



Material wastage in family law property matters

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In family law property settlements, the way Courts deal with wasted or disposed of assets has changed. Following legislative change and a 2025 court decision, so-called “addbacks” are no longer included in the property pool. Instead, the focus is now on existing assets and whether one party has engaged in material wastage of financial resources.

This article explains what addbacks were, why they no longer apply, and how material wastage may still affect property division outcomes.

The 2025 Shinohara decision – formerly used "addbacks" are no longer a relevant factor

Before 2025, the Court could add assets that had ceased to exist to a property pool before determining how the pool should be divided between the separating parties.

In *Shinohara & Shinohara* [2025] FedCFamC1A 126, the Court changed its approach to how addbacks should be treated in property proceedings. Previously, in [calculating the asset pool](#) and what property was available for division, the Court could choose to include assets that had been disposed of as though they still existed.

The result of the decision in *Shinohara* is that **only existing property** is to be considered available for division, and that the legal concept of addbacks would no longer be applied in family law property settlements moving forward.

What were addbacks?

The term 'addbacks' referred to assets that did exist at one point during the relationship or following separation, but have since been disposed of by one party for personal expenditure or meeting the costs of legal fees.

The Court could then, at its discretion, include the value of the disposed asset as part of the property pool available for division, even if it no longer existed by the time the matter was before the Court.

For example, if one party lost a substantial amount of money on gambling during the relationship and those funds were never recovered, this could be considered as a reduction of the shared property pool and so could be 'added back' by including the value of the lost gambling money in the assets available for division.

The value of the gambling money would be included in the asset pool and factored in as though the party who disposed of those funds was still in receipt of the funds and was receiving them as part of their property settlement.

The 2024 amendments to the *Family Law Act*

In 2024, key amendments were made to the *Family Law Act 2024*, which focused on financial and property matters in the event of separation.

The Shinohara decision and the shift in the Court's approach to formerly used addbacks is a result of the changes made to the *Family Law Act* in 2024. This decision arose from the Court's interpretation of the amended [section 79\(3\)\(a\)\(i\) of the *Family Law Act 1975 \(Cth\)*](#).

The section states that the Court is to 'identify the **existing**' assets and liabilities of each party, and so the Court determined this to exclude assets that no longer existed.

Material wastage and section 79(5) of the *Family Law Act*

While the concept of addbacks is now no longer considered by the Court, expenditure and reduction of the asset pool can still be considered as 'material wastage' under the new [section 79\(5\) of the *Family Law Act*](#).

In 2025, the concept of 'material wastage' came into effect as a consideration the Court can look at in determining if an adjustment should be made in the overall property division.

This section is still new to the Act and to the Court, and so we will know more about how the Court views material wastage in property proceedings as more cases come before the appellate Courts and the case law develops. While 'material' generally means significant or having an effect, what the Court considers to be 'material' in terms of financial resources will become evident in the future.

You can read more about wastage in our explainer blog ["Family law changes for property matters from June 2025"](#).

Factors considered, including wastage, when determining property settlement

In [determining family law property matters](#), the Court is required to first consider if it is 'just and equitable' to make final property orders that alter the property interests of the parties (dividing the asset pool).

There is a range of considerations beyond material wastage that the Court may take into account to assist it in reaching a 'just and equitable' outcome. These considerations include:

- the assets and liabilities held by each party;
- direct financial contributions to property of the parties;
- indirect financial contributions, such as maintenance or home repairs;
- if family violence impacted on one party's potential to make direct or indirect financial contributions and/or their future circumstances;
- future earning capacity of each party.

Although reductions in the asset pool by one party can no longer be grouped together with the existing assets that remain, the Court does have the power to consider if any intentional or reckless material wastage of the relationship's financial resources should alter the final property division.

Get help from a family lawyer

Understanding your property pool and what considerations the Court may make in property proceedings is complex, and adding the potential of material wastage can make the process even more complicated.

We recommend seeking legal advice from our experienced team of family lawyers, who can guide you in understanding the asset pool available for division and how the Court may consider any potential wastage or expenditure by you or your former partner.

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