

Will receiving an inheritance affect your beneficiary's Centrelink benefits?

Receiving an inheritance may seem like a windfall, but for a beneficiary who is on a pension or entitled to Centrelink benefits, there could be adverse consequences.

Centrelink benefits can provide a basic standard of living for a pensioner. Not only are the income payments important, but the substantial fringe benefits that may be available (such as medical, pharmaceutical, transport and accommodation concessions) are also significant.

Most Centrelink pensions and benefits are subject to two qualifying means tests: an assets test and an income test. The receipt of an inheritance usually causes an increase in both the assessable assets and assessable income of a beneficiary receiving social security support, potentially resulting in either a reduction or the loss of their entitlements.

What if the beneficiary gives away or renounces the inheritance?

A pensioner is only allowed to gift \$10,000 in a year and a maximum of \$30,000 over a continuous five-year period. If a pensioner gifts more than the allowable amount, Centrelink will deem the pensioner to receive income from the excess amount over the next five years, which may reduce their benefits.

If a beneficiary who is in receipt of a pension renounces their entitlement to an inheritance, they may be deemed to have deprived themselves of the asset(s) that they were to receive from their inheritance, triggering the same deeming rules that apply to gifting. This may lead to additional 'deemed income' being assessed by Centrelink against the pensioner, even though they have not had the benefit of the income or asset(s). As a result, renouncing the inheritance may actually leave the beneficiary worse off.

Can a testamentary discretionary trust assist a pensioner beneficiary?

A trust is an ownership structure in which the assets of the trust are owned by one person or organisation (the trustee) but held for the benefit of other individuals or organisations (the beneficiaries). A testamentary discretionary trust is a trust created within and by your Will but does not come into existence until after your death.

Generally, the trustee of a testamentary discretionary trust has the discretion to distribute the income or capital of the trust to any of the beneficiaries nominated in your Will.

For a beneficiary who receives Centrelink benefits, social security rules make it difficult to shield trust assets from Centrelink assessment. When a testamentary discretionary trust is activated by the death of a testator (on or after 1 April 2001), the assets and income of the trust will usually be attributed to a recipient of Centrelink benefits who:

- is a potential beneficiary of the trust
- has control of the trust (irrespective of whether the pensioner is a potential beneficiary) or
- is a potential beneficiary and an associate of the beneficiary has control of the trust.

A person has 'control' if they act as a trustee of the testamentary trust, are able to remove or appoint the trustee (the 'appointor'), or are able to vary the trust deed or veto the decisions of the trustee. Control can also occur where a person has some influence over the trustee to act in their favour or in accordance with their wishes.

It is important to consider the social security status not only of potential beneficiaries of a testamentary discretionary trust, but also the trustees. If a pensioner is a potential beneficiary or trustee, the entire income and assets of the trust may be attributed to that beneficiary by Centrelink and result in the reduction or even loss of their Centrelink benefits. In these circumstances the Will-maker may consider appointing an independent professional trustee company such as Australian Executor Trustees to ensure the trust is managed professionally and there are no issues around control that may adversely affect the beneficiary's financial status and Centrelink eligibility.

Specialist estate planning advice should be obtained which takes into account your circumstances and those of your beneficiaries.

Would you like further information?

For further information please contact your AET estate planning specialist on 1800 882 218.