Rahul Singh, Challengert

Rahul Singh is Challenger's technical services manager and has been in the industry since 2004. He commenced his career with Clearview and has worked in technical services teams in AMP, ANZ and MLC, prior to joining Challenger in 2019. Rahul is passionate about supporting advisers to deliver technical solutions to retail clients.

TILL DEATH DO US PART

An aged care focus

Rahul Singh

Introduction

In the 2017/18 financial year, the average age of admissions to permanent residential aged care was 82 years for men and 84.5 years for women (Department of Health, *2017-18 Report on the operation of the Aged Care Act 1997,* p. 10). With people entering residential aged care at a later stage in life and with an average stay of 2.97 years (Aged Care Financing Authority 2019 *Annual Report on Funding and Financing of the Aged Care Sector,* p. 42), estate planning and post-death issues are often at the forefront of advice considerations for aged care clients.

When a person is a member of a couple and in aged care, the financial impact caused by the death of their spouse could have significant ramifications on their aged care fees and Age Pension. If the surviving spouse inherits or becomes the sole owner of assets, this can result in a double impact — increased assets and income which may result in higher aged care fees as well as lower Age Pension.

Approximately 50% of aged care residents suffer from dementia (Department of Health, *2017-18 Report on the operation of the Aged Care Act 1997,* p. 7) and with loss of mental capacity, the opportunities to restructure affairs may be limited. With planning and appropriate legal advice, when suitable to a client's goals and objectives, diverting assets to someone other than the surviving spouse may assist with minimising aged care fees and maximising Age Pension.

Using a case study, this article discusses the impact caused by the death of a member of a couple on a surviving spouse's aged care fees and Age Pension and highlights the use of potential strategies which could assist with maximising financial outcomes.

Note:
On 14 July, the government announced a reduction to the deeming rates, backdated to 1 July. The numbers in this article are based on the deeming rates prior to this announcement.

Case study

John, aged 85, entered aged care in October 2018. Separated from John, his wife Nancy, aged 80, struggled to live by herself. With various physical health ailments and a wish to be closer to John, Nancy entered the same aged care facility as John in March 2019.

Their assets in October 2018 when John entered aged care were:

- Main residence occupied by Nancy: $900,000
- Bank account: $80,000
- Personal effects: $10,000.

When Nancy entered aged care, they sold the home, paid a refundable accommodation deposit (RAD) of $550,000 for Nancy and a refundable accommodation contribution (RAC) of $349,933 for John.

John's aged care fees and Age Pension before Nancy entered aged care

At the time John entered aged care in October 2018, as Nancy was living in the home, it was exempt from the aged care means test. John's assessable assets before Nancy entered aged care were $45,000 (50% of the couple's combined assets) and he was classified as a low-means resident.

John was only liable for the basic daily fee until Nancy entered aged care. From an Age Pension perspective, with combined assessable assets of $90,000, John received the maximum rate of Age Pension.

John's aged care fees and Age Pension after Nancy entered aged care and sold the home

When Nancy entered aged care, they sold the home and paid a RAD of $550,000 for Nancy and a RAC of $349,933 (assume RAC stays fixed, although in reality the accommodation contribution is subject to quarterly review. Equivalent RAC calculated by 20,856/5.96%) for John.

From an aged care perspective, John's assessable assets were $495,000 (50% of $550,000 RAD paid by Nancy, $349,933 RAC paid by John, $80,067 in cash and $10,000 personal effects). He was liable for the basic daily fee and a means tested care fee.

As John entered as a low-means resident, even though his assets increased post-entry, he would be liable for an accommodation contribution rather than the advertised accommodation payment.

From an Age Pension perspective, with combined assessable assets of $90,067 ($80,067 in cash and $10,000 in personal effects. RAD paid by Nancy and RAC paid by John are exempt under the Age Pension means test), John would continue to receive the maximum rate of Age Pension.

Nancy's aged care fees and Age Pension

When Nancy entered aged care, from an aged care perspective, after paying a RAD of $550,000, her assessable assets were $495,000 (50% of $550,000 RAD paid by Nancy, $349,933 RAC paid by John, $80,067 in cash and $10,000 personal effects). She was also liable for the basic daily fee and a mean-tested care fee.

From an Age Pension perspective, with combined assessable assets of $90,067 ($80,067 in cash and $10,000 in personal effects. RAD paid by Nancy and RAC paid by John are exempt under the Age Pension means test), Nancy would continue to receive the maximum rate of Age Pension.

What happens to the RAD/RAC if either spouse was to pass away?

Upon death, the RAD/RAC is paid back to the estate and is then ultimately transferred to a beneficiary as per the instructions in the Will or if there is no Will, a specified order of distributions under intestacy rules.

Assuming John and Nancy have a typical Will which leaves the entire estate assets to the surviving spouse, effectively, the RAD/RAC is inherited by the surviving spouse. Being assessed as a single person and with increased assets can be detrimental for aged care fees and Age Pension.

Impact on aged care fees and Age Pension upon either spouse passing away

If John passed away first, his RAC of $349,933 would be inherited by Nancy through his estate. Increased assets would have an impact on Nancy's aged care fees and Age Pension when compared with both of them being alive.

If Nancy passed away first, her RAD of $550,000 would be inherited by John through her estate. Increased assets would have an impact on John's aged care fees and Age Pension when compared with both of them being alive.

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Upon death, the RAD/RAC is paid back to the estate and is then ultimately transferred to a beneficiary as per the instructions in the Will or if there is no Will, a specified order of distributions under intestacy rules.

Table 1. Summary of John's aged care fees and Age Pension

	Basic daily fee	Accommodation contribution	Means tested care fee	Total	Age Pension
Before Nancy entered aged care	$18,692	Nil	Nil	$18,692	$24,081
After Nancy entered aged care		Up to $20,856 p.a. or an equivalent RAC of $349,933	$4,168	$22,860	

Table 2. Summary of Nancy's aged care fees and Age Pension

Basic daily fee	Accommodation payment	Means tested care fee	Total	Age Pension
$18,692	RAD of $550,000 paid	$4,168	$22,860	$24,081

Table 3. Impact on Nancy if John passed away first

Basic daily fee	Accommodation payment	Means tested care fee	Total	Age Pension
$18,692	RAD of $550,000 paid	$16,268 (Increase of $12,100 (compared with Table 2))	$34,960	$19,744 (Reduction of $4,337 (compared with Table 2))

What if John and Nancy had the capacity to change their Wills and distributed assets to adult children?

The task of restructuring affairs to achieve certain financial outcomes is made difficult by not having a definitive date of death for the respective individuals. Faced with this challenge, one could however put a plan in place upon either spouse passing away.

They could consider changing their Wills so that upon either of them passing away, their respective RAD/RAC is distributed to some other beneficiary rather than the surviving spouse. In considering this arrangement, the surviving spouse would want to have sufficient assets to pay for their aged care fees and personal expenses.

Seeking legal advice, John and Nancy change their Wills so that upon the death of either spouse, the RAD/RAC would be paid to their estate and then distributed to adult children, rather than inherited by the surviving spouse. This means that if John was to pass away first, his RAC of $349,933 would be paid to his estate, and as per his Will, transferred to adult children. Similarly, if Nancy was to pass away first, her RAD of $550,000 would be paid to her estate, and as per her Will, transferred to adult children.

Other advice considerations

If John and Nancy did not have mental capacity to change their Wills or they did not wish to transfer assets to their beneficiaries before both of them passed away, there could be other options which may assist with improving their financial position.

Investing in Challenger CarePlus

Challenger CarePlus could assist in reducing assessable assets and income which may help minimising aged care fees or maximising Age Pension. Table 7 compares the financial outcomes if the RAD or RAC was inherited by the surviving spouse and subsequently invested in Challenger CarePlus.

Using inheritance assets to establish a special disability trust

An aged care resident who has an inability to work more than seven hours a week would usually be an eligible disabled beneficiary for whom a special disability trust (SDT) could be established. Usually, the disabled beneficiary is prevented from gifting their own funds into an SDT which is established for them — the exception to this rule is where the source of the funds is from a superannuation death benefit or an inheritance which has been contributed into the SDT within three years of receipt.

An SDT is a special purpose trust established for the sole benefit of the disabled person. Assets of up to $681,750 (2019/20) could be contributed and be exempt from both the aged care and Age Pension means test.

Table 4. Impact on John if Nancy passed away first

Basic daily fee	Accommodation payment	Means tested care fee	Total	Age Pension
$18,692	RAC of $349,933 paid	$15,202 (Increase of $11,034 (compared with Table 1))	$33,894	$11,114 (Reduction of $12,967 (compared with Table 1))

Table 5. Impact on Nancy if John passed away first and his RAC was inherited by other beneficiaries compared with inheriting the RAC personally

Basic daily fee	Accommodation payment	Means tested care fee	Total	Age Pension
$18,692	RAD of $550,000 paid	$7,077 (Reduction of ($9,191 (compared with Table 3))	$25,769	$24,081 (Increase of $4,337 (compared with Table 3))

Table 6. Impact on John if Nancy passed away first and her RAD was inherited by other beneficiaries compared with inheriting the RAD personally

Basic daily fee	Accommodation payment	Means tested care fee	Total	Age Pension
$18,692	RAC of $349,933 paid	$3,066 (Reduction of $12,136 (compared with Table 4))	$21,758	$24,081 (Increase of $12,967 (compared with Table 4))

Table 7. Impact on Nancy if she invested John's RAC of $349,933 in Challenger CarePlus*

*Based on a CarePlus quote prepared on 2 July 2019 for an 80-year-old female, with no adviser fees. Means testing based on post-30 June 2019 social security rules

Basic daily fee	Accommodation payment	Means tested care fee	Total	Age Pension
$18,692	RAD of $550,000 paid	$14,377 (Reduction of $1,891 (compared with Table 3))	$33,069	$22,906 (Increase of $3,162 (compared with Table 3))

Table 8. Impact on John if he invested Nancy's RAD of $550,000 in Challenger CarePlus*

*Based on a CarePlus quote prepared on 2 July 2019 for an 85-year-old male, with no adviser fees. Means testing based on post-30 June 2019 social security rules

Basic daily fee	Accommodation payment	Means tested care fee	Total	Age Pension
$18,692	RAC of $349,933 paid	$13,859 (Reduction of $1,343 (compared with Table 4))	$32,551	$12,030 (Increase of $916 (compared with Table 4))

Legal advice and confirmation from the Department of Human Services should be sought confirming that the trust meets all the requirements. If all the requirements are met, an SDT could assist with reducing assets and income, in turn minimising aged care fees and maximising Age Pension.

A potential disadvantage is that it introduces a layer of complexity and, despite its potential financial advantages, clients may not be comfortable with this additional complexity. In assessing benefits, establishment and ongoing costs should also be considered.

Changing rooms to pay for a higher priced RAD

Nancy initially paid $550,000 as a RAD. Facilities have to seek approval if they wish to charge a RAD of more than $550,000. It is possible that some facilities have rooms priced higher than $550,000.

If the facility has a higher priced room offering superior accommodation, Nancy may consider changing rooms and paying the higher advertised RAD. As the RAD is an exempt asset for the Age Pension means test, this may assist with maximising Age Pension. There may also be a reduction in the means tested care fee because the RAD is not deemed for the aged care means test.

As John entered as a low-means resident, even though his assets increased upon Nancy's death, he cannot change rooms and pay a RAD within the same facility. Instead, he would need to change facilities which may enable him to choose a facility with a higher priced RAD. **FS**