



Are my future needs considered in family law property settlement?

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When a marriage or relationship breaks down, a question that often comes to mind is, *“They make so much more money than me, I am sick, I am keeping the care of the children – will I be compensated for our different future needs?”* The short answer is yes; in most cases, your future needs will be compensated for in your family law property settlement.

The *Family Law Act* mandates the Court to consider a number of factors when determining whether a [property settlement is just and equitable](#). One of these is the “future needs” of each party.

What factors are considered in family law property settlement?

Section 75(2) of the *Family Law Act* sets out the many factors relevant to consider for each party moving into the future.

These include the following:

Age and state of health of you and the other party;

The income, property and financial resources of you and the other party, and the physical and mental capacity of each of you to continue;

Which party has the care or control of a child to the relationship;

What are the commitments of you and the other party necessary to support yourself, or a child or any other person who you have a duty to maintain (for example, an elderly family member)?

Are you or the other party eligible for a pension, allowance or government benefit;

Can you and the other party maintain a reasonable standard of living?

Are you or the other party now living with another person? If so, what are the other person's respective financial circumstances? and

Are you or the other party [paying child support](#)? If so, in what quantum?

Considering future needs during property settlement – a common example

A common example of where the Court will consider future needs is in a “traditional marriage” where one party is the primary income earner, and the other party primarily takes care of the children (primary carer).

The primary carer often puts their career on hold whilst the other parents' career prospers and advances.

At the time of separation, the primary income earner has enjoyed the benefit of climbing the corporate ladder and often earning more monies than the primary carer. The primary carer may be in a position where they need to now return to the workforce without advancing at all in the time they have been away from work caring for the children.

The Court will look to see where an adjustment should apply due to the income earning disparity of the parties and also the continuing primary carer role one parent may remain in.

How is the amount of adjustment for future needs calculated?

The quantum of the adjustment will depend on the difference in the two parents' income-earning capacity and the parenting arrangements post-separation. For example, if one parent earns over \$1,000,000 per annum and spends time with the children each alternate weekend, the adjustment will be higher than parents who have a smaller income earning disparity and shared care of the children equally.

There is no formula for the adjustment the Court will apply for future needs, and the discretion of the Judicial Officer is broad. Seeking assistance from a family lawyer will ensure you achieve optimal results when negotiating future needs.

Get property settlement help from a family lawyer

If you are considering separation or have recently separated, Meillon & Bright's team of experienced family lawyers can assist you with considering your rights and entitlements to a property settlement. The adjustment applied for future needs has broad discretion, and how this is presented early in the case is important.

We can assist you with working through the various options to engage with your former partner to discuss your property settlement or the options available to commence proceedings in the Family Court if necessary. We will also work with you to [formalise any agreement you reach](#) to ensure your future needs are considered.

Our family lawyers also regularly work with other [professional advisors, including financial advisors, tax specialists and accountants](#), to craft property settlements in a way which maximises the practical outcomes for our clients and minimises potential taxation consequences. Such professionals can assist in putting structures in place, at separation, to maximise the implication of any property settlement.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.