sections 1191 to 1194).

*No additional free area for certain prescribed student children*

1068A-E15 No additional free area is to be added for a dependent child who:

- (a) has turned 18; and
- (b) is a prescribed student child;

unless the person whose rate is being calculated receives carer allowance for the child.



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*Reduction of additional free area for dependent children*

1068A-E16 The additional free area for a dependent child is reduced by the annual amount of any payment received by the person for or in respect of that particular child. The payments referred to in point 1068A-E17 do not result in a reduction.

*Payments that do not reduce additional free area*

1068A-E17 No reduction is to be made under point 1068A-E16 for a payment:

- (a) under this Act; or
- (b) of maintenance income; or
- (c) under the Veterans' Entitlements Act; or
- (d) under an Aboriginal study assistance scheme; or
- (e) under the Assistance for Isolated Children Scheme.

Note: For *Aboriginal study assistance scheme* see subsection 23(1).

*Examples of payments reducing additional free area*

1068A-E18 Examples of the kinds of payments that result in a reduction under point 1068A-E16 are:

- (a) amounts received from State authorities or benevolent societies in respect of the boarding out of the child; or
- (b) amounts of superannuation or compensation paid in respect of the child; or
- (c) amounts (other than amounts covered by point 1068A-E17) paid in respect of the child under educational schemes; or
- (d) foster care allowance payments made by a State welfare authority.

*Ordinary income excess*

1068A-E19 A person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.

*Reduction for ordinary income*

1068A-E20 A person's reduction for ordinary income is:  
Ordinary income excess  $\times$  0.4

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1068A-E21 In this Module:

*dependent child*, in relation to a person, includes any child of the person who is under 18 and is receiving a youth allowance.

**Module F—Remote area allowance**

*Remote area allowance*

1068A-F1 An amount by way of remote area allowance is to be added to a person’s rate if:

- (a) either:
  - (i) the person’s rate apart from this point is greater than nil; or
  - (ii) apart from this point the person’s rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under:
    - (A) Part 2.23 of this Act; or
    - (B) Division 2 of Part VIIA of the Veterans’ Entitlements Act; and
- (b) the person’s usual place of residence is situated in a remote area; and
- (c) the person is physically present in the remote area.

Note: For *remote area* and *physically present in the remote area* see section 14.

*Rate of remote area allowance*

1068A-F2 The rate of remote area allowance payable to a person is worked out using Table F. The rate of remote area allowance is the amount in Column 2 plus the additional corresponding amount in Column 4 for each FA child of the person.

**Table F—Remote area allowance**

<b>Column 1 Item</b>	<b>Column 2 Basic allowance per year</b>	<b>Column 3 Basic allowance per fortnight</b>	<b>Column 4 Additional allowance per year</b>	<b>Column 5 Additional allowance per fortnight</b>
1	\$473.20	\$18.20	\$189.80	\$7.30

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**1068B Rate of parenting payment—PP (partnered)** [*see* Note 14]

- (1) If a person is a member of a couple, the person's rate of parenting payment is the benefit PP (partnered) rate.
- (2) The benefit PP (partnered) rate is worked out in accordance with the rate calculator at the end of this section.

Note: For *member of a couple* see section 4.

**Benefit PP (Partnered) Rate Calculator**

**Module A—Overall rate calculation process**

*Method of calculating rate—general*

1068B-A1 The rate of benefit PP (partnered) is a daily rate. That rate is worked out by dividing the fortnightly rate calculated according to this Rate Calculator by 14. There are 2 ways of working out the fortnightly rate:

- (a) one for a person who is not a partner of a non-independent YA recipient (see point 1068B-A2); and
- (b) one for a person who is a partner of a non-independent YA recipient (see point 1068B-A3).

Note: For *partner of a non-independent YA recipient* see subsection 23(1).

*Method of calculating rate for person who is not a partner of a non-independent YA recipient*

1068B-A2 If a person is not the partner of a non-independent YA recipient, the fortnightly rate of benefit PP (partnered) for the person is worked out as follows:

*Method statement*

- Step 1.* Work out the person's *maximum basic rate* using Module C below.
- Step 2.* Work out the amount per fortnight (if any) of rent assistance using Module F below.

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- Step 3.* Work out the amount per fortnight (if any) of pharmaceutical allowance using Module E below.
- Step 4.* Add up the amounts obtained in steps 1 to 3: the result is called the **maximum payment rate**.
- Step 5.* Apply the income test using Module D below to work out the person's income reduction.
- Step 6.* Take the income reduction away from the maximum payment rate: the result is called the **provisional payment rate**.
- Step 7.* The rate of benefit PP (partnered) is the difference between:
- (a) the provisional payment rate; and
  - (b) any advance payment deduction (see Part 3.16A);
- plus, except where the person is a CDEP Scheme participant in respect of the whole or part of the period for which the rate of payment is being worked out, any amount by way of remote area allowance that, under Module G, is to be added to the person's rate of benefit PP (partnered).

Note 1: For **partner of a non-independent YA recipient** see subsection 23(1).

Note 2: If a person's rate is reduced under step 6, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1207 (maximum basic rate first, then rent assistance).

*Method of calculating rate for partner of a non-independent YA recipient*

1068B-A3 If a person is the partner of a non-independent YA recipient, the fortnightly rate of benefit PP (partnered) for the person is worked out as follows:

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*Method statement*

- Step 1.* Work out the person's **maximum basic rate** using Module C below.
- Step 2.* Work out the amount per fortnight (if any) of rent assistance using Module F below.
- Step 3.* Work out the amount per fortnight (if any) of pharmaceutical allowance using Module E below.
- Step 4.* Add up the amounts obtained in steps 1 to 3: the result is called the **maximum payment rate**.
- Step 5.* Apply the income test using Module E of the Rate Calculator in section 1068A to work out the person's income reduction.
- Step 6.* Take the income reduction away from the maximum payment rate: the rate is called the **provisional payment rate**.
- Step 7.* The rate of benefit is the difference between:
- (a) the provisional payment rate; and
  - (b) any advance payment deduction (see Part 3.16A);
- plus, except where the person is a CDEP Scheme participant in respect of the whole or part of the period for which the rate of payment is being worked out, any amount by way of remote area allowance that, under Module G, is to be added to the person's rate of benefit PP (partnered).

Note 1: For **partner of a non-independent YA recipient** see subsection 23(1).

Note 2: If a person's rate is reduced under step 6, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1207 (maximum basic rate first, then rent assistance).

**Module C—Maximum basic rate [see Appendix for CPI adjusted figures]** *[see Note 14]*

*Maximum basic rate*

1068B-C2 If a person is not a CDEP Scheme participant in respect of the whole or part of the period for which the rate of payment is being worked out, the person’s maximum basic rate is worked out using Table C. Work out the person’s family situation. The maximum basic rate is the corresponding amount in Column 3.

<b>Table C—Maximum basic rates</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Person’s family situation</b>	<b>Rate</b>
1	Person not covered by item 2, 3 or 4	\$290.10
2	Member of illness separated couple	\$347.80
3	Member of respite care couple	\$347.80
4	Partnered (partner in gaol)	\$347.80

Note 1: For *illness separated couple*, *respite care couple* and *partnered (partner in gaol)* see section 4.

Note 2: The rates are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

*Maximum basic rate—CDEP Scheme participant*

1068B-C3 The maximum basic rate of a person who is a CDEP Scheme participant in respect of the whole or a part of the period for which the maximum basic rate is being worked out is nil (see section 500W).

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**Module D—Income test**

*Effect of income on maximum payment rate*

1068B-D1 This is how to work out the effect of a person's ordinary income, and the ordinary income of the person's partner, on the person's maximum payment rate:

*Method statement*

*Step 1.* Work out the amount of the person's ordinary income on a fortnightly basis.

Note: The amount of the person's ordinary income is affected by points 1068B-D2 to 1068B-D21.

*Step 2.* Work out the partner income free area using point 1068B-D22.

Note: The partner income free area is the maximum amount of ordinary income the person's partner can have without affecting the person's rate.

*Step 3.* Use point 1068B-D23 to work out the person's partner income excess.

*Step 4.* Use the person's partner income excess to work out the person's partner income reduction using point 1068B-D24.

*Step 5.* Work out whether the person's ordinary income exceeds the person's ordinary income free area (see point 1068B-D27).

Note: A person's ordinary income free area is the maximum amount of ordinary income the person can have without affecting the person's rate.

*Step 6.* If the person's ordinary income does not exceed the person's ordinary income free area, the person's ordinary income excess is nil.



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- Step 7.* If the person's ordinary income exceeds the person's ordinary income free area, the person's ordinary income excess is the person's ordinary income less the person's ordinary income free area.
- Step 8.* Use the person's ordinary income excess to work out the person's **ordinary income reduction** using points 1068B-D29 to 1068B-D31.
- Step 9.* Add the person's ordinary income reduction and partner income reduction: the result is the person's income reduction referred to in step 5 of the method statement in point 1068B-A2.

Note 1: For **ordinary income** see section 8.

Note 2: See point 1068B-A2 (step 6) for the significance of the person's income reduction.

Note 3: The application of the ordinary income test is affected by provisions concerning the following:

- (a) the general concept of ordinary income (sections 1072 and 1073);
- (b) business income (sections 1074 and 1075);
- (c) deemed income from financial assets (sections 1076 to 1084);
- (d) income from income streams (sections 1095 to 1099D);
- (e) disposal of income (sections 1106 to 1112).

*Ordinary income of members of certain couples*

1068B-D2 If a person's partner is receiving a social security pension, a service pension or income support supplement, the person's ordinary income is taken to be one half of the sum of:

- (a) the amount that would be the person's ordinary income if he or she were not a member of a couple; and
- (b) the amount that would be the ordinary income of the person's partner if the partner were not a member of a couple.

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*Friendly society amounts*

1068B-D4 The ordinary income of a person to whose partner a sickness allowance is payable is not to include any amount received by the person from an approved friendly society in respect of the incapacity because of which the partner is qualified for the sickness allowance.

Note: For *approved friendly society* see subsection 23(1).

*Ordinary income includes certain periodical payments from relatives*

1068B-D5 Subject to point 1068B-D6, in this Module, a person's ordinary income includes a periodical payment or benefit by way of gift or allowance from the father, mother, son, daughter, brother or sister of the person.

Note: Point 1068B-D5 reverses paragraph 8(8)(z) which excludes these amounts.

*Board and lodging*

1068B-D6 A person's ordinary income is not to include a payment to the person for board or lodging provided by the person to the person's father, mother, son, daughter, brother or sister.

*Termination payments*

1068B-D7 Subject to points 1068B-D8 to 1068B-D18 (inclusive), if:  
(a) a person's employment has been terminated; and  
(b) as a result, the person is entitled to a lump sum payment from the person's former employer;  
the person is taken to have received the lump sum payment on the day on which the person's employment was terminated.

*Roll-over of lump sum leave payments*

1068B-D8 If:  
(a) a person's employment has been terminated; and  
(b) as a result, the person is entitled to a lump sum leave payment from the person's former employer; and

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- (c) the person rolls over the lump sum leave payment into an approved deposit fund, a superannuation fund or a deferred annuity;

the lump sum leave payment is to be disregarded in working out the ordinary income of the person for the purposes of this Module.

*Certain leave payments taken to be ordinary income—employment continuing*

1068B-D9 If:

- (a) a person is employed; and
- (b) the person is on leave for a period; and
- (c) the person is or was entitled to receive a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise) in respect of a part or all of the leave period;

the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the leave period to which the leave payment entitlement relates.

*Certain leave payments taken to be ordinary income—employment terminated*

1068B-D10 If:

- (a) a person's employment has been terminated; and
- (b) the person receives a leave payment (whether as a lump sum payment, as a payment that is one of a series of regular payments or otherwise);

the person is taken to have received ordinary income for a period (the *income maintenance period*) equal to the leave period to which the payment relates.

*More than one leave payment on a day*

1068B-D11 If:

- (a) the person is covered by point 1068B-D10; and
- (b) the person receives more than one leave payment on a day;

the income maintenance period is worked out by adding the leave periods to which the payments relate.

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*Start of income maintenance period—employment continuing*

1068B-D12 If the person is covered by point 1068B-D9, the income maintenance period starts on the first day of the leave period to which the leave payment entitlement relates.

*Start of income maintenance period—employment terminated*

1068B-D13 If the person is covered by point 1068B-D10, the income maintenance period starts, subject to point 1068B-D14, on the day the person is paid the leave payment.

*Commencement of income maintenance period where there is a second leave payment—employment terminated*

1068B-D14 If a person who is covered by point 1068B-D10 is subject to an income maintenance period (the **first period**) and the person is paid another leave payment during that period (the **second leave payment**), the income maintenance period for the second leave payment commences the day after the end of the first period.

1068B-D15 If the Secretary is satisfied that a person is in severe financial hardship because the person has incurred unavoidable or reasonable expenditure while an income maintenance period applies to the person, the Secretary may determine that the whole, or any part, of the period does not apply to the person.

Note 1: For **in severe financial hardship** see subsection 19C(3) (person who is a member of a couple).

Note 2: For **unavoidable or reasonable expenditure** see subsection 19C(4).

Note 3: If an income maintenance period applies to a person, then, during that period:

- (a) the PP (partnered) claimed may not be payable to the person; or
- (b) the amount of the PP (partnered) payable to the person may be reduced.

*When a person receives a leave payment*

1068B-D16 For the purposes of points 1068B-D8 to 1068B-D15 (inclusive), a person (the **first person**) is taken to receive a leave payment if the payment is made to another person:

- (a) at the direction of the first person or a court; or

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- (b) on behalf of the first person; or
  - (c) for the benefit of the first person; or
- the first person waives or assigns the first person's right to receive the payment.

*Single payment in respect of different kinds of leave—employment terminated*

1068B-D17 If a person who is covered by point 1068B-D10 receives a single payment in respect of different kinds of leave, then, for the purposes of the application of points 1068B-D8 to 1068B-D16 (inclusive), each part of the payment that is in respect of a different kind of leave is taken to be a separate payment and the income maintenance period in respect of the single payment is worked out by adding the leave periods to which the separate payments relate.

*Definitions*

1068B-D18 In points 1068B-D8 to 1068B-D18 (inclusive):

**leave payment** includes a payment in respect of sick leave, annual leave, maternity leave and long service leave.

**roll-over**, in relation to a lump sum leave payment, has the same meaning as **roll-over** in section 27D of the *Income Tax Assessment Act 1936* in relation to an eligible termination payment.

*Period over which ordinary income taken into account*

1068B-D19 Subject to points 1068B-D8 to 1068B-D18 (inclusive), a person's ordinary income is to be taken into account over such period, not exceeding 52 weeks, as the Secretary determines.

Note: This point, in conjunction with point 1068B-D20, enables the Secretary to determine the person's fortnightly income amount that best represents the person's income situation.

Example 1: Barbara has a casual job. She regularly works 8 hours in one fortnight and 12 in the next. This provides her with income of \$80 and \$120 in the respective fortnights. The Secretary determines that each income amount will be spread over a period of two fortnights, resulting in a fortnightly income under point 1068B-D20 of \$100.

Example 2: Barbara's partner, Ian, is a commission based salesperson. In the last year he has received 7 payments at irregular intervals, totalling

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\$13,000. The Secretary determines that each income amount will be spread over a period of 52 weeks, resulting in a fortnightly income under point 1068B-D20 of \$500.

*Fortnightly rate of ordinary income*

1068B-D20 For the purposes of this Module, the person's ordinary income for such a period is to be reduced to a fortnightly rate rounded to the nearest cent (rounding 0.5 cents downwards).

*Payment of arrears of periodic compensation payments*

1068B-D21 If:

- (a) at the time of an event that gives rise to an entitlement of a person to compensation, the person is receiving a compensation affected payment; and
- (b) in relation to that entitlement, the person receives a payment of arrears of periodic compensation;

the person is taken to receive, on each day in the periodic payments period, an amount calculated by dividing the amount received by the number of days in the periodic payments period.

Note: For *compensation affected payment* and *periodic payments period* see section 17.

*Partner income free area*

1068B-D22 The partner income free area for a person is:

- (a) if the person's partner is not receiving a social security benefit and has not turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which youth allowance would not be payable to the partner if the partner were qualified for a youth allowance and were not undertaking full-time study (see section 541B); or
- (b) if the person's partner is not receiving a social security benefit and has turned 21—the amount of income of the partner (rounded up to the nearest dollar) beyond which newstart allowance would not be payable to the partner if the partner were qualified for a newstart allowance; or
- (c) if the person's partner is receiving a social security benefit—the amount of income of the partner (rounded up to the

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nearest dollar) beyond which that benefit would not be payable to the partner.

*Partner income excess*

1068B-D23 If:

- (b) the person's partner is not receiving a social security pension, a service pension or income support supplement; and
- (c) the partner's ordinary income exceeds the partner income free area for the partner;

the person's partner income excess is the amount by which the partner's ordinary income exceeds the partner income free area. Otherwise, the person's partner income excess is nil.

*Partner income reduction*

1068B-D24 If a person has a partner income excess, the person's partner income reduction is an amount equal to 70% of the part of the partner's ordinary income that exceeds the partner income free area.

*Ordinary income free area*

1068B-D27 A person's ordinary income free area is \$62.

*Ordinary income excess*

1068B-D28 If a person's ordinary income exceeds the person's ordinary income free area:

- (a) the person has an ordinary income excess; and
- (b) the person's ordinary income excess is the amount by which the person's ordinary income exceeds the person's ordinary income free area.

*Ordinary income reduction*

1068B-D29 If a person has an ordinary income excess, the person's ordinary income reduction is the sum of:

- (a) the person's lower range reduction (see point 1068B-D30); and

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(b) the person's upper range reduction (if any) (see point 1068B-D31).

*Lower range reduction*

1068B-D30 The person's lower range reduction is an amount equal to 50% of the part of the person's ordinary income excess that does not exceed \$183.

*Upper range reduction*

1068B-D31 The person's upper range reduction is an amount equal to 70% of the part (if any) of the person's ordinary income excess that exceeds \$183.



**Module E—Pharmaceutical allowance**  
**[see Appendix for CPI adjusted figures]**

*Qualification for pharmaceutical allowance*

1068B-E1 Subject to points 1068B-E2, 1068B-E3, 1068B-E4 and 1068B-E6, an additional amount by way of pharmaceutical allowance is to be included in a person's maximum payment rate in points 1068B-A2 and 1068B-A3 if:

- (b) the person is an Australian resident, or has a qualifying residence exemption for parenting payment; and
- (d) the person has turned 60; and
- (e) the person has been receiving income support payments in respect of a continuous period of at least 9 months (whether or not the kind of payment received has changed over the period and whether the period or any part of it occurred before or after the commencement of this paragraph).

Note 1: For *income support payment* see subsection 23(1).

Note 2: For the determination of the continuous period in respect of which a person received income support payments see section 38B.

Note 3: For *Australian resident* and *qualifying residence exemption* see section 7.

*No pharmaceutical allowance if person receiving pharmaceutical allowance under the Veterans' Entitlements Act*

1068B-E2 A person is not qualified to receive pharmaceutical allowance if the person is receiving pharmaceutical allowance under the Veterans' Entitlements Act.

Note: A person can receive both:

- (a) a disability pension under the VEA; and
- (b) a payment under this Act;

and pharmaceutical allowance might be built into the disability pension rate.

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*No pharmaceutical allowance if partner receiving pharmaceutical allowance under the Veterans' Entitlements Act and not a service pensioner*

- 1068B-E3 A person is not qualified to receive pharmaceutical allowance if:
- (a) the person's partner is receiving pharmaceutical allowance under the Veterans' Entitlements Act; and
  - (b) the person's partner is not receiving a service pension.

Note: If paragraphs (a) and (b) apply to the person's partner, the partner is receiving pharmaceutical allowance under the VEA at the higher rate (rather than the person and the person's partner each receiving pharmaceutical allowance at the lower rate).

*No pharmaceutical allowance before advance payment period ends*

- 1068B-E4 Pharmaceutical allowance is not to be included in a person's provisional payment rate if:
- (a) the person has received an advance pharmaceutical allowance under:
    - (i) Part 2.23 of this Act; or
    - (ii) Division 2 of Part VIIA of the Veterans' Entitlements Act; and
  - (b) the person's advance payment period has not ended.

Note: For *advance payment period* see point 1068B-E5.

*Advance payment period*

1068B-E5(1) A person's advance payment period starts on the day on which the advance pharmaceutical allowance is paid to the person.

1068B-E5(2) The period ends after the number of paydays worked out using the following formula have passed:

$$\frac{\text{Amount of advance} \times 26}{\text{Pharmaceutical allowance rate}}$$

where:

*amount of advance* is the amount of the advance paid to the person.

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***pharmaceutical allowance rate*** is the fortnightly amount of pharmaceutical allowance which would be included in the person's maximum payment rate in working out the benefit PP (partnered) instalment for the day on which the advance is paid if parenting payment were payable to the person and pharmaceutical allowance were to be included in the person's maximum payment rate. (The person's maximum payment rate is the maximum payment rate at step 4 of whichever of the method statements in points 1068B-A2 and 1068B-A3 is applicable to the person.)

Note: The person may have commenced receiving parenting payment after having been a pension recipient and have received an advance while a pension recipient.

*No pharmaceutical allowance if annual limit reached*

1068B-E6 Pharmaceutical allowance is not to be included in a person's provisional payment rate if:

- (a) the person has received an advance pharmaceutical allowance during the current calendar year; and
- (b) the total amount paid to the person for that year by way of:
  - (i) pharmaceutical allowance; and
  - (ii) advance pharmaceutical allowance;

equals the total amount of pharmaceutical allowance that would have been paid to the person during that year if the person had not received any advance pharmaceutical allowance.

Note 1: For the amount ***paid*** to a person by way of pharmaceutical allowance see subsections 19A(2) to (7).

Note 2: The annual limit is affected by:

- (a) how long during the calendar year the person was on pension or benefit; and
- (b) whether the person's rate of pharmaceutical allowance varies during the calendar year.

*VEA payments taken into account*

1068B-E7 In points 1068B-E5 and 1068B-E6:

***advance pharmaceutical allowance*** includes advance pharmaceutical allowance under the Veterans' Entitlements Act.

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*pharmaceutical allowance* includes pharmaceutical allowance under the Veterans' Entitlements Act.

*Amount of pharmaceutical allowance*

1068B-E8 The amount of pharmaceutical allowance is the amount per fortnight worked out using Table E.

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**Table E—Pharmaceutical allowance amounts**

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<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Amount per fortnight</b>
1	Person not covered by item 2, 3, 4 or 5	\$2.70
2	Member of illness separated couple	\$5.40
3	Member of respite care couple	\$5.40
4	Partnered (partner getting service pension)	\$2.70
5	Partnered (partner in gaol)	\$5.40

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Note 1: For *illness separated couple*, *respite care couple* and *partnered (partner in gaol)* see section 4.

Note 2: The amounts in Column 3 are indexed or adjusted annually in line with CPI increases (see sections 1191 to 1194 and 1206A).

**Module F—Rent assistance [see Appendix for CPI adjusted figures]**

*Rent assistance*

- 1068B-F1 An amount to help cover the cost of rent is to be included in a person's maximum payment rate in points 1068B-A2 and 1068B-A3 for a period if:
- (b) the person is not an ineligible homeowner; and
  - (c) the person is not an aged care resident; and
  - (d) the person pays, or is liable to pay, rent (other than Government rent) in respect of the period; and
  - (e) the rent is payable at a rate of more than the rent threshold rate; and
  - (f) the rent is in respect of premises in Australia throughout the period.
  - (g) the person's partner is not receiving a rent increased pension; and
  - (h) either of the following applies:
    - (i) if the person is a member of an illness separated couple, a respite care couple or a temporarily separated couple and is entitled to be paid family tax benefit—the person's maximum Part A rate of family tax benefit does not include rent assistance;
    - (ii) if the person is a member of a couple other than an illness separated couple, a respite care couple or a temporarily separated couple, and the person or the person's partner is entitled to be paid family tax benefit—the maximum Part A rate of family tax benefit of the person, or the person's partner, does not include rent assistance.

Note 1: For *rent*, *Government rent* and *ineligible homeowner* see section 13.

Note 2: For *rent threshold rate* see point 1068B-F2.

Note 3: For *rent increased pension* see point 1068B-F3.

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*Rent threshold rate*

1068B-F2 A person's rent threshold rate depends on the person's family situation. Work out which family situation in Table F-1 applies to the person. The rent threshold rate is the corresponding amount in Column 3.

**Table F-1—Rent threshold rates**

<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Amount per fortnight</b>
1	Person's partner does not have rent increased benefit	\$116.60
2	Person's partner has rent increased benefit	\$116.60
3	Member of illness separated couple	\$71.60
4	Member of respite care couple	\$71.60
5	Member of temporarily separated couple	\$71.60
6	Partnered (partner in gaol)	\$71.60

Note 1: For *illness separated couple, respite care couple, temporarily separated couple* and *partnered (partner in gaol)* see section 4.

Note 2: For *rent increased benefit* see point 1068B-F5.

Note 3: The Column 3 amounts are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

*Partner with rent increased pension*

1068B-F3 A person has a partner with a **rent increased pension**, for the purposes of point 1068B-F1, if:

- (a) the partner is living with the person in their home; and
- (b) the partner is receiving a social security or, service pension or income support supplement; and
- (c) the rate of pension or supplement is increased to take account of rent.

*Factors affecting rate of rent assistance*

1068B-F4 The rate of rent assistance depends on:

- (a) the fortnightly rent paid or payable by the person; and

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- (b) whether or not the person has a partner who has a rent increased benefit.

*Partner with rent increased benefit*

1068B-F5 A person's partner has a **rent increased benefit** for the purposes of this Module if:

- (a) the partner is living with the person in their home; and  
 (b) the partner:
- (i) is receiving a social security benefit whose rate is increased to take account of rent; or
  - (ii) would be receiving such a benefit but for the application of the income test under Module H of the Youth Allowance Rate Calculator, Module D of the Austudy Payment Rate Calculator, Module G of Benefit Rate Calculator B or Module D of this Rate Calculator;

Note: For the treatment of rent paid by a member of a couple see points 1068B-F8 and 1068B-F9.

*Rate of rent assistance*

1068B-F6 The rate of rent assistance per fortnight is worked out using Table F-2. Work out the person's family situation and calculate Rate A for the person using the corresponding formula in Column 3. This will be the person's rate of rent assistance but only up to the person's maximum rent assistance rate. The person's maximum rent assistance rate is Rate B for the person, which is the amount in Column 4 that corresponds to the person's family situation.

**Table F-2—Rate of rent assistance**

Column 1 Item	Column 2 Person's family situation	Column 3 Rate A	Column 4 Rate B
1	Person's partner does not have rent increased benefit	$3 \times \left[ \frac{\text{Fortnightly rent} - \$116.60}{4} \right]$	\$70.60

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**Table F-2—Rate of rent assistance**

<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Rate A</b>	<b>Column 4 Rate B</b>
2	Person's partner has rent increased benefit	$3 \times \frac{\text{Fortnightly rent} - \$116.60}{8}$	\$35.30
3	Member of illness separated couple	$3 \times \frac{\text{Fortnightly rent} - \$71.60}{4}$	\$74.80
4	Member of respite care couple	$3 \times \frac{\text{Fortnightly rent} - \$71.60}{4}$	\$74.80
5	Member of temporarily separated couple	$3 \times \frac{\text{Fortnightly rent} - \$71.60}{4}$	\$70.60
6	Partnered (partner in goal)	$3 \times \frac{\text{Fortnightly rent} - \$71.60}{4}$	\$74.80

Note 1: For *illness separated couple*, *respite care couple*, *temporarily separated couple* and *partnered (partner in goal)* see section 4.

Note 2: For *rent increased benefit* see point 1068B-F5.

Note 3: The rent threshold amounts in Column 3 are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

Note 4: The Rate B amounts are indexed 6 monthly in line with CPI increases (see sections 1191 to 1194).

*Fortnightly rent*

1068B-F7 **Fortnightly rent** is the fortnightly rent paid or payable by the person whose parenting payment rate is being calculated.



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*Rent paid by a person's partner*

1068B-F8 If a person's partner is living with the person in their home, any rent that the person's partner pays or is liable to pay in respect of the home is to be treated as paid or payable by the person.

*Rent paid by a member of an illness separated couple*

1068B-F9 If a person is a member of an illness separated couple, any rent that the person's partner pays or is liable to pay in respect of the premises or lodgings occupied by the person is to be treated as paid or payable by the person.

Note: For *illness separated couple* see section 4.

**Module G—Remote area allowance**

*Remote area allowance—person physically in remote area*

1068B-G1 An amount by way of remote area allowance is to be added in step 7 of the method statements in points 1068B-A2 and 1068B-A3 to a person's rate of benefit PP (partnered) if:

(b) either:

- (i) the person's rate of parenting payment apart from this point is greater than nil; or
- (ii) apart from this point the person's rate would be nil merely because an advance pharmaceutical allowance has been paid to the person under Part 2.23 of this Act or Division 2 of Part VIIA of the Veterans' Entitlements Act; and

(c) the person's usual place of residence is in a remote area; and

(d) the person is physically present in the remote area.

Note 1: For *remote area* see subsection 14(1).

Note 2: A person may be considered to be physically present in a remote area during temporary absences—see subsection 14(2).

*Rate of remote area allowance*

1068B-G2 The rate of remote area allowance payable to a person is worked out using Table G. Work out which family situation in the table applies to the person. The rate of remote area allowance is the

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corresponding amount in Column 3 plus the additional corresponding amount in Column 4 for each FTB child of the person.

**Table G—Remote area allowance**

<b>Column 1 Item</b>	<b>Column 2 Person's family situation</b>	<b>Column 3 Basic allowance</b>	<b>Column 4 Additional allowance for each FA child</b>
1	Person not covered by item 2, 3 or 4	\$15.60	\$7.30
2	Member of illness separated couple	\$18.20	\$7.30
3	Member of respite care couple	\$18.20	\$7.30
4	Partnered (partner in gaol)	\$18.20	\$7.30

Note: For *illness separated couple*, *respite care couple* and *partnered (partner in gaol)* see section 4.

*Meaning of remote area allowance*

1068B-G3 In point 1068B-G2, remote area allowance means:

- (a) an amount added to a person's social security pension or benefit by way of remote area allowance; or
- (b) a remote area allowance payable under point SCH6-G1 of the VEA.

*FTB child must be present in Australia*

1068B-G4 Additional allowance is not payable for an FTB child unless the child is physically present in Australia.

*Additional amount of remote area allowance where partner has an FTB child but is not receiving additional remote area allowance for the FTB child*

1068B-G5 If:

- (a) an amount of remote area allowance is to be added to the person's rate; and
- (b) the person's partner has an FTB child; and

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(c) the person's partner is not receiving an additional amount of remote area allowance for the FTB child;  
the child is taken, for the purposes of this Module, to be an FTB child of the person.

*Special rule dealing with the death of an FTB child*

1068B-G6 If an FTB child of a person dies, this Module has effect, for a period of 14 weeks after the death of the child, as if the child had not died.

Note: This point does not prevent this Module having the effect it would have had if the child would otherwise have ceased to be an FTB child during that 14 weeks.

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## **Part 3.9—Seniors Health Card Taxable Income Test Calculator**

### **1071 Seniors Health Card Taxable Income Test Calculator**

The Seniors Health Card Taxable Income Test Calculator at the end of this section is to be used in working out whether a person satisfies the seniors health card taxable income test for the purposes of this Act.

### **Seniors Health Card Taxable Income Test Calculator**

*Satisfying the seniors health card taxable income test*

- 1071-1 This is how to work out whether a person satisfies the seniors health card taxable income test at a particular time (the *test time*).

*Method statement*

- Step 1.* Work out the amount of the person's adjusted taxable income for the reference tax year.
- Step 2.* Work out the person's seniors health card taxable income limit using point 1071-12.
- Step 3.* Work out whether the person's adjusted taxable income for the reference tax year exceeds the seniors health card taxable income limit.
- Step 4.* If the person's adjusted taxable income for the reference tax year is less than the person's seniors health card taxable income limit, the person satisfies the seniors health card taxable income test.
- Step 5.* If the person's adjusted taxable income for the reference tax year is equal to or exceeds the person's seniors health card taxable income limit, the person does not satisfy the seniors health card taxable income test.

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*Reference tax year*

- 1071-2(1) In the ordinary case, a person's **reference tax year** is:
- (a) if the person has received a notice of assessment of his or her taxable income for the tax year immediately preceding the tax year in which the test time occurred—that immediately preceding tax year; or
  - (b) otherwise—the tax year immediately preceding the tax year applicable under paragraph (a).
- 1071-2(2) However, if the person has informed the Secretary in writing that the person wishes to have his or her entitlement to a seniors health card determined by reference to his or her adjusted taxable income for the tax year in which the test time occurred (the **current tax year**), the person's **reference tax year** is the current tax year.

*Adjusted taxable income*

- 1071-3 For the purposes of this Part, a person's **adjusted taxable income** for a particular tax year is the sum of the following amounts (**income components**):
- (a) the person's taxable income for that year;
  - (b) the person's fringe benefits value for that year;
  - (c) the person's target foreign income for that year;
  - (d) the person's net rental property loss for that year.

Note 1: For **taxable income** see subsection 23(1) and point 1071-4.

Note 2: For **fringe benefits value** see point 1071-6.

Note 3: For **target foreign income** see subsection 10A(2) and point 1071-7.

Note 4: For **net rental property loss** see subsection 10A(15) and point 1071-8.

*Taxable income*

- 1071-4 For the purposes of this Part, a person's **taxable income** for a particular tax year is:
- (a) the person's assessed taxable income for that year; or
  - (b) if the person does not have an assessed taxable income for that year—the person's accepted estimate of taxable income for that year.

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*Assessed taxable income*

- 1071-5 For the purposes of this Part, a person's ***assessed taxable income*** for a particular tax year at a particular time is the most recent of:
- (a) if, at that time, the Commissioner of Taxation has made an assessment or an amended assessment of that taxable income—that taxable income according to the assessment or amended assessment; or
  - (b) if, at that time, a tribunal has amended an assessment or an amended assessment made by the Commissioner—that taxable income according to the amendment made by the tribunal; or
  - (c) if, at that time, a court has amended an assessment or an amended assessment made by the Commissioner or an amended assessment made by a tribunal—that taxable income according to the amendment made by the court.

*Fringe benefits value*

- 1071-6 For the purposes of this Part, a person's ***fringe benefits value*** for a particular tax year is the person's accepted estimate of the amount by which the total of the assessable fringe benefits received or to be received by the person in the tax year exceeds \$1,000.

Note: For ***assessable fringe benefit*** see subsection 10A(2) and Part 3.12A.

*Target foreign income*

- 1071-7 For the purposes of this Part, a person's ***target foreign income*** for a particular tax year is the person's accepted estimate of the amount of that income for that year.

*Net rental property loss*

- 1071-8 For the purposes of this Part, a person's ***net rental property loss*** for a particular tax year is the person's accepted estimate of the amount of that loss for that year.

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*Accepted estimate*

1071-9 For the purposes of this Part, a person's *accepted estimate* of an income component for a particular tax year is that income component according to the most recent notice given by the person to the Secretary under point 1071-10 and accepted by the Secretary for the purposes of this Part.

*Notice estimating income component*

- 1071-10(1) A person may give the Secretary a notice, in a form approved by the Secretary, setting out the person's estimate of an income component of the person for a tax year.
- 1071-10(2) The notice is to contain, or be accompanied by, such information as is required by the form to be contained in it or to accompany it, as the case may be.
- 1071-10(3) The Secretary is to accept a notice only if the Secretary is satisfied that the estimate is reasonable.

*Adjusted taxable income of members of couples*

1071-11 If a person is a member of a couple, add the couple's adjusted taxable incomes for the reference tax year and divide by 2 to work out the amount of the person's adjusted taxable income for the reference tax year.

*Seniors health card taxable income limit*

1071-12 A person's seniors health card taxable income limit is worked out using the Seniors Health Card Taxable Income Limit Table. Work out which family situation in the table applies to the person. The person's seniors health card taxable income limit is the corresponding amount in column 3 plus an additional corresponding amount in column 4 for each dependent child of the person.

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<b>Seniors Health Card Taxable Income Limit Table</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item</b>	<b>Person's family situation</b>	<b>Amount per year</b>	<b>Additional dependent child Amount per year</b>
1	Not member of couple	\$50,000	\$639.60
2	Partnered	\$40,000	\$639.60
3	Member of illness separated couple	\$50,000	\$639.60
4	Member of respite care couple	\$50,000	\$639.60
5	Partnered (partner in gaol)	\$50,000	\$639.60



## **Part 3.9A—Health Care Card Income Test Calculator**

### **1071A Health care card income test**

The Health Care Card Income Test Calculator at the end of this section is to be used in working out whether a person satisfies the health care card income test for the purposes of Division 3 of Part 2A.1.

### **Health Care Card Income Test Calculator**

*Satisfying the health care card income test: persons claiming a card*

- 1071A-1 This is how to work out whether a person claiming a health care card satisfies the health care card income test on the day on which the person claims the card, whether or not the person is the holder of a health care card at that time.

*Method statement*

- Step 1.* Work out the amount of the person's ascertained income for the period of 8 weeks ending on the day on which the person lodged the claim.
- Step 2.* Work out the amount of the person's allowable income for the period.
- Step 3.* If the person's ascertained income for the period is less than the person's allowable income for the period, the person satisfies the health care card income test.
- Step 4.* If the person's ascertained income for the period equals or exceeds the person's allowable income for the period, the person does not satisfy the health care card income test.

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*Satisfying the health care card income test: cardholders*

1071A-2 This is how to work out whether a person who holds a health care card satisfies the health care card income test at a particular time where there has been a change in circumstances.

*Method statement*

*Step 1.* Work out the amount of the person's ascertained income for the period of 8 weeks ending on the day on which the change of circumstances occurred.

*Step 2.* Work out the amount of the person's allowable income for the period.

*Step 3.* If the person's ascertained income for the period is less than 125% of the person's allowable income for that period, the person satisfies the health care card income test.

*Step 4.* If the person's ascertained income for the period is 125% or more of the person's allowable income for that period, the person does not satisfy the health care card income test.

*Cessation of dependency*

1071A-3 For the purposes of point 1071A-2, if a person (the **first person**) ceases to be a dependant of another person who is the holder of a health care card:

- (a) the fact that the first person has so ceased is to be disregarded for a period of 4 weeks commencing on the day on which the first person so ceased; and
- (b) if, at the end of the period, the first person has not become again a dependant of that other person, the first person is taken to have ceased to be a dependant of the other person at the expiration of that period of 4 weeks.

*Definitions*

1071A-4 In this Part:

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***allowable income***, in relation to any period of 8 weeks, means:

- (a) in relation to a person who had a dependant or dependants on the last day of the period—the amount worked out by multiplying by 8, or such other number as is prescribed, the aggregate of:
  - (i) the amount of the weekly rate of income that would, on the last day of the period, be sufficient to prevent both members of a one-income couple from receiving newstart allowance; and
  - (ii) \$20, or such other amount as is prescribed; and
  - (iii) an amount worked out by multiplying \$34, or such higher amount as is prescribed, by the number of the dependants of the person on the last day of the period; or
- (b) in relation to a person who had no dependants on the last day of the period—the amount worked out by multiplying by 8, or such other number as is prescribed, an amount equal to 60%, or such other percentage as is prescribed, of the aggregate of the amount worked out under subparagraph (a)(i) and the amount referred to in subparagraph (a)(ii) if paragraph (a) had applied to the person.

***ascertained income***, in relation to a period, means:

- (a) in relation to a person who is not a member of a couple—the income of the person in respect of that period; and
- (b) in relation to a person who is a member of a couple—the income of the person and his or her partner in respect of that period.

***exceptional circumstances relief payment*** means exceptional circumstances relief payment under the *Farm Household Support Act 1992*.

***farm help income support*** means farm help income support under the *Farm Household Support Act 1992*.

***income***, in relation to a person, means ordinary income and, to the extent that they are not ordinary income, includes:

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- (a) if the person is receiving a social security pension or benefit—the person’s maintenance income (if any) within the meaning of the Family Assistance Act; and
- (b) payments of a pension under the Veterans’ Entitlements Act; and
- (c) payments of a pension payable by a foreign country, being a pension that, in the opinion of the Secretary, is similar in character to a pension referred to in paragraph (b); and
- (d) payments under the scheme known as the New Enterprise Incentive Scheme; and
- (e) payments of compensation.

1071A-5 If a weekly rate of income referred to in subparagraph (a)(i) of the definition of *allowable income* in point 1071A-4 or an amount worked out under paragraph (b) of that definition includes an amount of cents, the amount of that weekly rate is, for the purposes of that definition, increased to the nearest whole dollar.

1071A-6 A couple is a *one-income couple* for the purposes of point 1071A-4 if only one member of the couple is receiving income.

## **Part 3.10—General provisions relating to the ordinary income test**

### **Division 1—Ordinary income concept**

#### **1072 General meaning of ordinary income**

A reference in this Act to a person's ordinary income for a period is a reference to the person's gross ordinary income from all sources for the period calculated without any reduction, other than a reduction under Division 2 or 3.

Note 1: For *ordinary income* see subsection 8(1).

Note 2: For other provisions affecting the amount of a person's ordinary income see sections 1074 and 1075 (business income), sections 1076 to 1084 (deemed income from financial assets) and sections 1095 to 1099D (income from income streams).

#### **1073 Certain amounts taken to be received over 12 months**

1073(1) Subject to points 1067G-H5 to 1067G-H20 (inclusive), 1067L-D4 to 1067L-D16 (inclusive), 1068-G7AA to 1068-G7AR (inclusive), 1068A-E2 to 1068A-E12 (inclusive) and 1068B-D7 to 1068B-D18 (inclusive), if a person receives, whether before or after the commencement of this section, an amount that:

- (a) is not income within the meaning of Division 1B or 1C of this Part; and
- (b) is not:
  - (i) income in the form of periodic payments; or
  - (ii) ordinary income from remunerative work undertaken by the person; or
  - (iii) an exempt lump sum.

the person is, for the purposes of this Act, taken to receive one fifty-second of that amount as ordinary income of the person during each week in the 12 months commencing on the day on which the person becomes entitled to receive that amount.

1073(2) Subsection (1) applies to a person who has claimed one of the following allowances:

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- (a) newstart allowance;
  - (b) sickness allowance;
  - (c) youth allowance;
  - (d) widow allowance;
  - (e) partner allowance;
  - (f) mature age allowance under Part 2.12B;
- even if the person:
- (g) has to serve an ordinary waiting period or a liquid assets test waiting period in respect of the allowance claimed; or
  - (h) is subject to an income maintenance period in respect of the allowance claimed; or
  - (i) is subject to a seasonal work preclusion period;
- during the period of 12 months referred to in subsection (1).

## **Division 1A—Business income**

### **1074 Ordinary income from a business—treatment of trading stock**

1074(1) If:

- (a) a person carries on a business; and
- (b) the value of all the trading stock on hand at the end of a tax year is greater than the value of all the trading stock on hand at the beginning of that tax year;

the person's ordinary income for that tax year in the form of profits from the business is to include the amount of the difference in values.

1074(2) If:

- (a) a person carries on a business; and
- (b) the value of all the trading stock on hand at the end of a tax year is less than the value of all the trading stock on hand at the beginning of that tax year;

the person's ordinary income for that tax year in the form of profits from the business is to be reduced by the amount of the difference in values.

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)).

### **1075 Permissible reductions of business income**

1075(1) Subject to subsection (2), if a person carries on a business, the person's ordinary income from the business is to be reduced by:

- (a) losses and outgoings that relate to the business 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
- (b) depreciation that relates to the business 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

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- (ba) amounts that relate to the business and can be deducted for the decline in value of depreciating assets under Subdivision 40-B of the *Income Tax Assessment Act 1997*; and
- (c) amounts that relate to the business and are allowable deductions under subsection 82AAC(1) of the *Income Tax Assessment Act 1936*.

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)).

1075(2) If, under Division 1B, a person is taken to receive ordinary income on a financial investment, that ordinary income is not to be reduced by the amount of any expenses incurred by the person because of that investment.

Note: For *financial investment* see subsection 9(1).

1075(3) If a person's ordinary income for a period includes rental income from a property that is not business income, the person's ordinary income from that property is to be reduced by losses and outgoings that relate to the property 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, for that period.

1075(4) If the amount of the allowable deductions relating to a property for a period under section 51 of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997*, as appropriate, exceeds the amount of the rental income from the property for that period, the amount of the ordinary income from the property for that period is taken to be nil.



## **Division 1B—Deemed income from financial assets**

### **1076 Deemed income from financial assets—persons other than members of couples**

1076(1) This section applies to a person who is not a member of a couple.

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)).

1076(2) A person who has financial assets is taken, for the purposes of this Act, to receive ordinary income on those assets in accordance with this section.

1076(3) If the total value of the person's financial assets is equal to or less than the person's deeming threshold, the ordinary income the person is taken to receive per year on the financial assets is the amount worked out by multiplying the value of those assets by the below threshold rate.

1076(3A) If the total value of the person's financial assets exceeds the person's deeming threshold, the ordinary income that the person is taken to receive is worked out as follows:

*Method statement*

*Step 1.* Multiply the person's deeming threshold by the below threshold rate.

Note 1: For *deeming threshold* see subsection 1081(1).

Note 2: For *below threshold rate* see subsection 1082(1).

*Step 2.* Subtract the deeming threshold from the total value of the person's financial assets.

Note: For *deeming threshold* see subsection 1081(1).

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*Step 3.* Multiply the remainder worked out at Step 2 by the above threshold rate.

Note: For *above threshold rate* see subsection 1082(2).

*Step 4.* The total of the amounts worked out at Steps 1 and 3 represents the ordinary income the person is taken to receive per year on the financial assets.

1076(4) The person is taken, for the purposes of this Act, to receive one fifty-second of the amount calculated under subsection (3) or (3A) as ordinary income of the person during each week.

**1077 Deemed income from financial assets—members of pensioner couples**

1077(1) This section applies to the members of a pensioner couple.

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)).

1077(2) If one or both of the members of a couple have financial assets, the members of the couple are taken, for the purposes of this Act, to receive together ordinary income on those assets in accordance with this section.

1077(3) If the total value of the couple's financial assets is equal to or less than the couple's deeming threshold, the ordinary income the couple is taken to receive per year on the financial assets is the amount worked out by multiplying the value of those assets by the below threshold rate.

1077(3A) If the total value of the couple's financial assets exceeds the couple's deeming threshold, the ordinary income that the couple is taken to receive is worked out as follows:

*Method statement*

*Step 1.* Multiply the couple's deeming threshold by the below threshold rate.

Note 1: For *deeming threshold* see subsection 1081(2).

Note 2: For *below threshold rate* see subsection 1082(1).

*Step 2.* Subtract the deeming threshold from the total value of the couple's financial assets.

Note: For *deeming threshold* see subsection 1081(2).

*Step 3.* Multiply the remainder worked out at Step 2 by the above threshold rate.

Note: For *above threshold rate* see subsection 1082(2).

*Step 4.* The total of the amounts worked out at Steps 1 and 3 represents the ordinary income the couple is taken to receive per year on the financial assets.

1077(4) Each member of the couple is taken, for the purposes of this Act, to receive, as ordinary income during each week, an amount worked out under the following formula:

$$\frac{\text{Amount calculated under subsection [3] or [3A]}}{52} \times 0.5$$

**1078 Deemed income from financial assets—members of non-pensioner couples**

1078(1) This section applies to a person who is a member of a couple, other than a pensioner couple.

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)).

1078(2) A person who has financial assets is taken, for the purposes of this Act, to receive ordinary income on those assets in accordance with this section.

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- 1078(3) If the total value of the person's financial assets is equal to or less than the person's deeming threshold, the ordinary income the person is taken to receive per year on the financial assets is the amount worked out by multiplying the value of those assets by the below threshold rate.
- 1078(3A) If the total value of the person's financial assets exceeds the person's deeming threshold, the ordinary income that the person is taken to receive is worked out as follows:

*Method statement*

*Step 1.* Multiply the person's deeming threshold by the below threshold rate.

Note 1: For *deeming threshold* see subsection 1081(3).

Note 2: For *below threshold rate* see subsection 1082(1).

*Step 2.* Subtract the deeming threshold from the total value of the person's financial assets.

Note: For *deeming threshold* see subsection 1081(3).

*Step 3.* Multiply the remainder worked out at Step 2 by the above threshold rate.

Note: For *above threshold rate* see subsection 1082(2).

*Step 4.* The total of the amounts worked out at Steps 1 and 3 represents the ordinary income the person is taken to receive per year on the financial assets.

- 1078(4) The person is taken, for the purposes of this Act, to receive one fifty-second of the amount calculated under subsection (3) or (3A) as ordinary income of the person during each week.

**1081 Deeming threshold**

1081(1) The deeming threshold for a person who is not a member of a couple is \$30,000.

1081(2) The deeming threshold for a pensioner couple is \$50,000.

1081(3) The deeming threshold for a member of a couple, other than a pensioner couple, is an amount equal to one-half of the amount fixed by subsection (2).

Note: The amounts fixed by subsections (1) and (2) are indexed every 1 July. See sections 1190-1192.

### **1082 Below threshold rate, above threshold rate**

1082(1) For the purposes of this Division, the below threshold rate is the rate determined by the Minister to be the below threshold rate for the purposes of this Division.

1082(2) For the purposes of this Division, the above threshold rate is the rate determined by the Minister to be the above threshold rate for the purposes of this Division.

1082(3) A rate determined under this section must be in the form of a specified percentage.

1082(4) A determination under this section:  
(a) must be in writing; and  
(b) is a disallowable instrument.

### **1083 Actual return on financial assets not treated as ordinary income**

1083(1) Subject to subsection (2), any return on a financial asset that a person actually receives is taken, for the purposes of this Act, not to be ordinary income of the person.

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)).

1083(2) If, because of:  
(a) a determination under subsection 1084(1); or  
(b) the operation of subsection 1084(2);  
a financial investment is not to be regarded as a financial asset for the purposes of section 1076, 1077 or 1078, subsection (1) does not apply to any return on the investment that the person actually receives.

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**1084 Certain money and financial investments not taken into account**

1084(1) The Minister may determine that:

- (a) specified financial investments; or
- (b) a specified class of financial investments;

are not to be regarded as financial assets for the purposes of section 1076, 1077 or 1078.

1084(2) If a financial investment is an unrealisable asset for the purposes of section 1129, 1130B or 1131, the financial asset is not to be regarded as a financial asset for the purposes of section 1076, 1077 or 1078.

1084(3) A determination under subsection (1):

- (a) must be in writing; and
- (b) takes effect on the day on which it is made or on such other day (whether earlier or later) as is specified in the determination.

**1084A Valuation and revaluation of certain financial investments**

The total value of a person's listed securities and managed investments (being listed securities and managed investments that fluctuate depending on the market) (the *relevant investments*) is determined in accordance with the following:

- (a) an initial total valuation is to be given to the relevant investments on 1 July 1996, or when a new claim is determined, by the method set out in departmental guidelines;
- (b) that total valuation continues in effect until the relevant investments are revalued by the method set out in departmental guidelines, and that revaluation must occur:
  - (i) on 20 March in each calendar year after 1996; and
  - (ii) on 20 September in each calendar year after 1996; and
  - (iii) when the person requests a revaluation of one or more of the person's listed securities and managed investments; and
  - (iv) following an event that affects the relevant investments and is the subject of a recipient notification notice.

## **Division 1C—Income from income streams**

### **Subdivision A—Investments taken into account on realisation**

#### **1096 Early withdrawal from superannuation fund**

1096(1) If:

- (a) a person realises an investment in a superannuation fund, approved deposit fund or deferred annuity; and
- (aa) when the investment is realised, the person has not turned 55; and
- (b) the amount is not rolled over into:
  - (i) a superannuation fund; or
  - (ii) an approved deposit fund; or
  - (iii) a deferred annuity; or
  - (iv) an income stream;

the person is taken to receive one fifty-second of the assessable growth component of that amount as ordinary income of the person during each week in the period of 12 months commencing on the day on which the person realises the investment.

1096(2) However, if the person turns 55 before the end of the period of 12 months, this section does not apply to the person in relation to:

- (a) the week, during that period, in which the person turns 55; and
- (b) any later weeks during that period.

#### **1097 Adjustment of ordinary income for investment losses**

1097(1) If:

- (a) a person realises an investment to which section 1096 applies; and
- (b) the investment is realised at a loss;

the person's ordinary income is taken to be reduced during each week in the 12 months commencing on the day on which the person realises the investment by the amount worked out using the formula:

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Assessable loss  
52

where:

*assessable loss* is so much (if any) of the amount of the loss as is attributable to the person's assessable period.

Note: For *assessable period* see subsection 9(1).

1097(2) The reduction under subsection (1) in a person's rate as at a particular day is not to exceed the increase to be made under section 1096 in working out the person's rate as at that day.

### **Subdivision B—Income streams**

#### **1098 Income from asset-test exempt income stream**

For the purpose of working out the annual rate of ordinary income of a person from an asset-test exempt income stream, the person is taken to receive from that income stream each year the amount worked out under section 1099 or 1099A.

Note: For *asset-test exempt income stream* see sections 9A and 9B.

#### **1099 Income—income stream not a defined benefit income stream**

If the asset-test exempt income stream is not a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

Annual payment =  $\frac{\text{Purchase price}}{\text{Relevant number}}$

where:

*annual payment* means the amount payable to the person for the year under the income stream.

*purchase price* has the meaning given by subsection 9(1).

*relevant number* has the meaning given by subsection 9(1).

Example: Mark is 65 years old and single. He purchases an annuity for \$100,000 with a term based on life expectancy (i.e. 15.41 years, which he chooses to round up to 16 years). The annuity has all the revised



characteristics listed in the legislation. His annual payment from the annuity totals \$9,895. Mark's assessable income from this income stream is:

$$\$9,895 - \left[ \frac{\$100,000}{16 \text{ years}} \right] = \$3,645$$

### **1099A Income—income stream is a defined benefit income stream**

If the asset-test exempt income stream is a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

Annual payment – Deductible amount

where:

*annual payment* means the amount payable to the person for the year under the income stream.

*deductible amount* has the meaning given by subsection 9(1).

### **1099B Income from asset-tested income stream (long term)**

For the purpose of working out the annual rate of ordinary income of a person from an asset-tested income stream (long term), the person is taken to receive from that income stream each year the amount worked out under section 1099C or 1099D.

### **1099C Income—income stream not a defined benefit income stream**

If the asset-tested income stream (long term) is not a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

$$\text{Annual payment} - \left[ \frac{\text{Purchase price} - \text{Residual capital value}}{\text{Relevant number}} \right]$$

where:

*annual payment* means the amount payable to the person for the year under the income stream.

*purchase price* has the meaning given by subsection 9(1).

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*relevant number* has the meaning given by subsection 9(1).

*residual capital value* has the meaning given by subsection 9(1).

Note: For treatment of asset-tested income streams (short term) see Division 1B of Part 3.10.

Example: Sally is 65 years old and single. She purchases a 10 year annuity for \$150,000, with a residual capital value of \$20,000. Her total annual annuity payment is \$18,337. Sally's assessable income from her 10 year annuity is:

$$\$18,337 - \frac{\$150,000 - \$20,000}{10} = \$5,337$$

**1099D Income—income stream is a defined benefit income stream**

If the asset-tested income stream (long-term) is a defined benefit income stream, the amount that the person is taken to receive from the income stream each year is worked out as follows:

Annual payment – Deductible amount

where:

*annual payment* means the amount payable to the person for the year under the income stream.

*deductible amount* has the meaning given by subsection 9(1).

## **Division 1D—Aged care accommodation bonds: certain transactions before 6 November 1997**

### **1099E Scope of Division**

1099E(1) This Division applies to a person if:

- (a) at any time from the beginning of 1 October 1997 until the end of 5 November 1997, the person became liable to pay an accommodation bond for entry to a residential care service; and
- (b) either an accommodation charge would have been payable for the entry, or the person would have been a charge exempt resident, had section 44-8B and Division 57A of the *Aged Care Act 1997* been in force at the time of the entry; and
- (c) the person later made an agreement (a *refund agreement*) with the provider of the service that the person's liability to pay an accommodation bond for the entry was to be replaced with a liability to pay an accommodation charge for the entry, and that any payment of any of the bond was to be refunded to the person.

Note: For *accommodation bond*, *accommodation charge* and *charge exempt resident*, see subsection 11(1).

1099E(2) This Division also applies to a person if the Secretary is satisfied that:

- (a) on or before 5 November 1997, the person sold his or her principal home for the sole or principal purpose of raising money to pay an accommodation bond for entry to a residential care service; and
- (b) either an accommodation charge would have been payable for the entry, or the person would have been a charge exempt resident, had section 44-8B and Division 57A of the *Aged Care Act 1997* been in force at the time of the entry.

Note: For *accommodation bond*, *accommodation charge* and *charge exempt resident*, see subsection 11(1).

**Chapter 3** General provisions relating to payability and rates

**Part 3.10** General provisions relating to the ordinary income test

**Division 1D** Aged care accommodation bonds: certain transactions before 6 November 1997

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1099E(3) This Division also applies to the partner of a person covered by subsection (1) or (2) (even if the person so covered is now deceased).

1099E(4) For the purposes of subsection (2), the time at which a person *sells* his or her home is the time when he or she comes under a legal obligation to transfer the home to the buyer.

**1099F Exempt bond amount does not count as income**

The person's exempt bond amount (see section 1099H) does not count as *income* of the person for the purposes of this Act.

Note: *Income* is otherwise defined in section 8.

**1099G Person's ordinary income reduced using financial asset rules**

1099G(1) For the purposes of this section, assume that the person's exempt bond amount (see section 1099H) were a financial asset of the person.

1099G(2) The person's ordinary income for a year is reduced by the amount of ordinary income taken to be received on the asset for the year, as worked out under Division 1B (Deemed income from financial assets).

1099G(3) In working out that reduction, assume that the total value of the person's financial assets exceeded the person's deeming threshold (*deeming threshold* is a term used in Division 1B).

**1099H Meaning of exempt bond amount**

1099H(1) The following is how to work out a person's *exempt bond amount*.

1099H(2) If the person is covered by subsection 1099E(1) (but not subsection 1099E(2)), the person's *exempt bond amount* is any amount of accommodation bond payment refunded to the person under the refund agreement mentioned in that subsection.

1099H(3) If the person is covered by subsection 1099E(2) (but not subsection 1099E(1)), the person's *exempt bond amount* is the gross proceeds of the sale mentioned in that subsection, less:

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- (a) any costs incurred in the course of the sale; and
  - (b) the amount of any debt the person or the person's partner owed immediately before the sale, so far as the debt was secured by the home at that time.
- 1099H(4) If the person is covered by both subsections 1099E(1) and (2), the person's ***exempt bond amount*** is the greater of the 2 amounts worked out under subsections (2) and (3) of this section.
- 1099H(5) If the person is covered by subsection 1099E(3), the person's ***exempt bond amount*** is equal to the exempt bond amount of the person's partner, as worked out under subsection (2), (3) or (4) of this section.
- 1099H(6) But in all of the above cases, if the person currently has a partner (who is not deceased), the person's ***exempt bond amount*** is half of what it would otherwise be.

## **Division 1E—Refunds to charge exempt residents**

### **1099J Scope of Division**

1099J(1) This Division applies to an amount (the *refunded amount*) that is refunded as mentioned in paragraph 56-1(kc) or 56-3(ic) of the *Aged Care Act 1997* to a person because the person is or was a charge exempt resident.

Note: For *charge exempt resident*, see subsection 11(1).

1099J(2) This Division also applies to an amount (also called the *refunded amount*) that is paid to a person under paragraph 44-8A(6)(b) of that Act because the person is or was a charge exempt resident.

Note: For *charge exempt resident*, see subsection 11(1).

1099J(3) To avoid doubt, this Division does not apply if the amount is paid to the person's estate or to any other person.

### **1099K Refunded amount does not count as income**

The refunded amount does not count as *income* of the person for the purposes of this Act.

Note: *Income* is otherwise defined in section 8.

### **1099L Person's ordinary income reduced using financial asset rules**

1099L(1) For the purposes of this section, assume that the refunded amount were a financial asset of the person.

1099L(2) The person's ordinary income for a year is reduced by the amount of ordinary income taken to be received on the asset for the year, as worked out under Division 1B (Deemed income from financial assets).

1099L(3) In working out that reduction, assume that the total value of the person's financial assets exceeded the person's deeming threshold (*deeming threshold* is a term used in Division 1B).

**1099M Application of Division**

This Division applies in relation to a person who is a charge exempt resident at any time, whether before or after the commencement of the Division.

## **Division 2—Conversion of foreign currency amounts**

### **1100 How value of a payment received in a foreign currency is to be determined**

(1) If:

- (a) the rate of a payment to be made to a person under this Act is being worked out for a calculation day; and
- (b) an amount received by the person in a foreign currency needs to be taken into account in working out the rate;

the value in Australian currency of the amount received is to be determined in accordance with this section.

(2) Except in the case of:

- (a) amounts received in a foreign currency in respect of which the Secretary determines that it is not appropriate for this subsection to apply; or
- (b) a payment, or class or kind of payments, received in a foreign currency, being a payment or a class or kind of payments in respect of which the Secretary determines that it is not appropriate for this subsection to apply;

the value in Australian currency of the amount received is to be calculated using the appropriate market exchange rate for the foreign currency on the 15th business day before the calculation day.

(3) For the purposes of subsection (2), the *appropriate market exchange rate* on a particular day for a foreign currency to which subsection (2) applies is:

- (a) if there is an on-demand airmail buying rate for the currency available at the Commonwealth Bank of Australia at the start of business in Sydney on that day and the Secretary determines it is appropriate to use that rate—that rate; or
- (aa) section 1068A (Pension PP (Single) Rate Calculator).
- (b) in any other case:
  - (i) if there is another rate of exchange for the currency, or there are other rates of exchange for the currency, available at the Commonwealth Bank of Australia at



the start of business in Sydney on that day and the Secretary determines it is appropriate to use the other rate or one of the other rates—the rate so determined;  
or

- (ii) otherwise—a rate of exchange for the currency available from another source at the start of business in Sydney on that day that the Secretary determines it is appropriate to use.
- (4) In the case of a foreign currency or a payment in a foreign currency in respect of which the Secretary has determined that it is not appropriate for subsection (2) to apply, the value in Australian currency of the amount received is to be calculated using a rate of exchange that the Secretary determines to be appropriate.
  - (5) The Secretary may make written determinations for the purposes of this section.
  - (6) In this section:

***business day*** means a day other than:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a day that is a public holiday or bank holiday in Canberra or Sydney.

***calculation day*** means the first business day for each month.

***month*** means one of the 12 months of the calendar year.

## **Division 3—Disposal of ordinary income**

### **1106 Disposal of ordinary income**

1106(1) For the purposes of this Act, a person *disposes of ordinary income* of the person if:

- (a) the person engages in a course of conduct that directly or indirectly:
  - (i) destroys the source of the income; or
  - (ii) disposes of the income or the source of the income; or
  - (iii) diminishes the income; and
- (b) one of the following subparagraphs is satisfied:
  - (i) the person receives no consideration in money or money's worth for the destruction, disposal or diminution;
  - (ii) the person receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;
  - (iii) the Secretary is satisfied that the person's purpose, or the person's dominant purpose, in engaging in that course of conduct was to obtain a social security advantage.

1106(2) For the purposes of subsection (1), a person has a purpose of obtaining a social security advantage if the person has a purpose of:

- (a) obtaining, or enabling the person's partner to obtain, a social security pension a social security benefit, a youth training allowance, a service pension or income support supplement; or
- (b) obtaining, or enabling the person's partner to obtain, a social security pension a social security benefit, a youth training allowance, a service pension or income support supplement at a higher rate than that which would otherwise have been payable; or

- (c) ensuring that the person or the person's partner would be qualified for fringe benefits for the purposes of this Act or the Veterans' Entitlements Act.

Note 1: for *amount of disposition* see section 1107.

Note 2: for the effect of a transaction that constitutes both a disposal of an asset and a disposal of ordinary income see section 1110.

### **1107 Amount of disposition**

If a person disposes of ordinary income, the amount of the disposition is the amount that, in the Secretary's opinion, is:

- (a) if the person receives no consideration for the destruction, disposal or diminution—the annual rate of the diminution of the income because of the destruction, disposal or diminution; or
- (b) if the person receives consideration for the destruction, disposal or diminution—the annual rate of the diminution of the income because of the destruction, disposal or diminution less the part (if any) of the consideration that the Secretary considers to be fair and reasonable in all the circumstances of the case.

### **1108 Disposal of ordinary income—individuals**

If a person who is not a member of a couple has disposed of ordinary income of the person, the amount of that disposition is to be included in the person's ordinary income for the purposes of this Act.

Note 1: for *disposes of ordinary income* see section 1106.

Note 2: for *amount of disposition* see section 1107.

Note 3: for *ordinary income* see subsection 8(1): *ordinary income* includes investment income but does not include maintenance income.

### **1109 Disposal of ordinary income—members of couples**

1109(1) Subject to subsections (1A), (1B), (2), (3) and (4), if a person who is a member of a couple has disposed of ordinary income of the person:

- (a) 50% of the amount of the disposition is to be included in the person's ordinary income; and

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- (b) 50% of the amount of the disposition is to be included in the person's partner's ordinary income.

Note 1: for *disposes of ordinary income* see section 1106.

Note 2: for *amount of disposition* see section 1107.

Note 3: for transactions that constitute both a disposal of ordinary income and a disposal of an asset see section 1110.

1109(1A) Subject to subsection (3), for the purposes of the application of this Act in relation to a person's rate of social security benefit, if:

- (a) a person who is a member of a couple has disposed of ordinary income of the person; and  
(b) the amount of the disposition is not greater than the least amount that, if added to the person's ordinary income (disregarding this section), would cause the person's rate of benefit to be reduced to nil;

the amount of the disposition is to be included in the person's ordinary income.

1109(1B) Subject to subsection (3), for the purposes of the application of this Act in relation to a person's rate of social security benefit, if:

- (a) a person who is a member of a couple has disposed of ordinary income of the person; and  
(b) the amount of the disposition is greater than the least amount that, if added to the person's ordinary income (disregarding this section), would cause the person's rate of benefit to be reduced to nil;

then:

- (c) the second of the amounts referred to in paragraph (b) is to be included in the person's ordinary income; and  
(d) the difference between the 2 amounts referred to in paragraph (b) is to be included in the person's partner's ordinary income.

1109(2) If:

- (a) amounts are included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person's partner's ordinary income because the person has disposed of ordinary income; and

- (b) the person and the person's partner cease to be members of the same couple;

any amount that was included in the ordinary income of the person's former partner because of the disposition is to be included in the person's ordinary income.

1109(3) If:

- (a) amounts are included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person's partner's ordinary income because the person has disposed of ordinary income; and

- (b) the person dies;

no amount is to be included in the ordinary income of the person's partner because of the disposition.

1109(4) If:

- (a) an amount is included under subsection (1) in the ordinary income of a person who is a member of a couple and in the person's partner's ordinary income because the person has disposed of ordinary income; and

- (b) the person's partner dies;

any amount that would, if the person's partner had not died, be included in the ordinary income of the person's partner because of the disposition is to be included in the person's ordinary income.

Note: for *ordinary income* see subsection 8(1): *ordinary income* includes investment income but does not include maintenance income.

### **1110 Treatment of transactions before 1 July 2002 that constitute both a disposal of ordinary income and a disposal of assets**

1110(1) This section applies if:

- (a) a person disposes of an asset of the person before 1 July 2002; and
- (b) the course of conduct that constituted the disposition of the asset also constituted a disposition of ordinary income; and
- (c) the ordinary income disposed of is attributable, in whole or in part, to the asset.

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1110(1A) If:

- (a) this section applies; and
- (b) an amount is not included in the value of the person's assets under section 1124A or 1125A because of the disposition of the asset;

an amount is not, for the purposes of sections 1108 and 1109, to be included in the person's ordinary income because of the disposition of ordinary income.

1110(2) If:

- (a) this section applies; and
- (b) no amount is included in the value of the person's assets under section 1125 or 1126 because of the disposition of the asset;

no amount is, for the purposes of sections 1108 and 1109, to be included in the person's ordinary income because of the disposition of ordinary income.

1110(2A) If:

- (a) this section applies; and
- (b) the amount that is included in the value of the person's assets under section 1124A or 1125A because of the disposition of the asset is:
  - (i) if section 1125A applies—less than 50% of the amount of the disposition of the asset; or
  - (ii) if section 1124A applies—less than the amount of the disposition of the asset;

the amount to be included in the person's ordinary income because of the disposition of ordinary income is to be worked out disregarding so much of the amount of the disposition of ordinary income as the Secretary decides is attributable to the part of the amount of the disposition of the asset that is not included in the value of the person's assets under section 1124A or 1125A.

1110(3) If:

- (a) this section applies; and
- (b) the amount that is included in the value of the person's assets under section 1125 or 1126 because of the disposition of the asset is:

- (i) if section 1126 applies—less than 50% of the amount of the disposition of the asset; or
- (ii) if section 1125 applies—less than the amount of the disposition;

the amount to be included in the person's ordinary income because of the disposition of ordinary income is to be worked out disregarding so much of the amount of the disposition of ordinary income as the Secretary decides is attributable to the part of the amount of the disposition of the asset that is not included in the value of the person's assets under section 1125 or 1126.

### **1111 Dispositions more than 5 years old to be disregarded**

This Division does not apply to a disposition of ordinary income that took place:

- (a) more than 5 years before the time when:
  - (i) the person who disposed of the ordinary income; or
  - (ii) if the person who disposed of the ordinary income was, at the time of disposition, a member of a couple—the person's partner;  
became qualified for a social security pension; or
- (b) less than 5 years before the time referred to in paragraph (a) and before the time when the Secretary is satisfied that the person who disposed of the ordinary income could reasonably have expected that the person or the person's partner would become qualified for such a pension.

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## Part 3.11—General provisions relating to the maintenance income test

### 1116 Apportionment of capitalised maintenance income

1116(1) The object of this section is to spread capitalised maintenance income so that it is taken into account over the whole of the period in respect of which it is received.

1116(2) If a person receives capitalised maintenance income, the maintenance income of the person that is attributable to the capitalised maintenance income during any period (in this subsection called the *relevant period*) in the capitalisation period is the amount calculated in accordance with the formula

$$\text{Capitalised maintenance income} \times \frac{\text{Relevant period}}{\text{Capitalisation period}}$$

*Capitalisation period—court order or registered or approved maintenance agreement*

1116(3) If:

- (a) the capitalised maintenance income is received under or as a result of:
  - (i) the order of a court; or
  - (ii) a maintenance agreement registered in, or approved by, a court under the *Family Law Act 1975* or the law of a State or Territory; and
- (b) the order or agreement specified the period in relation to which the capitalised maintenance income was to be provided; and
- (c) the length of the period could be ascertained with reasonable certainty when the order was made or the agreement was so registered or approved;

the *capitalisation period* is, subject to subsection (6), the period specified in the order or agreement.



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*Capitalisation period—dependent child under 18*

1116(4) If:

- (a) the capitalised maintenance income relates to the maintenance of a dependent child of the person; and
- (b) the child has not turned 18 on the day on which the income is received; and
- (c) subsection (3) does not apply to the capitalised maintenance income;

the *capitalisation period* is, subject to subsection (6), the period that starts on the day on which the income is received and ends on the day immediately before the day on which the child turns 18.

*Capitalisation period—partner under 65*

1116(5) If:

- (a) the capitalised maintenance income relates to the maintenance of the person by the person's partner or former partner; and
- (b) the person has not turned 65 on the day on which the income is received; and
- (c) subsection (3) does not apply to the capitalised maintenance income;

the *capitalisation period* is, subject to subsection (6), the period that starts on the day on which the income is received and ends on the day immediately before the day on which the person turns 65.

*Capitalisation period—other cases*

1116(6) If:

- (a) the Secretary considers:
  - (i) in a case falling within subsection (3) where the period referred to in that subsection was specified in an order of a court that was made by consent or in a maintenance agreement—that the period is not appropriate in the circumstances of the case; or
  - (ii) in a case falling within subsection (4) or (5)—that the period referred to in that subsection is not appropriate in the circumstances of the case; or

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- (b) no capitalisation period is applicable in relation to the capitalised maintenance income under subsection (3), (4) or (5);

the *capitalisation period* is such period as the Secretary considers appropriate in the circumstances of the case.

## **Part 3.12—General provisions relating to the assets test**

### **Division 1—Value of person's assets**

#### **1118 Certain assets to be disregarded in calculating the value of a person's assets**

- 1118(1) In calculating the value of a person's assets for the purposes of this Act (other than sections 198H, 198HA, 198HB, 198J, 198JA, 198JB, 198K and 198L, subparagraph 501E(1)(d)(iv) and sections 1125, 1126, 1133 and 1135A), disregard the following:
- (a) if the person is not a member of a couple—the value of any right or interest of the person in the person's principal home that:
    - (i) is a right or interest that gives the person reasonable security of tenure in the home;
  - (b) if the person is a member of a couple—the value of any right or interest of the person in one residence that is the principal home of the person, of the person's partner or of both of them that:
    - (i) is a right or interest that gives the person or the person's partner reasonable security of tenure in the home;
  - (c) the value of any life interest of the person other than:
    - (i) a life interest in the principal home of the person, of the person's partner or of both of them; or
    - (ii) a life interest created by the person, by the person's partner or by both of them; or
    - (iii) a life interest created on the death of the person's partner;
  - (d) the value of any asset-test exempt income stream of the person;
  - (e) any amount that is:
    - (i) received by the person within the immediately preceding period of 90 days; and

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- (ii) is excluded from the definition of *income* in subsection 8(1) by subsection 8(4) or (5);
  - (f) the value of the person's investment in:
    - (i) a superannuation fund; or
    - (ii) an approved deposit fund; or
    - (iii) a deferred annuity; or
    - (iv) an ATO small superannuation account;until the person:
    - (v) reaches pension age; or
    - (vi) starts to receive a pension or annuity out of the fund;
  - (g) if:
    - (i) the person has a granny flat interest in the person's principal home; and
    - (ii) the granny flat interest gives the person reasonable security of tenure in the home; and
    - (iii) the person acquired or retained the granny flat interest before 22 August 1990;the value of the granny flat interest;
  - (ga) if:
    - (i) the person has a granny flat interest in the person's principal home; and
    - (ii) the person is a person to whom subsection 1150(2), 1151(2), 1152(2), 1152(5), 1153(2), 1154(2), 1155(2), 1156(2) or 1157(2) applies;the value of the granny flat interest;
- Note: a person described in subparagraph (ii) will have acquired or retained the granny flat interest on or after 22 August 1990 (see section 1145A).
- (gb) if:
    - (i) the person is a sale leaseback resident; and
    - (ii) the person is a person to whom subsection 1150(2), 1151(2), 1152(2), 1152(5), 1153(2), 1154(2), 1155(2), 1156(2) or 1157(2) applies;the value of any right or interest of the person in the sale leaseback home;

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- (h) the value of any contingent, remainder or reversionary interest of the person (other than an interest created by the person, by the person's partner or by both of them);
- (j) the value of any assets (other than a contingent, remainder or reversionary interest) to which the person is entitled from the estate of a deceased person but which has not been, and is not able to be, received;
- (k) the value of any medal or other decoration awarded (whether to the person or another person) for valour that is owned by the person otherwise than for the purposes of investment or a hobby;
- (m) the value of:
  - (i) any cemetery plot acquired by the person for the burial of the person or the person's partner; and
  - (ii) any funeral expenses paid in advance by the person in respect of the funeral of the person or the person's partner;
- (ma) an amount invested in an exempt funeral investment and any return on the investment;
- (n) if:
  - (i) personal property of the person is designed for use by a disabled person; and
  - (ii) the person, the person's partner, a dependent child of the person or a dependent child of the person's partner is disabled;the value of the property;
- (p) if:
  - (i) personal property of the person is modified so that it can be used by a disabled person; and
  - (ii) the person, the person's partner, a dependent child of the person or a dependent child of the person's partner is disabled;the part of the value of the property that is attributable to the modifications;
- (q) if the person is provided with a motor vehicle under the scheme administered by the Commonwealth known as the gift car scheme—the value of that motor vehicle;

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- (r) if the person has sold a residence that was the principal home of the person on terms and has purchased, also on terms, another residence that is the principal home of the person—so much of the balance due to the person in respect of the sale as will be applied by the person in respect of the purchase of the other residence;
- (s) the amount of any insurance or compensation payments received by the person because of the loss, damage to buildings, plant or personal effects within the immediately preceding 12 months or such longer period as the Secretary determines for any special reason for a particular payment;
- (t) the value of any native title rights and interests of the person, or of a community or group of which the person is a member.

Note 1: for *granny flat interest* see subsection 12A(2).

Note 2: for *principal home* see subsections (5) to (7).

Note 3: for *reasonable security of tenure* see subsection 11(8).

Note 4: for *exempt funeral investment* see subsection 23(1).

1118(1A) In this section:

*native title rights and interests* means:

- (a) native title rights and interests within the meaning of section 223 of the *Native Title Act 1993*;
- (b) any rights and interests of a similar nature under any law of a State, a Territory or a foreign country (whether or not the rights and interests relate to land or waters outside Australia);

but, to avoid any doubt, does not include any right or interest in a lease or licence, or in a freehold estate.

1118(2) If:

- (a) a person sells the person's principal home; and
- (b) the person is likely, within 12 months, to apply the whole or a part of the proceeds of the sale in acquiring another residence that is to be the person's principal home;

so much of the proceeds of the sale as the person is likely to apply in acquiring the other residence is to be disregarded during that period for the purposes of this Act.

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1118(2A) Subsection (2) does not apply to the calculation of the value of a person's assets for the purposes of sections 198F to 198MA or 1123 to 1128 (disposal of assets).

1118(3) For the purposes of this section, if:

(a) the value of any assets of a person or, if the person is a member of a couple, of the person and the person's partner, that consists of the contents of a principal home and of other personal effects that are used primarily within the principal home does not exceed \$10,000; and

(b) the assets are used primarily for private or domestic purposes;

the value of the assets is to be taken to be \$10,000 unless the person satisfies the Secretary that the value of the assets is less than \$10,000.

1118(4) This section has effect subject to sections 1145A to 1157 (special residences).

**1118B Value of superannuation investments determined by Minister to be disregarded**

1118B(1) The value of a person's investment in a superannuation fund, an approved deposit fund, a deferred annuity or an ATO small superannuation account is to be disregarded in calculating the value of the person's assets for the purposes of this Act (other than section 198H, 198HA, 198HB, 198J, 198JA, 198JB, 198K or 198L, subparagraph 263(1)(d)(iv), or section 1124A, 1125, 1125A, 1126, 1133 or 1135A) if the investment is specified in a determination made under subsection (2).

1118B(2) The Minister may specify:

(a) a specified investment in a superannuation fund, an approved deposit fund, a deferred annuity or an ATO small superannuation account; or

(b) a specified class of investments in a superannuation fund, an approved deposit fund, a deferred annuity or an ATO small superannuation account;

in a determination for the purpose of subsection (1).

1118B(3) A determination under subsection (2) must be in writing.

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1118B(4) A determination under subsection (2) takes effect on the day on which it is made or on such other day (whether earlier or later) as is specified in the determination.

**1118AA Value of assets reduced by amounts received from Mark Fitzpatrick Trust**

1118AA(1) In this section:

*application day*, in relation to a person who was a recipient of a social security payment immediately before 28 September 1995, means the day, on or after that date, on which the person applied or applies for review of the rate of that social security payment because of the expected enactment, or the operation, of this section.

1118AA(2) Subject to subsection (3), the value of a person's assets for the purposes of this Act (other than subparagraph 501E(1)(d)(iv) and sections 1124A, 1125, 1125A and 1126) is reduced by the sum of any amounts received by the person from the Mark Fitzpatrick Trust.

1118AA(3) Subsection (2) has effect, or is taken to have had effect, as the case may be:

- (a) for a person who was a recipient of a social security pension immediately before 28 September 1995—on the first pension payday after the application day; or
- (b) for a person who was a recipient of a social security payment other than a social security pension immediately before 28 September 1995—on the next day, after the application day, on which the person received or receives an instalment of the payment; or
- (c) for a person who became or becomes a recipient of a social security payment on or after 28 September 1995—on the day on which the person received or receives the first instalment of the payment.



**1118AB Value of person's assets reduced: certain transactions to do with aged care accommodation bonds**

1118AB(1) This section applies to a person if Division 1D of Part 3.10 applies to the person.

1118AB(2) For the purposes of this Act (other than subparagraph 501E(1)(d)(iv) and sections 1124A, 1125, 1125A and 1126), the total value of the person's assets is reduced by the person's exempt bond amount (as defined by section 1099H).

**1118AC Value of person's assets reduced: refunds to charge exempt residents**

1118AC(1) This section applies to a person if Division 1E of Part 3.10 applies to the person.

1118AC(2) For the purposes of this Act (other than subparagraph 501E(1)(d)(iv) and sections 1124A, 1125, 1125A and 1126), the total value of the person's assets is reduced by the refunded amount (as defined by section 1099J).

**1119 Value of asset-tested income streams that are not defined benefit income streams**

1119(1) This section applies to a person's asset-tested income stream if it is not a defined benefit income stream.

Note: For *defined benefit income streams* see section 1120.

1119(2) The value of the income stream is, for the purposes of the assets test, worked out:

- (a) if the person receives payments from the income stream 2 or more times a year—in relation to each 6 month period of the income stream's term; and
- (b) if the person receives a payment from the income stream only once a year—in relation to each 12 month period of the income stream's term.

1119(3) If the income stream has an account balance, the value of the income stream, for the purposes of the assets test, is the value of

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the account balance at the beginning of the 6 month or 12 month period (as the case requires) referred to in subsection (2).

1119(4) If the income stream does not have an account balance, the value of the income stream is, for the purposes of the assets test, worked out as follows:

$$\text{Purchase price} - \left[ \left( \frac{\text{Purchase price} - \text{Residual capital value}}{\text{Relevant number}} \right) \times \text{Term elapsed} \right]$$

where:

*purchase price* has the meaning given by subsection 9(1).

*relevant number* has the meaning given by subsection 9(1).

*residual capital value* has the meaning given by subsection 9(1).

*term elapsed* is the number of years of the term that have elapsed since the commencement day of the income stream, rounded down:

- (a) in the case of an income stream referred to in paragraph (2)(a)—to the nearest half-year; and
- (b) in the case of an income stream referred to in paragraph (2)(b)—to the nearest whole year.

Example: Sally is 65 years old and single. She purchases a 10 year annuity for \$150,000 with a residual capital value of \$20,000. Her total annual annuity payment is \$18,337. Monthly payments commence on 1 January. Her assessable asset for the first six months will be:

$$\$150,000 - \left[ \left( \frac{\$150,000 - \$20,000}{10 \text{ years}} \right) \times 0 \text{ year} \right] = \$150,000$$

Her assessable asset after 30 June in that year will be:

$$\$150,000 - \left[ \left( \frac{\$150,000 - \$20,000}{10 \text{ years}} \right) \times 0.5 \text{ year} \right] = \$143,500$$

### **1120 Value of asset-tested income streams that are defined benefit income streams**

- 1120(1) This section applies to a person's asset-tested income stream if it is a defined benefit income stream.
- 1120(2) The value of the income stream is, for the purposes of the assets test, worked out in relation to each 12 month period of the income stream's term.
- 1120(3) The value of the income stream is, for the purposes of the assets test, worked out as follows:  
Annual payment  $\times$  Pension valuation factor  
where:  
*annual payment* means the amount payable to the person for the relevant 12 month period under the income stream.  
*pension valuation factor* means the pension valuation factor that applies to the person in accordance with the determination made by the Minister for the purposes of this section.
- 1120(4) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **1121 Effect of charge or encumbrance on value of assets**

- 1121(1) If there is a charge or encumbrance over a particular asset of the person, the value of the asset, for the purposes of calculating the value of the person's assets for the purposes of this Act, is to be reduced by the value of that charge or encumbrance.  
Note: this section does not apply to an asset to which section 1121A (primary production assets) applies.
- 1121(2) Subsection (1) does not apply to a charge or encumbrance over an asset of a person to the extent that:  
(a) the charge or encumbrance is a collateral security; or  
(b) the charge or encumbrance was given for the benefit of a person other than the person or the person's partner.
- 1121(3) Subsection (1) does not apply to a charge or encumbrance over assets that are to be disregarded under section 1118.

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**Part 3.12** General provisions relating to the assets test

**Division 1** Value of person's assets

Section 1121A

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1121(3A) Subsection (1) does not apply to an asset that is an asset-tested income stream (long-term).

1121(4) If:

- (a) there is a charge or encumbrance over assets; and
- (b) the charge does not arise under section 1138; and
- (c) the assets consist of assets whose value is to be disregarded under section 1118 and other assets;

the amount to be deducted under subsection (1) is:

$$\frac{\text{Value of the charge or encumbrance} \times \text{Value of the other assets}}{\text{Value of all the assets}}$$

1121(6) This section has effect subject to sections 1145A to 1157 (special residences).

**1121A Effect of certain liabilities on value of assets used in primary production**

1121A(1) For the purposes of working out the value of a person's assets under this Act, if:

- (a) the person is:
  - (i) a primary producer; or
  - (ii) a family member of a primary producer; and
- (b) the person has assets (including real property) that are, in the Secretary's opinion, used for the purposes of carrying on that primary production; and
- (c) the person also has liabilities that are, in the Secretary's opinion, related to the carrying on of the primary production;

then:

- (d) section 1121 does not apply in relation to the assets referred to in paragraph (b); and
- (e) those assets are taken to be a single asset (in this section called the *primary production asset*); and
- (f) the value of that single asset is worked out under subsection (2).

Note: for *family member* see subsection 23(1).

1121A(2) The value of a person's primary production asset is worked out in the following way:

*Method statement*

*Step 1.* Add together the value of the assets referred to in paragraph (1)(b): the result is called the ***unencumbered value***.

*Step 2.* Add together the value of the liabilities referred to in paragraph (1)(c): the result is called the ***total liability***.

*Step 3.* Take the total liability away from the unencumbered value: the result is the value of the person's primary production asset.

1121A(3) If the result under Step 3 of the Method statement is less than nil, the value of the primary production asset is taken to be nil.

## **1122 Loans**

If a person lends an amount after 27 October 1986, the ***value of the assets*** of the person for the purposes of this Act includes so much of that amount as remains unpaid but does not include any amount payable by way of interest under the loan.

## Division 2—Disposal of assets

### 1123 Disposal of assets [see Note 14]

1123(1) For the purposes of this Act, a person *disposes* of assets of the person if:

- (a) the person engages in a course of conduct that directly or indirectly:
  - (i) destroys all or some of the person's assets; or
  - (ii) disposes of all or some of the person's assets; or
  - (iii) diminishes the value of all or some of the person's assets; and
- (b) one of the following subparagraphs is satisfied:
  - (i) the person receives no consideration in money or money's worth for the destruction, disposal or diminution;
  - (ii) the person receives inadequate consideration in money or money's worth for the destruction, disposal or diminution;
  - (iii) the Secretary is satisfied that the person's purpose, or the dominant purpose, in engaging in that course of conduct was to obtain a social security advantage.

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).

1123(2) For the purposes of subsection (1), a person has a purpose of obtaining a social security advantage if the person has a purpose of:

- (a) obtaining a social security pension, a social security benefit, a parenting allowance, a service pension or an income support supplement or enabling the person's partner or someone else of whom the person is a family member to obtain such a pension, benefit, allowance or supplement, or a youth training allowance; or
- (b) obtaining a social security pension, a social security benefit, a parenting allowance, a service pension or an income

support supplement, or enabling the person's partner to obtain such a pension, benefit, allowance or supplement, or a youth training allowance, at a higher rate than would have otherwise been payable; or

- (c) ensuring that the person or the person's partner would be qualified for fringe benefits for the purposes of this Act or the Veterans' Entitlements Act.

1123(3) For the purposes of subsection (1), the value of a person's granny flat interest is to be taken not to be consideration received by the person if the interest was acquired or retained before 22 August 1990.

Note: for *granny flat interest* see subsection 11(9).

1123(4) If, under subsection 1147(1A), the value of a granny flat interest is less than the amount paid, or agreed to be paid, for the interest, then, for the purposes of this section, so much of the amount paid, or agreed to be paid, as exceeds the value of the interest is not consideration for the interest.

Note: for *granny flat interest* see subsection 11(9).

## **1124 Amount of disposal or disposition**

If a person disposes of assets, the amount of the disposal or disposition is:

- (a) if the person receives no consideration for the destruction, disposal or diminution—an amount equal to:
  - (i) the value of the assets that are destroyed; or
  - (ii) the value of the assets that are disposed of; or
  - (iii) the amount of the diminution in the value of the assets whose value is diminished; or
- (b) if the person receives consideration for the destruction, disposal or diminution—an amount equal to:
  - (i) the value of the assets that are destroyed; or
  - (ii) the value of the assets that are disposed of; or
  - (iii) the amount of the diminution in the value of the assets whose value is diminished;

less the amount of the consideration received by the person in respect of the destruction, disposal or diminution.

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**1124A Disposal of assets in pre-pension years—individuals**

1124A(1A) This section applies only to disposals of assets that took place before 1 July 2002.

1124A(1) Subject to subsection (2), if:

- (a) a person is not a member of a couple when the person claims a pension, benefit or payment of a kind referred to in subsection 11(10A); and
- (b) the person has, during a pre-pension year of the person, disposed of an asset of the person; and
- (c) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the person during that pre-pension year, exceeds the disposal limit;

then, for the purposes of determining whether a pension, benefit or payment is payable to the person, there is to be included in the value of the person's assets for the period of 5 years that starts on the day on which the disposition took place:

- (d) the amount by which the sum of the amount of the first-mentioned disposition of assets and of the amounts (if any) of other dispositions of assets previously made by the person during that pre-pension year exceeds the disposal limit; or
- (e) the amount of the first-mentioned disposition;

whichever is the lesser amount.

Note 1: for *disposes of assets* see section 1123.

Note 2: for *amount of disposition* see section 1124.

Note 3: for the effect of a transaction that constitutes both a disposal of an asset and a disposal of ordinary income see section 1110.

Note 4: if a pension or benefit is payable to the person, section 1125 operates to determine the rate of payment and section 1124A ceases to apply to the person.

1124A(2) If:

- (a) a person disposes of an asset; and



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- (b) an amount (the *relevant amount*) is included in the value of the person's assets under subsection (1) because of the disposition;

the amount that is to be included in that value under that subsection is to be reduced, on each anniversary of the day on which the disposition took place, by an amount equal to 10% of the relevant amount.

Note 1: for *disposes of assets* see section 1123.

Note 2: for *amount of disposition* see section 1124.

1124A(3) In this section:

*disposal limit* means:

- (a) in relation to assets disposed of on or after 1 March 1986 and before 1 March 1991—\$2,000; and  
(b) in relation to assets disposed of on or after 1 March 1991—\$10,000.

### **1125 Disposal of assets in pension years—individuals**

1125(1) Subject to subsection (2), if, on or after 1 March 1986 and before 1 July 2002:

- (a) a person who is not a member of a couple has, during a pension year of the person, disposed of an asset of the person; and  
(b) the amount of that disposition, or the sum of that amount and of the amounts (if any) of other dispositions of assets previously made by the person during that pension year, exceeds the disposal limit;

then, for the purposes of this Act, there is to be included in the value of the person's assets for the period of 5 years that starts on the day on which the disposition takes place:

- (c) the amount by which the sum of the amount of the first-mentioned disposition of assets, and of the amounts (if any) of other dispositions of assets previously made by the person during that pension year, exceeds the disposal limit; or  
(d) the amount of the first-mentioned disposition;  
whichever is the lesser amount.

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**Part 3.12** General provisions relating to the assets test

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Note 1: for *disposes of assets* see section 1123.

Note 2: for *amount of disposition* see section 1124.

Note 3: for the effect of a transaction that constitutes both a disposal of an asset and a disposal of ordinary income see section 1110.

1125(2) If:

- (a) a person disposes of an asset; and
- (b) an amount (in this subsection called the *relevant amount*) is included in the value of the person's assets under subsection (1) because of the disposition;

the amount that is to be included in that value under that subsection is to be reduced, on each anniversary of the day on which the disposition took place, by an amount equal to 10% of the relevant amount.

Note 1: for *disposes of assets* see section 1123.

Note 2: for *amount of disposition* see section 1124.

1125(3) In this section:

*disposal limit* means:

- (a) in relation to assets disposed of on or after 1 March 1986 and before 1 March 1991—\$2,000; and
- (b) in relation to assets disposed of on or after 1 March 1991—\$10,000.

**1125A Disposal of assets in pre-pension years—members of couples**

1125A(1A) This section applies only to disposals of assets that took place before 1 July 2002.

1125A(1) Subject to subsections (2), (3), (4) and (5), if:

- (a) a person has disposed of an asset; and
- (b) the person is a member of a couple when the person or the person's partner claims a pension, benefit or payment of a kind referred to in subsection 11(10A) or when the person's partner claims a youth training allowance; and
- (c) the person disposed of the asset:
  - (i) during a pre-pension year of the person; or
  - (ii) if the person has not claimed a pension, benefit or payment of a kind referred to in subsection 11(10A) but

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the person's partner has claimed such a pension, benefit or payment or has claimed a youth training allowance—during a pre-pension year of the person's partner; and

- (d) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during that pre-pension year, exceeds the disposal limit;

then, for the purposes of determining whether a pension, benefit, payment or allowance is payable to the person:

- (e) there is to be included in the value of the person's assets for the period of 5 years that starts on the day on which the disposition took place:
- (i) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during that pre-pension year exceeds the disposal limit; or
  - (ii) 50% of the amount of the first-mentioned disposition; whichever is the lesser amount; and
- (f) there is to be included in the value of the assets of the person's partner for the period of 5 years that starts on the day on which the disposition took place:
- (i) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during that pre-pension year exceeds the disposal limit; or
  - (ii) 50% of the amount of the first-mentioned disposition; whichever is the lesser amount.

Note 1: for *disposes of assets* see section 1123.

Note 2: for *amount of disposition* see section 1124.

Note 3: for the effect of a transaction that constitutes both a disposal of an asset and a disposal of ordinary income see section 1110.

Note 4: if a pension or benefit is payable to the person, section 1126 operates to determine the rate of payment and section 1125A ceases to apply to the person.

1125A(2) If:

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- (a) a person disposes of an asset; and
- (b) an amount (the *relevant amount*) is included in the value of the person's or the person's partner's assets under subsection (1) because of the disposition;

the amount that is to be included in that value under that subsection is to be reduced, on each anniversary of the day on which the disposition took place, by an amount equal to 10% of the relevant amount.

Note 1: for *disposes of assets* see section 1123.

Note 2: for *amount of disposition* see section 1124.

1125A(3) If:

- (a) amounts are included under subsection (1) in the value of a person's assets who is a member of a couple and in the assets of the person's partner because of a disposition of an asset by the person; and
- (b) the person and the person's partner cease to be members of the same couple;

any amount that was included in the value of the person's former partner's assets because of that disposition is to be included in the value of the person's assets.

1125A(4) If:

- (a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and the value of the assets of the person's partner because of a disposition of an asset by the person; and
- (b) the person dies;

an amount is not to be included in the value of the assets of the person's partner because of that disposition.

1125A(5) If:

- (a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and the value of the assets of the person's partner because of a disposition of an asset by the person; and

(b) the partner dies;  
any amount that would, if the partner had not died, be included in the value of the partner's assets because of the disposition is to be included in the value of the person's assets.

1125A(6) In this section:

*disposal limit* means:

- (a) in relation to assets disposed of on or after 1 March 1986 and before 1 March 1991—\$4,000; and
- (b) in relation to assets disposed of on or after 1 March 1991—\$10,000.

### **1126 Disposal of assets in pension years—members of couples**

1126(1) Subject to subsections (2), (3) and (4), if, on or after 1 March 1986 and before 1 July 2002:

- (a) a person who is a member of a couple has disposed of an asset of the person:
  - (i) during a pension year of the person; or
  - (ii) if the person is not receiving a pension, benefit or payment of a kind referred to in subsection 11(10) but the person's partner is receiving such a pension, benefit or payment or is receiving a youth training allowance—during a pension year of the person's partner; and
- (b) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during that pension year, exceeds disposal limit;

then, for the purposes of this Act:

- (c) there is to be included in the value of the person's assets for the period of 5 years that starts on the day on which the disposition takes effect:
  - (i) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during the pension year exceeds disposal limit; or

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- (ii) 50% of the amount of the first-mentioned disposition; whichever is the lesser amount; and
- (d) there is to be included in the value of the assets of the person's partner for the period of 5 years that starts on the day on which the disposition takes place:
  - (i) 50% of the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the person or the person's partner during the pension year exceeds disposal limit; or
  - (ii) 50% of the amount of the first-mentioned disposition; whichever is the lesser amount.

Note 1: for *disposes of assets* see section 1123.

Note 2: for *amount of disposition* see section 1124.

Note 3: for the effect of a transaction that constitutes both a disposal of an asset and a disposal of ordinary income see section 1110.

1126(2) If:

- (a) a person disposes of an asset; and
- (b) an amount (in this subsection called the *relevant amount*) is included in the value of the person's or the person's partner's assets under subsection (1) because of the disposition;

the amount that is to be included in that value under that subsection is to be reduced, on each anniversary of the day on which the disposition took place, by an amount equal to 10% of the relevant amount.

Note 1: for *disposes of assets* see section 1123.

Note 2: for *amount of disposition* see section 1124.

1126(3) If:

- (a) amounts are included under subsection (1) in the value of a person's assets who is a member of a couple and in the assets of the person's partner because of a disposition of an asset by the person; and

(b) the person and the person's partner cease to be members of the same couple;

any amount that was included in the value of the person's former partner's assets because of that disposition is to be included in the value of the person's assets.

1126(4) If:

(a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and the value of the assets of the person's partner because of a disposition of an asset by the person; and

(b) the person dies;

no amount is to be included in the value of the assets of the person's partner because of that disposition.

1126(5) If:

(a) an amount is included under subsection (1) in the value of the assets of a person who is a member of a couple and the value of the assets of the person's partner because of a disposition of an asset by the person; and

(b) the partner dies;

any amount that would, if the partner had not died, be included in the value of the partner's assets because of the disposition is to be included in the value of the person's assets.

1126(6) In this section:

*disposal limit* means:

(a) in relation to assets disposed on or after 1 March 1986 and before 1 March 1991—\$4,000; and

(b) in relation to assets disposed of on or after 1 March 1991—\$10,000.

### **1126AA Disposal of assets in income year—individuals**

*Disposals to which section applies*

1126AA(1) This section applies to a disposal (the *relevant disposal*) on or after 1 July 2002 of an asset by a person who is not a member of a couple at the time of the relevant disposal.

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*Increase in value of assets*

1126AA(2) If the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of assets previously made by the person during the income year in which the relevant disposal took place, exceeds \$10,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the person's assets for the period of 5 years starting on the day on which the relevant disposal took place:

- (a) the amount of the relevant disposal;
- (b) the amount by which the sum of the amount of the relevant disposal and the amounts (if any) of other disposals of assets previously made by the person during the income year in which the relevant disposal took place, exceeds \$10,000.

*Previous joint disposals*

1126AA(3) If, during the income year in which the relevant disposal took place but before the time of the relevant disposal, the person was a member of a couple who jointly disposed of an asset, a reference in subsection (2) to the amounts (if any) of other disposals of assets previously made by the person during that income year includes a reference to one-half of the amount of the joint disposal.

**1126AB Disposals of assets in 5 year period—individuals**

*Disposal to which section applies*

1126AB(1) This section also applies to a disposal (the *relevant disposal*) on or after 1 July 2002 of an asset by a person who is not a member of a couple at the time of the relevant disposal.

*Increase in value of assets*

1126AB(2) If:

- (a) the sum of the amount of the relevant disposal and the amounts of any previous disposals of assets made during the rolling period by the person;

*less*



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- (b) the sum of any amounts included in the value of the person's assets during the rolling period under section 1126AA, 1126AC or 1126AD or any previous application or applications of this section;  
exceeds \$30,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the person's assets for the period of 5 years starting on the day on which the relevant disposal took place:
- (c) an amount equal to the excess;
  - (d) the amount of the relevant disposal.

*Previous joint disposals*

- 1126AB(3) If, during the rolling period but before the time of the relevant disposal, the person was a member of a couple who jointly disposed of an asset, the reference in paragraph (2)(a) to the amounts of any previous disposals of assets made during the rolling period by the person includes a reference to one-half of the amount of the joint disposal.

*Rolling period*

- 1126AB(4) For the purposes of this section, the *rolling period* is the period comprising the income year in which the relevant disposal took place and such (if any) of the 4 previous income years as occurred after 30 June 2002.

**1126AC Disposal of assets in income year—members of couples**

*Disposals to which section applies*

- 1126AC(1) If there is a disposal (the *relevant disposal*) on or after 1 July 2002 of an asset by:
- (a) a person who, at the time of the relevant disposal, is a member of a couple; or
  - (b) the person referred to in paragraph (a) and the person who is, at that time, the partner of the person referred to in that paragraph;
- subsection (2) has effect.

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*Increase in value of assets*

- 1126AC(2) Subject to this section, if the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of assets previously made by the person, the person's partner, or the person and the person's partner, during the income year in which the relevant disposal took place (whether before or after they became members of the couple), exceeds \$10,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the assets of the person and in the value of the assets of the partner for the period of 5 years starting on the day on which the relevant disposal took place:
- (a) one-half of the amount of the relevant disposal;
  - (b) one-half of the amount by which the sum of the amount of the relevant disposal, and the amounts (if any) of other disposals of assets previously made by the person, the partner, or the person and the partner, during the income year in which the relevant disposal took place, exceeds \$10,000.

*Effect of ceasing to be member of couple*

- 1126AC(3) If, after the disposal referred to in paragraph (1)(a), the person and the person's partner cease to be members of the same couple:
- (a) no amount is to be included after the cessation in the value of the assets of the former partner because of that disposal; and
  - (b) any amount that would, apart from this subsection, have been so included is to be included in the value of the assets of the person.

*Effect of death of person*

- 1126AC(4) If, after the disposal referred to in paragraph (1)(a), the person dies, no amount is to be included in the value of the assets of the person's partner because of that disposal.

*Effect of death of partner*

- 1126AC(5) If, after the disposal referred to in paragraph (1)(a), the person's partner dies, any amount that, if the partner had not died, would

have been included in the value of the assets of the partner because of that disposal is to be included in the value of the assets of the person.

**1126AD Disposal of assets in 5 year period—members of couples**

*Disposals to which section applies*

1126AD(1) If there is a disposal (the *relevant disposal*) on or after 1 July 2002 of an asset by:

- (a) a person who, at the time of the relevant disposal, is a member of a couple; or
- (b) the person referred to in paragraph (a) and the person who is, at that time, the partner of the person referred to in that paragraph;

subsection (2) has effect.

*Increase in value of assets*

1126AD(2) Subject to this section, if:

- (a) the sum of the amount of the relevant disposal and the amounts of any previous disposals of assets made during the rolling period by the person, the person's partner or the person and the person's partner;

*less*

- (b) the sum of any amounts included in the value of the assets of the person or of the partner during the rolling period under section 1126AA, 1126AB or 1126AC or any previous application or applications of this section;

exceeds \$30,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the assets of the person and in the value of the assets of the partner for the period of 5 years starting on the day on which the relevant disposal took place:

- (c) an amount equal to one-half of the excess;
- (d) one-half of the amount of the relevant disposal.

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*Effect of ceasing to be member of couple*

- 1126AD(3) If, after the disposal referred to in paragraph (1)(a), the person and the person's partner cease to be members of the same couple:
- (a) no amount is to be included after the cessation in the value of the assets of the former partner because of that disposal; and
  - (b) any amount that would, apart from this subsection, have been so included is to be included in the value of the assets of the person.

*Effect of death of person*

- 1126AD(4) If, after the disposal referred to in paragraph (1)(a), the person dies, no amount is to be included in the value of the assets of the person's partner because of that disposal.

*Effect of death of partner*

- 1126AD(5) If, after the disposal referred to in paragraph (1)(a), the person's partner dies, any amount that, if the partner had not died, would have been included in the value of the assets of the partner because of that disposal is to be included in the value of the assets of the person.

*Rolling period*

- 1126AD(6) For the purposes of this section, the **rolling period** is the period comprising the income year in which the relevant disposal took place and such (if any) of the 4 previous income years as occurred after 30 June 2002.

**1126A Disposal of assets in pre-pension year—family members**

- 1126A(1A) This section applies only to disposals of assets that took place before 1 July 2002.

- 1126A(1) Subject to this section, if:
- (a) a person (the **relevant person**) has disposed of an asset; and
  - (b) the relevant person is a family member of another person (the **other person**) when the other person claims a youth allowance; and

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- (c) the relevant person disposed of the asset during a pre-pension year of the other person; and
- (d) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the relevant person or the other person during that pre-pension year, exceeds \$10,000;

then, for the purpose of determining whether a youth allowance is payable to the other person, there is to be included in the value of the other person's assets for the period of 5 years that starts on the day on which the disposition took place:

- (e) the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the relevant person or the other person during that pre-pension year exceeds \$10,000; or
- (f) the amount of the first-mentioned disposition;

whichever is the lesser amount.

Note 1: For *disposes of assets* see section 1123.

Note 2: For *amount of disposition* see section 1124.

Note 3: For the effect of a transaction that constitutes both a disposal of an asset and a disposal of ordinary income see section 1110.

1126A(2) If:

- (a) amounts are included under subsection (1) in the value of the other person's assets because of a disposition of an asset by the relevant person; and
- (b) the relevant person ceases to be a family member of the other person;

any amount that was included in the value of the other person's assets because of the disposition ceases to be included in the value of those assets.

1126A(3) If:

- (a) an amount is included under subsection (1) in the value of the assets of the other person because of a disposition of an asset by the relevant person; and
- (b) the relevant person dies;

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any amount that was included in the value of those assets because of the disposition ceases to be included in the value of those assets.

**1126B Disposal of assets in pension year—family members**

1126B(1A) This section applies only to disposals of assets that took place before 1 July 2002.

1126B(1) Subject to this section, if:

- (a) a person (the *relevant person*) has disposed of an asset during a pension year of another person (the *other person*) of whom the relevant person is a family member; and
- (b) the other person is receiving youth allowance; and
- (c) the amount of that disposition, or the sum of that amount and the amounts (if any) of other dispositions of assets previously made by the relevant person or the other person during that pension year, exceeds \$10,000;

then, for the purposes of this Act, there is to be included in the value of the other person's assets for the period of 5 years that starts on the day on which the disposition took place:

- (d) the amount by which the sum of the amount of the first-mentioned disposition and of the amounts (if any) of other dispositions of assets previously made by the relevant person or the other person during the pension year exceeds \$10,000; or
- (e) the amount of the first-mentioned disposition;

whichever is the lesser amount.

Note 1: For *disposes of assets* see section 1123.

Note 2: For *amount of disposition* see section 1124.

Note 3: For the effect of a transaction that constitutes both a disposal of an asset and a disposal of ordinary income see section 1110.

1126B(2) If:

- (a) amounts are included under subsection (1) in the value of the other person's assets because of a disposition of an asset by the relevant person; and
- (b) the relevant person ceases to be a family member of the other person;

any amount that was included in the value of the other person's assets because of the disposition ceases to be included in the value of those assets.

1126B(3) If:

- (a) an amount is included under subsection (1) in the value of the assets of the other person because of a disposition of an asset by the relevant person; and
- (b) the relevant person dies;

any amount that was included in the value of those assets because of the disposition ceases to be included in the value of those assets.

### **1126C Disposal of assets in income year—family members**

*Disposals to which section applies*

1126C(1) This section applies to a disposal (the *relevant disposal*) on or after 1 July 2002 of an asset by a person (the *relevant person*) who is a family member of another person (the *other person*) who has claimed or is receiving a youth allowance.

*Increase in value of assets*

1126C(2) Subject to this section, if the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of assets previously made by the relevant person or the other person during the income year in which the relevant disposal took place, exceeds \$10,000, then, for the purpose of determining whether a youth allowance is payable to the other person, the lesser of the following amounts is to be included in the value of the other person's assets for the period of 5 years starting on the day on which the relevant disposal took place:

- (a) the amount of the relevant disposal;
- (b) the amount by which the sum of the amount of the relevant disposal, and the amounts (if any) of other disposals of assets previously made by the relevant person or the other person during the income year in which the relevant disposal took place, exceeds \$10,000.

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*Effect of ceasing to be family member*

1126C(3) If:

- (a) an amount is included under subsection (2) in the value of the other person's assets because of a disposal of an asset by the relevant person; and
- (b) the relevant person ceases to be a family member of the other person;

any amount that was included in the value of those assets because of the disposal ceases to be included in the value of those assets.

*Effect of death*

1126C(4) If:

- (a) an amount is included under subsection (2) in the value of the other person's assets because of a disposal of an asset by the relevant person; and
- (b) the relevant person dies;

any amount that was included in the value of those assets because of the disposal ceases to be included in the value of those assets.

**1126D Disposals of assets in 5 year period—family members**

*Disposals to which section applies*

1126D(1) This section applies to a disposal (the *relevant disposal*) on or after 1 July 2002 of an asset by a person (the *relevant person*) who is a family member of another person (the *other person*) who has claimed or is receiving youth allowance.

*Increase in value of assets*

1126D(2) If:

- (a) the amount of the relevant disposal, or the sum of that amount and the amounts (if any) of other disposals of assets made during the rolling period by the relevant person or the other person;

*less*

- (b) the sum of any amounts included in the value of the other person's assets during the rolling period under



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section 1126C or any previous application or applications of this section;

exceeds \$30,000, then, for the purposes of this Act, the lesser of the following amounts is to be included in the value of the other person's assets for the period of 5 years starting on the day on which the relevant disposal took place:

- (c) an amount equal to the excess;
- (d) the amount of the relevant disposal.

*Effect of ceasing to be family member*

1126D(3) If:

- (a) amounts are included under subsection (2) in the value of the other person's assets because of a disposal of an asset by the relevant person; and
- (b) the relevant person ceases to be a family member of the other person;

any amount that was included in the value of those assets because of the disposal ceases to be included in the value of those assets.

*Effect of death*

1126D(4) If:

- (a) an amount is included under subsection (2) in the value of the other person's assets because of a disposal of an asset by the relevant person; and
- (b) the relevant person dies;

any amount that was included in the value of those assets because of the disposal ceases to be included in the value of those assets.

*Rolling period*

1126D(5) For the purposes of this section, the **rolling period** is the period comprising the income year in which the relevant disposal took place and such (if any) of the 4 previous income years as occurred after 30 June 2002.

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**1127 Disposition more than 5 years old to be disregarded** [see Note 10]

This Division does not apply to a disposition of an asset that took place:

- (a) more than 5 years before the time when:
  - (i) the person who disposed of the asset; or
  - (ii) if that person was, at the time when the disposition took place, a member of a couple—the person's partner; or
  - (iii) if that person was, at that time, a family member of another person who is receiving or claiming youth allowance and is not independent—the other person; became qualified for a social security pension, a social security benefit or family allowance; or
- (b) less than 5 years before the time referred to in paragraph (a) and before the time when the Secretary is satisfied that the person who disposed of the asset could reasonably have expected that the person, the person's partner or the other person, as the case may be, would become qualified for such a pension, benefit or allowance.

**1127A Division does not apply for purposes of care receiver assets test**

This Division does not apply for the purposes of the assets test set out in Subdivision A of Division 1 of Part 2.5 (care receiver assets test).

## **Division 3—Financial hardship**

### **1129 Access to financial hardship rules—pensions**

1129(1) If:

(a) either:

- (i) a social security pension is not payable to a person because of the application of an assets test; or
- (ii) a person's social security pension rate is determined by the application of an assets test; and

(b) either:

- (i) sections 1108 and 1109 (disposal of income) and 1124A, 1125, 1125A, 1126, 1126AA, 1126AB, 1126AC and 1126AD (disposal of assets) do not apply to the person; or
- (ii) the Secretary determines that the application of those sections to the person should, for the purposes of this section, be disregarded; and

(c) the person, or the person's partner, has an unrealisable asset; and

(d) the person lodges with the Department, in a form approved by the Secretary, a request that this section apply to the person; and

(e) the Secretary is satisfied that the person would suffer severe financial hardship if this section did not apply to the person;

the Secretary must determine that this section applies to the person.

Note 1: For *social security pension* see subsection 23(1).

Note 2: for *unrealisable asset* see subsections 11(12) and (13).

(1A) In subsection (1):

*social security pension* does not include a pension PP (single).

Note: Financial hardship rules for pension PP (single) are contained in sections 1130B and 1130C.

1129(2) A decision under subsection (1) takes effect:

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- (a) on the day on which the request under paragraph (1)(d) was lodged with the Department; or
- (b) if the Secretary so decides in the special circumstances of the case—on a day not more than 6 months before the day referred to in paragraph (a).

**1130 Application of financial hardship rules—pensions**

*Value of unrealisable asset to be disregarded*

1130(1) If section 1129 applies to a person, the value of:

- (a) any unrealisable asset of the person; and
- (b) any unrealisable asset of the person's partner;

is to be disregarded in working out the person's social security pension rate.

*Deduction from social security pension maximum payment rate*

1130(2) If section 1129 applies to a person, there is to be deducted from the person's social security pension maximum payment rate an amount equal to the person's adjusted annual rate of ordinary income.

*Adjusted annual rate of ordinary income*

1130(3) A person's **adjusted annual rate of ordinary income** is an amount per year equal to the sum of:

- (a) the person's annual rate of ordinary income (other than income from assets); and
- (b) the person's annual rate of ordinary income from assets that are not assets tested; and
- (c) either:
  - (i) the person's annual rate of ordinary income from unrealisable assets; or
  - (ii) the person's notional annual rate of ordinary income from unrealisable assets;whichever is the greater; and
- (d) an amount per year equal to \$19.50 for each \$250 of the value of the person's assets (other than disregarded assets).

*Assets tested asset*

- 1130(4) For the purposes of subsection (3), an asset is ***not assets tested*** if the value of the asset is to be disregarded under subsection 1118(1).

*Notional annual rate of ordinary income from unrealisable assets*

- 1130(5) A person's ***notional annual rate of ordinary income*** from unrealisable assets is:
- (a) the amount per year equal to 2.5% of the value of the person's and the person's partner's unrealisable assets; or
  - (b) the amount per year that could reasonably be expected to be obtained from a purely commercial application of the person's and the person's partner's unrealisable assets;
- whichever is the less.

*Family farms*

- 1130(6) If:
- (a) an unrealisable asset is a farm; and
  - (b) the farm is operated by a person who is a family member of the person to whom this section applies; and
  - (c) it is not reasonable to expect the farm to be used for another purpose;
- the Secretary, in working out the amount per year that could reasonably be expected to be obtained from a purely commercial application of the farm, is to have regard to the overall financial situation of the person operating the farm.

- 1130(6A) If:
- (a) section 1129 applies to a person; and
  - (b) the person, or the person's partner, owns residential premises; and
  - (c) the premises are an unrealisable asset; and
  - (d) a family member of the person, or of the partner, lives at the premises; and
  - (e) one of the following conditions is satisfied:
    - (i) the family member previously provided substantial care for the person or the partner at the premises at a time

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when the premises were the principal home of the person or the partner;

- (ii) the family member has resided at the premises for a period of, or periods that add up to, 10 years or more;
- (iii) the family member is:
  - (A) a child of the person or the partner; and
  - (B) disabled;

and the person or the partner is promoting the independent living of the family member; and

- (f) it is not reasonable to expect the premises to be sold or otherwise used to provide income support for the person;

the Secretary, in working out the amount per year that could reasonably be expected to be obtained from a purely commercial application of the premises, is to have regard to whether the family member is financially capable of obtaining suitable alternative accommodation.

Note: for *family member* see subsection 23(1).

1130(7) Subsections (6) and (6A) do not limit the matters to which the Secretary may have regard in exercising the powers under paragraph (5)(b).

1130(8) Subsection (2) applies:

- (a) subject to subsection (10); and
- (b) despite sections 1064 and 1066.

1130(9) If:

- (a) a person has disposed of assets and section 1125, 1126, 1126AA, 1126AB, 1126AC or 1126AD applies to the disposition; and
  - (b) the Secretary has made a determination under subparagraph 1129(1)(b)(ii) in relation to the disposition;
- this section applies to the person as if the person had not disposed of the assets.

1130(10) If the sum of the rate of pension that would, apart from this subsection, be payable to a person and the annual rate of ordinary income of the person exceeds the maximum payment rate, the rate so payable is to be reduced by the amount per annum of the excess.

**1130A Division does not apply for purposes of care receiver assets test**

This Division does not apply for the purposes of the assets test set out in Subdivision A of Division 1 of Part 2.5 (care receiver assets test).

**1130B Access to financial hardship rules—pension PP (single)**

1130B(1) If:

- (a) a pension PP (single) is not payable to a person because of the application of an assets test; and
- (b) the person is not receiving and is not eligible to apply for acceptable alternative Commonwealth income support; and
- (c) either:
  - (i) sections 1108 and 1109 (disposal of income) and 1124A, 1125, 1125A, 1126, 1126AA, 1126AB, 1126AC and 1126AD (disposal of assets) do not apply to the person; or
  - (ii) the Secretary decides that the application of those sections to the person should, for the purposes of this section, be disregarded; and
- (d) the person has an unrealisable asset; and
- (e) the person lodges with the Department, in a form approved by the Secretary, a request that this section apply to the person; and
- (f) the Secretary is satisfied that the person would suffer severe financial hardship if this section did not apply to the person;

the Secretary must determine that this section applies to the person.

Note: For *unrealisable asset* see subsections 11(12) and (13).

1130B(2) A reference in subsection (1) to *acceptable alternative Commonwealth income support* in relation to a person is a reference to payments (other than payments under the *Farm Household Support Act 1992*):

- (a) that are made available by the Commonwealth by way of income support; and

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- (b) the rate of which is not less than the rate of pension PP (single) that would be applicable to the person if pension PP (single) were payable to the person.

1130B(3) A decision under subsection (1) takes effect:

- (a) on the day on which the request under paragraph (1)(e) was lodged with the Department; or
- (b) if the Secretary so decides in the special circumstances of the case—on a day not more than 6 months before the day on which the request under paragraph (1)(e) was lodged with the Department.

**1130C Application of financial hardship rules—pension PP (single)**

*Value of unrealisable asset to be disregarded*

1130C(1) If section 1130B applies to a person, the value of any unrealisable asset of the person is to be disregarded in working out whether a pension PP (single) is payable to the person.

*Deduction from pension PP (single) maximum payment rate*

1130C(2) If section 1130B applies to a person, there is to be deducted from the person's pension PP (single) maximum payment rate an amount equal to the person's adjusted annual rate of ordinary income.

Note: For *maximum payment rate* see Step 4 of the method statement in point 1068A-A1.

*Adjusted annual rate of ordinary income*

1130C(3) The *adjusted annual rate of ordinary income* of a person who is not a financial hardship farmer is an amount per year equal to the sum of:

- (a) the person's annual rate of ordinary income (other than income from assets); and
- (b) the person's annual rate of ordinary income from assets that are not assets tested; and
- (c) either:
  - (i) the person's annual rate of ordinary income from unrealisable assets; or



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- (ii) the person's notional annual rate of ordinary income from unrealisable assets;
- whichever is the greater; and
- (d) an amount per year equal to \$26.00 for each \$250 of the value of the person's assets (other than disregarded assets).

Note: For *financial hardship farmer* see subsection 23(1).

1130C(4) The ***adjusted annual rate of ordinary income*** of a person who is a financial hardship farmer is an amount per year equal to the sum of:

- (a) the person's annual rate of ordinary income (other than income from assets); and
- (b) the person's annual rate of ordinary income from assets that are not assets tested; and
- (c) either:
  - (i) the person's annual rate of ordinary income from unrealisable assets that are not subsection 11(14) assets; or
  - (ii) the person's notional annual rate of ordinary income from those assets;whichever is the greater; and
- (d) either:
  - (i) the person's annual rate of ordinary income from subsection 11(14) assets; or
  - (ii) the amount per year that the person could reasonably be expected to obtain from a commercial lease or hiring of those assets;whichever is the lesser; and
- (e) an amount per year equal to \$26.00 for each \$250 of the value of the person's assets (other than disregarded assets).

Note: For *financial hardship farmer* see subsection 23(1).

*Assets tested asset*

1130C(5) For the purposes of subsections (3) and (4), an asset is ***not assets tested*** if the value of the asset is to be disregarded under subsection 1118(1).

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*Notional annual rate of ordinary income from unrealisable assets*

- 1130C(6) A person's *notional annual rate of ordinary income* from unrealisable assets is:
- (a) the amount per year equal to 2.5 per cent of the value of the person's unrealisable assets; or
  - (b) the amount per year that could reasonably be expected to be obtained from a purely commercial application of the person's unrealisable assets;
- whichever is the lesser.
- 1130C(7) Subsection (2) applies:
- (a) subject to subsection (9); and
  - (b) despite section 500Q.
- 1130C(8) If:
- (a) a person has disposed of assets and section 1125, 1126, 1126AA, 1126AB, 1126AC or 1126AD applies to the disposition; and
  - (b) the Secretary has made a determination under paragraph 1130B(1)(c) in relation to the disposition;
- this section applies to the person as if the person had not disposed of the assets.
- 1130C(9) If the sum of the rate of pension PP (single) that would, apart from this subsection, be payable to a person and the annual rate of ordinary income of the person exceeds the maximum payment rate, the rate so payable is to be reduced by the amount per year of the excess.

**1131 Access to financial hardship rules—benefits**

- 1131(1) If:
- (a) a social security benefit is not payable to a person because of the application of an assets test; and
  - (b) the person is not receiving and is not eligible to apply for acceptable alternative Commonwealth income support; and
  - (c) the person's partner is not receiving and is not eligible to apply for acceptable alternative Commonwealth income support; and

- (d) either:
- (i) sections 1108 and 1109 (disposal of income) and 1124A, 1125, 1125A, 1126, 1126AA, 1126AB, 1126AC and 1126AD (disposal of assets) do not apply to the person; or
  - (ii) the Secretary decides that the application of those sections to the person should, for the purposes of this section, be disregarded; and
- (e) the person, or the person's partner, has an unrealisable asset; and
- (f) the person lodges with the Department, in a form approved by the Secretary, a request that this section apply to the person; and
- (g) the Secretary is satisfied that the person would suffer severe financial hardship if this section did not apply to the person; the Secretary must determine that this section applies to the person.

Note: for *unrealisable asset* see subsections 11(12) and (13).

1131(1A) In subsection (1):

*assets test* does not include the parental means test in section 1067G (Youth Allowance Rate Calculator).

1131(2) A reference in subsection (1) to *acceptable alternative Commonwealth income support* in relation to a person is a reference to payments (other than payments under the *Farm Household Support Act 1992*):

- (a) that are made available by the Commonwealth by way of income support; and
- (b) the rate of which is not less than the rate of newstart allowance, youth allowance or austudy payment that would be applicable to the person if that allowance were payable to the person.

1131(3) A decision under subsection (1) takes effect:

- (a) on the day on which the request under paragraph (1)(f) was lodged with the Department; or
- (b) if the Secretary so decides in the special circumstances of the case—on a day not more than 6 months before the day on

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which the request under paragraph (1)(f) was lodged with the Department.

**1132 Application of financial hardship rules—benefits**

*Value of unrealisable asset to be disregarded*

1132(1) If section 1131 applies to a person, the value of:

- (a) any unrealisable asset of the person; and
- (b) any unrealisable asset of the person's partner;

is to be disregarded in working out whether a social security benefit is payable to the person.

*Deduction from social security benefit maximum payment rate*

1132(2) If section 1131 applies to a person, there is to be deducted from the person's social security benefit maximum payment rate an amount equal to the person's adjusted fortnightly rate of ordinary income.

Note: for *maximum payment rate*, see, for example, Step 4 of the Method statement in point 1068-A1.

*Adjusted fortnightly rate of ordinary income*

1132(3) The *adjusted fortnightly rate of ordinary income* of a person who is not a financial hardship farmer is an amount per fortnight equal to the sum of:

- (a) the person's fortnightly rate of ordinary income (other than income from assets); and
- (b) the person's fortnightly rate of ordinary income from assets that are not assets tested; and
- (c) either:
  - (i) the person's fortnightly rate of ordinary income from unrealisable assets; or
  - (ii) the person's notional fortnightly rate of ordinary income from unrealisable assets;

whichever is the greater; and

- (d) an amount per fortnight equal to \$1 for each \$250 of the value of the person's assets (other than disregarded assets).

1132(3A) The *adjusted fortnightly rate of ordinary income* of a person who is a financial hardship farmer is an amount per fortnight equal to the sum of:

- (a) the person's fortnightly rate of ordinary income (other than income from assets); and
- (b) the person's fortnightly rate of ordinary income from assets that are not assets tested; and
- (c) either:
  - (i) the person's fortnightly rate of ordinary income from unrealisable assets that are not subsection 11(14) assets; or
  - (ii) the person's notional fortnightly rate of ordinary income from those assets;whichever is the greater; and
- (d) either:
  - (i) the person's fortnightly rate of ordinary income from subsection 11(14) assets; or
  - (ii) the amount per fortnight that the person could reasonably be expected to obtain from a commercial lease or hiring of those assets;whichever is the lesser; and
- (e) an amount per fortnight equal to \$1 for each \$250 of the value of the person's assets (other than disregarded assets).

Note: for *financial hardship farmer* see subsection 23(1).

*Assets tested asset*

1132(4) For the purposes of subsections (3) and (3A), an asset is not assets tested if the value of the asset is to be disregarded under subsection 1118(1).

*Notional fortnightly rate of ordinary income from unrealisable assets*

1132(5) A person's notional fortnightly rate of ordinary income from unrealisable assets is:

- (a) the amount per fortnight equal to one twenty-sixth of 2.5% of the value of the person's and the person's partner's unrealisable assets; or

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(b) the amount per fortnight that could reasonably be expected to be obtained from a purely commercial application of the person's and the person's partner's unrealisable assets; whichever is the less.

1132(6) Subsection (2) applies:

- (a) subject to subsection (8); and
- (b) despite sections 601, 733, 1067G, 1067L and 1068.

1132(7) If:

- (a) a person has disposed of assets and section 1125, 1126, 1126AA, 1126AB, 1126AC or 1126AD applies to the disposition; and
  - (b) the Secretary has made a determination under paragraph 1131(1)(d) in relation to the disposition;
- this section applies to the person as if the person had not disposed of the assets.

1132(8) If the sum of the rate of benefit that would, apart from this subsection, be payable to a person and the fortnightly rate of ordinary income of the person exceeds the maximum payment rate, the rate so payable is to be reduced by the amount per fortnight of the excess.

## **Division 4—Pension loans scheme**

### **1133AA Pension loans scheme definitions**

1133AA(1) In this Division, unless the contrary intention appears:

*assets reduced rate* means the rate worked out at Step 10 of the Method statement in Module A of the relevant Pension Rate Calculator.

*disposes of real assets* has its ordinary meaning.

*guaranteed amount* means the amount (if any) specified under paragraph 1136(1A)(b) or subsection 1137(1) (as the case may be).

*income reduced rate* means the rate worked out at Step 8 of the Method statement in Module A of the relevant Pension Rate Calculator.

*maximum payment rate* means the rate worked out at Step 4 of the Method statement in Module A of the relevant Pension Rate Calculator.

*real assets*, in relation to a person or couple, means the real property (including the principal home) of the person or couple in Australia, but does not include any real property specified under paragraph 1136(1A)(a).

1133AA(2) For the purposes of this Division, a reference to a charge under section 1138 includes a reference to a charge continued in force by subsection 1138(3) or paragraph 1139(2A)(b).

### **1133 Qualification for participation in pension loans scheme**

#### *Person not member of a couple*

1133(1) A person who is not a member of a couple is qualified to participate in the pension loans scheme if:

- (a) the person is receiving or is qualified for:
  - (i) age pension; or

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- (ii) disability support pension; or
  - (iii) carer payment; or
  - (v) widow B pension; or
  - (vi) bereavement allowance; or
  - (viii) rehabilitation allowance; and
- (b) the rate of that pension or allowance is, or is to be:
- (i) an income reduced rate; or
  - (ii) an assets reduced rate;
- and at least one of those reduced rates is not a nil rate; and
- (c) the person has reached pension age; and
- (d) either:
- (i) the value of the person's real assets (after deduction of any guaranteed amount) is sufficient to secure the payment of any debt that may become payable to the Commonwealth under this Division; or
  - (ii) subsection (3) applies to the person.

Note 1: For *income reduced rate* and *assets reduced rate* see subsection 1133AA(1).

Note 2: For *real assets* see subsection 1133AA(1).

Note 3: For *guaranteed amount* see subsection 1133AA(1).

Note 4: For *pension age* see subsections 23(5A), (5B), (5C) and (5D).

*Person member of a couple*

1133(2) A person who is a member of a couple is qualified to participate in the pension loans scheme if:

- (a) the person is receiving or is qualified for:
  - (i) an age pension; or
  - (ii) a disability support pension; or
  - (iii) a wife pension; or
  - (iv) a carer payment; or
  - (vii) a rehabilitation allowance; and
- (b) the rate of that pension or allowance is, or is to be:
  - (i) an income reduced rate; or
  - (ii) an assets reduced rate;and at least one of those reduced rates is not a nil rate; and
- (c) the person:



- (i) has reached pension age; or
  - (ii) is the partner of a person who has reached pension age;  
and
- (d) either:
- (i) the value of the couple's real assets (after deduction of any guaranteed amount) is sufficient to secure the payment of any debt that may become payable to the Commonwealth under this Division; or
  - (ii) subsection (3) applies to both of the members of the couple.

Note 1: For *income reduced rate* and *assets reduced rate* see subsection 1133AA(1).

Note 2: For *real assets* see subsection 1133AA(1).

Note 3: For *guaranteed amount* see subsection 1133AA(1).

Note 4: For *pension age* see subsections 23(5A), (5B), (5C) and (5D).

- (3) This subsection applies to a person if:
- (a) either:
    - (i) the person is an attributable stakeholder of a company or trust (within the meaning of Part 3.18); or
    - (ii) the person is a member of a couple and the other member of the couple is an attributable stakeholder of a company or trust (within the meaning of Part 3.18); and
  - (b) the company or trustee has given the Commonwealth a guarantee that the company or trustee will pay any debt that may become payable to the Commonwealth by the person under this Division; and
  - (c) the company's or trustee's liability under the guarantee is secured by a charge against real property of the company or trust in Australia; and
  - (d) the Secretary is satisfied that the value of that real property is sufficient to secure the payment of any amount that may become payable by the company or trustee under the guarantee; and
  - (e) the Secretary has, by writing, approved the guarantee and the charge.

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**1134 Effect of participation in pension loans scheme—pension or allowance rate**

1134(1) If:

- (a) a person is qualified to participate in the pension loans scheme; and
- (b) the person makes a request to participate under section 1136; and
- (d) the Secretary is satisfied that the amount of any debt that becomes payable by the person to the Commonwealth under this Division is readily recoverable;

then:

- (e) the rate of the pension or allowance payable to the person by operation of the scheme is to be:
  - (i) the maximum payment rate; or
  - (ii) some other rate nominated by the person;whichever is the lower.

Note: For *maximum payment rate* see subsection 1133AA(1).

1134(2) The pension or allowance is to commence to be paid at the rate payable by operation of the scheme in respect of the first instalment period for which an instalment is paid after the request is lodged.

1134(3) For the purposes of sections 92, 146R, 146T, 196, 247, 360, 408 and 477 (fringe benefits), if but for the operation of the scheme the person would not have received a pension or allowance, the person is to be taken to be a person who is not receiving a pension or allowance.

**1135 Effect of participation in pension loans scheme—creation of debt**

1135(1) If the rate of the pension or allowance payable by operation of the pension loans scheme is more than the rate that would have been received by the person but for the operation of the scheme, the person owes a debt to the Commonwealth.

1135(3) This is how to work out the amount of the debt owed by the person from time to time:

*Method statement*

*Step 1.* Work out the sum of the amount of pension or allowance received by the person from time to time under the pension loans scheme: the result is the ***primary loan amount***.

*Step 2.* Add to the primary loan amount the amount of any registration costs payable by the person under subsection 1143(4): the result is the ***registration cost adjusted amount***.

*Step 3.* Take away from the registration cost adjusted amount the sum of the amount of pension or allowance (if any) that would have been received by the person but for the operation of the scheme: the result is the ***basic amount of debt***.

*Step 4.* Add to the basic amount of debt the amount of interest payable. The interest payable is compound interest at the rate fixed under subsection (4) and compounding fortnightly: the result is the ***total amount of debt***.

*Step 5.* From the total amount of debt take away any amount of the debt already paid to the Commonwealth: the result is the current amount of debt owed by the person.

1135(4) The rate at which compound interest is payable under subsection (3) is the rate fixed from time to time by the Minister by determination in writing.

1135(5) A determination made under subsection (4) is a disallowable instrument.

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**1135A Effect of participation in pension loans scheme—maximum loan available**

1135A(1) The maximum loan available to a person under the pension loans scheme is the amount worked out using the formula:

$$\text{Age component amount} \times \frac{\text{Value of real assets}}{10,000}$$

where:

*age component amount* means the amount specified in column 2 of the Table in subsection (3), in relation to:

- (a) if the person is not a member of a couple—the age the person turned on his or her last birthday; or
- (b) if the person is a member of a couple—the age the younger member of the couple turned on his or her last birthday.

*value of real assets* means:

- (a) if neither subparagraph 1133(1)(d)(ii) nor subparagraph 1133(2)(d)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme—the value of the real assets (after deduction of any guaranteed amount); or
- (b) if subparagraph 1133(1)(d)(ii) or (2)(d)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme—the value of the charge referred to in paragraph 1133(3)(c).

Note 1: For *real assets* see subsection 1133AA(1).

Note 2: For *guaranteed amount* see subsection 1133AA(1).

1135A(2) For the purposes of subsection (1), the following provisions have effect:

- (a) if, but for this paragraph, the value of real assets would be an amount that exceeds \$10,000 but is not a multiple of \$10,000, the value is to be taken to be the next lower amount that is a multiple of \$10,000;
- (b) if, but for this paragraph, the value of real assets would be less than \$10,000, the value is to be taken to be nil.

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1135A(3) The following is the Table referred to in subsection (1):

<b>Age component amount table</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 1</b>	<b>Column 2</b>
<b>Age</b>	<b>Age component amount</b>	<b>Age</b>	<b>Age component amount</b>
55, and each earlier year	\$1,710.00	75	\$3,750.00
56	\$1,780.00	76	\$3,900.00
57	\$1,850.00	77	\$4,050.00
58	\$1,920.00	78	\$4,210.00
59	\$2,000.00	79	\$4,380.00
60	\$2,080.00	80	\$4,560.00
61	\$2,160.00	81	\$4,740.00
62	\$2,250.00	82	\$4,930.00
63	\$2,340.00	83	\$5,130.00
64	\$2,430.00	84	\$5,330.00
65	\$2,530.00	85	\$5,550.00
66	\$2,630.00	86	\$5,770.00
67	\$2,740.00	87	\$6,000.00
68	\$2,850.00	88	\$6,240.00
69	\$2,960.00	89	\$6,490.00
70	\$3,080.00	90, and each later year	\$6,750.00
71	\$3,200.00		
72	\$3,330.00		
73	\$3,460.00		
74	\$3,600.00		

**1136 Need for a request to participate**

1136(1) A person who wants to participate in the pension loans scheme must make a request to participate in accordance with this section.

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1136(1A) A request under subsection (1) must:

- (a) specify any real property that is not to be included in working out the value of real assets for the purposes of sections 1133 and 1135A, or that is not to be subject to a charge under section 1138; and
- (b) specify the minimum amount (if any) that the person is to be entitled to retain out of the proceeds of the enforcement of a charge under section 1138; and
- (c) specify the rate of the pension or allowance (if any) nominated by the person for the purposes of subparagraph 1134(1)(e)(ii).

1136(1B) Paragraphs (1A)(a) and (b) do not apply if subparagraph 1133(1)(d)(ii) or (2)(d)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme.

1136(2) The request must be signed:

- (a) if the person is not a member of a couple—by the person; or
- (b) if the person is a member of a couple—by both members of the couple.

1136(3) The request must be:

- (a) in writing; and
- (b) in a form approved by the Secretary; and
- (c) lodged at an office of the Department.

**1137 Need for a request to later nominate or change guaranteed amount or rate of pension or allowance**

1137(1) A person who is participating in the pension loans scheme and who wants to:

- (a) nominate a minimum amount that the person is to be entitled to retain out of the proceeds of the enforcement of the charge under section 1138; or
- (b) nominate a rate of pension or allowance for the purposes of subparagraph 1134(1)(e)(ii); or
- (c) change the guaranteed amount earlier specified; or

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(d) change the rate of the pension or allowance earlier specified; must make a request that specifies the nomination or change (as the case may be).

1137(1A) Paragraphs (1)(a) and (c) do not apply if subparagraph 1133(1)(d)(ii) or (2)(d)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme.

1137(2) A request under subsection (1) must be signed:

- (a) if the person is not a member of a couple—by the person; or
- (b) if the person is a member of a couple—by both members of the couple.

1137(3) The request must:

- (a) be in writing; and
- (b) be lodged at an office of the Department.

### **1138 Existence of debt results in charge over real assets**

#### *Person not member of a couple*

1138(1) If a person who is not a member of a couple is participating in the pension loans scheme, the person's real assets are subject to a charge in favour of the Commonwealth to secure the payment of the debt to the Commonwealth.

Note: If there is a guaranteed amount, the charge is enforceable only to the extent that the value of the real assets exceeds the guaranteed amount (see subsection 1144(2)).

#### *Person member of a couple*

1138(2) If:

- (a) a person who is a member of a couple is participating in the pension loans scheme; and
- (b) the person's partner has signed the person's request under subsection 1136(2);

the couple's real assets are subject to a charge in favour of the Commonwealth to secure the payment of a debt to the Commonwealth.

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Note: If there is a guaranteed amount, the charge is enforceable only to the extent that the value of the real assets exceeds the guaranteed amount (see subsection 1144(2)).

1138(3) If:

- (a) the pension loans scheme ceases to operate in relation to a person because of the effect of section 1141 or 1142; and
- (b) at the time the scheme ceases to operate, the person owes a debt to the Commonwealth because of the person's participation in the scheme;

the charge in favour of the Commonwealth under subsection (1) or (2) of this section continues in relation to the real assets until the debt is repaid or recovered.

Note 1: Section 1141 provides that a person ceases to participate in the scheme if the debt owed by the person exceeds the maximum loan available.

Note 2: Section 1142 provides for a person to withdraw from the scheme.

Note 3: If there is a guaranteed amount, the charge is enforceable only to the extent that the value of the real assets exceeds the guaranteed amount (see subsection 1144(2)).

1138(4) This section does not apply if subparagraph 1133(1)(d)(ii) or (2)(d)(ii) applied to the person when the person made his or her request to participate in the pension loans scheme.

**1139 Debt not to be recovered until after death**

1139(1) The Commonwealth is not entitled to recover a debt under section 1135 from a person until after the person's death.

1139(2) In the following circumstances, the Commonwealth is not entitled to recover the debt until after the person's death and after:

(a) if:

- (i) the person was a member of a couple at the time of death; and
- (ii) the person's partner survives the person; and
- (iii) an amount of bereavement payment is payable to the partner because of the person's death;

the last instalment of bereavement payment has been paid; or

(b) if:

- (i) the person was a member of a couple at the time of death; and



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- (ii) the person's partner survives the person; and
  - (iii) the person's partner has the use of the assets or part of the assets that are subject to a charge; and
  - (iv) the partner has reached pension age;
    - (A) if a woman—60; or
    - (B) if a man—65;
- the death of the partner.

Note: For *pension age* see subsections 23(5A), (5B), (5C) and (5D).

1139(2A) In relation to the period between the person's death and the time of recovery of the debt by the Commonwealth:

- (a) compound interest continues to accrue, and forms part of the debt, in accordance with Step 4 of the Method statement in subsection 1135(3); and
- (b) the charge in favour of the Commonwealth under section 1138 continues in relation to the real assets until the debt is recovered.

Note: If there is a guaranteed amount, the charge is enforceable only to the extent that the value of the real assets exceeds the guaranteed amount (see subsection 1144(2)).

1139(3) This section is subject to section 1140 (enforcement of charge if assets change hands).

1139(4) If the Secretary decides that the debt is to be recovered before the events referred to in subsection (1) or (2), the debt may be so recovered in spite of those subsections.

### **1140 Enforcement of charge**

1140(1) If:

- (a) real assets of a person are subject to a charge under section 1138; and
- (b) any of those real assets cease to be real assets of the person; and
- (c) the person receives proceeds from the sale or other disposal of the real assets;

the Secretary may recover from the person, out of those proceeds but after deduction of any guaranteed amount, the whole or part of the debt secured by the charge.

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1140(2) If:

- (a) real assets of a person are subject to a charge under section 1138; and
- (b) any of those real assets are disposed of to another person (in this section called the *new owner*);

the Secretary may, subject to subsection (3), enforce the charge against those real assets.

1140(3) The Secretary may not enforce the charge against the assets if the new owner is a *bona fide* purchaser for value without notice.

**1141 Person ceases to participate in pension loans scheme if debt exceeds maximum loan available**

If:

- (a) a person is participating in the pension loans scheme; and
- (b) the debt owed by the person under section 1135 exceeds the maximum loan available to the person under the scheme;

the scheme ceases to operate in relation to the person at the beginning of the first instalment period for the pension or allowance being paid to the person that begins after the debt exceeds the maximum loan available.

Note 1: The maximum loan available is worked out by using the formula set out in subsection 1135A(1).

Note 2: For repayment or recovery of the debt owed by the person see sections 1142A and section 1139.

**1142 Person withdraws from pension loans scheme**

1142(1) If a person who is participating in the pension loans scheme makes a request to withdraw from the scheme, the scheme ceases to operate in relation to the person at the beginning of the first instalment period for the pension or allowance being paid to the person that begins after the request is lodged.

1142(2) A request under subsection (1) must be signed:

- (a) if the person is not a member of a couple—by the person; or
- (b) if the person is a member of a couple—by both members of the couple.

1142(3) The request must:

- (a) be in writing; and
- (b) be lodged at an office of the Department.

**1142A Repayment or recovery of debt after pension loans scheme ceases to operate because debt exceeds maximum loan available or person withdraws**

1142A(1) The debt owed by a person under section 1135, at the time the pension loans scheme ceases to operate in relation to the person by operation of section 1141 or 1142, may be repaid by the person at any time.

Note 1: Section 1141 provides that a person ceases to participate in the scheme if the debt owed by the person exceeds the maximum loan available.

Note 2: Section 1142 provides for a person to withdraw from the scheme.

1142A(2) If the debt owed by the person is not repaid by the person at the time the scheme ceases to operate in relation to the person, compound interest continues to accrue, and forms part of the debt, in accordance with Step 4 of the Method statement in subsection 1135(3), until the debt is repaid or recovered.

1142A(3) If the debt is not repaid under subsection (1) of this section, subject to section 1139 the Commonwealth is entitled to recover the debt.

Note: Section 1139 provides that a debt cannot be recovered from a person until after the person's death.

**1143 Registration of charge**

1143(1) If real assets are subject to a charge under section 1138, the Secretary may lodge a notice in writing of the charge with the appropriate officer of the State or Territory in which the real assets are situated.

1143(2) The appropriate officer may register the charge as if the Secretary's notice were an instrument of charge or encumbrance duly executed under the laws in force in the State or Territory.

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1143(3) The Secretary may require the person whose real assets are subject to the charge to execute an instrument relating to the registration of the charge.

1143(4) If the Commonwealth incurs costs associated with:

(a) the registration of the charge; or

(b) the registration of the discharge of the charge;

those costs are payable by the person whose real assets are subject to the charge.

**1144 Manner of enforcement of charge**

1144(1) If a charge against real assets is enforceable under this Division, the Secretary may, subject to subsection (2), enforce the charge against those real assets or against part of those real assets in any manner that the Secretary decides.

1144(2) If there is a guaranteed amount, the charge is enforceable only to the extent that the value of the real assets exceeds the guaranteed amount.

**1144A Division does not apply for purposes of care receiver assets test**

1144A(1) This Division does not apply for the purposes of the assets test set out in Subdivision A of Division 1 of Part 2.5 (care receiver assets test).

1144A(2) This section is for the avoidance of doubt.

## **Division 5—Provisions relating to special residences and special residents**

### **Subdivision A—General**

#### **1145A Application of Division to granny flat residents**

This Division applies to a granny flat resident only if the resident acquired or retained the person's granny flat interest in the person's principal home on or after 22 August 1990.

#### **1146 Basis for different treatment**

This Division's operation on a special resident depends on:

- (a) whether the resident is:
  - (i) not a member of a couple; or
  - (ii) a member of a couple; or
  - (iii) a member of an illness separated couple; or
  - (iv) a member of an ordinary couple with different principal homes; and
- (b) the resident's entry contribution; and
- (c) the resident's extra allowable amount.

Note 1: for *member of an ordinary couple with different principal homes* see subsection 12(2).

Note 2: for *entry contribution* see section 1147.

Note 3: for *extra allowable amount* see section 1148.

#### **1147 Entry contribution**

1147(1) A special resident's entry contribution is:

- (a) if the resident is not a member of a couple—the resident's individual residence contribution; or
- (b) if the resident is a member of a couple, shares the resident's principal home with the resident's partner and is not a member of an illness separated couple—an amount equal to 50% of the resident's individual residence contribution and of the partner's individual residence contribution; or

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(c) if the resident is a member of an illness separated couple—the resident’s individual residence contribution; or

(d) if:

- (i) the resident is a member of an ordinary couple with different principal homes; and
- (ii) the principal home of the resident’s partner is not a special residence;

the resident’s individual residence contribution; or

(e) if:

- (i) the resident is a member of an ordinary couple with different principal homes; and
- (ii) the principal home of the resident’s partner is also a special residence;

an amount equal to 50% of the resident’s individual residence contribution and of the partner’s individual residence contribution.

1147(1A) A special resident’s entry contribution is the resident’s individual residence contribution plus the amount paid, or agreed to be paid, for the resident’s current right (if any) to share the resident’s principal home with a partner if:

- (a) the resident was a member of a couple at the time when the resident took up residence in the retirement village or granny flat; and
- (b) the resident has ceased to be a member of a couple.

1147(1B) A special resident’s entry contribution is the resident’s individual residence contribution if:

- (a) the resident was a member of a couple at the time when the sale leaseback agreement was entered into; and
- (b) the resident has ceased to be a member of a couple.

1147(1C) For the purposes of this Division, the individual residence contribution is:

- (a) for a retirement village resident—the total amount paid, or agreed to be paid, for the resident’s current right to live in the retirement village; and

- (b) for a granny flat resident—the total amount paid, or agreed to be paid, for the resident’s current right to live in the granny flat; and
- (c) for a sale leaseback resident—the deferred payment amount.

Note: for *deferred payment amount* see section 12B.

1147(1D) For the purposes of paragraph (1C)(b):

- (a) the total amount paid to obtain for a person his or her current right to live in a granny flat is the amount equal to the value of the person’s granny flat interest; and
- (b) the value of a person’s granny flat interest is:
  - (i) unless subparagraph (ii) applies—the amount paid, or agreed to be paid, for the interest; or
  - (ii) if the Secretary considers that, for any special reason in any particular case, that value should be another amount—that other amount.

1147(2) An amount that is rent for the purposes of this Act is to be disregarded in applying subsections (1), (1A) and (1B).

### **1148 Extra allowable amount**

#### *Residence taken up before 13 June 1989*

1148(1) If a retirement village resident became entitled to take up residence in the retirement village before 13 June 1989, the resident’s ***extra allowable amount*** is:

- (a) if the resident is not a member of a couple—\$64,000; or
- (b) if the resident is a member of an illness separated couple—\$64,000; or
- (c) in any other case—\$32,000.

#### *Residence taken up on or after 13 June 1989*

1148(2) If a retirement village resident became entitled to take up residence in the retirement village on or after 13 June 1989, the resident’s ***extra allowable amount*** is:

- (a) if the resident is not a member of a couple—the amount that, as at the time when the resident becomes entitled to take up that residence, is the difference between the pension “single”

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homeowner AVL and the pension “single” non-homeowner AVL; or

- (b) if the resident is a member of an illness separated couple—the amount that, as at the time when the resident becomes entitled to take up that residence, is the difference between the pension “single” homeowner AVL and the pension “single” non-homeowner AVL; or
- (c) in any other case—the amount that, as at the time when the resident becomes entitled to take up that residence, is the difference between the pension “partnered” homeowner AVL and the pension “partnered” non-homeowner AVL.

1148(2A) A granny flat resident’s *extra allowable amount* is:

- (a) if the resident is not a member of a couple—the amount that, as at the time when the resident becomes entitled to the granny flat interest, is the difference between the pension “single” homeowner AVL and the pension “single” non-homeowner AVL; or
- (b) if the resident is a member of an illness separated couple—the amount that, as at the time when the resident becomes entitled to the granny flat interest, is the difference between the pension “single” homeowner AVL and the pension “single” non-homeowner AVL; or
- (c) in any other case—the amount that, as at the time when the resident becomes entitled to the granny flat interest, is the difference between the pension “partnered” homeowner AVL and the pension “partnered” non-homeowner AVL.

1148(2B) A sale leaseback resident’s *extra allowable amount* is:

- (a) if the resident is not a member of a couple—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension “single” homeowner AVL and the pension “single” non-homeowner AVL; or
- (b) if the resident is a member of an illness separated couple—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension “single” homeowner AVL and the pension “single” non-homeowner AVL; or



(c) in any other case—the amount that, as at the time when the sale leaseback agreement is entered into, is the difference between the pension “partnered” homeowner AVL and the pension “partnered” non-homeowner AVL.

1148(3) For the purposes of this section, a person *becomes entitled to take up residence* in a retirement village when the person becomes entitled to take up residence in a retirement village pursuant to the agreement under which the person’s current right to live in the retirement village arises.

1148(4) In this section, “pension ‘single’ homeowner AVL”, “pension ‘single’ non-homeowner AVL”, “pension ‘partnered’ homeowner AVL” and “pension ‘partnered’ non-homeowner AVL” have the same meaning as in Part 3.16 (Indexation).

### **1149 Renegotiation of retirement village agreement**

If a person who has a right to live in a retirement village under an agreement enters into a new agreement under which the person obtains a right to live in the retirement village, then, for the purposes of this Division, the total amount paid, or agreed to be paid, for the person’s current right to live in the retirement village is the sum of the following amounts:

- (a) the total amount paid under the new agreement for that right; and
- (b) so much (if any) of:
  - (i) any amount paid under an earlier agreement to obtain a right for the person to live in the retirement village; and
  - (ii) any amount that was, or would have been, payable to the person upon the termination of an earlier agreement;

as ought, in the Secretary’s opinion, to be attributed to the cost of the person’s current right to live in the retirement village.

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**Subdivision B—Residents who are not members of a couple**

**1150 Residents who are not members of a couple**

1150(1) This section applies to a special resident who is not a member of a couple.

*Entry contribution above extra allowable amount*

1150(2) If:

- (a) this section applies to a special resident; and
- (b) the resident's entry contribution was more than the extra allowable amount;

the resident is to be taken, for the purposes of this Act, to be a homeowner.

*Entry contribution equal to or below extra allowable amount*

1150(3) If:

- (a) this section applies to a special resident; and
- (b) the resident's entry contribution was equal to or less than the extra allowable amount;

then, for the purposes of this Act:

- (c) the resident is to be taken not to have a right or interest in relation to the resident's principal home; and
- (d) the resident's assets are to be taken to include an asset the value of which is equal to the amount of the resident's entry contributions; and
- (e) sections 198H, 198HA, 198HB, 198J, 198JA and 198JB, subsection 1118(1) and section 1125 do not apply to the asset that the resident is, because of paragraph (d) of this subsection, to be taken to have.

1150(4) Subsection (3) applies:

- (a) whether or not the resident actually has any right or interest in the resident's principal home; and
- (b) whatever the value of any right or interest that the resident does have in the resident's principal home.

## **Subdivision C—Residents who are members of couple and share principal home**

### **1151 Members of couples**

1151(1) This section applies to a special resident if:

- (a) the resident is a member of a couple; and
- (b) the resident shares the resident's principal home with the resident's partner.

#### *Entry contribution above extra allowable amount*

1151(2) If:

- (a) this section applies to a special resident; and
- (b) the resident's entry contribution was more than the extra allowable amount;

the resident is to be taken, for the purposes of this Act, to be a homeowner.

#### *Entry contribution equal to or below extra allowable amount*

1151(3) If:

- (a) this section applies to a special resident; and
- (b) the resident's entry contribution was equal to or less than the extra allowable amount;

then, for the purposes of this Act:

- (c) the resident is to be taken not to have a right or interest in relation to the resident's principal home; and
- (d) the resident's assets are to be taken to include an asset the value of which is equal to the amount of the resident's entry contribution; and
- (e) sections 198K and 198L, subsection 1118(1) and section 1126 do not apply to the asset that the resident is, because of paragraph (d) of this subsection, to be taken to have.

1151(4) Subsection (3) applies:

- (a) whether or not the resident actually has any right or interest in the resident's principal home; and

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- (b) whatever the value of any right or interest that the resident does have in the resident's principal home.

**Subdivision D—Residents who are members of illness separated couple**

**1152 Members of illness separated couples (both in special residences)**

[see Appendix for CPI adjusted figures]

1152(1) This section applies to a special resident if:

- (a) the resident is a member of an illness separated couple; and
- (b) the principal home of the resident's partner is also a special residence.

*Both entry contributions above extra allowable amount*

1152(2) If:

- (a) this section applies to a special resident; and
- (b) the resident's entry contribution, and the entry contribution of the resident's partner, were each more than the extra allowable amount concerned;

then, for the purposes of this Act:

- (c) the resident is to be taken to be a homeowner; and
- (d) any right or interest of the resident in the partner's principal home is to be disregarded in calculating the actual value of the resident's assets for the purposes of this Act; and
- (e) any right or interest of the partner in his or her principal home, or in the resident's principal home, is to be disregarded in calculating the actual value of the partner's assets for the purposes of this Act.

*Both entry contributions equal to or below extra allowable amount*

1152(3) If:

- (a) this section applies to a special resident; and

- (b) the resident's entry contribution, and the entry contribution of the resident's partner, were each equal to or less than the extra allowable amount concerned;

then, for the purposes of this Act:

- (c) the resident is to be taken not to have a right or interest in relation to the resident's principal home; and
- (d) the resident's assets are to be taken to include an asset the value of which is equal to the amount of the resident's entry contribution; and
- (e) sections 198K and 198L, subsection 1118(1) and section 1126 do not apply to the asset that the resident is, because of paragraph (d) of this subsection, taken to have.

1152(4) Subsection (3) applies:

- (a) whether or not the resident actually has any right or interest in the resident's principal home; and
- (b) whatever the value of any right or interest that the resident does have in the resident's principal home.

*Person's entry contribution above extra allowable amount and partner's entry contribution equal to or below extra allowable amount*

1152(5) If:

- (a) this section applies to a special resident; and
- (b) the resident's entry contribution was more than the extra allowable amount; and
- (c) the resident's partner's entry contribution was equal to or less than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the resident and to the partner:

- (d) the resident is to be taken to be a homeowner;
- (e) for the purposes of this Act:
  - (i) both the resident, and the partner, are to be taken not to have a right or interest in relation to the partner's principal home; and
  - (ii) the partner's assets are to be taken to include an asset whose value is equal to the amount of the partner's entry contribution; and

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- (iii) sections 198K and 198L, subsection 1118(1) and section 1126 do not apply to the asset that the partner is, because of subparagraph (ii) of this paragraph, to be taken to have;
- (f) any right or interest of the partner in the resident's principal home is to be disregarded in calculating the actual value of the partner's assets for the purposes of this Act;
- (g) the resident's assets value limit and the partner's assets value limit are both to be taken to be \$98,625.

Note: the amount in paragraph (g) is adjusted annually: see section 1205.

1152(6) Subsection (5) applies:

- (a) whether or not the resident's partner actually has any right or interest in the partner's principal home; and
- (b) whatever the value of any right or interest that the partner does have in the partner's principal home.

**1153 Members of illness separated couples (partner not in special residence and partner homeowner)**

1153(1) This section applies to a special resident if:

- (a) the resident is a member of an illness separated couple; and
- (b) the principal home of the resident's partner is not a special residence; and
- (c) the right or interest of the partner in the partner's principal home is to be disregarded because of paragraph 1118(1)(b).

*Entry contribution above extra allowable amount*

1153(2) If:

- (a) this section applies to a special resident; and
- (b) the resident's entry contribution was more than the extra allowable amount;

then:

- (c) for the purposes of this Act, the resident is to be taken to be a homeowner; and
- (d) any right or interest of the resident in the partner's principal home referred to in paragraph (1)(c) is to be disregarded in

calculating the actual value of the resident's assets for the purposes of this Act; and

- (e) any right or interest of the partner in the resident's principal home is also to be disregarded in calculating the actual value of the partner's assets for the purposes of this Act.

*Entry contribution equal to or below extra allowable amount*

1153(3) If:

- (a) this section applies to a special resident; and
- (b) the resident's entry contribution was equal to or less than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the resident and to the resident's partner:

- (c) for the purposes of this Act:
  - (i) the resident is to be taken not to be a homeowner; and
  - (ia) the partner is to be taken not to have a right or interest in relation to the resident's principal home; and
  - (ii) the resident's assets are to be taken to include an asset the value of which is equal to the amount of the resident's entry contribution; and
  - (iii) sections 198K and 198L, subsection 1118(1) and section 1126 do not apply to the asset that the resident is, because of subparagraph (ii) of this paragraph, to be taken to have;
- (d) any right or interest of the resident in the partner's principal home referred to in paragraph (1)(c) is to be disregarded in calculating the actual value of the resident's assets for the purposes of this Act;
- (e) the resident's assets value limit and the partner's assets value limit are both to be taken to be \$98,625.

Note: the amount in paragraph (e) is adjusted annually: see section 1205.

1153(4) Subsection (3) applies:

- (a) whether or not the resident actually has any right or interest in the resident's principal home; and
- (b) whatever the value of any right or interest that the resident does have in the resident's principal home.

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**1154 Members of illness separated couples (partner not in special residence and partner not homeowner)**

[see Appendix for CPI adjusted figures]

1154(1) This section applies to a special resident if:

- (a) the resident is a member of an illness separated couple; and
- (b) the principal home of the resident's partner is not a special residence; and
- (c) the resident's partner does not have a right or interest in the partner's principal home that is to be disregarded because of paragraph 1118(1)(b).

*Entry contribution above extra allowable amount*

1154(2) If:

- (a) this section applies to a special resident; and
- (c) the resident's entry contribution was more than the extra allowable amount;

the following provisions apply for the purposes of the application of this Act to the resident and to the partner:

- (d) for the purposes of this Act, the resident is to be taken to be a homeowner;
- (e) any right or interest of the partner in the resident's principal home is to be disregarded in calculating the actual value of the partner's assets for the purposes of this Act;
- (f) the resident's assets value limit and the partner's assets value limit are both to be taken to be \$98,625.

Note: the amount in paragraph (f) is adjusted annually: see section 1205.

*Entry contribution equal to or below extra allowable amount*

1154(4) If:

- (a) this section applies to a special resident; and
- (b) the resident's entry contribution was equal to or less than the extra allowable amount;

then, the following provisions apply for the purposes of the application of this Act to the resident and to the resident's partner:

- (c) both the resident, and the partner, are to be taken not to have a right or interest in relation to the resident's principal home;



- (d) the resident's assets are to be taken to include an asset the value of which is equal to the amount of the resident's entry contribution;
- (e) sections 198K and 198L, subsection 1118(1) and section 1126 do not apply to the asset that the resident is, because of paragraph (d) of this subsection, taken to have.

1154(5) Subsection (4) applies:

- (a) whether or not the resident actually has any right or interest in the resident's principal home; and
- (b) whatever the value of any right or interest that the resident does have in the resident's principal home.

### **Subdivision E—Residents who are members of ordinary couple with different principal homes**

#### **1155 Members of ordinary couple with different principal homes (both in special residences)**

1155(1) This section applies to a special resident if:

- (a) the resident is a member of an ordinary couple with different principal homes; and
- (b) the principal home of the resident's partner is also a special residence.

*Both entry contributions above extra allowable amount*

1155(2) If:

- (a) this section applies to a special resident; and
- (b) the resident's entry contribution and the partner's entry contribution, were each more than the extra allowable amount concerned;

then, for the purposes of this Act:

- (c) the resident and the partner are each to be taken to be home owners; and
- (d) the value of the resident's principal home is taken to be the resident's individual residence contribution; and
- (e) the value of the partner's principal home is taken to be the partner's individual residence contribution; and

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- (f) any right or interest of the resident in:
  - (i) the more valuable of the 2 principal homes; or
  - (ii) where the value of the 2 principal homes is the same—the principal home of the younger person;(in this subsection called the *more valuable principal home*) is to be disregarded in calculating the actual value of the resident's assets; and
- (g) any right or interest of the partner in the more valuable principal home is to be disregarded in calculating the actual value of the partner's assets; and
- (h) the assets of the person whose principal home is not the more valuable principal home are to be taken to include an asset the value of which is equivalent to the amount of that person's entry contribution.

*Both entry contributions equal to or below extra allowable amount*

1155(3) If:

- (a) this section applies to a special resident; and
- (b) the resident's entry contribution, and the partner's entry contribution, were each less than or equal to the extra allowable amount concerned;

then, for the purposes of this Act:

- (c) the resident and the partner are each to be taken not to have a right or interest in relation to the resident's principal home or the partner's principal home; and
- (d) the resident's assets are taken to include an amount equal to the resident's individual residence contribution; and
- (e) the partner's assets are taken to include an amount equal to the partner's individual residence contribution.

1155(4) Subsection (3) applies:

- (a) whether or not the resident actually has any right or interest in the resident's principal home; and
- (b) whatever the value of any right or interest that the resident does have in the resident's principal home; and
- (c) whether or not the partner actually has any right or interest in the partner's principal home; and

- (d) whatever the value of any right or interest that the partner does have in the partner's principal home.

**1156 Members of ordinary couple with different principal homes  
(partner not in special residence and partner homeowner)**

1156(1) This section applies to a special resident if:

- (a) the resident is a member of an ordinary couple with different principal homes; and
- (b) the principal home of the resident's partner is not a special residence; and
- (c) the right or interest of the partner in the partner's principal home would, but for this section, be disregarded because of paragraph 1118(1)(b).

1156(2) If this section applies to a special resident, then, for the purposes of this Act:

- (a) the resident and the resident's partner are each to be taken to have a right or interest in a principal home to which paragraph 1118(1)(b) applies; and
- (b) the value of the resident's principal home is to be taken to be the amount of the resident's entry contribution; and
- (c) any right or interest of the resident in:
  - (i) the more valuable of the 2 principal homes; or
  - (ii) where the value of the 2 principal homes is the same—the principal home that is not a special residence;  
(in this subsection called the *more valuable principal home*) is to be disregarded in calculating the actual value of the resident's assets; and
- (d) any right or interest of the partner in the more valuable principal home is to be disregarded in calculating the actual value of the partner's assets; and
- (e) the assets of the person whose principal home is not the more valuable principal home are to be taken to include an asset whose value is equivalent to the value of the less valuable principal home.

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**1157 Members of ordinary couple with different principal homes  
(partner not in special residence and partner not  
homeowner)**

1157(1) This section applies to a special resident if:

- (a) the resident is a member of an ordinary couple with different principal homes; and
- (b) the principal home of the resident's partner is not a special residence; and
- (c) the partner does not have a right or interest in the partner's principal home that is to be disregarded because of paragraph 1118(1)(b).

*Entry contribution above extra allowable amount*

1157(2) If:

- (a) this section applies to a special resident; and
- (b) the resident's entry contribution was more than the amount that would be the extra allowable amount if the resident were not a member of a couple;

then, for the purposes of this Act, the resident and the partner are each to be taken to have a right or interest in a principal home to which paragraph 1118(1)(b) applies.

*Entry contribution equal to or below extra allowable amount*

1157(3) If:

- (a) this section applies to a special resident; and
- (b) the resident's entry contribution was equal to or less than the amount that would be the extra allowable amount if the resident were not a member of a couple;

then, the following provisions apply for the purposes of the application of this Act to the resident and to the resident's partner:

- (c) both the resident, and the partner, are to be taken not to have a right or interest in relation to the resident's principal home; and
- (d) the resident's assets are to be taken to include an asset whose value is equal to the amount of the resident's entry contribution.

1157(4) Subsection (3) applies:

- (a) whether or not the resident actually has any right or interest in the resident's principal home; and
- (b) whatever the value of any right or interest that the resident does have in the resident's principal home; and
- (c) whether or not the partner actually has any right or interest in the resident's principal home; and
- (d) whatever the value of any right or interest that the partner does have in the resident's principal home.