How is HECS/HELP debt treated in a property settlement?

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The costs associated with tertiary education are at an all-time high, meaning it is taking much longer to pay off any HECS/HELP debts. It's now common place in family law property settlements to see sizeable HECS/HELP debts for one or both of the parties. In short, HECS/HELP debts count as part of your overall financial position, yet repayment depends on income and tax rules instead of regular loan instalments.

When you separate, the family court uses a broad four step process to divide assets and liabilities. The first step involves listing all assets, liabilities, and superannuation in a single pool, regardless of whose name the debt is in. To read more about the four step process, you can visit our earlier blog "how does the Family Court determine property settlement matters?".

Where HECS/HELP fits in the property pool

Under Australian family law, HECS/HELP are generally dealt with in either of these two ways:

- A personal liability to one party of the relationship - not to be included in the joint pool of assets and liabilities; or
- A joint liability of the relationship - included in the joint pool of assets and liabilities.

What sets HECS/HELP debts apart from our other loans or debts, however, is that you don't start making repayments until your taxable income rises above a threshold. After which, the Australian Tax Office (ATO) collects repayments through the tax system.

No single rule for HECS/HELP

There is no fixed rule across all cases about HECS/HELP in property settlements. In some matters, the court has treated a HECS/HELP balance as part of the joint liabilities in the pool. In other matters, the court has treated the balance as personal to the student partner and left the debt outside the pool.

What factors does the court consider for HECS/HELP debt?

When deciding whether to include HECS/HELP debt in the property pool, the court considers the individual circumstances of each case. Often the following factors will guide their decision making:

- When the HECS/HELP debt was incurred and whether both parties agreed to the study.
- Whether the other party also had a HECS debt and whether repayments were made on that debt during the relationship.
- Whether the debt is a current liability or a contingent liability.
- For contingent debts, how likely the debtor is to earn above the repayment threshold and start repayments.
- How the qualification has been used to generate income during the relationship and whether that income supported both parties.

When is HECS/HELP treated as a joint liability?

In cases where the court ruled that the HECS/HELP debt was a joint liability, it is generally because the relationship as a whole benefited from the qualification and joint resources helped fund the study or repayments. This includes situations where:

- One partner’s HECS loan had already been repaid from joint funds, so the remaining HECS loan of the other partner needed equal treatment.
- The nonstudent partner agreed to the study, then carried more childcare or home duties while the student partner worked in the new field and became the main income earner.
- An extended relationship involved study during the partnership, clear prospects for repayment through future work, and a pattern of joint financial decisions that treated the qualification as an investment for the family.

Where the court treats HECS/HELP as a joint liability, the debt joins the broader pool and the final division shares responsibility in line with overall percentages. That outcome does not mean the ATO moves the debt into any other name. Rather, settlement orders adjust cash, other assets, or other liabilities so the net position feels even.

When does HECS/HELP stay a personal liability?

Where HECS/HELP debts are seen as outside of the shared property pool, cases tended to involve limited benefit for the relationship, uncertain prospects of repayment, or a course that hadn't finished by separation. This includes situations where:

- The student partner started a new course late in the relationship with the main career benefits likely to arise after separation.

- The relationship saw little benefit from the extra qualification. For example, employment in the new field lasted only a short period.

- Both partners had HECS balances of similar size, neither gained real career benefit from the study, and neither partner earned enough to trigger repayments.

In those matters, the court still recognised the HECS or HELP balance as part of the person's overall financial situation, even though the debt stayed outside the shared pool. That recognition often flowed through to percentage adjustments under the "future needs" step.

Future needs

Study funded through HECS/HELP often leads to higher future income for the student partner. In some instances, higher earning capacity can impact on the percentage split in a property settlement. In determining a just and equitable outcome, the courts will consider the "future needs" of each party. This includes:

- The age and health of the parties

- The financial and property resources of the parties (including earning capacities)

- Who will have primary or the majority of caring responsibilities for any children of the relationship

- The economic effect of any family violence to which one party has subjected or exposed the other party to

Where one party leaves the relationship with higher earning potential and the associated HECS/HELP debt has already been paid or heavily reduced from joint resources, courts have sometimes adjusted percentages in favour of the other partner.

Global pool or assetbyasset approach

In most cases, it is more appropriate in property settlements to group everything into a single global pool and then explore one overall percentage split.

In some cases, however, the family law may require you to review each asset and liability on an individual level and form a percentage split on each. HECS/HELP lend themselves to this closer attention, because repayment follows tax rules and ties closely to one person's future income.

You can read more about the difference between global and asset-by-asset approaches in our earlier blog, "Types of Property Settlements".

Time limits and strategy for HECS/HELP property settlement claims

Property settlement negotiations surrounding HECS/ HELP sit inside the same time limits as other property settlement matters. For married couples, an application for property orders usually needs to start within 12 months after a divorce order takes effect. De facto partners normally have two years from separation. Waiting too long can create problems, because interest, indexation, career changes, and further study shift the picture.

In some situations, a partial property settlement might help manage any risks associated with an outstanding HECS/HELP debt. For example, where one party plans further study or career change.

What you should do if HECS/HELP is part of your settlement?

If you or your former partner has HECS or HELP, preparation makes negotiations smoother and gives your lawyer clearer instructions. Steps that help include:

- Collect ATO records that show current HECS or HELP balances, recent income, and any repayments.
- List all assets, liabilities, and superannuation, not only study loans, so the full pool appears on one balance sheet.
- Think about how the qualification influenced income, career progression, and roles at home during the relationship.
- Consider whether any HECS or HELP repayments, including on your former partner's debt, came from joint funds.

Obtain legal advice before you agree on percentage splits or sign any agreement, especially where large study loans or very different earning capacities sit in the background.

How Meillon & Bright helps

If you or your former partner have an outstanding HECS or HELP debt, you should seek legal advice from an experienced family lawyer. Our team at Meillon & Bright, with offices in Perth and Sydney, can help you understand the possible scenarios of how those debts will be considered and treated in your property settlement.

If you have questions about HECS or HELP debts in your separation, or want advice on your broader property settlement, you should contact Meillon & Bright today.
