

MLC TechConnect

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Gifting rules in practice

This article outlines circumstances where the gifting and deprivation rules may be applied and the practical advice implications for clients.

Introduction

Deprivation may apply where a social security client:

- gives away or refuses an increase in income, or
- gives away (gifts) an asset and does not receive adequate consideration in return.

Deprived income is included in the client's assessable income (maybe indefinitely). Deprived assets are included under the assets test and deemed under the income test for five years from the date of the gift.

Clients can gift up to \$10,000 in a financial year and \$30,000 over a five financial year rolling period without impacting their entitlements. Gifts exceeding these thresholds are deprived assets.

Gifting includes where the person:

- gives an asset to another individual
- forgoes their interest in a deceased estate
- transfers assets to or resigns from involvement in a trust
- donates money
- sells an asset for less than market value
- is guarantor on a loan where the borrower defaults, a loan repayment is made and no legal steps are taken to recoup, and
- purchases a home with children or other family members and receives a disproportionate legal interest in the home compared to the amount paid.

Gifting that occurs within five years before a social security benefit is payable may impact the client's eligibility to a social security entitlement. In this article, we outline the gifting and deprivation rules and some of the main circumstances where these apply. We also highlight some of the practical advice issues.

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Gifting and deprivation basics

What is gifting?

Gifting occurs where the value of an asset or income source is destroyed or diminished, and inadequate consideration is received in return.¹ Deprivation applies where the gift exceeds the allowable thresholds or is deprived income.

Note: The basic principles for Services Australia (Centrelink) and Department of Veterans' Affairs (DVA) are the same. However, the application may differ slightly. This article focuses on the rules and application of Services Australia. DVA recipients should contact [DVA](#).

These provisions are in place to prevent people from gifting or depriving themselves of substantial levels of assets or income to obtain a more favourable social security outcome. The expectation is individuals firstly use their own resources to support themselves, rather than rely on Government income support. Special rules apply to these arrangements²:

- granny flat arrangements
- certain gifts to special disability trusts
- transfers of a farm to a close relative, where certain conditions are met³, and
- where a payment is made to a family member for substantial work undertaken that surpass what is outside that would be expected from a family member's 'love and affection' or moral obligation.

¹ Social Security Act 1991 (SSA) s1123(1)

² [Guide to Social Security Law 4.1.1](#)

³ [Guide to Social Security Law 4.1.7](#)

Deprived income

Assessment differs where a disposal relates to diminishing or waiving the right to an income source without disposing of an asset. In this case, the value of the income disposed of continues to be assessed indefinitely. For example, if an income support recipient owns an investment property and directs the tenant to pay rent to their adult child instead of receiving this income personally, the deprived income is assessed to the income support recipient for as long as this arrangement continues. This assessment applies until the income source is returned to the owner.

Generally, it's not considered deprived income if someone:

- becomes unemployed
- reduces their working hours, or
- doesn't derive income from an asset, eg if a person owns an investment property and chooses not to rent it out or chooses to allow someone to reside in it rent free.

Allowable asset gifting threshold

Clients can gift up to \$10,000 per financial year and \$30,000 over a rolling five financial year period without deprivation applying. These thresholds apply to singles and couples combined (ie not per person in relation to couples). Amounts that exceed these limits are treated as deprived assets for five years from the date deprivation occurs.

Table 1: Gifting thresholds

Clare provides gifts to her grandchildren over a number of years. The gifts are assessed as follows:

Date	Gift	Amount within \$10k limit per financial year	Cumulative amount within \$30k limit (rolling 5 financial years)	Deprivation
20 Mar 2021	\$9,000	\$9,000	\$9,000	\$0
1 Jan 2022	\$12,000	\$10,000 (excess \$2,000)	\$19,000	\$2,000 until 1/1/2027
20 Sep 2022	\$6,000	\$6,000	\$25,000	\$0
4 Jul 2023	\$11,000*	\$10,000 (excess \$1,000)	\$30,000 (excess \$5,000)	\$6,000 until 4/7/2028

*\$1,000 exceeds the \$10,000 per financial year limit and is deprived. The remainder of \$10,000 is then measured against the rolling five financial year \$30,000 limit and an additional \$5,000 (\$25,000 + \$10,000 - \$30,000) exceeds this cap and is deprived.

Means-test assessment of deprived assets

Deprived assets

Deprived assets are treated as financial investments for five years from the date of deprivation

The deprived amount:

- is assessed as an asset under the assets test, and
- deemed under the income test.

Note: This only impacts payments and entitlement subject to an assets and income tests (eg may not apply to non means tested payments and entitlements or where eligibility is determined by adjusted taxable income (ATI), see page 4).

Gifts made prior to application for a benefit

A disposal of an asset which takes place more than five years prior to becoming eligible for a social security benefit or pension is disregarded. Assets disposed of within five years of the date of claim are assessable for five years from the date of the gift.

Discretion may be applied to disregard a gift made within five years of claim where the person could not have reasonably anticipated that they would qualify for a payment or benefit. This might include circumstances where a spouse passes away or the person loses their job.

Advice tip

While an individual may not always be able to predict when an entitlement will arise, there is a planning opportunity for those who are able to anticipate a future entitlement (eg entitlement to Age Pension once reaching Age Pension age). Should a person wish to gift an amount of money, or transfer other assets (such as bringing forward an inheritance), they may wish to consider doing this at least five years before reaching their Age Pension age.

Transfers between members of a couple

The gifting or transferring of assets between the members of a couple does not trigger the gifting or deprivation provisions. Couples are ordinarily assessed on joint assets and income.

This is also the case where the amount is invested in assets receiving favourable social security treatment. For example, if a husband who has reached Age Pension age withdrew funds from his super account and contributed to super in his wife's name who is under age Pension age, the money would cease being assessable until his wife reaches her Age Pension age (or commences an income stream if this occurs sooner).

Advice tip

When transferring large amounts between super accounts via a cash out and retribution strategy, consider:

- the costs (eg buy/sell spreads and time out of market)
- estate planning implications, and
- future contribution opportunities from both a contribution cap and total super balance perspective.

Repayment of a gift and impact on deprivation

If a person does trigger the deprivation rules and the gift is subsequently returned to the person, Centrelink reduces the amount of the deprived asset by the amount which has been returned⁴.

Benefits and concessions not impacted by deprivation

Not all social security entitlements are impacted by gifting. This depends on the means-testing that applies for the specific benefit or entitlement.

Broadly, gifting does not impact entitlements where:

- there is no assets or income tests, or
- there is no assets test and the income test is based on an income definition that doesn't capture general deemed income, for example:
 - Commonwealth Seniors Health Card (CSHC)⁵
 - Carer Allowance
 - Family Tax Benefit
 - Age Pension (Blind), and
 - War Widows' Pension.

⁴ SSA s1106 and s1123

⁵ Deemed income from non-grandfathered account based pensions is added to ATI when determining eligibility for the CSHC. However, deemed income from other financial investments (including deprived assets) is not assessed.

Benefits and concessions impacted by deprivation

Most pensions, allowances and benefits assess eligibility based on 'social security income and assets' which includes:

- deemed income on financial investments which includes deprived amounts, and
- an asset value which includes deprived assets.

Gifting in practice

Below we cover some of the most common circumstances that are assessed under the gifting and deprivation rules.

Buying a home with or for children

Where a parent purchases a property with their child, either as joint tenants or tenants in common, if the parent's legal ownership, as reflected on the title, doesn't reflect their financial contribution to the purchase, deprivation may apply. For example, Mary (67) purchases a house for \$1,000,000 with her daughter, Sue, as tenants in common. Mary owns 40% of the property but pays half of the purchase price (\$500,000).

Deprivation applies to the amount contributed to the purchase in excess of the value of the 40% ownership that she received (ie \$100,000). If Mary has not yet used her annual gifting threshold of \$10,000, this reduces the deprived amount to \$90,000.

Advice tip

If a parent:

- transfers their home
- pays for a property in their child's name, or
- pays for the construction of a granny flat on the child's property

in exchange for a life interest to reside in the property and they have no ownership/equity interest in the property, this is assessed under the granny flat provisions. Special rules may apply to determine if deprivation applies to the arrangement. For more information on the assessment of granny flat arrangements, see our technical article [Guide to granny flat rights](#).

Transferring property or other assets for less than market value

Where a property or another asset is sold for less than market value, deprivation is likely to apply.⁶ In situations where the transfer is made to a non-arm's length buyer, it may be difficult to substantiate a valid reason that market value was not received. This is not to say that all sales and transfers to children and relatives are problematic. Care should be taken so that any purchase price can be substantiated as being reflective of fair market value if there is a desire to avoid triggering the deprivation rules. This may be supported by a professional valuation of the asset.

Where a sale is made to an unrelated party on the open market for less than the estimated current value, deprivation does not apply, provided the sale price was determined by market conditions. For example, this may also be acceptable where a quick sale of the asset was required, leading to a situation where a price was accepted that is below market value, as this should reflect what a willing buyer is prepared to pay based on the circumstances.⁷

Guarantor arrangements

If a social security recipient becomes a guarantor on a loan, this does not impact the assessment of their entitlement. However, if the borrower defaults, the guarantor is required to repay the loan. The assessment of repaying the borrower's loan depends on what action is taken by the guarantor after repaying the loan.

If legal action is commenced to recover the amount from the borrower, the amount paid is treated as a debt owing to the guarantor. The recoverable value of this debt is an assessable asset⁸. However, it's not subject to deeming for income test purposes, as debts are not financial investments. If no legal action is commenced, the gifting and deprivation rules apply. A deprived asset is counted for five years from the date of the gift (in this case when the loan is repaid) and subject to deeming.

⁶ [Guide to Social Security Law 4.1.1](#)

⁷ [Guide to Social Security Law 4.1.1](#)

⁸ [4.6.5.60 Assessing Loans & Guarantor Arrangements | Social Security Guide \(dss.gov.au\)](#)

Advice tip

Clients should seek legal advice prior to becoming a guarantor to ensure all rights, risks and obligations are explained. Once the family member has sufficient equity in the asset (or other circumstances have changed) and the guarantor arrangement is no longer necessary, the client should seek to have the guarantor arrangement removed. Individual lenders have their own processes which ordinarily include the borrower demonstrating their own ability to provide sufficient security and/or serviceability of the loan.

Forgiving a debt

In the event that an income support recipient loans money to another individual and subsequently forgives a debt (in full or part) that exceeds the allowable gifting thresholds, deprivation applies to the excess gift for five years from the date that the debt is forgiven.⁹ Special rules may apply to failed loans¹⁰.

Deprivation relating to estates

Any interest in a deceased estate is assessed against the individual from the point at which it can be received or able to be received. It is generally accepted that it will be unable to be received for up to 12 months from date of death. Where a person has an interest in a deceased estate or superannuation fund, deprivation occurs where the person¹¹:

- gives away their interest for inadequate consideration
- directs the executor of the estate or the trustee of a super fund to distribute their interest to another person, or
- waives their entitlement to any of their interest.

The date of deprivation is the later of:

- the date the interest is given away, waived or direction given, and
- the date the person would have been able to receive their interest.

Payment of expenses

The payment of an expense for another person is regarded as a gift and deprivation applies. This may include:

- education costs
- gifting money to grandchildren via their parents
- payment of expenses for children and grandchildren, and
- payment of home maintenance expenses and utility bills of another person.

In the event that the person lives in a home owned by their adult child or has entered into a granny flat arrangement and contributes towards home maintenance and associated expenses, it's advisable to document these arrangements to ensure that it's clear that these payments constitute a form of rent or the person's share of household expenses.

Paying for children's wedding

Generally, making a payment directly to a service provider for a child's wedding is not considered a gift where the parents host and attend the wedding. The parents are taken to have received adequate financial consideration. If the parents were to give cash to the child to pay for their own wedding, gifting rules apply.

Deprivation and trusts

Where cash or other assets are gifted to a trust by a person or their partner and neither the person or their partner control the trust (are attributed with the income and assets of the trust), the amount is assessed under the gifting and deprivation rules.

Where a person who controls a trust formally relinquishes all formal roles, control and beneficial interests, the assets of the trust are subject to gifting and deprivation from the date of resignation based on the attribution percentage.

Note: For more information about private trusts and deprivation, see our Technical article [Social security assessment of private trusts](#).

⁹ [Guide to Social Security Law 4.6.5.65](#)

¹⁰ [Guide to Social Security Law 4.6.5.60](#)

¹¹ [Guide to Social Security Law 4.1.5](#)

Donating money

Donations to charities, churches or other organisations are assessed as gifts and may trigger deprivation.

Repayment of undocumented loans

Where arrangements are entered into some time prior to a person becoming eligible for a benefit or concession, future social security implications are often not considered. Difficulty can arise when unwinding these arrangements and repaying what might have effectively been a loan, but where there is no evidence to support the arrangement that existed. It would be prudent to document these arrangements for social security, legal and estate planning purposes.

Impact of relationship breakdowns and death on deprivation

Where members of a couple separate¹² or one member of the couple passes away¹³, there may be a change in the way a prior gift or deprived amount is assessed.

Table 2: Change in deprivation amounts where couple permanently separates due to a relationship breakdown

Ownership of asset disposed of:	Amount of disposition
Jointly	Does not change (50% of the value of the asset or income continues to be held against each person)
One partner	Becomes fully assessed against the partner who owned the asset or income

Table 3: Change in deprivation amounts where member of a couple dies

Ownership of asset disposed of:	Amount of disposition
Jointly	Does not change (the surviving partner will still be assessed with half the asset or income)
Deceased partner	Reduces to zero
Surviving partner	Increases by the deprived amount held against the deceased (the amount which was formerly shared between the two partners is now held against the surviving partner)

Notifying Centrelink

Centrelink must be notified within 14 days of a change of circumstances. To avoid overpayment, gifts should be reported to Centrelink within this timeframe.¹⁴ Gifts within the allowable gifting limits must still be reported.

Gifts not assessed as deprivation

Gift to a Special Disability Trust

Immediate family members who are receiving a social security pension and have reached Age Pension age, can gift up to a combined amount of \$500,000 (unindexed) into a Special Disability Trust (SDT) without the money being assessed under the normal gifting rules. People may consider establishing an SDT for an immediate family member as part of pre-estate planning.

Note: For more information on SDTs, see our technical article [Special Disability Trusts explained](#).

¹² SSA s1126AC(3), s1126AD(3)

¹³ SSA s1126AC(4)(5), s1126AD(4)(5)

¹⁴ [Guide to Social Security Law 3.10.4.10](#)

Loans

A loan provided to a person is not assessed as a gift. To be a loan there must be a clear intention for the amount to be repaid. The outstanding value of the loan is assessed under the assets test.¹⁵ It is a financial investment and deeming applies to the outstanding balance under the income test.¹⁶ If an outstanding debt is subsequently forgiven, it is assessed as a gift from that point, and the deprivation rules apply if the amount forgiven exceeds the thresholds (see page 5).

Granny flat arrangements

Granny flat arrangements are not assessed under the general gifting and deprivation rules (special rules apply). A granny flat arrangement exists where property or other assets are transferred in return for a right to occupy a dwelling for life. A granny flat arrangement cannot exist where a person has any legal ownership of a dwelling, as their right to occupy the home is as a result of a legal interest rather than the granting of a right by another person. Gifting and deprivation may apply to a granny flat arrangement where:

- the test of reasonableness applies (eg the home and additional assets are transferred to establish a granny flat right), or
- a person vacates a granny flat arrangement within five years of the arrangement being established, where Centrelink determines that the person could have reasonably foreseen the circumstances leading to the vacation of the arrangement (eg a sick elderly person enters into a granny flat arrangement with their child and moves into aged care shortly after).

Note: A full discussion of these circumstances is complex and can be found in our [Guide to Granny Flat Rights](#).

Is gifting worthwhile?

Some people focus solely on obtaining social security benefits without considering what they are giving up to derive the income support or concession. As the table below shows, the impact of reducing income or assets is not significant for people who are already eligible for a part-pension.

Table 4: Approximate impact on entitlements based on \$10,000 gift based on 20/3/2024 thresholds

	Pensions	Allowances
Decrease assets by \$10,000	Increase pension by \$780 pa (\$30 pf)	N/A – most allowances cut-out once assets exceed low asset thresholds. Reducing assets below lower asset threshold may allow entitlement.
Decrease assessable income by \$225 pa ¹⁷	Increases pension by \$112.50 pa under income test ¹⁸	Increase allowance by \$135 pa ¹⁹

Benefits may be more significant if gifting enables entitlement to a part pension and access to the Pensioner Concession Card.

Gifting and aged care

Gifts are also assessed the same way when calculating aged care fees. While gifts within the threshold might make a small difference on aged care fees, deprived amounts still continue to be assessed as an asset. The impact of a \$10,000 gift on the means-tested fee is very minor but may have a significant impact if the means-tested fee is no longer payable and the client can no longer be requested to pay a refundable accommodation deposit (RAD). Note: If the client can no longer be asked to pay a RAD, they may not be offered a position in their desired aged care facility.

Note: This point is complex and beyond the scope of discussion in this article. Additional detailed guidance can be found in our [Guide to Aged Care Fees and Rules](#).

¹⁵ SSA s1122

¹⁶ SSA s9

¹⁷ Based on a gift of \$10,000 and the current higher deeming rate of 2.25%.

¹⁸ Assuming the person has overall income above the lower income threshold, whereby deemed income on \$10,000 is reducing Age Pension entitlement.

¹⁹ This assumes assessable income is above \$256 but less than the cut-out threshold and the reduction factor is 0.6. Income between \$150 and \$256 has a reduction factor of 0.5.

Other considerations

When substantial amounts are gifted, broader considerations should be addressed, including:

- impact on ability to fund future expenses
- whether the person's Will and super beneficiary nominations need to be amended
- limiting aged care options due to being a fully or partially support resident
- implications on estate planning outcomes, including any potential estate challenges as a result of the gift, and
- whether elder abuse is a concern in relation to what might be motivating a desire to make large gifts.

When providing advice to an Enduring Power of Attorney (EPoA), even greater levels of complexity can arise when discussing whether gifting strategies are appropriate or even permissible. The EPoA must act in the best interest of the donor and make decisions based on what the donor would be likely to do if they had capacity to make their own decisions. This requirement applies more broadly than just gifts, but it is particularly relevant here.

Depending on the jurisdiction, an EPoA may need to expressly allow the attorney to gift amounts or assets owned by the donor. Further restrictions may apply in relation to the nature and amount of the gift.

Legislation may also limit the nature of acceptable gifts, even if a gift is expressly allowed. For example the legislation that governs [Powers of Attorney in NSW](#) provides that even where authority to give gifts is expressly provided in an EPoA, the nature of the gifts may be limited to²⁰:

- gifts to immediate family members, and seasonal in nature or associated with a special event, or
- a donation that the principal may reasonably make (if they had capacity).

It also stipulates that the gift must reflect the nature of that the principal made or would reasonably have been expected to make when they had capacity, and that the value should be reasonable considering the person's financial circumstances and the size of their estate.²¹ For example, it is not likely to be reasonable for an EPoA to gift \$10,000 to an immediate family member where the principal is a full Age Pension recipient in an aged care facility.

While gifts within the allowable thresholds may lead to a small social security benefit and a decrease in some aged care fees, in most cases the benefit derived is very minor as outlined above. Care should be taken when advising an EPoAs to gift any amounts and legal advice should be sought prior to any gifts being made. Where elder abuse is suspected, the matter should be escalated. External guidance can be sought from the Government's Elder Abuse phone line on 1800 353 374.

Contact details

For further information, please contact TechConnect on 1800 645 597

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20 Powers of Attorney Act 2003 NSW s11, 12 and 13

21 Powers of Attorney Act 2003 NSW Schedule 3 s1