

To Add Back Post-Separation Expenditure or Not

In **Werner [2013] FamCA 341** Justice Forrest stated that the general principle is that 'add backs' are the exceptions rather than the rule.

In this case the husband who was not working had accessed his superannuation in the post-separation period for the purpose of meeting his personal living expenses. However the wife claimed that their divisible matrimonial asset pool should include the amount of superannuation the husband had spent.

The Judge noted that as parties are entitled to get on with their lives after separation, it is for the party contending for the 'add back' of funds to make out the case that justice and equity requires the 'add back' to be considered when determining what property is in the pool and what adjustment orders are appropriate.

As the husband was not challenged about how he had spent the superannuation funds, the Judge considered there was no basis for determining that his use of the funds had not been reasonable and that they should be 'added back'.

It did not follow from the mere fact that the superannuation funds had existed at the time of separation that they should necessarily and notionally be later included in the divisible pool.

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