

Future Needs: What are they and why are they Considered?



Article by Townsville Family Lawyer, [Courtney Aitken](#)

January, 2023

[Courtney Aitken](#) is an experienced Family Lawyer and Senior Associate at OSheaDyer Solicitors, Townsville. She was admitted in 2014 and has practiced exclusively in Family Law. Courtney is also a Collaboratively Trained Family Lawyer.

What are Future Needs and why are they Considered?

When a married or de facto couple separates, a property settlement usually needs to take place. This process of 'property settlement' will determine 'who keeps what' of the parties' house, cars, superannuation, and other assets and liabilities. In working out a property settlement, there is a 4-step process to follow. Our article '[Property Settlement: The Four Step Process](#)' in our client library on our website explains each step.

This article focuses on the third step in that process, where the future needs of each party are assessed.

Assessing future needs involves looking at, as best we can, the likely future circumstances of each party. An assessment is then made as to whether one party should receive an adjustment (i.e. more of the property pool than they otherwise would) because they have greater future needs.

The factors to consider in working out future needs are listed in the Family Law Act 1975 (Cth) ("the Act"), within:

- Section 75(2) – for married couples; and
- Section 90SF – for de facto couples.

Some of these Factors Include:

- i. The age and state of health of each party;
 - ii. The income, property, and financial resources of each party and the physical and mental capacity of each of them for appropriate gainful employment;
 - iii. Whether either party has the care of a child of the marriage who is under 18 years;
 - iv. Commitments of each of the parties that are necessary to enable the party to support:
 - a. Himself or herself; and
 - b. A child or another person that the party has a duty to maintain;
 - v. The responsibilities of either party to support any other person;
 - vi. The eligibility of either party for a pension, allowance, or benefit;
 - vii. Where the parties have separated or divorced, a standard of living that in all the circumstances is reasonable;
 - viii. Any child support that a party has provided, is to provide, or might be liable to provide in the future; and
 - ix. Any fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account.
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Examples of how the Above Factors can be Applied Include:

- a) **If one party is older than the other**, then they will likely have fewer years ahead of them to earn an income and superannuation. In this case, the older party has a future need to be considered. The *specific* age difference (and age) will need to be considered though. For example, if one party is only a couple of years older than the other, this might not be a big consideration. However, if there is a 15-year age difference, and say the parties are 50 and 65, it is likely the older party has greater future needs as they are close to retirement age.
 - b) **If one party has a health issue that limits their ability to work and earn an income**, that party has a future need to be considered based on their state of health. The health issue and impact on income is important. For example, if the health issue limits the party from working in their usual field, but they have the ability to work otherwise, that is relevant. Or, if there is evidence that the health issue means that party cannot work again, in any field, that is relevant and likely a significant future need.
 - c) **If one party earns more than the other party**, there is a future need to be considered for the lower-earning party. Again, the specifics of each case are relevant. If one party earns slightly more than the other, this may not be a big factor. However, if one party earns twice what the other earns, that usually means the party earning less has greater future needs.
 - d) **If one party cares for the children of the relationship**, this is a future need to be considered. The amount and frequency of time the other party spends with the children is taken into account, as well as the age of the children. For example, if the children are in their late teens and the parties have equal care, neither party is likely to have a greater future need. On the other hand, if one parent has the sole care of a 3-year-old, this may give rise to a considerable future need. The amount of child support paid is also taken into account.
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What are the Exemptions?

For the property settlement to be fair, a party that has greater future needs *may* receive an adjustment (i.e. greater share) of the property pool in their favour. The intention of the future needs step is to recognise if one party will not be as well off as the other in the future, and aims to level the playing field.

It's important to remember that there are many future needs to balance, and this step is only one of 4 steps in the process. Everyone's circumstances are unique. It's crucial to get independent legal advice from an experienced Family Lawyer, specific to your circumstances.

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Everyone's situation is unique.

We always recommend seeing an experienced family lawyer so you can discuss your situation and obtain customised advice about how this process specifically applies to you.

We offer first appointments with experienced family lawyers for \$220 - a low fixed fee so that everyone can afford to obtain advice about their situation.

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