



How is wastage dealt with in family law property settlements?

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Amendments to the *Family Law Act 1975* (“the Act”) in June 2025 saw the addition of new factors that the Court is to consider (so far as they are relevant) when assessing the current and future circumstances of the parties in determining how to [divide property interests](#).

In this article, we will discuss one of these new legislative considerations – the effect of any material wastage of property or financial resources, caused intentionally or recklessly by either or both parties to the relationship.

Prior to the June 2025 changes, the concept of “wastage” was recognised and considered in case law only and not set out in the relevant family law legislation. The changes to the Act now include reference to material wastage as a factor relevant to the parties’ current and future circumstances.

You can read more about the June 2025 changes to the Act in our earlier article, [“Big changes to Australia’s Family Law Act from June 2025: a comprehensive overview”](#).

The case law

It has long been accepted that financial losses incurred by one or both parties during the course of the relationship should be shared in the same manner that financial gains are, although not necessarily equally. However, there are exceptions.

In the case of [Kowal v Kowal \[1981\] FamCA 70](#) the Court set out the following exceptions:

1. Where one of the parties has embarked upon a course of conduct designed to reduce or minimise the effective value or worth of matrimonial assets.

2. Where one of the parties has acted recklessly, negligently or wantonly with matrimonial assets, the overall effect of which has reduced or minimised their value.

Key points - Kowaliw &Kowaliw

In this case, the wife argued that the husband's business debts should be solely attributed to him along with a further wastage argument involving the parties' former matrimonial home. The Court examined two aspects of the husband's conduct to determine whether either (or both) constituted wastage:

1. The husband's involvement with the company during the relationship;
2. Post separation, the husband permitting (without consultation with the wife) a prospective purchaser of the former matrimonial home to live there rent-free for twelve months.

In relation to the business debts incurred by the husband after the company he had an interest in was wound up, counsel for the wife attempted to argue that these debts should be deemed as debts of the husband and not deducted from the available asset pool.

This argument was rejected by the Court, who held that the husband's involvement in the company was an attempt by him *"not only to produce income for the family, but also to acquire assets of a business nature with the whole object of improving the parties' overall financial position."*

It was held that the company did not fail as a result of the husband embarking on a course of conduct designed to reduce or minimise the value or worth of matrimonial assets, or the husband acting recklessly, negligently or wantonly with these assets.

In relation to the former matrimonial home, the Court found that the husband's conduct was *"both commercially inept and economically reckless to allow anyone, whether it be a prospective purchaser or not, to occupy the matrimonial home without the payment of rent"* and the husband's actions demonstrated a *"a sufficient degree of economic recklessness to come within the ambit of the exceptions"*.

Thus, the Court found that the husband was to be solely responsible for the payment of the rates, maintenance levies and the mortgage instalments which should have been paid from the time he vacated the property up until the time of sale.

It is yet to be seen how the Court will treat "wastage" cases in light of the June 2025 changes, however, it seems likely that the Court will be guided by the general principles set out in *Kowaliw &Kowaliw*.

Wastage due to gambling

Another common example of wastage is excessive gambling.

This type of case tends to be more complicated as not all gambling expenditure will meet the definition of waste, and each case will turn on its own facts.

In summary, when considering whether gambling losses are to be treated as wastage, the Court will generally look at:

- The extent of the gambling losses. In [Hamilton & Thomas](#) [2008] FamCAFC 8, the Court concluded that to prove wastage, “*more is required than simply the existence of gambling losses*” and the “*amounts involved were to be so disproportionate so as to justify the judge in making an adjustment to the entitlements to the pool of assets...*”.

For example, in *De Angelis & De Angelis* (1999), the Court found that the wife’s gambling losses of at least \$154,220 of “marital funds” was “*very high in the context of the total value of the parties’ overall assets*” and the husband is entitled to some adjustment for the losses.

- Whether gambling was a normal form of entertainment undertaken by both parties or was generally accepted as a form of entertainment during the relationship. It is difficult to succeed with an argument that one party should be compensated because of another party’s gambling losses in these circumstances.
- Whether gambling was as a result of an illness. However, even if the Court makes a finding that the gambling was as a result of an illness, they may still find that there should be an adjustment to the non-gambling party due to the extent of the gambling losses (*De Angelis & De Angelis*).

Case review – wife receives adjustment due to husband’s excessive gambling

A 2025 case where a party was successful in receiving an adjustment as a result of the other party’s gambling losses was [Musa & Waheed](#) [2025] FedCFamC2F215.

In this case, the Court found that the husband did suffer net gambling losses over two periods of time (June 2021 to July 2022, and August 2022 to June 2024) totalling \$142,845 and represented wastage of the parties’ matrimonial property.

In making this finding, the Court considered the husband’s oral evidence under cross-examination by counsel for the wife and found that the husband’s evidence essentially comprised of:

1. denials;
2. reference to his oral evidence alleging that his friend was significantly involved with him in his gambling activities (who the husband did not call as a witness to attest to this); and
3. allegations that he often left his playing card in the machine at the club which may have allowed other third parties to use it without his knowledge.

The Court therefore determined that the husband's evidence was unpersuasive and to a significant extent, lacked reality. The Court took the husband's gambling losses into account when deciding on the appropriate adjustment to the wife for her future needs.

If there is wastage, how is this treated by the Court?

If the Court determines that wastage has occurred, it may consider whether it would be appropriate to add back the value of the losses to the asset pool. This argument is rarely successful, particularly in light of addbacks being an exception.

In gambling cases, it can also be difficult to prove that cash withdrawals were used for gambling purposes. For example, in the above case of *Musa & Waheed*, while the Court accepted that it is likely that the husband used cash withdrawals from his business and personal accounts to fund gambling activities, they were not persuaded that the withdrawals, over and above what he likely withdrew to fund gambling, were used for a purpose other than business expenses or reasonable living expenses.

The more common approach adopted by the Court is to consider whether there should be an adjustment to the party who did not cause the wastage.

Prior to the legislative amendments in June 2025, case authorities differed as to whether the Court considered the impact of wastage on the parties' contributions ([Hadjidemetriou & Lescouriou](#)) or their future needs. However, the new wording of the legislation now indicates that it should be taken into account when assessing the parties' **current and future circumstances**, and any adjustment may therefore need to be made on this basis.

Obtain legal advice from an experienced family lawyer

Be it extravagant spending, deliberate incurring of business losses or extremely poor economic decisions regarding the treatment of assets, the Court has wide discretion in determining whether there has been material wastage of property and/or financial resources, and each case depends on its individual circumstances.

Issues of commerciality (i.e. is it financially viable to aggressively pursue a wastage argument?) may also be relevant. It is therefore important to obtain advice from a family lawyer about the circumstances relevant to your case.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.