

Departmental Instruction no.

Date of issue:

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| New Instruction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | Review/Expiry date | Contact Officer Christine Johnston | Telephone (02) 6289 4773 |
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Veterans' Affairs Legislation Amendment

(2007 Measures No. 1) Act 2007

Deprivation amendments

Purpose

The purpose of this Departmental Instruction (DI) is to provide advice on the effect of amendments to the deprivation provisions contained in Subdivision B and Subdivision BB of Division 11 of Part IIIB of the *Veterans' Entitlements Act 1986* (VEA). The amendments are made by the *Veterans' Affairs Legislation Amendment (2007 Measures No. 1) Act 2007* (VALA Act).

Commencement of Act

The VALA Act received Royal Assent on 21 June 2007. The deprivation items described in this DI commenced on the day after Royal Assent was received.

Legislative changes - Subdivision B

Section **52FAAA Application of asset deprivation rules to cease in respect of certain assets**, has been added to the end of Subdivision B of Division 11 of Part IIIB of the VEA.

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**Background to
Subdivision B
changes**

Where an asset has been disposed of for less than its full value, or more than \$10,000 per year or \$30,000 per rolling 5 year period has been gifted to another person, the asset or gifted amount may be regarded as being a 'deprived asset' and may be included in the value of the person's financial assets for a period of five years from the date of disposal.

Prior to the VALA Act being passed, the VEA did not contain any provision to allow deprivation to be undone or reduced where the deprived asset was returned or where consideration was received at a later date. The value of the deprived asset was held in a person's income support assessment, even if the asset was subsequently returned or consideration received.

The application of these deprivation provisions has in some circumstances resulted in unfair outcomes where the deprived asset or assets have subsequently been returned to the person who disposed of them. In such circumstances the asset was effectively double counted as there was no mechanism in the legislation by which a deprived asset could be disregarded once the disposal of assets provisions had been applied.

**Explanation of
changes to
Subdivision B**

New section 52FAAA directs that the deprivation provisions cease to apply where an asset that has previously been assessed as a deprived asset is subsequently returned, or adequate consideration for the asset is subsequently received.

Notification

The cessation of the deprivation provisions can only occur when the person notifies of the return of the asset or the receipt of adequate consideration.

The notification must be made via a document lodged by the person with the Department in accordance with section 5T of the VEA. The request must outline the circumstances of the disposal and the subsequent reacquisition or receipt of adequate consideration.

The application of the deprivation provisions ceases from the day the person lodges the document notifying that adequate consideration for the asset has been received.

**Date of
notification
prior to Royal
Assent**

If the date of notification of the return of the deprived asset or receipt of adequate consideration was prior to the commencement of new provision 52FAAA, the asset can only be removed from the assessment after the provision commenced, which was the day after Royal Assent ie 22 June 2007.

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Examples of effective date

Example 1 : Ken gifted \$100,000 to his son in January 2005. Since then, \$90,000 (\$100,000 - \$10,000 allowable annual gifting amount) has continued to be held as a deprived asset in Ken's pension assessment. In November 2006 his son decided to return the \$100,000 to Ken. Ken advised DVA in January 2007 that his son had returned his gift of \$100,000. The amendments to the deprivation provisions mean that the \$90,000 will no longer be assessed as a deprived asset, however, although the money was returned in November 2006, the amount can only be deleted from 22 June 2007. Assessment of the \$100,000 will depend on what was done with the money when it was returned eg may become a deemed financial asset, or an expensive sports car may have been bought.

Example 2 : Shirley gifted \$40,000 to her grandson in March 2004, and \$30,000 of that has been held in her pension assessment as a deprived asset since that date. On 14 September 2007 Shirley advised that her grandson had returned the \$40,000 on 1 September 2007. The amount can be removed as a deprived asset from Shirley's pension assessment from 14 September 2007.

Partial return /consideration

In some cases a person may have only part of the deprived asset returned to them, or receive adequate consideration for only part of the value of the deprived asset.

In order for 52FAAA to apply, the full value of the asset does not need to be received. The value of a partial return or consideration can also be removed from the deprived asset amount in the person's pension assessment.

When only a partial value of the deprived asset is removed from the assessment it is important that the original gifting date remains the same, to ensure that the 5 year gifting period is not extended or reduced.

Examples of partial return /consideration

Example 1 : Jack gave \$80,000 worth of shares to his daughter 2 years ago. Since then, \$70,000 has been held as a deprived asset in Jack's pension assessment. His daughter sold a portion of the shares and returned \$40,000 to Jack. The deprived asset amount in Jack's assessment can be adjusted down to \$30,000 (\$70,000 - \$40,000). As in previous examples, the \$40,000 may be assessed as a financial or non-financial asset depending on how the money has been used.

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Systems action to be taken by delegates

When the deprived asset or adequate consideration for the deprived asset is returned to the person, when creating a PIPS worksheet:

- insert actual date of event,
- for date of notification insert:
 - actual date of notification, if after 22 June 2007, or
 - 22 June 2007, if notification received before 22 June 2007, and
- delete the deprived asset amount from the deprived asset folder.

When only partial return or partial consideration has been received, create the worksheet as for a deleted deprived asset and edit the original deprivation amount in the deprived asset folder to the new amount calculated. Do not change the original gifting date.

Reassessing existing cases

Any existing cases where, prior to the release of this DI, the pensioner has notified the Department that the asset has been returned or adequate consideration has been received, should be reassessed under the new rules. The date of effect will be the later of 22 June 2007 or date of notification.

Discretion to disregard certain dispositions - Subdivision BB

Section **52JE Certain dispositions to be disregarded**, has been added to the end of Subdivision BB of Division 11 of Part IIIB of the VEA.

Section 52J of the VEA provides for disposal of assets that took place more than 5 years before a person claims an income support payment to be disregarded. Subparagraph 52J(b) further provides the discretion to disregard deprivation occurring within 5 years of a claim, if the Commission/delegate is satisfied that the disposal occurred before the person could have reasonably expected that they would become eligible to receive a service pension or income support supplement.

Section 52J is located within Subdivision BA which limits its application to disposals that took place before 1 July 2002.

This addition of Section 52JE to the end of Subdivision BB corrects this legislative oversight by extending the power to disregard certain disposals to those that occur after 1 July 2002. It also aligns the VEA disposal rules with the *Social Security Act 1991*(SSA).

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**Policy
information
updated**

- Fact sheet IS92 will be updated to include information regarding amendments to the deprivation provisions.
- Part 9 / Chapter 6 of CLIK will be updated to reflect these changes.

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