

# Aged care stories

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- Aged care case studies

## Vincent and Vicky



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- Vincent and Vicky, both age 87, live separately in adjacent apartments (each in their own names)

Question: *Are they a couple of illness separated?*

- Vincent's health has deteriorated. The couple are thinking of selling the Vincent's apartment and moving him to a 2-bedroom retirement village unit. The retirement village requires the Vicky to have a 1% tenants in common interest in the leasehold agreement in the RV unit Vincent is purchasing. Entry Contribution = \$550,000.
- Vicky plans to live temporarily with Vincent to provide him care until he has to move to an aged care facility. She wishes to keep her own apartment to go back to when her husband moves to residential aged care.

Adviser's questions:

- *Is Vincent a homeowner or non-homeowner?*
- *If Vicky moves into the RV temporarily, will the couple be assessed as 'illness separated'?*
- *If assessed as 'illness separated' how will Centrelink regard her 1% interest in the RV? Will she be a non-homeowner?*
- *And will Centrelink assess Vicky's apartment?*
- *Will Vicky's apartment still be her principal home under the 24 month exemption for a care situation? And will Centrelink treat her 1% interest in the RV as an asset?*



## S4 of the Social Security Act 1991 defines ‘member of a couple’

If the person lives ‘with another person as their partner, where both people are over the age of consent...are living together on a permanent or indefinite basis, are not in a prohibited relationship (subsections 4(12) and 4(13)), and are either:

- legally married, OR
- in a registered relationship ([2.2.5.13](#)), OR
- in a de facto relationship ([2.2.5.10](#)).



## Commissioner's discretion: (Ss 4(7) of the SSA 1991)

A couple is considered to be an 'illness separated couple' where:

- they are unable to live together in their home, and
- the inability to live together:
  - is due to illness or infirmity of either or both of them, and
  - results in their living expenses being greater or are likely to be greater than otherwise, and
  - is likely to continue indefinitely.



Section 44.26B of the Aged Care Act 1997 definition of:

***"member of a couple"*** means:

- a person who is legally married to another person, and is not living separately and apart from the person on a permanent basis; or
- a person whose relationship with another person (of the same or different sex) is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901*, and who is not living separately and apart from the other person on a permanent basis; or
- a person who lives with another person (of the same or different sex) in a de facto relationship, although not legally married to the other person.





## Centrelink's response


“...if the circumstances of an illness separated couple change to enable them to live together in the one home, I would not think that they would meet the definition of illness separated.

The temporary vacation of home provisions as per Guide [4.6.3.60 Exempting the Principal Home - Temporary Vacation of Property](#), and exemption of the home when moving to provided care as per Guide [4.6.3.70 Exempting the Principal Home - Care Situations](#) , would generally not apply to situations where a person is moving back in with their partner.

Therefore if a couple was living together in a retirement village unit they own, it is likely that this would be assessed as the principal home, with any other property owned by the couple assessed as an asset.”

## Ray and his second wife – Case Study






Ray broke his hip in the October 2018 last year and had a stay in hospital. It was agreed his 2<sup>nd</sup> wife would not be able to cope with both his care along with her medical problems. Therefore he moved in with his daughter who provided care for him.

Question:

*Are they illness separated?*


It became apparent that was not a suitable long-term solution and he moved permanently into Always the Best Care Facility on 27<sup>th</sup> February 2018.



On 9 January 2018, Ray's EPOA was contacted by Centrelink to update Ray's bank and address details. He was made aware that Ray's wife had informed Centrelink that she had separated on the 7 November 2017 and filled in the relevant separation paperwork.

The wife and her family have closed bank accounts etc., however Ray managed to remove \$35,000 of his share of a bank account to an account in his name solely. This, along with personal possessions valued at approximately \$1,000 are the only assets he has aside from the house.

There is no chance of reconciliation. Ray's son completed the Department of Human Services (DHS) SA457 form and sent this off on 20/3/2018.



The house is owned by Ray and his wife as tenants-in-common, 50/50. His wife still resides in the house (worth \$600,000).

Ray has sought advice from a lawyer regarding settlement and a proposal was put forward to the wife suggesting they sell the house and he would settle with 40% of the proceeds. The wife has refused the offer. The wife won't release the Title Deeds to Ray so he is unable to sell his share of the house.

The son is unaware of any accommodation fees and doesn't believe Ray has paid any daily accommodation payment (DAP) or refundable accommodation deposit (RAD). On the [myagedcare.gov.au](http://myagedcare.gov.au) website Ray's room type at Always the Best Facility advertised the Refundable Accommodation Deposit (RAD) at \$200,000.



## Raymond's case continued...

### Questions:

- How will Centrelink assess Ray's interest in the home?
- What strategies can be considered to help out Ray?
- What other non-aged care issues should be considered?



## Definition of 'protected person'

Is the home assessed for the aged care means test?

- Is there a protected person?
  - your partner;
  - a dependent child;
  - an eligible carer who has been living with you in that home for the previous 2 years; or
  - an eligible close relative who has been living with you in that home for the previous 5 years.



## Living separately & apart - general provisions (Guide 2.2.5.20)

“If a couple claim to be separated they must establish that:

- they are living apart either permanently or indefinitely, and
- there has been an estrangement or breakdown in their relationship.

Generally, a physical separation as well as an emotional separation between the couple is required.

**Note:** Living separately and apart should not generally be accepted if the couple are living apart solely because of ill health, employment and/or economic reasons.”





## Can Raymond apply for financial hardship?

Financial hardship is available if:

- Aged care resident does not have sufficient income to meet fees and charges and
- The circumstances outside the person's control

Assets must not exceed \$35,396.40 unless unrealisable

Not gifted more than the limit (unless POA gifted when person was incapacitated)

Complete SA456 or SA457



## ‘Unrealisable asset’

A person is ‘unable to sell or borrow’ against an asset if:

- the asset is on the market and the asking price is not higher than 10% above the assessed assets test value, OR
- the person is eligible for Farm Household Allowance, OR
- a legal restriction or court order prevents the asset being sold or borrowed against, OR
- the asset is a jointly owned home and the person has left the home as a result of domestic violence, OR
- the asset is owned jointly with another person and this person refuses to sell, OR
- the asset is owned as a tenant in common and the practical effect of this form of ownership is that the asset would be unsaleable.



Additional information:

Raymond receives a part age pension from Centrelink as well as a pension from a Government defined benefits scheme of about \$1,280/fortnight. This is payable for life.



## Pension Loan Scheme vs Reverse Mortgage

### Pension loan scheme

- Part pensioners/non-pensioners
- Meet age pension residence rules
- Income stream capped at maximum age pension rate
- LVR depends on age
- Interest rate 5.25% pa\*
- Not assessed by Centrelink

### Reverse mortgage

- Available to full pensioners
- Age pension residence rules don't apply
- Income stream or lump sum
- LVR depends on age
- Interest rate higher e.g. 6.25% pa
- Lump sum may be assessed by Centrelink if not spent

\*since 25 Dec 1997




## Other considerations?

For SIS, tax, and Family Law the spouse of a person includes:

- a person who is legally married to the person
- a person (of the same sex or a different sex) with whom the person is in a prescribed kind of relationship that is registered under a State or Territory law and
- a person who, although not legally married to the person, lives with the person on a genuine 'marriage like' relationship as a couple.

## Andrew and Penny – further funding options



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- Andrew and Penny are a married couple
  - No assets other than home
  - Penny moves into care, as low means (no RAC or DAC paid)
  - \$0 cost for Penny's room nominated on the contract
  - Andrew still occupies home and therefore exempt asset
  - 6 months later Andrew moves into care, sells home for \$400,000
  - Moves into same facility (same room) and pays a 100% of \$400,000 RAD.
  - Andrew and Penny are now sharing a sole occupancy room with a double bed.
  - Penny's means-tested amount is now more than \$0 because \$200,000 of the Andrew's RAD is assessed to her, but there are no funds to pay for all of her aged care fees.

Andrew and Penny – Accommodation payment per suite








## Adviser's email

“I met the Facility Manager and just wanted to double check, if the facility for some strange reason allowed one of them to pay the 750k and the other 0k (assuming both as not low means), is there any benefit in doing so? The Facility Manager advised that they charge per suite, not bed.”

Moses – treatment of life interest





Moses, single, transferred his home (\$675,000) and the mortgage over the home (\$200,000) to Levi in exchange for a life interest in the home and then shortly after entered into Aged Care.

Moses' solicitor advises that the life interest received continues until the client passes away.

An actuary has valued the life interest at \$150,000.

I understand that the holder of a life interest in a home is a homeowner for Centrelink purposes provided they have reasonable security of tenure, however I need to clarify the treatment after the client has entered aged care.

Questions:

- *Does the life interest continue to be treated as the client's home for Centrelink and Aged Care purposes?*
- *Since the entry into aged care was anticipated at the time of the granny flat interest being created, there is a deprived asset. Since the net value transferred to the nephew was \$475,000 (\*\$675,000-\$200,000), what is the deprived amount?*



## Centrelink response:

“In response to question 1 if the life interest is a full life interest it would continue to be treated as the customer’s home for Centrelink purposes and the exemptions contained in the guide [4.6.3.70 Exempting the Principal Home - Care Situations](#) would apply. My understanding is that for aged care purposes the customer is only a homeowner if they have title to the property or will have an amount refunded to them when they vacate the property.”



Deprived amount:

Net value of property transfer:

= \$675,000 - \$200,000 (loan)

= \$475,000 - \$150,000 (life interest)

= \$325,000

The deprived amount:

= \$325,000 - \$10,000

## Places for supported residents





Why would a low means resident be offered a place before a full paying resident?

Accommodation supplement (maximum) at 20 March 2018

Eligibility if service	Supplement
<b>Is significantly refurbished or newly built</b>	
>40% low means, supported, concessional & assisted residents	\$56.14
=<40% low means, supported, concessional & assisted residents	\$42.11
<b>Meets building requirements Sch 1 of AC(TP)P 2014</b>	
>40% low means, supported, concessional & assisted residents	\$36.59
=<40% low means, supported, concessional & assisted residents	\$27.44
<b>Does not meet building requirements</b>	
>40% low means, supported, concessional & assisted residents	\$30.74
=<40% low means, supported, concessional & assisted residents	\$23.06



## Why our work is important...

- Explore clients circumstances
- Seek other options
- Educate and prepare clients for the event