Your home and the age pension

What you need to know

Qualifying for the pension

In Australia the age pension is not automatically available to everyone who is of age pension age. Centrelink has rules about what you can own (the assets test) and how much income you can receive (the income test) before you are entitled to a full or part pension.

If your assets or income exceed the limits set by Centrelink you will not be entitled to the pension. Both tests apply. You may be under the asset limit but over the income limit, or vice versa. Centrelink will use the test that results in the lower amount of pension payable. If you exceed the assets or income test, you will lose your entitlement to the pension or it will be reduced.

Your home and the pension

There is a different asset test for homeowners and non-home owners. If you are retired your major asset may be the home you live in. Centrelink does not count your home as an asset when calculating your pension if it is your 'principal place of residence' – any residence you occupy or in which you have an interest or the right to occupy. This can include a granny flat, caravan, motor home or houseboat. Your principal place of residence is regarded as an 'exempt asset'.

However this doesn't mean that you can do anything you like with your home and your pension entitlements will stay the same. Your pension may be affected if:

- there is a change in the way you own property
- there is a change in your living arrangements; or
- you borrow money using your home as security

Let's look at how these changes will affect the way Centrelink calculates your pension.

Downsizing

You may decide to sell your home to buy another, smaller home. If you intend to buy another home within 12 months, the money from the sale of your original home that is to be spent on your new home won't be counted as an asset for up to 12 months from the date of the sale.

This can be extended for up to 24 months if you can show that you made reasonable attempts

to buy or build a new home within a reasonable time and that you experienced delays beyond your control in doing so.

For example, if you sold your house for $500,000, with the intention of buying a unit for $350,000, that $350,000 would be an exempt asset for

12 months. The remaining $150,000 would be assessed as part of your assets.

Centrelink will also 'deem' (take as a fact) that you are receiving income from the amount of money you have received from the sale of your house. Centrelink will assess the 'deemed income' from the $500,000 until you pay for the new unit.

If that 'deemed income' exceeds the maximum amount allowed under the income test it could affect your pension. Pensions can be reassessed whenever your circumstances change. You can apply for your pension to be reassessed as soon as you have paid for your new home.

Selling or giving your home to someone else for less than market value

You are free to give any of your assets away, including your home. However it could mean that you lose your entitlement to the pension. Centrelink has very strict limits on how much of your assets you can 'gift' before your pension will be affected (the 'gifting rules'). You can give away assets of $10,000 in a financial year, with a limit of $30,000 over a 5 year period. Any assets you give away over this amount will be treated as a 'deprived asset' for 5 years from the date of the gift.

If you deprive yourself of an asset Centrelink will assess its market value and this will be included as your asset for the next 5 years. The value of the deprived asset will also be deemed to have income. Both the asset and the income will be taken into account when calculating your pension.

If you transfer ownership of your home to a friend or family member and you don't get adequate compensation for it (for example if you get less than the market value for the property, or you do not obtain a right to live in the property for life) Centrelink will regard the property as a deprived asset.

For example, if your house was worth $500,000 and you gave it to your daughter Centrelink would regard $10,000 as a gift and $490,000 as a deprived asset.

If you sold your house to your daughter for $300,000 and the market value was $500,000 Centrelink would regard $10,000 as a gift and regard $190,000 as a deprived asset.

This would affect both the income and asset test. Depending on the amounts involved and your other assets you could be putting yourself over the maximum asset test limit and may lose your pension entitlements. Also, you will be 'deemed' to be getting income from the 'deprived asset' and this may put you over the income limit for the income test.

Granny flat arrangements

You may decide to transfer the title in your property to a family member, or to contribute financially to the extension or improvement of their property, on the understanding that you will live there for life. These are commonly referred to as 'granny flat' arrangements.

Centrelink has special rules for these arrangements to make sure the arrangement is not being used to give away large sums of money or assets for the purpose of increasing your pension. You should check with Centrelink what these rules are. Centrelink's 'gifting rules' can apply if you contribute too much for your granny flat interest.

Whether your contribution will be counted as an asset depends on how much you contributed. Your contribution is compared with what Centrelink calls an 'extra allowable amount'. This is the difference between the homeowner's asset limit and the non-homeowners asset limit. You should check with Centrelink what the amount is as it changes from time to time.

If your contribution to the property is more than this amount you will be considered to be a homeowner and your contribution will be exempt from the asset test. The homeowner's asset test will apply to you. You may still be entitled to the pension, depending on other assets and income you may have.

If your contribution is equal to or less than this amount it will be counted as an asset and calculated against the non-homeowners asset test which has a higher asset limit. You may still be entitled to the pension, depending on other assets and income you may have. You may also be entitled to rent assistance from Centrelink if you make ongoing payments to your child for the right to stay on the property or to receive care.

For more information about granny flat arrangements see the Legal Aid NSW fact sheet 'Moving in with the family? Make sure you protect your interests'.

Borrowing money using your home as security

Borrowing against the equity in your home is a change in your financial circumstances and should be reported to Centrelink.

If you take out a mortgage using your home as security, and give the money to your children or anyone else (for example, to help them buy their own property), Centrelink will treat the loan as your asset and deem that you are earning income from the money you borrowed. This may mean your pension will be reduced. It won't matter that you did not get any benefit from the loan or that your children are making the repayments on your mortgage.

If your child can't repay the loan and the bank sells your home to pay the debt, Centrelink will treat the money from the sale of the home as

a 'gift' to your children and that amount will be regarded as a deprived asset for 5 years under the 'gifting rules'. You will most likely exceed the asset or income threshold and your pension will be stopped or reduced.

If you take legal action against your child to recover the amount you have to pay to the bank, the gifting rules won't apply. However the money will still be treated as a loan to your child and this will affect your pension.

Agreeing to guarantee another person's loan won't affect your pension. However, if that person can't repay the loan and you, as guarantor, have to pay it, the money you pay will be regarded as a gift to your child and the gifting rules will apply.

For more information about using the equity in your home to help your family see the Legal Aid NSW fact sheet 'Helping your family financially? Understand the risks.'

Moving into residential aged care

If you have to move out of your home to go into residential aged care on a permanent basis your home is no longer your principal place of residence. Centrelink will give you a '2 year exemption period' before counting your former home as an asset. After 2 years has elapsed your former home will be counted as an asset and it could affect your entitlement to receive the pension. However, if your partner is still living in the home it won't be counted as an asset while they are still there and the 2 years will not begin until your partner leaves.

If your former home is rented out during the exemption period, the 'net pre-tax income' is assessed and may affect your pension entitlements unless an 'indefinite exemption' applies.

You will have an indefinite exemption from having your former home treated as an asset if your home is rented and you are paying a daily accommodation payment to the aged care facility. The home and the rental income won't be tested under the asset and income tests.

If you stop renting your former home or you stop making the daily accommodation payments the home will become assessable and may affect your pension entitlements.

If your home is sold during an exemption period the proceeds are immediately assessed under the ssets and income tests. Any part of the proceeds that are used to pay a refundable accommodation deposit will not be assessed.

In certain circumstances you may be able to apply to Centrelink under the assets hardship rules for your home to be exempted as an asset. This test requires you to show that it is not reasonable for you to sell your home. Circumstances that Centrelink will accept include where there is a near relative who is a handicapped child and you are providing the house to promote the child's independent living or there is a near relative who has been living in your home for at least ten years or the near relative living in your home had been providing you with care. Contact a Centrelink Financial Service Officer for more information about making an asset hardship application.

Notifying Centrelink of a change in circumstances

By law you have to notify Centrelink within 14 days of any changes to your circumstances that may affect your pension. This includes taking out loans, gifting assets or moving out of your home.

Centrelink can take action against you to recover any overpayment made to you because you did not tell them of your change in circumstances. Deliberate and persistent failure to notify Centrelink is fraud and you can be charged with a criminal offence

If you have any doubt about whether you should report something to Centrelink or whether what you are planning to do may affect your pension you should talk to someone in the Financial Information Service (FIS) at Centrelink.

If you are unable to contact Centrelink yourself you can nominate another person you trust to notify Centrelink (or enquire) on your behalf by completing a 'Permission to Enquire' form. You can get this form by calling Centrelink on 132 300.

Centrelink has special rules for these arrangements. There are tests to ensure the arrangement is not being used to give away large sums of money or assets for the purpose of increasing your pension entitlements.

You should check with Centrelink what these rules are. Centrelink's 'gifting rules' can apply if you contribute too much for your granny flat interest.

Where can I get more help?

Seniors Rights Service

Provides free legal advice and assistance for older people in a range of areas of law.
Tel: **1800 424 079**
www.seniorsrightsservice.org.au

Welfare Rights Centre

Provides free legal advice and assistance on social security matters.
Tel: **02 9211 5300 or 1800 226 028** (toll-free)
www.welfarerightscentre.org.au

LawAccess NSW

Provides free telephone legal information, advice and referrals to other services, including to your nearest Legal Aid NSW office, Community Legal Centres, private lawyers and other organisations that can help.
Tel: **1300 888 529** (cost of a local call)
www.lawaccess.nsw.gov.au

Financial Information Service (FIS)

FIS is a free service provided by Centrelink. FIS can help you to understand the consequences of any financial decisions you are considering. This is not legal advice.
Tel: **131 021**
www.humanservices.gov.au

Do you need an interpreter?

TIS

If you need help to talk to us in your language, call the Translating and Interpreting Service (TIS) on **131 450** (9am – 5pm).

Do you find it hard to hear or speak?

NATIONAL RELAY SERVICE

If you find it hard to hear or speak:

- call us through the National Relay Service on **133 677** or www.relayservice.gov.au
  or call
- LawAccess NSW on **1300 889 529**

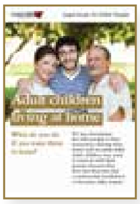
This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing. However it may change. For more information contact LawAccess NSW on **1300 888 529**.

Order brochures online at **www.legalaid.nsw.gov.au/publications** or email **publications@legalaid.nsw. gov.au**

For more information about Legal Aid NSW services:

Other brochures available:



Adult children living at home

What do you do if you want them to leave?

Are you experiencing violence or abuse?

You can make it stop

Are you a grandparent?

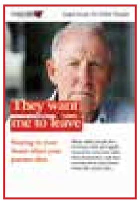
Your legal questions answered

Helping your family financially?

Understand the risks

Moving in with the family?

Make sure you protect your interests



They want me to leave

Staying in your house when your partner dies

Who will decide for you if you can't decide for yourself?

Think about planning ahead

Why make a will?

A guide to making a will

Legal Aid NEW SOUTH WALES

THE LAW SOCIETY OF NEW SOUTH WALES