

**Reprint
as at 1 April 2019**

Social Security (Long-term Residential Care) Amendment Regulations 2005

(SR 2005/265)

Social Security (Long-term Residential Care) Amendment Regulations 2005: revoked, on 1 April 2019, pursuant to regulation 20 of the Residential Care and Disability Support Services Regulations 2018 (LI 2018/203).

Pursuant to section 155 of the Social Security Act 1964, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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1 Title

- (1) These regulations are the Social Security (Long-term Residential Care) Amendment Regulations 2005.
- (2) In these regulations, the Social Security (Long-term Residential Care) Regulations 2005¹ are called “the principal regulations”.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

These regulations are administered by the Ministry of Social Development.

¹ SR 2005/183

2 Commencement

These regulations come into force on 19 September 2005.

3 New regulation 3A inserted

The principal regulations are amended by inserting, after regulation 3, the following regulation:

3A Status of examples

- (1) Every example used in these regulations is part of these regulations.
- (2) An example used in these regulations is only illustrative of the provision to which it relates. It does not limit the provision.
- (3) If an example and the provision to which it relates are inconsistent, the provision prevails.

4 New regulations 9A and 9B inserted

The principal regulations are amended by inserting, after regulation 9, the following regulations:

9A Gift in recognition of care

- (1) If all allowable gifts gifted during the gifting period have a total value less than \$25,000, a gift in recognition of care that meets the criteria in subclause (2) is to be treated as an allowable gift.
- (2) The criteria for a gift in recognition of care are that the gift—
 - (a) is a gift of real or personal property (for example, money) gifted by any of the following persons:
 - (i) the person being means assessed;
 - (ii) the spouse or partner of the person being means assessed;
 - (iii) the person being means assessed and the person's spouse or partner jointly; and
 - (b) is gifted within the period of 12 months immediately preceding the date of means assessment; and
 - (c) is gifted to a person who—
 - (i) for a continuous period of at least 12 months during the gifting period—
 - (A) lived in the same household as the person being means assessed; and
 - (B) provided to the person being means assessed a high level of care that enabled the person being means assessed to remain in the community without receipt of home-based disability support services (as defined in section 69FA of the Act); and

- (ii) is not the spouse, partner, or dependent child of the person being means assessed; and
 - (d) is of an amount up to \$5,000 for each 12-month period of care provided; and
 - (e) is not of an amount that, together with the amounts of any other gifts in recognition of care, exceeds the difference between \$25,000 and the total value of all gifts allowable under regulation 9.
- (3) If the person being means assessed and that person's spouse or partner are both in long-term residential care, then the value of any gift in recognition of care gifted jointly by that person and that person's spouse or partner in respect of the care they both received from the same person may be apportioned equally between the person being means assessed and that person's spouse or partner.

9B Deprivation of property and income

For the purposes of paragraph (c) of the definition of assets in clause 4 of Part 2 of Schedule 27 of the Act and paragraph (e) of the definition of income in clause 5 of Part 3 of Schedule 27 of the Act, the following may be treated as deprivation of property or income:

- (a) gifts that are gifted in the 12-month period prior to the commencement of the gifting period, or in any 12-month period preceding that period, to the extent that the total value of the gifts in each such period exceeds \$27,000:

Example

In the year before the commencement of the gifting period the person being means assessed and that person's spouse jointly make gifts having a total value of \$100,000.

The person being means assessed and his or her spouse may be treated as having deprived themselves of \$73,000 in respect of the gifts.

- (b) a disposition of property at any time before the commencement of the gifting period for no consideration, or for a consideration less than the market value of the property at the time of disposition, may be treated as a gift for the purposes of paragraph (a):

Example

Two years before the commencement of the gifting period the person being means assessed and that person's partner transfer the \$300,000 house that they jointly own to a family member for \$100,000. One year before the commencement of the gifting period the person being means assessed and that person's partner gift \$50,000 to another family member.

The person being means assessed and his or her partner may be treated as having deprived themselves of \$196,000 in respect of the disposition and the gift (being the sum of \$200,000 less \$27,000 for the disposition of the house and \$50,000 less \$27,000 for the monetary gift).

- (c) a disposition of property during the gifting period for no consideration, or for a consideration less than the market value of the property at the time of disposition:

Example

During the gifting period the person being means assessed sells his or her car for \$10,000. The market value of the car at the time of sale was \$20,000.

The person being means assessed may be treated as having deprived himself or herself of property to the extent of \$10,000 in respect of the car sale.

- (d) a failure at any time to exercise any right or entitlement to demand a payment:

Example

The spouse of the person being means assessed makes a loan to another person with interest on the loan being payable on demand. The spouse of the person being means assessed never makes a demand for the interest.

The spouse of the person being means assessed may be treated as having deprived himself or herself of interest to the extent of the amount of interest that is payable on demand.

- (e) a waiver of a right at any time to receive any entitlement or payment:

Example

The person being means assessed and that person's partner jointly own a rental property. The tenants of that property fail to pay the rent payable under the tenancy agreement. The person being means assessed and that person's partner take no action to recover the unpaid rent.

The person being means assessed and his or her partner may be treated as having deprived themselves of income to the extent of the unpaid rent.

- (f) an investment at any time in non-income-earning assets:

Example

The person being means assessed deposits savings in a non-interest-bearing bank account.

The person being means assessed may be treated as having deprived himself or herself of income to the extent of income that could have been earned on the savings if the savings had been invested in an interest-bearing bank account.

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 19 September 2005, amend the Social Security (Long-term Residential Care) Regulations 2005. The amendments prescribe—

- gifts in recognition of care as allowable gifts;
- rules relating to deprivation of property and income.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 15 September 2005.

Eprint notes**1 *General***

This is an eprint of the Social Security (Long-term Residential Care) Amendment Regulations 2005 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *About this eprint*

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

3 *Amendments incorporated in this eprint*

Residential Care and Disability Support Services Regulations 2018 (LI 2018/203): regulation 20