



DEMYSTIFYING THE PENSION ASSETS TEST FOR FARMERS

1. Demystifying the Pension Assets Test for Farmers

A pension is not the "be all and end all". When planning for the future you should consider the advantages and disadvantages of:-

1.1 Changes to the Assets Test as from 1 January 2007

The value of the lands contained within the title upon which the principal place of residence of a pensioner is erected is excluded under the Assets Test subject to the following conditions:

- i. The pensioner(s) must have owned the Title for at least 20 years and resided in the house on the Title for 20 years. A client who owned a property and lived on the property for 15 years and then sold it to his son and acquired another property prior to the sale to the son (19 kilometres away) and has lived on that property for 13 years - Centrelink have indicated that the potential pensioners will not qualify as it is not 20 continuous years.
- ii. The pensioner(s) must establish effective use of the land by themselves or a close family member.
- iii. Commins Hendriks made submissions which have resulted in the value of any water rights that attach to the house title being excluded from the assets test.

1.2 Changes to the Assets Test as at 20 September 2007

The threshold is to increase on 20 September 2007 so that the pensions are reduced by \$1.50 per fortnight for every thousand dollars of additional assets above the limit. At present the rates and pension are reduced by \$3.00 per fortnight for every thousand dollars of additional assets above the limit.

As at today (May 2007), a married couple home owner will receive a part pension of approx. \$23.15 per fortnight if their assets are under \$500,000 and no pension if their assets are above \$515,500.

As from 20 September 2007 the same couple can have assets of up to \$800,000 and qualify for a very small part pension and no pension at \$818,000. Single home owners can have a part pension if their assets excluding their house and curtilage are \$320,000 with no pension if their assets are \$338,500. As from 20 September 2007 the Assets Test cut off limit for a single homeowner will be \$515,500.

For example, a married farming couple who have net assets of \$450,000 taking off the house and curtilage will qualify for a pension of approximately \$219.80 combined per fortnight whilst as from 20 September 2007 their pension would be approximately \$596.30 per fortnight combined.



NB. Under the new Asset Test rules that were introduced on 1 January 2007 the house and the Title upon which the house is erected, subject to the rules set out below, will be excluded.

1.3 Income Test (for the period 20 March 2007 to 30 June 2007)

	Full Pension	Part Pension
Single Person	\$3,328.00	\$37,836.50
Married Couple	\$5,928.00	\$63,310.00

1.4 Commonwealth Seniors Card. There is no Assets Test and you could qualify for a Commonwealth Seniors Card if the following occurs:-

- i. Single - your income is below \$50,000 per annum.
- ii. Couple - your income is below \$80,000 per annum.

These figures are valid until 30 June 2007.

1.5 Nursing home (high care) accommodation fees. Depending upon your assets the fees could be at least \$40,000 per annum if you own a farm. There is no entrance fee. Attached is a summary entitled "Summary of Aged Care Accommodation Fees".

1.6 Pensioner Bonus Scheme. If you are of pension age and you defer applying for a pension, you could apply for the Pensioner Bonus Scheme.

The following table shows the maximum bonuses payable up to 30 June 2007

Years (bonus periods)	Single	Partnered (each)
1	\$1,251.60	\$1,045.30
2	\$5,006.30	\$4,181.20
3	\$11,264.20	\$9,407.70
4	\$20,025.20	\$16,724.80
5	\$31,289.30	\$26,132.50

1.7 Low care (Hostel accommodation)

- i. A bond is payable on the basis that the applicant must be left with at least \$31,000.00 worth of assets or cash.
- ii. The maximum that can be retained is \$273.50 per month for up to five years (\$16,410). The balance must be refunded when the resident leaves. There is also an accommodation fee.

1.8 Tax Offset. Any moneys payable above \$1,500 can be eligible for a tax offset of 20% in place of the following:



- (a) Basic daily fees;
- (b) Income tested daily fees;
- (c) Extra service fees;
- (d) Accommodation charges – amount deducted or retained from accommodation bonds.

2. Wills

Issues to Consider:

I recommend that all family members review their Wills so that the Wills of those involved in the business complement each other in relation to the business assets.

- 2.1 (a) Has the business structure been dealt with. Example shares in a Trustee Company, the position of appointor of a trust and the different entities being dealt with. A key question is whether the person making the Will owns the assets or has control over the entity that owns the assets and how to deal with these issues in the Will.
- (b) Whether there are any capital, loan or beneficiary accounts that need to be dealt with in the Will.
- (c) Any capital gains tax, stamp duty, GST or any other taxes that could arise at the date of death or in the future.
- (d) Whether all assets have been dealt with.

2.2 Advantages and Disadvantages of a Simple Testamentary Trust

A simple testamentary trust basically allows a husband and wife to leave the assets in Trust with the surviving spouse having control of the assets and income by way of a Trust with the ability to distribute income to children under the age of 18 as if they are adults and the trust can be wound up at any time or say upon the youngest child attaining the age of 21 or 25.

2.3 Complicated Testamentary Trusts

It is crucial that we liaise with your accountant/financial planner to discuss the advantages and disadvantages of a testamentary trust such as:

2.3.1 A testamentary trust does not suit all situations and all types of assets. We recommend that in conjunction with your accountant you review the advantages and disadvantages of including or excluding the following assets from the testamentary trust:

- (a) superannuation
- (b) jewellery, furniture, personal effects
- (c) farmlands.



- 2.3.2 Testamentary trusts can be costly to wind up depending upon whether assets are to be transferred out of the testamentary trust. The Stamp Duty and tax issues must be considered.
- 2.3.3 Tax wise it can be an advantage to distribute income to infant beneficiaries. However the infant beneficiaries' beneficiary accounts can result in legally enforceable debts being owed to children or grandchildren. The practicalities of monitoring the increase in beneficiary accounts and how to reduce beneficiary accounts must be considered.
- 2.3.4 A testamentary trust could be beneficial if grandparents wish to make provisions for the education of grandchildren.
- 2.3.5 The difficulties of winding up trusts.

3. Contested Wills

When preparing Wills you need to be aware:

- 3.1 That family members in certain circumstances can contest Wills.
- 3.2 Generally the costs of contesting a Will comes out of the estate and a Will dispute can cost tens of thousands of dollars.
- 3.3 If you are to pay out a family member an early inheritance, or restructure ownership of land or the business then you can arrange for the non-farmers to enter into an agreement under Section 31 of the Family Provisions Act whereby they state that they will not contest the parents' Wills.
- 3.4 Before a Section 31 Release can be valid, the person entering into the release must have independent advice and the Deed must be approved by a Court. This could cost \$5,000-\$10,000.
- 3.5 A gift cannot be challenged under the Family Provision Act after three years from the date of the gift ie. if you transfer land now then it's not included in your assets for Family Provision Act claims against your estate three years from now.

4. Powers of Attorney / Enduring Guardianship

- 4.1 Power of Attorney (business decisions)
A Power of Attorney is a document that allows you appoint a person or persons to handle your business affairs subject to certain conditions.
- 4.2 Enduring Guardianship (health decisions)
An Enduring Guardianship allows you to appoint a person/s subject to certain conditions to make medical decisions on your behalf and obtain medical



information from treating doctors only if you are incapable of handling your affairs.

4.3 Please contact our office should you wish to organise a Power of Attorney and Enduring Guardianship. We generally recommend you appoint each other together with your children and you can place conditions such as:-

- i. Any two of your children must sign jointly.
- ii. A child only has the right to sign if you are declared medically incapacitated, etc.
- iii. The farmer and one of the other children.
- iv. With prior written approval.

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