Gambling and family law: how it can affect your property settlement

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Date: Monday August 10, 2026

Following recent amendments to the Family Law Act 1975 (Cth) (‘the Act’), and the findings of the Court in Shinohara &Shinohara [2025] FedCFamC1A 126, the Court can now only consider the current asset pool when dividing it between the parties.

In the past, parties were able to recover the value of assets that no longer existed due to one party’s intentional, reckless or negligent behaviour. The recent amendments, and the Shinohara decision, mean that ‘addbacks’ are no longer used by the Court.

However, where one party has engaged in gambling (called ‘wastage’ by the Court) that substantially reduces the combined asset pool available for division, the Court is still able to consider if and by how much the division should be adjusted in favour of the non-gambling party.

What does the Court consider when determining a property settlement?

The Court is first required to consider whether it is ‘just and equitable’ to make final property orders that will alter the property interests held by both parties. In determining whether it is ‘just and equitable,’ the Court will have regard to:

- The current assets and liabilities held by both parties;
- Financial contributions to the asset pool;
- Indirect financial contributions, such as maintenance or home improvements;

- Whether family violence has impacted one party's potential to financially contribute to the asset pool; and
- The age and health of each party, and how this impacts their future earning capacity.

The new and amended factors introduced by the Family Law Amendment Act 2024 require the Court to also consider:

1. **Wastage** – whether one or both parties have intentionally, recklessly or negligently reduced the asset pool.
2. **Liabilities** – what liabilities were incurred and for what purpose, including who consented to them. Liabilities are generally shared between the parties, though there are exceptions.
3. **Housing needs of children** – the extent to which either party has the care of a child of the relationship, and the need for either party to provide appropriate housing for the child.

How will the Court adjust the division of the asset pool to account for gambling?

If the Court finds that the asset pool is considerably smaller due to a party's gambling habits, it may divide the asset pool in a way that is favourable to the non-gambling party in accordance with s 75(2) of the Act, by making a percentage adjustment to account for a party's losses. The gambling losses, however, must be 'so disproportionate' that an adjustment by the Court is justified in the circumstances. It is not enough that gambling losses merely exist.

This becomes difficult to prove when a party suspects that cash withdrawals have been used for gambling, or when the party has been gambling for such a long period of time that identifying the exact amount lost is impossible. With regard to gambling, the Court will consider:

- Whether the gambling was due to a diagnosed gambling addiction;
- Whether the gambling occurred during the relationship or after separation;
- The scale of the gambling losses compared to the asset pool; and
- Whether it was one or both parties who engaged in gambling.

Since these amendments are relatively recent, there is limited case law that demonstrates how the Court will deal with it.

Case Study: Musa &Waheed [2025] - $142,845 in gambling losses

In this case, the husband had incurred gambling losses of approximately $142,845 over two separate periods. The husband argued that his friends were using his gambling card, and that his cash withdrawals were used to purchase lunch. In weighing the evidence produced by both parties, the Court found in favour of the wife and awarded her an extra 12.5% of the asset pool to account for the husband's gambling, and for the wife's care of the children.

Case Study: Rockman &Rockman [2014] - gambling losses after separation

In this case, the parties had been married for 30 years and separated in 2002. Over the next 12 years, the husband spent the entirety of his superannuation entitlements, which the wife suspected was used on gambling rather than reasonable living expenses. There was some difficulty with proving that the entirety of the husband's superannuation was used on gambling, as he frequently withdrew cash from an ATM. Though, since he declined to produce casino statements to document his gambling and could not explain where the money had been spent, the Court found in favour of the wife.

Since the wastage had occurred after separation, the Court awarded the wife an extra 8% of the asset pool, which was equivalent to the money lost by the husband's gambling.

Key takeaways

- Since recent amendments to the Family Law Act 1975 (Cth), the Court can only divide the current asset pool - "addbacks" for wasted assets are no longer available, following Shinohara &Shinohara [2025] FedCFamC1A 126.
- Gambling losses are treated by the Court as "wastage" and can still lead to an adjustment in the non-gambling party's favour under section 75(2) of the Act.
- To succeed, the losses must be "so disproportionate" that an adjustment is justified - simply proving that gambling occurred is not enough.
- In Musa &Waheed [2025], the wife received an extra 12.5% of the asset pool after the husband's $142,845 in gambling losses.
- In Rockman &Rockman [2014], the wife was awarded an extra 8% after the husband could not account for gambling losses incurred following separation.
- Because the relevant case law is still limited, early legal advice is recommended for anyone negotiating a property settlement involving gambling.

Talk to a family lawyer if your property settlement involves gambling

There are a number of factors that influence the outcome of a property settlement, which can be complicated further with the presence of gambling, or other wastage behaviour. This process is still relatively uncertain due to the limited case law that exists in 2026 following the amendments made to the Act.

If you are negotiating a property division and suspect gambling has influenced the asset pool, we recommend seeking legal advice from our experienced team of family lawyers. Our team will guide you in understanding the asset pool available for division, and how the court may consider any wastage by you or by your former partner.

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