



Shinohara in Practice

Shinohara & Shinohara [2025] FedCFamC1A 126

**HIS HONOUR JUDGE PAUL GLASS
DOUGLAS LAIDLAW
EMILE DOLDMAN**

CPD Professional Development Series

2026 | Svenson Barristers

Overview of the case

The parties

Mother (appellant) & Father (respondent)
Married Oct 2018 | Separated Feb 2023
Two children aged 6 and 4

The court

Federal Circuit & Family Court, Division 1
Appealing orders of 31 March 2025
Appealed allowed in part — property only

Case citation

[2025] FedCFamC1A 126
NAA 185 of 2025 | 149 paragraphs
Williams, Altobelli & Campton JJ

What was in dispute?

- Parenting: sole parental responsibility, residence of children, and terms of time spent with each parent
- Property: division of \$589,155 — the balance of proceeds from sale of the matrimonial home at Suburb BB
- Centrelink childcare subsidy debt of ~\$22,000 — which party bears responsibility?
- Notional add-backs: how to treat \$592,768 in funds already spent by each party on legal fees and living costs

Landmark issue — the 'add-back' doctrine after the 2024 amendments

What are add-backs?

Funds that existed but were spent before trial (on legal fees, predisposition, or waste) — historically notionally 'added back' to the asset pool as if they still existed.

- **Omacini (2005):** Identified 3 add-back categories: legal fees, premature distribution, waste
- **Stanford (2012) HCA:** Mandated identification of existing legal/equitable interests — questionable basis for notional property
- **Bevan (2013):** Full Court: add-backs unlikely to be 'property' — use s 75(2) instead
- **Trevi (2018):** Called the practice 'unduly simplistic' — s 75(2)(o) technically more correct
- **This case (2025):** s 79(3) codifies: only existing property on the balance sheet. Add-backs now via s 79(4) & s 79(5)

Legislative framework

Family Law Act 1975 (Cth) — Section 79 (as amended 10 June 2025)

s 79(2)

Just & equitable gate

Court must be satisfied an order is just and equitable before making it

s 79(3)(a)(i)

Identify existing property

Map legal and equitable interests — only property that EXISTS at the date of assessment

s 79(4)

Contributions (historical)

Financial, non-financial, homemaking & parenting contributions across the relationship

s 79(5)

Current & future circumstances

Income, health, care of children, earning capacity, property disposal impacts

s 79(2) — justice & equity: gateway, standard and confirmation

The court in Shinohara applied the just and equitable requirement in three distinct but overlapping ways, not as a single discrete step.

1 Threshold gateway

Before any order is made

s 79(2)

[116], [129]

The court must be positively satisfied it is just and equitable to make any order at all before it proceeds. This is a jurisdictional prerequisite, not merely a description of the outcome.

Stanford & Stanford (2012) 247 CLR 108 confirmed this as a mandatory threshold. A court cannot bypass it by proceeding straight to contributions.

"We are satisfied that the requirement of justice and equity will be achieved as part of the adjustment process.." — [129]

2 Permeating standard

Throughout the whole exercise

s 79(2), (3), (4), (5)

[125], [126], [133]

Justice and equity is not confined to a single step — it is the animating principle that permeates every stage of the s 79 exercise. The court described it as a "mandate" shaping both contributions assessment and s 79(5) factors.

At [126] the court held that each consideration "requires engagement... to achieve the mandate of justice and equity that permeates s 79 of the Act."

"The mandate of justice and equity that permeates s 79 is shaped from the particular circumstances of each case." — [125]

3 Closing confirmation

After s 79(4) and s 79(5) complete

s 79(2)

[144]

Once the contributions and s 79(5) analysis is complete, the court makes a final express finding that the outcome is just and equitable. This is a verification step — not a fresh discretionary exercise, but a confirmation that the process and result satisfy the s 79(2) standard.

At [144]: "We find that this conclusion is just and equitable."

"We find that this conclusion is just and equitable." — [144]

This three-part operation of s 79(2) is consistent with Stanford & Stanford (2012) 247 CLR 108 and reflects the court's treatment at [116], [125]–[126], [129] and [144] of the amended Act.

Key legal principles applied

Property adjustment — holistic approach

- Not a mathematical formula — contributions assessed collectively across the whole relationship (Jabour & Jabour (2019); Horrigan & Horrigan (2020))
- Notional add-backs of property no longer in existence cannot be included in the balance sheet — Stanford & Stanford (2012) 247 CLR 108; s 79(3)(a)(i)
- Disposed-of property is instead considered via s 79(4) (contribution history) or s 79(5) (current/future circumstances)
- A just and equitable outcome permeates every step — s 79(2) is a mandatory gateway the court must pass before making any order

Step 1 — identifying the asset pool

What property EXISTS at the date of trial? (s 79(3)(a)(i))

Item	Holder	Value	Notes
Suburb BB home proceeds	In trust (joint)	\$589,155	Only asset in dispute
[Motor Vehicle 1]	Father retains	\$12,590	Agreed
[Motor Vehicle 2] + e-bike	Mother / Father	\$1,300 / \$8,500	Agreed
L Company shares	Mother retains	\$5,086	Agreed
Superannuation — Father	Father (after split)	~\$324,566	Consensual split order
Superannuation — Mother	Mother (incl. split)	~\$291,764	Agreed — not challenged

Property NO LONGER existing (Suburb FF unit, Suburb EE apartment) was NOT placed on the balance sheet — instead considered under s 79(4)/(5)

Step 2 — assessing contributions (s 79(4))

Mother's contributions

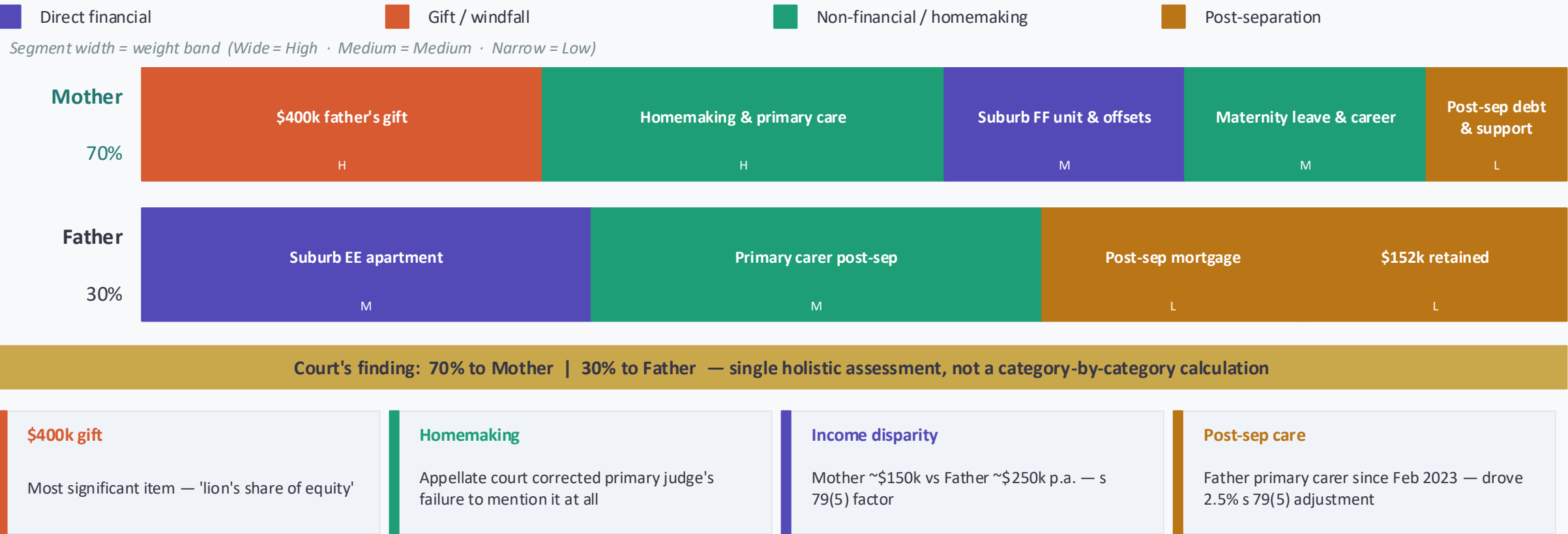
- Suburb FF unit at cohabitation (subject to mortgage)
- Applied \$606,000 to Suburb BB home — including \$400,000 gift from her father (2021)
- \$40,000 placed in offset accounts for the Suburb BB mortgage
- Primary carer of children from birth until separation; majority of homemaking
- 22 months total maternity leave; returned part-time then full-time
- \$344,601 of post-separation funds applied to legal fees
- Reduced Centrelink debt \$39,444 → \$21,994.89; pays \$988/month child support

Father's contributions

- Suburb EE apartment at cohabitation (unquantified equity)
- Applied \$160,000 from Suburb EE sale to Suburb BB home
- Retained \$152,344 from Suburb EE — applied to legal fees and living expenses
- Paid mortgage on Suburb BB from separation until July 2024
- Primary carer of children since family violence intervention order (Feb 2023)
- Will continue as primary carer under parenting orders
- Income ~\$250,000 p.a. incl. super — greater future accumulation capacity

Court's finding: 70% to Mother | 30% to Father (non-superannuation pool)

Step 2 — contribution profile by type & weight



Segment width = weight band (Wide = High · Medium = Medium · Narrow = Low)

Mother

70%

\$400k father's gift

H

Homemaking & primary care

H

Suburb FF unit & offsets

M

Maternity leave & career

M

Post-sep debt & support

L

Father

30%

Suburb EE apartment

M

Primary carer post-sep

M

Post-sep mortgage

L

\$152k retained

L

Court's finding: 70% to Mother | 30% to Father — single holistic assessment, not a category-by-category calculation

\$400k gift

Most significant item — 'lion's share of equity'

Homemaking

Appellate court corrected primary judge's failure to mention it at all

Income disparity

Mother ~\$150k vs Father ~\$250k p.a. — s 79(5) factor

Post-sep care

Father primary carer since Feb 2023 — drove 2.5% s 79(5) adjustment

Segment widths reflect weight bands from the court's expressed emphasis, not numerical sub-findings. The 70/30 is a single global finding.

Step 2 — s 79(4) contribution factors: Shinohara

Mother (appellant)		Father (respondent)	
s 79(4)(a)–(b) Direct & indirect financial contributions			
H	\$400k gift · Suburb FF unit · \$40k offsets	\$160k to Suburb BB · \$152k retained (Suburb EE)	M
s 79(4)(c) Homemaker & parent contributions			
H	Primary carer · 22 mths leave · homemaking	Primary carer post-separation	M
s 79(4)(ca) Effect of family violence on ability to contribute			
	not in issue	not in issue	
s 79(4)(d) Effect of proposed order on earning capacity			
M	Career gaps · part-time · income ~\$150k	Income ~\$250k	L
s 79(4)(f) Child support & other orders under the Act			
M	Pays \$988/mth CS · \$15,709 supervision	Receives child support	L
Global contribution finding: 70% Mother 30% Father → adjusted to 67.5% / 32.5% after s 79(5) factors			

* FVI order made on separation — court recorded this as background fact; s 79(4)(ca) was not engaged as a contribution factor.

Add-backs analysis — pool magnitude & net entitlement

\$616,631 Existing pool <i>primary judge used</i>	\$1,209,399 Notional pool <i>if add-backs included</i>	\$592,768 Add-backs total <i>96.1% of existing pool</i>	\$112,784 Mother received more <i>net diff in disposals</i>
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Net new money to mother — four scenarios compared

Gross notional-pool figures less funds mother already received (\$352,776)



Key finding: The actual appellate outcome (\$416,226 net) is **better for the mother** than the father's 60/40 concession on the notional pool (\$372,863 net). The gross figure of \$725,639 is misleading — once her \$352,776 in already-received funds is netted off, the father's concession would have delivered \$43,363 less in new distributable money.

Step 3 — current & future circumstances (s 79(5))

Income gap

Father ~\$250k p.a. vs Mother ~\$150k. Mother's earning capacity affected by maternity leave and part-time work.

Care obligations

Father will continue as primary carer of children. Mother's time is set to increase if she completes psychological treatment.

Spent funds (s 79(5))

Mother retained \$352,776 from real-property proceeds — \$112,784 more than Father (\$239,992). Most spent on legal fees. Weighed under s 79(5), not as a negative contribution.

Health

Father in good health. Mother living with ongoing mental health challenges (stress-triggered), currently receiving treatment.

Superannuation

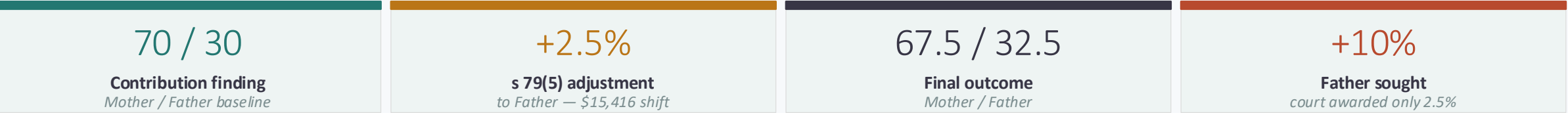
Post-split, father has ~\$32,802 more superannuation than mother. His higher income means greater future accumulation capacity.

Centrelink debt

Parties agreed to equally share the \$21,994.89 Centrelink debt once mother proves payment.

Result: modest 2.5% adjustment in Father's favour → final split 67.5% Mother / 32.5% Father

s 79(5) analysis — how the adjustment was reached



s 79(5) factors applied at [135] — direction & significance

Factor		Direction	Significance	Court's reasoning
[135](a)	Health	Mother	Low-Medium	Mother's ongoing mental health challenges and stress vulnerabilities. Father in good health.
[135](b)	Income & earning capacity	Mother		Income gap of ~\$100k p.a. Mother's capacity impacted by career breaks; both can work full-time.
[135](c)	Non-super property disparity	Neutral	Low	Mother's non-super share is >2x father's; offset by father's \$32,802 super advantage and higher accumulation capacity.
[135](d)	Spent funds — property disposals	Father		Mother received \$112,784 more from disposals (\$352,776 vs \$239,992). Inadequate evidence of father's full application of funds.
[135](e)	Centrelink debt	Neutral	Low	Equally shared by consent. Not a contested factor.
[135](f)	Ongoing care obligations	Father		Father continues as primary carer. Mother's time will increase subject to treatment compliance.
[135](g)-(h)	Child support & standard of living	Neutral	Low	Mother pays CS as assessed. Both enjoy reasonable standard of living; no other dependants.

Net result: Two factors favoured the mother (health, income gap) vs two favoured the father (spent funds differential, ongoing care). Four factors were neutral. The court characterised the adjustment as 'modest' — awarding 2.5% of a possible 10% sought by the father. In dollar terms: \$15,416 shifted from mother to father. Father's claim for a further 7.5% (\$46,247) was rejected.

Significance bars are illustrative of the court's relative emphasis drawn from the reasons — the court made a single holistic 2.5% adjustment without assigning numerical weights to individual factors.

Add backs – cross check

*Watts J Example – **A** = (**B X C**) / **D***

*The additional percentage sought at Step 3 after add backs are taken into account **(A)***

(B) Value of the add back (or differential Value) X **(C)** the percentage split of net assets (ex add backs) contented for originally

(D) The Value of the net assets (ex add backs)

Add backs – cross check

Watts J Example

- Net existing assets \$10m **(D)**
- Husband destroys \$1m **(B)**
- If the destroyed property had never existed, Wife would have contended for 50/50 on contributions and 10% for future; overall 60/40 **(C)**
- **The additional percentage to be claimed (A)**

(B) \$1,000,000 X **(C)** 60%

(D) \$10,000,000

A = 6%

The wife would claim 50% at Step 2 and 16% adjustment at Step 3 (10%+6%)

Step 4 — just & equitable test (s 79(2))

The court confirmed it is just and equitable to make orders having regard to:

- Six-year relationship and the parties now living apart
- Joint acquisition of the Suburb BB home and the need to distribute its sale proceeds
- The full contribution history — most significantly the \$400,000 gift to the mother from her father
- All s 79(4) and s 79(5) factors considered holistically

The judgment — how assets were divided

67.5%

Mother's share

non-superannuation

32.5%

Father's share

non-superannuation

57.5%

Mother's overall

super + non-super

42.5%

Father's overall

super + non-super

Key orders made on re-exercise:

- Orders 40 & 41 of 31 March 2025 set aside
- Father to pay mother \$115,262.50 within 28 days
- Mother receives \$416,226 of the non-superannuation property (from \$589,155 home proceeds + other items)
- Father to pay mother 50% of Centrelink debt (\$21,994.89) once mother proves payment
- Superannuation split unchanged: 47% mother / 53% father — consensual, not challenged
- Parenting appeal dismissed — costs of \$5,000 (respondent) + \$3,865 (ICL) ordered against mother

Practical lessons — the father's \$152k: what the evidence failed to establish

The case: Father retained \$152,344 from the sale of his Suburb EE apartment. He sought to have this treated as a financial contribution under s 79(4)(a). The court found the evidence was insufficient to do so — and that failure had material consequences.

What the evidence failed to establish [142]

Sale price not disclosed. The father did not say what the Suburb EE apartment sold for, making it impossible to verify the net proceeds figure of \$152,344.

No breakdown of legal fees vs living expenses. The father stated the \$152,344 was applied to 'legal fees and living expenses' but gave no amounts, no receipts and no timeframe.

Period of expenditure not identified. No timeframe was given for when the \$152,344 was spent, making it impossible to assess whether the outlay was reasonable.

Only \$27,000 in legal fees could be substantiated — leaving \$125,344 of the \$152,344 effectively unaccounted for on the evidence.

No mortgagee, balance outstanding or repayment terms disclosed — basic information needed to verify what equity the father actually held in the apartment.

Practical lesson for practitioners & clients

Always obtain and tender the contract of sale, settlement statement and discharge figures. The court cannot accept an unexplained net proceeds figure.

Itemise every application of funds separately. Legal fees benefit only one party; living expenses for children may carry different weight as a contribution.

Document timing and duration of expenditure. Contemporaneous bank records showing expenditure across an identifiable period are far stronger than a bare assertion.

Retain all invoices and receipts for legal costs. Trust account statements and solicitor invoices are the appropriate supporting evidence.

Produce loan statements, discharge receipts and settlement adjustments as a matter of course for every property forming part of the contribution history.

Result: The evidentiary deficiency meant the court could not treat the \$152,344 as a precisely quantifiable contribution. It was considered only as part of the broader s 79(5) assessment of the differential between the parties' received funds (\$112,784 in the mother's favour) — a far weaker position than if the expenditure had been properly documented and itemised. The lesson is that the court's willingness to give weight to a financial contribution is directly proportional to the quality of the evidence supporting it.

Practical takeaways

Document everything

Keep records of every financial contribution — who paid what, when, and from which account. Evidentiary deficiencies cost this case dearly.

Large gifts are significant

A \$400,000 parental gift late in the relationship attracted 'significant weight' and drove the outcome.

Add-backs are now assessed differently

Post-2024 amendments: spent funds go into contribution/future-circumstances analysis, not the balance sheet. Strategy must adapt.

Non-financial contributions matter

Homemaking, primary caregiving and maternity leave will be assessed — they influenced a 70/30 split here.

Income disparity affects s 79(5)

A \$100k/year income gap was a live factor. Future earning capacity — including career interruptions — is considered.

Procedural fairness is critical

If the court is considering an approach different to what both parties argued, it must warn you. If it doesn't, that is an error.



Shinohara & Shinohara

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Key message: The 2024 amendments to the Family Law Act 1975 have formally codified that only existing property is divided — but disposed-of property remains very much in play through contributions and future circumstances analysis.