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What the Law Says

Understanding your financial entitlements at separation

When a relationship ends, there are often strong opinions about what each person is entitled to. Those opinions are not what matters. What matters is what the law says. In Australia, the Family Law Act 1975 sets out a clear framework for how assets are divided at separation — a legal process, with established criteria, designed to produce a just and equitable outcome.

> *"The court must make such order as it considers appropriate to do justice between the parties."*
>
> Family Law Act 1975 (Cth), Section 79(2)

The Law — Not Opinion — Decides

Property settlement in Australia is governed by the Family Law Act 1975 (Cth) — federal legislation that applies to all married couples, and to de facto couples in most states and territories. It is administered by the Federal Circuit and Family Court of Australia.

Under this Act, property settlement is not determined by what one party wants, what one party says is fair, or what was earned by whom during the relationship. It is determined by a structured, four-step legal process — the same process applied in every case, in every state.

The Four-Step Framework

The Family Law Act requires the court to consider property settlement through four sequential steps. A family law solicitor will work through exactly this process.

STEP 1

Identify and value all assets and liabilities

Everything owned and owed — by either party, individually or jointly — is included in the asset pool. This includes superannuation, property, investments, savings, business interests, and all debts. There is a legal obligation on both parties to make full and frank financial disclosure.

STEP 2

Assess the contributions of each party

Both financial and non-financial contributions are assessed — across the full duration of the relationship. This is broader than most people expect, and deliberately so.

STEP 3

Consider future needs

The court considers the future circumstances of each party — including age, health, income capacity, caring responsibilities, and standard of living during the relationship. These factors can adjust the outcome significantly.

STEP 4

Determine whether the outcome is just and equitable

The court must be satisfied that the outcome is just and equitable in all the circumstances — not merely arithmetically equal, but fair in context.

What Counts as a Contribution

This is one of the most important things to understand — and one of the most commonly misunderstood. The law recognises a much wider range of contributions than paid income alone.

FINANCIAL CONTRIBUTIONS	NON-FINANCIAL CONTRIBUTIONS
– Income earned during the relationship – Assets brought into the relationship – Inheritances received during the relationship – Gifts received from family – Investments and savings – Business income and assets	– Homemaking — managing the household – Raising children – Supporting a partner's career or business – Care of family members – Unpaid work in a family business – Renovating or improving property

The Family Law Act makes no distinction in principle between financial and non-financial contributions. A woman who spent years raising children and managing a household while her partner built a career has made contributions that the law recognises and takes into account.

Future Needs — What the Law Also Considers

In Step 3, the court looks forward as well as back. The Family Law Act Section 75(2) sets out a list of factors the court must consider when assessing future needs.

– Age and state of health of each party — health, capacity to work, and life expectancy
– Income, property, and financial resources of each party — including earning capacity
– Whether either party has the care of children, including adult children or other dependants
– Commitments necessary to support either party or any children
– The standard of living enjoyed during the relationship
– A party's ability to become self-supporting — career interruptions and reduced earning capacity are relevant
– Any other fact or circumstance the court considers relevant

These factors mean the outcome is not simply a mathematical split. Context — including years out of the workforce, career sacrifices, and future earning capacity — is part of the legal picture.

Common Misunderstandings — And What the Law Actually Says

Opinions expressed during the breakdown of a relationship are not legal advice. The following are some of the most common misunderstandings.

WHAT IS SOMETIMES SAID	WHAT THE LAW SAYS
"You didn't earn it, so you're not entitled to it."	The Family Law Act explicitly recognises non-financial contributions — homemaking, childrearing, and supporting a partner's career. Income earned is one contribution among many that the law considers.
"The house is in my name — it's mine."	Legal title does not determine entitlement under the Family Law Act. Assets held in one party's name are included in the asset pool and assessed as part of the overall settlement.
"Super is mine — you can't touch it."	Superannuation is included in the property pool under the Family Law Act and can be subject to a superannuation splitting order. This is one of the most commonly misunderstood aspects of family law in Australia.
"You'll get nothing — I'll make sure of it."	Settlement is determined by the Family Law Act and, if needed, by the Federal Circuit and Family Court of Australia — not by either party. The court is required to produce a just and equitable outcome.
"We agreed — so that's what you'll get."	Informal agreements are not legally binding. Until an agreement is formalised through Consent Orders or a Binding Financial Agreement, it can be revisited — by either party.

Where to Learn More — Official Sources

The following are authoritative, independent sources of information on family law and property settlement in Australia.

Federal Circuit and Family Court of Australia
Property & Financial Matters
The court's own guidance on how property settlement works, what the process involves, and what to expect.
fcfcoa.gov.au

Australian Government — Attorney-General's Department
Family Law System
Overview of the family law system in Australia, including property settlement, superannuation splitting, and the rights of both parties.
ag.gov.au/families-and-marriage/families/family-law-system

Legal Aid NSW
Property Settlement — Plain Language Guide
Legal Aid produces clear, accessible guidance on property settlement rights. Free and independent. Similar services are available through Legal Aid in each state and territory.
legalaid.nsw.gov.au

Australian Government
Family Law Help
A government-run resource designed to help people understand their options under Australian family law.
familylawhelp.gov.au

The law does not ask whose name is on the account, who earned more, or who wants more. It asks what is just and equitable — in all the circumstances. A family law solicitor can tell you what that framework means for your specific situation. That first conversation is confidential, and it does not commit you to anything.

This document is general information only — not legal advice.
