Calculating the Likely Split of Assets

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1. Background

The *Family Law Act 1975* ("the Act") will shortly be celebrating the 30th anniversary of its operation. As the Family Court has developed through infancy to maturity, the fundamentals for dealing with property cases have not changed to any significant degree.

Ours is still a discretion-based system where, even on an identical set of facts (if such a thing existed) a judgment does not have the force of binding precedent, and – dare we say it – it is a truism that no two Judges can necessarily be relied upon to produce the same result.

The purpose of this paper is to articulate the approach that the Court can be expected to apply to disputes decided under the Act, and to then ascertain what guidance can be obtained from decided cases, to assist us in advising clients as to the outcome of those proceedings.

It is not proposed, in this paper, to consider the decision-making approach that is applied to same-sex and de facto couples.

2. Section 79 Family Law Act 1975

Section 79 of the Act gives the Courts exercising jurisdiction under the Act the power to adjust the interests in property as between the parties to a marriage.

Section 79(1) of the Act provides as follows:

> *"In proceedings with respect to the property of the parties to a marriage or either of them, the Court may make such Order as it considers appropriate altering the interests of the parties in the property, including an Order for a settlement of property in substitution for any interest in the property and including an Order requiring either or both of the parties to make, for the benefit of either or both of the parties or a child of the marriage, such settlement or transfer of property as the Court determines."*

Section 79(4) of the Act sets out the matters that the Court *must* take into account when making an Order under Section 79(1). This Sub-section is set out in full in Appendix A to this paper.

It will be seen that Section 79(4)(e) requires the Court to also have regard to what are affectionately known as "the Section 75(2) Factors". For ease of reference, Section 75(2) is also reproduced in this paper, at Appendix B.

Section 79(2) is also a significant section. It provides:

> *"The Court shall not make an Order under this Section unless it is satisfied that, in all the circumstances, it is just and equitable to make the Order."*

3. The 4-Step Approach

It is now well-established that in determining proceedings for property settlement, the 4 fundamental steps that should be taken by the Court are as follows:

(1) Make findings as to the identity and value of the assets, liabilities and financial resources of the parties. As a general rule, the assets should be valued at the time of the hearing.

(2) Assess the contributions of the parties, whether financial or non-financial, and including contributions to the welfare of the family in the role of home-maker and parent, having regard to Section 79(4)(a), (b) and (c).

(3) Determine and assess the relevant factors under Section 79(4)(d)-(g), which requires consideration of "the Section 75(2) factors".

(4) Consider whether, having regard to the 3 steps referred to above, the proposed Orders are just and equitable.

In relation to the "4th step", the Full Court pointed out in *Russell and Russell (1999) FLC 92-877*:

> *"That under Section 79(2) of the Act the Court is required to be satisfied that it is the* Order *to be made which is just and equitable*, not *just the underlying percentage division of the net value of the parties' assets."*

The addition of this 4th step was confirmed in the more recent decision of the Full Court in *Hickey and Hickey (2003) FLC 93-143*.

4. Global, or Asset-By-Asset, Approach

It has long been settled law that in the exercise of a Trial Judge's discretion under Section 79, the Court should either adopt a "global approach", or else determine the interests of the parties, asset-by-asset.

The global approach commonly involves applying the same percentage split to the totality of the parties' assets. The "asset-by-asset approach", on the other hand, might involve applying different percentages to individual items of property, for example having regard to the different contributions made to those assets by the parties. An asset-by-asset approach may also involve "quarantining" a particular asset or assets, for example an inheritance that has been received by one party shortly prior to, or following, the separation.

The High Court in *Norbis and Norbis (1986) FLC 91-712* held that either of these approaches is legitimate, and that there is no binding principle of law that restricts the exercise of discretion in the division of matrimonial property. The reality, however, is that the Family Court will more commonly apply the global approach, unless the marriage is of short duration.

5. Short Marriages

We have all heard ourselves talking about "a short marriage". Does it have any legal definition?

The Full Court in *McMahon and McMahon (1995) FLC 92-606* referred to a marriage of 5 years and 4 months as being "short". It should be remembered, however, that the test of shortness should be applied not to the length of the marriage, but to the period during which the parties were cohabiting. This is because the Court has long held that contributions made prior to the marriage can be taken into account in determining the parties' entitlements

pursuant to Section 79, in the same way that the Court can take into account contributions made post-separation: *Kowalski (1993) FLC 92-342*.

Similarly, different considerations will apply to a short, childless marriage than will apply to a short period of cohabitation, during which one or more children are born. This is because the parent with whom the child or children are living is likely to receive a significant adjustment in his or her favour pursuant to Section 75(2), and the children of the short marriage are likely to be very young, which will obviously magnify the nature of that adjustment.

In a short marriage, the contributions of the parties are generally capable of easy identification. They might be attributable to one particular asset, or class of assets. The parties are also more likely to have kept their financial affairs separate during a short marriage.

While the non-financial contributions of one party or the other in a short marriage may well be significant, it is apparent that the shorter the marriage, the more emphasis will be placed by the Court on the direct financial contributions that were made by the parties. As the Full Court stated in *Bushby and Bushby (1988) FLC 91-919*:

> *"In a marriage of 4 years, with no dependent children being involved on either side, it ought to have been apparent to the parties' legal advisers that each party's actual financial contribution to the marriage was the primary issue."*

In *McMahon's* case, which involved a marriage of 5 years and 4 months, the husband brought into the marriage assets valued at $280,000; the wife, $889,000. There were no children of the marriage. By the time of the hearing, they had accumulated joint assets of $268,000. The husband, who unlike the wife had worked full-time throughout the marriage, had increased the value of his assets to $569,000, whilst the wife's assets were valued at approximately $463,000.

The Full Court favoured an asset-by-asset approach and re-exercised discretion. It provided for the parties to retain the assets that they owned at the date of the marriage, and to divide equally those that were acquired during the course of the marriage.

Similarly, in *Anastasio and Anastasio (1981) FLC 91-093*, the parties lived together for 14 months. They both brought savings into the marriage and worked throughout the

cohabitation. Justice Baker commented that *"... having regard to the shortness of the marriage, each party should take from this marriage, what he or she contributed."*

That is not to say that a short marriage will necessarily require an arithmetical approach to determining the interests of the parties in property. This will be especially so, where there is a child or there are children born during the marriage.

Thus in *Malpas and Mayson (2000) FLC 93-061*, the parties were married for 2 years and 7 months but there were 2 children born to the marriage. The Trial Judge essentially brought into account all of the assets, which at the hearing were found to be worth upwards of $2.5 million.

The Trial Judge adopted the global approach, assessing the wife's contributions at $350,000, or 13.5% of the known asset pool, and awarded her a further $200,000 under Section 75(2).

The Full Court, whilst dismissing the husband's Appeal, commented that an award of 13.5% of the net asset pool *"does on the face of it seem to be an extraordinarily large allowance by way of contribution for such a relatively short marriage. "* Nonetheless, whilst taking into account the 2 very young children when looking at the Section 75(2) Factors, the Court nonetheless added that *"We do not agree that the result is out of range."*

The Court is more likely to adopt a global approach to a marriage of short duration, if the assets are substantial. *Goodwin and Goodwin Alpe (1991) FLC 92-192* involved a childless marriage, where the parties lived together for just over 3½ years. At the time of the trial, the husband's assets were valued at some $3 million, whilst the wife had slightly in excess of $115,000. The Trial Judge found that the wife had made only a small contribution to the husband's assets, but awarded her 10%, or approximately $300,000. The Full Court upheld the decision.

6. Equality as a Starting-Point?

In its "formative years", a trend developed in the Family Court that in a long marriage, with no significant initial contributions by either party or any "windfalls" during the marriage, the contributions of the parties should be presumed to be equal. Thus in *Rolfe and Rolfe (1979) FLC 90-629*, the then Chief Justice Evatt commented that where a wife assumed the role of primary care-giver and homemaker:

> *"Provided she makes a contribution to the home and to the family, the Act clearly intends that her contributions should be recognised not in a token way but in a substantial way. While the parties resided together, the one earning and the other fulfilling responsibilities in the home, there is no reason to attach greater value to the contribution of one than to do that of the other. This is the way they arranged their affairs and the contribution of each should be given equal value."*

In *Racine and Hemmett (1982) FLC 91-277*, the Court went so far as to refer to the *"general rule ... that where the parties had been married for a substantial time, and there had been contributions by each of the parties, there should be an equal division."*

However, in *Mallet and Mallet (1984) FLC 91-507*, the High Court rejected the proposition that in a long marriage, where both parties worked together and built up assets by their joint efforts, a position of equality was a convenient starting-point, even if the role of one party was confined to that of parent and homemaker.

The position was then, and continues to be the case now, that in such a situation equality is the potential, even the most likely, outcome. Referring to the assessment of the respective contributions of husband and wife under Section 79(4) of the Act, Justice Mason said:

> *"In undertaking this task it is open to the Court to conclude on the materials before it that the indirect contribution of one party as homemaker or parent is equal to the financial contributions made to the acquisition of the matrimonial home on the footing that that party's efforts as homemaker and parent have enabled the other to earn an income by means of which the home was acquired and financed during the marriage."*

But he went on to say:

> *"No doubt a conclusion in favour of equality of contribution will be more readily reached where the property in issue is the matrimonial home or superannuation benefits or pension entitlements and the marriage is of longstanding. It would be otherwise when the property in issue consists of assets acquired by one party whose ability and energy has enabled the establishment or conduct of an extensive business enterprise to which the other party has made no financial contribution and where the other party's role does not extend beyond that of homemaker and parent."*

There can be little doubt that in a marriage of long duration, whether or not there are children born of the marriage, where the pool of assets has been built up as a result of the joint efforts of the spouses in their different roles, one can expect a finding of equality.

Mallet's case did, however, mark the emergence of an approach whereby, when the Court was dealing with a large pool of property, additional weight would be given to the financial contributions of one party or the other pursuant to Section 79(4) of the Act, where it could be shown that those contributions were the result of the special business or entrepreneurial skills of one party.

7. **"Big Money" Cases**

In *Ferraro and Ferraro (1993) FLC 92-335*, the parties were married for 27 years and accumulated assets to a value of approximately $11 million. Neither of them had any significant assets at the time of the marriage. There were 3 children of the marriage. The evidence was that during the marriage the wife on the one hand concentrated on her role as homemaker and parent, and did so extremely well, without any significant assistance from the husband. On the other hand, the husband pursued an extremely successful career in the purchase, development and resale of commercial property. At first instance, the assets were divided in the proportions of 70/30 in his favour.

The Full Court drew a distinction between the entrepreneurial skill of the businessman in that case, and the skills of a professional person such as a lawyer or tradesperson. It said:

> *"Typically in those cases there is a high level of professional training and a picture of long hours of work over many years, the development of high professional skills and the resultant imposition on the other partner of a substantial extra burden in relation to the home is common. The fundamental difference is that those cases normally do not produce the very high level of property with which this and comparable cases are concerned, and a common outcome, other aspects being equal, is one of approximating equality (although as previously pointed out Section 75(2) may intrude to a degree in such cases).*
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> *While the application of skill may be the same, the difference seems to be that in the one case the application of that skill produces assets which fall within what may be*

described as the medium range, whilst in cases such as that before us, it produces assets in the high range."

The Full Court re-exercised its discretion, finding that the Trial Judge's approach had denigrated the wife's contributions. She received 37.5%

In a later decision of *McLay and McLay (1996) FLC 92-667*, the parties lived together for about 21 years. The net assets were valued at over $8 million. There was one child of the marriage, aged 17 at the time of the hearing. Once again, neither of the parties had significant assets at the time of the marriage. The pool of assets was substantially accumulated as a result of the husband's financial activities. However, in addition to his *"ordinary employment"* as an advertising agency executive, the husband also engaged in managing investments and undertook property development projects.

Whilst attributing equal contributions to the domestic assets such as home, superannuation and personalty, the Trial Judge assessed the contributions as being 60/40 in the husband's favour, concluding as follows:

"Contributions made by Mr McLay overall do exceed those of Mrs McLay. The reason for this is the weight which attaches to his contribution from his activities and property dealing and property development ... Mr McLay undertook this additional activity for 10 years whilst undertaking full-time employment at the same time and by this extra contribution of effort added considerably to the assets accumulated during the course of the parties' marriage."

In short, just because the assets are in the "high range" does not mean that added weight will be given to the entrepreneurial skills of the chief financial provider. The thrust of the decision in *Ferraro's* case is that where the application of entrepreneurial skills by one party results in the accumulation of a higher range of assets, then those "special" or "extra" skills are given additional significance.

The most recent decision of the Full Court involving "special skills" came in *Jel and DDF ("Lynch and Fitzpatrick") (2001) FLC 93-075*. That case involved a period of cohabitation of 18 years, and a net asset pool of more than $36 million. There were 3 children of the marriage. The Full Court upheld the principle of recognising "special factors" and in its

Judgment set out a number of principles that could be said to arise from the previously reported "big money" cases. However, one of the principles that it commented could be said to arise from those cases was:

> *"The determination of an issue of whether or not a "special" or "extra" contribution is made by a party to a marriage is not necessarily dependent upon the size of the asset pool, or the "financial product."*

8. Section 75(2) Factors

No claim for an adjustment under Section 75(2) was made in either *Ferraro's* case or *McLay*. In another "big money", and certainly well-known, case of *Whiteley and Whiteley (1992) FLC 92-304*, which involved a 30-year relationship and about $11 million worth of assets, an adjustment of 2.5% was made. However, as a general rule, an adjustment under Section 75(2) will not be appropriate in a high range case.

The task of the Court of the "third step" is to examine each of the factors in Section 75(2), so far as they are relevant to the circumstances of the particular case, and deciding how much weight is to be placed on each of those relevant factors is entirely a matter for the discretion of the Trial Judge. Where the Court has before it applications for both property settlement and spousal maintenance, it should firstly determine a party's entitlement under Section 79, before deciding whether that party should in addition be entitled to spousal maintenance under Section 72 of the Act. Whilst Section 75(2) has to be considered in both types of proceedings, it should be remembered that a party will often qualify for an adjustment under Section 75(2) in property proceedings, without even applying for, let alone being entitled to, an award of spousal maintenance.

In an early decision of *Dench and Dench (1978) FLC 90-469*, the Full Court made an award of 10% under Section 75(2) in favour of a wife aged 37 with one school-aged child. The wife was on a pension and living in a new domestic relationship.

Subsequently, it was not uncommon to encounter reference to the " Dench factor", being an adjustment of 10% under Section 75(2) in favour of a party who, without more, was the principal care-giver to one or more school-aged children. Obviously, if there is only one child still at school and that child is in his or her last years at school, it may not be reasonable to

assert that an adjustment of 10% should still be made. However, as a general "rule of thumb", "the Dench factor" involving an adjustment of 10% in favour of the custodial parent still provides a useful guideline in advising clients of the likely adjustment under Section 75(2).

The magnitude of that adjustment will of course be further increased if the non-custodial parent also has a significantly higher earning capacity than the principal care-giver to the children. A more recent but equally useful illustration of the Court's approach to assessing the Section 75(2) factors can be found in the case of *Clauson and Clauson (1995) FLC 92-595.*

That case involved a marriage of 9 years and a net asset pool of approximately $1.4 million. The husband had been the financial activist during the marriage, whilst the wife had primary responsibility for looking after their 4 young children. Her ability to care for the children was restricted by that responsibility, although she was still only 34 years of age. The husband was 49 and earning slightly in excess of $200,000 per annum gross.

The Trial Judge made an adjustment of 15% in the wife's favour under Section 75(2), which the Full Court considered to be inadequate. It re-exercised its discretion and increased the Section 75(2) adjustment from 15% to 25%, commenting as follows:

> *"There is, we think, at times, a tendency to assess Section 75(2) factors in percentage terms without considering its real impact and we think that there is legitimacy in the views expressed in more recent times that the Court has tended to operate in this area within artificially delineated boundaries. That is, it appears almost to be inevitable that the Section 75(2) Factors will be assessed in a range between 10% and 20%. A number of cases will justify an assessment outside those parameters and in any event it is the real impact in money terms which is ultimately the critical issue."*

In a case such as this, the husband can be expected to point to the amount of child support that he is paying, together with the significant amount of time that the children might be spending with him during contact periods. From the wife's point of view, she will be placing reliance upon the restrictions placed by the responsibility of her role as primary care-giver to the children upon her ability to re-establish herself in the workforce, as well as the fact that her accommodation needs are increased accordingly.

9. Gifts by Family Members

Not uncommonly, the task of calculating the asset split will be complicated by a gift made during the marriage by the parents of one party or the other. Once the parties have separated, that gift is often characterised as a loan, but even if it stands as a gift, the benefactor will be heard to say that of course it was a gift made to his or her child: it was certainly not a gift to both of them!

The case of *Kessey and Kessey (1994) FLC 92-495* involved a contribution by the mother of substantial moneys towards the cost of improving the matrimonial home. The Full Court in that case commented:

> *""... a contribution by a parent of a party to a marriage to the property of the marriage will be taken to be a contribution made by or on behalf of the party who is the child of the parent unless there is evidence which establishes it was not the intention of the parent to benefit only his or her child."*

10. **"Windfalls"**

In this paper the term "windfalls" is used broadly, to cover circumstances such as an inheritance received by one party or the other, or a lottery win. The term is still conveniently used to describe a contribution that has resulted from good fortune, rather than due to the efforts of either party.

However, in *Zyk and Zyk (1995) FLC 92-644*, which involved consideration of a lottery win, the Full Court commented that the use of the term "windfall" created conceptual difficulties within Section 79, and that it should instead be simply described as "a contribution".

Cases such as *Zyk's* case and *Brease and Brease (1998*) *FLC 92-793* established that the legal title to a lottery ticket vests in the person in whose name the ticket issues. However, that is not to say that under Section 79, the party who did not purchase the lottery ticket will not obtain a significant share of the lottery win, even if it was made following the separation.

Thus in *Farmer and Bramley (2000) FLC 93-060*, the parties lived together for 12 years and had one child, who was nearly 15 at the time of the hearing. When they separated, there were no significant assets. The husband was in full-time employment and the child was living with

the wife at the time of the hearing. The husband won $5 million in a lottery win after the separation. 18 months later, the wife applied for a property settlement. She received an award of $750,000 from the Trial Judge, which was upheld on appeal. The Court took into account not only the heavy weighting in favour of the wife under Section 75(2), but also her financial and non-financial contributions made during the marriage.

11. Initial Financial Contributions

If the reference to a "short marriage" encompasses a period of cohabitation of up to 5 years or thereabouts, what then is "a long marriage", and what effect does that have on the assessment of the parties' contributions?

As a rule of thumb, in a marriage of 20 years' duration or more, especially if there is at least one child of the marriage, and no extraordinary or "special" contributions, it will be difficult to argue with a proposition that the contributions of the parties should be regarded as equal.

As our former Chief Justice Nicholson observed in *Bremner and Bremner (1995) FLC 92-560*,

> *"When one considers cases of this sort, it should be remembered that they are not decided upon a pure mathematical basis, and looked at from the point of view of abstract justice, it would appear to me that in a case where the assets of the parties are a comparatively modest $360,000, there has been a 20 year marriage and 2 children, where both parties have worked as these people have, it is difficult to argue with a judgment which divides those assets equally."*

In that case, the parties were married for just under 23 years and they had 2 children. The husband brought into the marriage a block of land, which remained unimproved at the time of the hearing and had an agreed value of some $220,000. There was no evidence that the wife had made any contribution that would have increased the value of the land. Both parties worked throughout the marriage.

The Trial Judge assessed the parties' contributions as equal, and made no adjustment under Section 75(2). The decision was upheld by the Full Court, Fogarty commenting that *"an initial substantial contribution by one party may be eroded to a greater or lesser extent by the later contributions of the other party, even though those later contributions do not necessarily*

at any particular point outstrip those of the other party." In short, the longer the marriage, the less significance will be attached to assets brought into the marriage by one party or the other, especially if those assets are intermingled or merged with the other property of the parties during the marriage.

An example of the treatment of pre-marital assets in a marriage of medium duration can be found in *Pierce and Pierce (1999) FLC 92-844*, which involved a period of cohabitation of just over 10 years. The husband brought into the relationship assets of $226,000, whilst the wife had slightly in excess of $10,000. There were no children of the marriage. At the time of the hearing, the net asset pool amounted to approximately $320,000. The Full Court allowed the husband's Appeal in that case, awarding him 70% of the assets based on his greater initial contributions, and commented as follows:

> *"In considering the weight to be attached to the initial contribution, in this case of the husband, regard must be had to the use made by the parties of that contribution. In the present case that use was a substantial contribution to the purchase price of the matrimonial home."*

12. Contributions made following the Separation

Contributions made following separation will be given recognition by the Court, in the same way as pre-marital contributions.

Thus in *Figgins and Figgins (2002) FLC 93-122*, a post-separation inheritance also effectively made up the entire pool of assets available for distribution. At the trial, the husband's net worth was agreed at $22.5 million, whilst the wife had no significant assets. The Trial Judge awarded the wife $600,000 for her contributions during a period of 7 year's cohabitation, and a further $500,000 under Section 75(2), principally having regard to her ongoing role as primary carer of the parties' 5-year old child.

The Full Court upheld the wife's appeal and observed that the Trial Judge had been led into error by treating the husband's inheritance as a "special factor" in the sense used in *McLay's* case. The Court regarded the situation as being similar to one where the parent of one party makes a gift to that party during the marriage. It awarded the wife $2.5 million, but dismissed her Application for spousal maintenance.

13. Treatment of Superannuation

Since 28 December, 2002, when the *Family Law Legislation Amendment (Superannuation) Act 2001* came into effect, a superannuation interest is to be treated as "property". That is not to say that superannuation must be split between the parties in all cases. The Court retains a wide discretion as to how superannuation is divided, and if it is to be divided, and the cases decided over a period of just under 3 years have provided a good demonstration of just how widely that discretion will be exercised.

On 2 June 2005, the Full Court released 4 Judgments, perhaps with the intention of giving some early guidance as to how superannuation interests should be treated. Unfortunately, but perhaps in keeping with the balance of this paper, no clear guidance can be drawn from these reported cases.[1]

Indeed, in *Coghlan's* case, the Full Court observed that Section 90MC of the Act did not mean that superannuation should be "treated" in exactly the same as other property. *"Superannuation interests are another species of asset which is different from property as defined in Section 4(1) ...."*, the Court said, but unfortunately did not go on to explain what precisely the implications were of superannuation being treated as *"another species of asset"*.

The Court considered that the preferred approach to determining property settlement was to prepare 2 separate lists, one containing the superannuation interests and the other, the balance of property available for distribution. In this way it considered that the direct and indirect contributions of the parties to superannuation were more likely to be given proper recognition.

In this particular case, the Trial Judge excluded from the net asset pool the wife's prospective superannuation entitlements under a defined benefit scheme, for the purposes of assessing the

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[1] The case references of the 4 Judgments are as follows:

- *Coghlan and Coghlan* (2005) *FLC 93-220*;
- *Wilkinson and Wilkinson* (2005) *FLC 93-222*;
- *Ilett and Ilett (2005) FLC 93-221*; and
- *Casey and Braione-Howard & Defence Forces Retirement and Death Benefits Authority (2005) FLC 93-219*.

parties' contribution-based entitlements, on the basis that they *"only arise many years into the future"*. He also excluded the husband's pension entitlements, although these were valued in accordance with the *Family Law (Superannuation) Regulations 2001* at more than $230,000. The net pool excluding superannuation was valued at just under $600,000.

The Court observed that when considering contribution-based entitlements to superannuation, relevant matters for consideration would include:

(a) the relationship between years of fund membership and cohabitation;

(b) actual contributions made by the member at the commencement of the cohabitation, at separation and at the date of hearing;

(c) preserved and non-preserved resignation entitlements at those times; and

(d) any factors peculiar to the fund, or to the spouse's present or future entitlements.

The Court upheld the Appeal and remitted the case for a re-hearing in accordance with the principles that it had set out.

14. Conclusion

From an assessment of the most significant judicial precedents over the nearly 30 years that the Family Court has been in existence, the following general guidelines might be gleaned:

(1) There is no presumption of equality. Nonetheless, an outcome of equality is most likely to result in a long marriage, uncomplicated by any direct recent direct financial contribution or windfalls.

(2) In such a marriage, and assuming that both parties applied themselves full-time to their respective roles, whether as homemaker and parent on the one hand, or as a professional person or trade-person on the other, the fact that one party made a greater financial contribution than the other is unlikely to change an outcome of equality.

(3) In the common run of cases, an adjustment of something in the order of 10% can be expected in favour of the custodial parent, without taking into account his or her inferior earning capacity.

(4) In the light of *Coghlan's* case, a "2 pools approach" will often be more appropriate where the superannuation interests form a substantial part of the net asset pool, or where those interests have to a significant degree been accumulated post-or pre-cohabitation.

(5) In a high range case, which might conveniently be described as involving net assets to the value of approximately $7.5 million or more, the significance of the financial contributions or special skills of the financial activist will be increased. It is also unlikely that the Court will make an adjustment under Section 75(2).

(6) In "mid-range" cases involving a net asset pool of between $3 million and $7.5 million, the added importance of the financial contributions would typically result in the domestic contributions being recognised in the range of 40-45% and the financial contributions in the range of 55-60%.

(7) In similar cases producing assets in the range of $7.5 million to $15 million, the homemaker typically will receive something in the range of 35-40% and the financial activist in the range of 60-65%.

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APPENDIX A

Section 79(4) *Family Law Act 1975*

In considering what order (if any) should be made under this section in proceedings with respect to any property of the parties to a marriage or either of them, the Court shall take into account:

(a) the financial contribution made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them;

(b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them;

(c) the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent;

(d) the effect of any proposed order upon the earning capacity of either party to the marriage;

(e) the matters referred to in subsection 75(2) so far as they are relevant;

(f) any other order made under this Act affecting a party to the marriage or a child of the marriage; and

(g) any child support under the Child Support (Assessment) Act 1989 that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage.

APPENDIX B

Section 75(2) *Family Law Act 1975*

(2) The matters to be so taken into account are:

(a) the age and state of health of each of the parties;

(b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;

(c) whether either party has the care or control of a child of the marriage who has not attained the age of 18 years;

(d) commitments of each of the parties that are necessary to enable the party to support:

(i) himself or herself; and

(ii) a child or another person that the party has a duty to maintain;

(e) the responsibilities of either party to support any other person;

(f) subject to subsection (3), the eligibility of either party for a pension, allowance or benefit under:

(i) any law of the Commonwealth, of a State or Territory or of another country; or

(ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia;

and the rate of any such pension, allowance or benefit being paid to either party;

(g) where the parties have separated or the marriage has been dissolved, a standard of living that in all the circumstances is reasonable;

(h) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;

(j) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;

(k) the duration of the marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;

(l) the need to protect a party who wishes to continue that party's role as a parent;

(m) if either party is cohabiting with another person—the financial circumstances relating to the cohabitation;

(n) the terms of any order made or proposed to be made under section 79 in relation to the property of the parties;

(na) any child support under the Child Support (Assessment) Act 1989 that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage; and

(o) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and

(p) the terms of any financial agreement that is binding on the parties.