FAMILY LAW PROPERTY final orders where wife seeks final property orders where wife is maincaregiver where parties have children where husband livesoverseas where husband earns significantly more than thewife where it is just and equitable to make property orders where there is anapplication for spousal maintenance where a superannuation splittingorder is made where contributions of parties are considered equal wherethere is an adjustment under s 75(2) Family Law Act 1975 (Cth) ss 75(2)(o),90MT(i)(a) Stanford v Stanford [2012] HCA52 APPLICANT: Ms Salesbury RESPONDENT: Mr Cannon FILENUMBER: SYC 2132 of 2010 DATE DELIVERED: 12 September 2014 PLACE DELIVERED: Sydney PLACE HEARD: Sydney JUDGMENT OF: Stevenson J HEARING DATE: 19, 20, 21 May 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr Lloyd SC SOLICITOR FOR THE APPLICANT: Newnhams Solicitors COUNSEL FOR THE RESPONDENT: Mr Batey SOLICITOR FOR THE RESPONDENT: Marks Griffiths & Bova Solicitors ORDERS (1) Thateach of the parties do all things and execute all documents required to effectthe sale, for the best price reasonably obtainable,of the property situate atand known as B Street, Suburb C in the State of New South Wales and todistribute the proceeds of suchsale as follows: 1.1 in paymentof legal costs and expenses incidental to the sale 1.2 in paymentof agents commission and expenses 1.3 in paymentof all monies required to discharge the mortgage on the title to theproperty 1.4 in paymentof the balance then remaining to the wife. (2) 2.1 That the amount allocated to the wife out of the interest of the husbandin the AMP Superannuation Fund (the Fund)is of a base amount of$157,700. 2.2 That, inaccordance with section 90MT(1)(a) of the Family Law Act 1975, whenever asplittable payment becomes payable in respect of the interest of the husband inthe Fund that the wife shall be entitledto be paid an amount calculated inaccordance with Part 6 of the Family Law (Superannuation) Regulations using thebase amount andthere be a corresponding reduction in any entitlement of theperson to whom the splittable payment would have been made but for theseorders. 2.2 That the operative time for order 2.1 is 28days after service of these orders upon the trustee of the Fund, who has libertytoapply at any time during that period of 28 days. 2.3 That the wife cause a sealed copy of these orders to be served upon thetrustee of the AMP Superannuation Fund within 14 daysof the date of theseorders. (3) That, subject to these orders,

each of the parties is declared to be solelyentitled to all property and superannuation presentlyin his and her possessionor control. (4) 4.1 That all existing orders for payment by the husband of periodic spousemaintenance to the wife are discharged. 4.2 That the husband payspouse maintenance to the wife in the sum of $1,200 per week until 31 December2015. 4.3 That the husband continue to pay the outgoings in respect of the propertyB Street, Suburb C as set out in the orders of 26 May2010, until settlement ofthe sale of that property. (5) That all outstanding applications and responses herein are dismissed. (6) That all material produced on subpoena bereturned. ITIS NOTED that publication of this judgment by this Court under the pseudonymSalesbury & Cannon has been approved by the Chief Justice pursuant tos 121(9)(g) of the Family Law Act 1975 (Cth). FAMILY COURT OF AUSTRALIA AT SYDNEY FILE NUMBER:SYC 2132 of 2010 Ms Salesbury Applicant And Mr Cannon Respondent REASONS FOR JUDGMENT THE PROCEEDINGS MsSalesbury (the wife) and Mr Cannon (the husband) arein dispute as to settlement of property, followingthe breakdown of theirmarriage of seventeen years. The parties commenced their relationship in 1988and married in April 1992. They separated on 12 June 2009. The husband haslived in California since November 2008. Theparties are the parents of two children: L born in December 1997 (16) and F born in November 2007 (6). Since the parties separation the children have lived with the wife inthe former matrimonial home at B Street, Suburb C. They spend time with thehusband when he returns to Australia but, to date, they have made no visits tohim in California. Thehusband was born in 1963 and is currently 50 years of age. He is a permanentresident of the United States and is employed byCompany H in a seniormanagement capacity. Thewife was born in 1969 and is presently aged 45 years. She has completed abachelors degree, which qualified her to workin that field, and iscurrently undertaking postgraduate study. The wife hopes to complete thesecourses at the end of 2015 andthen obtain employment as an academic in thatfield. Atthe date of the marriage the wife had minimal savings, together withsuperannuation of approximately $2,000. She had unrestricteduse of a BMW motorvehicle owned by her father, Mr Salesbury. Atthe date of the marriage the husband owned a home unit at I Street, Suburb D,which he had purchased for $155,000 in 1988. Thispurchase was funded in partby a mortgage advance of $110,000 from the

Commonwealth Bank. The husbandmaintained that he had a superannuationbenefit of approximately $100,000 at thedate of the marriage, arising from his employment in a senior role with CompanyE. Theparties agreed that the husbands home unit at Suburb D was valued at$170,000 at the date of marriage. In 1994 he soldthis property for $185,000,yielding net proceeds of approximately $98,600. InApril 1992 the husband was transferred to Country G in the course of hisemployment with Company E. The parties lived in thatcountry between April 1992and August 1994, when the husband resigned from Company E and they returned toAustralia. The husbandthen took on a senior executive role at Company J. Thewifes father was a minority shareholder in this company and Chairmanofthe Board of Directors. Thehusband amassed savings of approximately $130,000 while the parties lived inCountry G. The parties applied these funds, togetherwith the net sale proceedsof the husbands home unit at Suburb D, to the purchase of ten acres ofvacant land at Town K. The purchase price was $215,000, which the parties wereable to meet without resort to borrowings. Whenthe parties returned to Australia, the wifes father provided her with theuse of an Audi motor vehicle. The husband wasprovided with a company car as acomponent of his employment package. InJuly 1995 the parties commenced construction of a house on their land at Town K.Until this home reached lock-up stage, the partieslived on a rent-free basis ata home in Town M owned by the wifes parents. InNovember 1994, the parties jointly borrowed a sum of $250,000 from theCommonwealth Bank and used these funds for the constructionof a home on theland at Town K. The husband contended that he borrowed an additional sum of$100,000 from his father for that purpose. Mr Cannon Senior gave no evidence tocorroborate this advance or the husbands contention that the parties havea currentjoint debt of $100,000 to his parents. Whenthe parties returned to Australia the wife took on employment for two to threedays per week at Company N in Suburb O. It wascommon ground that the wifeoversaw the construction work on the home at Town K while the husband was fullyoccupied with his roleas a senior executive at Company J. Earlyin 1996 the wife was admitted to hospital for two weeks, as she was sufferingfrom severe endometriosis. She underwent surgeryand recuperated over a periodof three to six months. Her mother provided assistance to the wife during herrecovery. InMay 1997 the wife resigned from her

employment at Company N, as she was pregnantwith the parties first child. In August1997 she was admitted tohospital for one week, as she had discovered a lump under her arm and wasexperiencing chest pain. In November1997 the wife again suffered pain and wasadmitted to hospital. During her three-month stay in hospital the wife wasdiagnosed withStage 3 Non-Hodgkins Lymphoma. Theparties daughter L was delivered by Caesarean section in December 1997. The wife immediately began chemotherapy treatment,which continued on anoutpatient basis after her discharge from hospital. In1999 the parties invested $50,000 in a business at Town P, which was operated bythe husbands sister. This venture failedin 2004 or 2005 and theparties lost these funds. In 2001 the parties lost $110,000 and $20,000 throughunsuccessful investmentsin ventures known as Business Q and Business R. InJune 1999 the parties purchased a property at S Street, Suburb T for $997,000. They borrowed the whole of the purchase money fromthe National Australia Bank. In September 1999 the parties sold the Town K property for $850,000 and used thenet proceeds to reducethe mortgage on the Suburb T property. After thatpayment, the mortgage balance stood at approximately $500,000. Inlate 1999 the wife was diagnosed with a recurrence of cancer and underwentintensive radiotherapy. The parties and L moved intoher parents home atSuburb U, on a rent-free basis, while the wife underwent this treatment. InMay 2000 the husband terminated his employment with Company J. He joinedCompany Q in June 2000 and travelled overseas for workpurposes between November2000 and May 2001. The wife and L continued to live with her parents in theirhome at Suburb U. InAugust 2000 the parties sold the Suburb T property for $1,075,000. In December2000 they purchased a property at B Street, SuburbT for $1,250,000, utilisingborrowings of $800,000 from the National Australia Bank. The property wastenanted and the rental incomeapplied to meet mortgage repayments until theparties took up occupation in 2003. Eachof the parties was a director of a company known as V Pty Limited, which theycaused to be incorporated in 1993. In February2002 this company purchased twohome units at Suburb D for a total sum of $780,000. The purchase money andacquisition costs camefrom a mortgage advance of $823,000 from the NationalAustralia Bank. These properties were sold at a loss in 2003 and 2005. InMarch 2003 the company purchased a home unit at W Street, Suburb X for $391,000.They

borrowed $312,800 from Perpetual TrusteesVictoria to fund thisacquisition. This property was sold for $341,000 in May 2005. The husbandestimated that the parties incurreda total loss of approximately $100,000 onthe investments in the two Suburb D home units and the Suburb X property. Theselosseswere added to the existing mortgage encumbrance on the Suburb Cproperty. InJune 2003 the husband left his employment with Company Q and joined Company H. He returned to Company Q in May 2005 and againtook up employment with Company Hin January 2006. For approximately six months the husband travelled betweenAustralia and Dubai,spending alternate months in each country. Theparties daughter F was born in November 2007. After her birth thehusband continued to spend approximately half of histime outside Australia. Hemoved to California in December 2008, in order to commence his currentemployment on 1 January 2009. The husband returned to Australia in February2009 and the wife and children visited him in the USA in April 2009. InFebruary 2009 the wife commenced her university course. As noted, she hascompleted a Bachelors degree and is currentlyundertaking postgraduatestudies. Afterthe parties separated on 12 June 2009, the wife and the children continued tooccupy the former matrimonial home at Suburb C. The husband has paid theoutgoings in respect of this property. On 26 May 2010 interim orders were madewhich required the husbandto pay spouse maintenance of $2,000 per month. Thisamount was increased to $4,000 per month by further orders made on 17 December2010. Thehusband continued to meet the outgoings in respect of the former matrimonialhome at Suburb C and paid child support, initiallyin a sum of $2,233 and later$2,937 per month. The Child Support Agency issued a nil assessment because thehusband pays no incometax in Australia. Nonetheless, he currently pays childsupport in the sum of $3,087 per month. InAugust 2012 the husband purchased a home at Z Street, City A, California for$659,000. He funded this purchase from savings ofapproximately $179,000 andborrowings of $480,000. Thehusband has made regular contributions to a fund known as the AustralianScholarship Group. On 21 May 2014 the parties consentedto orders in relationto this fund in the following terms: Thatthe husband do all acts and things, execute all documents, instruments andwritings and pay all money necessary to effect thefollowing in relation to theAustralian Scholarship Group (ASG) investment in the joint

namesof the parties: 1.1 A payment of all instalments payableto maintain the investment at its current level until maturity; 1.2 Payment of all benefits presently payable or in the future payable to bepaid for the benefit of the children to the wife. Thatthe wife apply the funds received pursuant to Order 1 above towards the cost ofthe secondary and tertiary education of [L] born... December 1997 and/or [F]born ... November 2007. Andit be noted that he wife acknowledges that Orders 1 and 2 relieves thehusbands obligation to contribute to the childrensprimary andsecondary education costs other than for his ASGcontributions. Approach To These Proceedings InStanford v Stanford [2012] HCA 52 the majority of the High Courtof Australia held as follows: 35. It will be recalled that s 79(2) provides that [t]he court shall notmake an order under this section unless it is satisfied that, in all thecircumstances,it is just and equitable to make the order. Section 79(4)prescribes matters that must be taken into account in considering what order (ifany) should be made under this section. The requirementsof the twosub-sections are not to be conflated. In every case in which a propertysettlement order under s 79 is sought, it is necessary to satisfy the courtthat, in all the circumstances, it is just and equitable to make theorder. TheirHonours further observed as follows: 42. In many cases where an application is made for a property settlement order,the just and equitable requirement is readily satisfiedby observing that, asthe result of a choice made by one or both of the parties, the husband and wifeare no longer living in a maritalrelationship. It will be just and equitableto make a property settlement order in such a case because there is not and willnotthereafter be the common use of property by the husband and wife. No lessimportantly, the express and implicit assumptions thatunderpinned the existingproperty arrangements have been brought to an end by the voluntary severance ofthe mutuality of the maritalrelationship. That is, any express or implicitassumption that the parties may have made to the effect that existingarrangementsof marital property interests were sufficient or appropriate duringthe continuance of their marital relationship is brought to anend with theending of the marital relationship. And the assumption that any adjustment tothose interests could be effected consensuallyas needed or desired is alsobrought to an end. Hence it will be just and equitable that the court make aproperty settlement order. What order, if any, should then be made isdetermined by

apply s 79(4). Iam comfortably satisfied that it is just and equitable to make orders foralteration of property interests in the circumstancesof these proceedings. Theparties have now lived apart for some five years and they each urge the court tomake orders which willput an end to any financial entanglement between them. Iconstrue the respective positions of the parties as concessions that itis justand equitable that there be orders for alteration of property interests. Atthe commencement of the trial counsel for the parties informed me of thefollowing agreements: the ChildSupport Agency lacks jurisdiction because the husband is a permanent resident ofthe United States thecontributions of the parties were equal as at the date of trial there should bean adjustment of ten per cent of the net pool of assets and superannuation infavour of the wife pursuant to section 75(2) of the Family Law Act. There wassome adjustment to these agreed positions by the time of counsels finalsubmissions. Therewas a dispute as to the alleged debt of $100,000 owed by the parties to thehusbands parents. There was also an issueas to the treatment of thewifes minority shareholding in a company known as AA Pty Limited, whichwas created in 1970 byher parents. The Evidence and Witnesses Theapplicant wife relied on the following affidavits: MsSalesbury (the wife) sworn on 17 April 2014 MsBB Salesbury (the wifes mother) sworn on 13 June 2012 MrSalesbury (the wifes father) sworn on 14 June 2012 , 5 March 2013 and 17April 2014 DrCC (the wifes general practitioner) sworn on 7 June 2012 DrDD (Honours Coordinator in the wifes field at EE University) sworn on 13June 2012 Affidavitverifying wifes Financial Statement sworn on 17 April2014. The wife, the wifes father and Dr CC gave oral evidence but thewifes mother and Dr DD were not required forcross-examination. Therespondent husband relied upon his affidavit sworn on 12 May 2014 and hisFinancial Statement of the same date. He gave oralevidence in theproceedings. Itseemed to me that all of the witnesses did their best to provide accurateevidence for the assistance of the court. With respectto the wife, however, itseemed to me that the husbands recall of the details of theparties financial history wasmore reliable than hers. Therewas an issue as to the value of the wifes minority shareholding in thecompany AA Pty Limited. This shareholding wasvalued by a single expert, Mr FF.The wife engaged Ms GG as an adversarial expert. On9 May 2014 Mr FF and Ms GG held a conference and prepared a joint statement. They agreed that, as at 30 June 2013, the value

ofthe wifes nineordinary shares was $525,000. I will refer below to the opinions of the twoexperts in relation to the likelyvalue in June 2030, which is the time whenstatistical tables indicate that these shares are likely to vest in thewife. The Assets, Superannuation, Financial Resources and Liabilities of theParties On19 May 2014 counsel for the parties submitted a Joint Balance Sheet in thefollowing terms: No. Ownership Description Wife's Value Husband's Value Requires Expert Evidence Assets PROPERTY J [B Street, Suburb C] $1,925,000 $1,925,000 Joint Valuation H [Z Street, City A], California, USA ($659,000 US Dollars to AustralianDollars as at 17.04.14 @1.0673) $703,346 Original purchase price BANK ACCOUNTS W National Australia Bank account number ...42 $761 $761 W Commonwealth Bank of Australia account number ...45 $124 $124 H HSBC account numbers ...10 and ...18 $24,484 $24,484 H HSBC account numbers ...86 Nil Nil H NAB account number ...87 NK $130 H [Company H] Deposit Account NK Nil H Shares in [Company Q] NK Nil H Prudential Life Insurance Policy $10,000.00 Nil Surrendered 06/11/2013 H Money in solicitor's trust account on account of legal fees for hearing NK $45,378 Subject to disclosure MOTOR VEHICLES W Mercedes Benz $12,150 $12,150 Agreed Red Book H Lexus sale Nil Nil Sold H Hummer ... ($17,160 US Dollars to Australian Dollars as at 17.04.14@1.0673) $18,315 $18,315 COMPANIES & LIFE INSURANCE J [V] Pty Ltd ACN ... NK Nil Deregistered on ... 2012 (See attached ASICSearch) W [AA] Pty Ltd $936,000 $936,000 Joint valuation H Various company investments overseas including [Company HH] NK Nil Disposed W [JJ] Ltd Sold $5,476 $5,476 Sold 29.04.2014 FURNITURE & EFFECTS J Household contents, [Suburb C] $11,640.00 $11,640.00 Valuation Received W Jewellery $9,350.00 $9,350.00 Valuation Received H Household contents, [City A] $2,725.00 $2,725.00 Valuation Received H Jewellery $1,060.00 $1,060.00 Valuation Received H Coin Collection $2,632.00 $2,632.00 Valuation Received W Additional items $500.00 $500.00 Agreed H Accrued vacation/ benefits NK Husband to provide evidence Total $2,960,217 $3,699,071 Addbacks Ownership Description Wifes Value Husbands Value Requires Expert Evidence H Monies withdrawn from mortgage unaccounted for NK Nil H Waste of money invested in overseas companies and/or unaccountedincome $180,000.00 Nil Subject to disclosure W Legal fees paid NK NK Subject to Disclosure H Legal fees paid $NIL $NIL Wife asserts these are to be included H

Valuers paid $8,250.00 $45,298 See attached list Total $188,250 $45,298 Liabilities Ownership Description Wifes Value Husbands Value Requires Expert Evidence J Mortgage [Suburb C] $1,335,000.00 $1,335,000.00 H Mortgage [City A] ($346,000 US Dollars to Australian Dollars as at 17.04.14@1.0673) $369,286 W National Australia Bank credit card Nil Nil W CBA Mastercard $4,300 $4,300 J Loan from Mr and [Ms Cannon] Nil $100,000.00 W University fees $16,000 $16,000 Subject to disclosure W Loan from [Ms KK] Nil Nil W Loan for legal fees [the wifes father] $313,035 NK Disclosure Required H NAB Overdraft $50,000 Total $1,668,335 $1,874,586 Superannuation Member Fund & Interest Wife's Value Husband's Value Requires Expert Evidence W REST $3,910 $3,910 H Colonial First State $ $81,397 H Colonial First State $ $37,773 H AMP $ $174,986 Total $3,910 $298,066 Financial Resources Ownership Description Wife's Value Husband's Value Requires Expert Evidence W [AA Pty Ltd] $479,000 NK Disputed $479,000 Summary Total $1,963,042 $2,167,849 NOTES: PrudentialLife Insurance Policy which originally had a face value of US $10,000 wassurrendered and paid out on 6 November 2013 withan amount of $10,235.52 USbeing paid into the Husband's US HSBC account on 6 December2013. [15]. [V] Pty Ltd deregistered as per ASIC Notice attached. 29. Husband's Legal fees and disbursements all paid from Husband's postseparation earnings. Total legal fees and disbursements are$164,111.42. [30]. Agreement that valuation fees paid by husband 50% paid on behalf ofWife and Wife to reimburse Husband. Infinal submissions counsel stated that it was agreed that a sum of $45,378 heldin the trust account of the husbands solicitoris offset by a $50,000overdraft which he took out to pay legal fees. Accordingly, I will omit boththe funds held in trust andthe overdraft from the Balance Sheet. Thewife sought to include as an asset the husbands paid legal fees of$247,288. On behalf of the husband, it was contendedthat these funds came frompost-separation income and accordingly should be excluded from the list ofassets. Although there wasno evidence as to the source of this money, it seemsto me to be a safe inference that the husband did pay these costs from hispost-separationincome. The parties separated five years ago and there has beenno inter-mingling or common use of their available funds duringthatperiod. Similarly,the wife has paid legal and accounting fees in a total amount of $314,608. Inhis affidavits of 14 June 2012 and 17

April2014 the wifes father gaveunchallenged evidence that he has paid the wifes legal and accountingfees. He deposedthat he expects reimbursement by the wife from the net assetswhich she receives by way of property settlement. In his oral evidencethewifes father said: If [the wife] is unable to repay me, therewill be an adjustment in the books of [AA] Pty Limited. It wouldthus appear that the wife may not be pressed for repayment of these funds. Isee considerable merit in the submission on behalf of the husband that theappropriate course is to exclude from the balance sheetthe paid legal costs andassociated liabilities of each of the parties. For the reasons set out above, Iwill adjust the final balancesheet accordingly. Thehusband sought to include as an asset a sum of $26,815 which is held in a trustaccount by a company known as LL Pty Limited (exhibit3). There was littleevidence in relation to these monies, other than the wifes AffidavitVerifying Answers To Specific Questionsof 5 September 2012. The wife theredeposed that certain amounts are held by [Mr LL], CharteredAccountant, to be held by him as an education trust account to be applied towardthe education of[L] and not to be applied for my benefit. In myview the evidence fell short of establishing that the wife is beneficiallyentitled to this money, which I thus exclude fromthe list of assets. Thehusband sought to include as an asset the sum of $6,000 being fundsdeposited into the childrens accounts. The only evidence inrelation to these monies was the wifes statement: I put $100per month in for each child and they put in any birthday money et cetera.On the available evidence, it is thus impossible to distinguish funds givento the children by third parties and money lodged intothese accounts by thewife. In such circumstances, I am not prepared to include these funds in thebalance sheet as an asset ofthe wife. Therewas a dispute between the parties as to whether the wifes shares in AAPty Limited should be treated as a financial resource,as contended on herbehalf, or included in the list of assets. As noted, Mr FF and Ms GG agreed thatthe wifes shareholdinghad a value of $525,000 as at 30 June 2013. Inhis affidavit of 5 March 2013 the wifes father outlined the circumstancesin which he and his wife established the companyAA Pty Limited. He deposedthat they incorporated the company in March 1970 with the purpose andintention that it be an estate distribution and inheritance structure. Thewifes father deposed that he and his wife have been directors since thatdate in March 1970 and that they exercise controlof the company

pursuant to theshare structure and provisions of the Articles of Association. He deposedfurther that he and hiswife intend that the survivor of them will assume solecontrol of the company. His uncontradicted evidence was that the companyhasnever paid a dividend to any shareholder and that he and his wife have nointention to cause AA Pty Limited to do so in future. MrFF and Ms GG agreed that the appropriate methodology for valuation of thewifes shareholding is to assess the value of the shares held bythe wife in [AA Pty Ltd] on the basis of value to owner ratherthanfair market value because it is unlikely that these shares represent asaleable asset to the wife until after the death of her parents.They indicated that the figure of $525,000 equates to the netpresent value of a one-third interest in [AA Pty Ltd] that will be attainable inseventeen years, discountedat 6.79% per annum. That seventeen yearfigure was extracted from life tables published by the Australian Bureau ofStatistics. Theexperts acknowledged that a number of factors will ultimately impactupon the value of [AA Pty Ltd] in June 2030. Specifically, theypointed to a change in the market value of the companys assets, the mostsignificant of which is a ruralproperty. They looked also to the extent towhich trading losses, incurred between 2009 and 2013, will continue until thewife isable to realise her shareholding. MsGG applied a discount rate of 6.79 per cent in her report of 11 March 2014. Sheexplained her reasons for selection of this multipleas follows: Discount rate adopted 5.25 In determining a suitable discount rate to adopt in the circumstances, Ihave had regard to: (a) The 10 year Australian Government bond rate as at 30 June 2013 of 3.54%(which has increased to 4.12% as at February 2014), whichis a commonly adoptedmeasure of a risk-free rate. (b) The underlying assets owned by [AA Pty Ltd], which include [Property MM] and[Property NN]. In this regard, I have been advisedthat [Property NN] at [TownOO], NSW has recently been put on the market for sale. (c) The fact that [AA Pty Ltd] has sustained trading losses on its primaryproduction activities for an extended period, which arelikely to continue. Onaverage, [AA Pty Ltd] has incurred a net loss (before tax and extraordinaryitems) of approximately $322,000per annum during the five years prior to thedate of valuation. If trading losses of this magnitude continue into the futurewhilethe Company remains under the Fathers control, then the capitalbase of [AA Pty Ltd] will be eroded such that there will belittle or no valueremaining as at June 2030. The extent of any trading losses in the

future willparticularly depend on the Fathersdecisions regarding the conduct of theprimary production activities of [AA Pty Ltd], which is outside of theWifes control. 5.26 In my opinion, a discount rate of 6.79% is reasonable in the circumstances.In selecting this discount rate, I have also consideredthe value of theWifes equity interest in future (when it becomes a 33.33% interest)assuming that the historical tradinglosses will continue into the future, atleast to some extent. In this regard, my conclusion as to the value of theWifesinterest in [AA Pty Ltd] (refer paragraph 5.28 below) isapproximately equivalent to the value calculated assuming that: (a) Approximately one-third of the historical average trading losses incurredover the last five years will continue to be incurredafter 30 June 2013 i.e. anet loss before tax of around $(105,000) per annum. (b) [Property MM] will increase in value at the rate of around 1.25% per annumand adopting a discount rate of 5.74%. Attheir conference on 9 May 2014, Mr FF and Ms GG agreed that it is appropriate toapply a discount rate of 6.79 per cent for thepurpose of valuation of thewifes shareholding in AA Pty Limited. They applied this multiple toarrive at their valuationof $525,000 as at 30 June 2013. Certainlyit is the case that the wife is unable to realise her shareholding until thedemise of her parents. In my view, however,that fact alone does not mean thather shareholding should be treated as a financial resource rather than an asset.Two experts agreedon a present value for the wifes shareholding, withfull knowledge of her inability to realise its worth for a statisticallyassessed period of seventeen years. For these reasons, I will treat thewifes shareholding as an asset with a value of $525,000. Mydetermination to include the wifes shareholding in the balance sheet asan asset has implications for the agreement indicatedby counsel that theparties contributions were equal as at the commencement of the trial. Onthe part of the wife, this agreementwas contingent upon her shareholding beingtreated as a financial resource. In final submissions, counsel for the wifecontendedthat her contribution would increase in accordance with thepercentage of the pool if her shareholding is treated as an asset. Irefer to this issue below in these reasons, in the context of the contributionsofthe parties. Counselfor the husband contended that the wifes credit card balance is apost-separation debt and, accordingly, should beexcluded from the list ofliabilities. There was no evidence to that effect but it seems to be areasonable inference

that the wifescurrent credit card debt accruedafter the parties ceased living together and pooling their financial resources. Accordingly, thereis no basis upon which the husband could be required toassume responsibility for any part of that debt. I will exclude thewifescredit card liability from the balance sheet. Thewife took issue with the husbands contention that the parties have ajoint debt of $100,000 to his parents. In his affidavitthe husband deposed asfollows in relation to this alleged advance and/or debt: 23. In July 1995 [the wife] and I arranged to borrow $250,000 from the NationalAustralia Bank to assist us with constructing a threebedroom house withseparate double garage, in-ground swimming pool and gravel driveway from frontto rear of the property. In additionthis property required extensive fencingto be erected and my father [Mr Cannon Snr] and I constructed an orchard and weplantedtrees and gardens. The building costs were approximately $400,000 andas the loan from the National Australia Bank was not sufficientto cover thesecosts I borrowed $100,000 from my parents and the rest I drew from ouraccumulated savings and income earned by meduring the course of theconstruction... Thehusbands father gave no evidence in relation to this alleged loan. Thehusband gave evidence orally that his father is84 years old and a resident of anursing home at Town PP. He gave hearsay evidence as to his fathers poorstate of healthand offered unqualified opinions as to his lack of presenttestamentary capacity and poor memory. Therewas no documentary evidence to corroborate the proposition that thehusbands father or parents loaned a sum of $100,000to the parties at thetime of construction of the house at Town K. No documents such as bankstatements were tendered in the casefor the husband. Thereality is that the evidence fell short of establishing that the parties have ajoint debt of $100,000 to the husbandsparents. There was no evidence,for example, of the terms of any such loan agreement or whether there was anyrequest for repaymentbetween 1995 and the time of the trial. No explanationwas advanced as to why this evidence was not adduced from the husbandsmother. The husband said that his mother was living at the time of thetrial. Forthese reasons, I am unable to find that the parties have a joint debt of$100,000 to the husbands parents. I accept, however,the husbandsevidence that his father and/or parents provided a sum of $100,000 at the timeof the construction of the TownK home. As appears below, the evidencesuggested that insufficient funds

were available to that purpose, without suchan injectionfrom his father or parents. That matter is relevant as acontribution factor in the husbands favour and will be consideredbelowin these reasons. Ithus find the assets, superannuation, liabilities and financial resources of theparties to be as follows, noting that the lettersJ,H and W in this table denote legal ownership thereofby the parties jointly, the husbandor the wife: NON-SUPERANNUATION ASSETS 1. B Street, Suburb C J $1,925,000 2. Z Street, City A H $703,346 3. National Australia Bank Account W $761 4. Commonwealth Bank Account W $124 5. HSBC Account H $24,484 6. National Australia Bank Account H $130 7. Mercedes Benz Motor Vehicle W $12,500 8. Hummer Motor Vehicle H $18,315 9. Shareholding in AA Pty Limited W $525,000 10. Household Contents at Suburb C Property J $11,640 11. Household Contents at City A Property H $2,725 12. Jewellery W $1,060 13. Coin Collection H $2,632 14. Additional Items W $500 $3,228,217 SUPERANNUATION 15. REST W $3,909 16. Colonial First State H $81,397 17. Colonial First State H $37,773 18. AMP H $174,986 $298,065 $3,526,282 LIABILITIES 19. Mortgage on Suburb C Property J $1,335,000 20. Mortgage on City A Property H $369,286 $1,704,286 NET ASSETS AND SUPERANNUATION $1,821,996 The Contributions of the Parties Thewifes parents caused the company AA Pty Limited to be established inMarch 1970, when she was approximately thirteen monthsof age. The evidence didnot indicate when or in what circumstances the wife acquired her shareholding. There was no suggestionwhatsoever that she made any payment for her shares, norfor any purpose associated with this company during the partiescohabitation. Equally, the wife received no financial benefit from the companyduring the marriage. Essentially, the parties conducted theirjoint financialaffairs entirely independently of the wifes shareholding and herparents dealings with this company. Inthese circumstances, the husband properly made no submission that he contributeddirectly or indirectly to the acquisition or conservationof the wifesshareholding in the company AA Pty Limited. This asset thus can bedistinguished clearly from the remainingnet assets and superannuation, whichthe parties largely accrued during their cohabitation and as a result of theirjoint endeavours. For these reasons, it seems to me to be appropriate to adopta modified asset by asset or two poolapproach to the assessment of the parties contributions. The firstpool would consist solely of the wifes

shareholdingin the company AA PtyLimited. The second pool would be constituted by the remaining assets,superannuation and liabilities. Thesetwo pools can be identified asfollows: Pool One 1. Wifes shareholding in AA Pty Limited $525,000 Net Value of Pool One $525,000 Pool Two 1. B Street, Suburb C (J) $1,925,000 2. Z Street, City A (H) $703,346 3. National Australia Bank Account (W) $761 4. Commonwealth Bank Account (W) $124 5. HSBC Account (H) $24,484 6. National Australia Bank Account (H) $130 7. Mercedes Benz motor vehicle (W) $12,500 8. Hummer motor vehicle (H) $18,315 9. Household Contents at Suburb C Property (J) $11,640 10. Household contents at City A Property (H) $2,725 11. Jewellery (W) $1,060 12. Coin Collection (H) $2,362 13. Additional Items (W) $500 14. REST (W) $3,909 15. Colonial First State Super (H) $81,397 16. Colonial First State Super (H) $37,773 17. AMP Super (H) $174,986 $3,001,012 Less Liabilities 18. Mortgage on Suburb C Property (J) $1,335,000 19. Mortgage on City A Property (H) $369,286 $1,704,286 Net Value of Pool Two $1,296,726 Forthe reasons set out above, I find that the husband made no direct or indirectcontribution to the acquisition or conservationof the wifes shareholdingin AA Pty Limited. I find that the direct and indirect financial contributionsto that asset onbehalf of the wife properly should be assessed at 100 per centin her favour. Inrelation to Pool Two, the parties cohabited for seventeen years and are theparents of two children. During the marriage the husbandassumed the role ofmajor breadwinner and the wife that of primary homemaker and parent. Iappreciate that the wife suffered periodsof illness, which must have impactedon her ability to fulfil the role of primary homemaker and parent. I amsatisfied, however,that the maternal grandmother provided considerableassistance to the family at these times. The husband was employed on a fulltime basis throughout the marriage and was absent overseas for substantialperiods from May 2000. He moved permanently to the UnitedStates in November2008, when the parties daughter F was approximately twelve months of age. Asnoted above, I accept the husbands evidence that his father provided asum of $100,000 to the parties when the Town K housewas constructed in1995/1996. The husband gave persuasive evidence that the total building costsamounted to some $400,000. Thewife contended as follows: 26. Over the next twelve eighteen months building work was performed atthe [Town K] property which entailed the buildingof a house, fencing, roadwaysand

landscaping. The cost was over $100,000 which was met from savings andborrowings. Withrespect to the wife, it seems to me inherently improbable that such work couldhave been completed at a total cost in the vicinityof $100,000. The husbandadduced documentary evidence that the parties borrowed $250,000 from theNational Australia Bank in orderto fund the construction work. He deposed thatthe total cost amounted to approximately $400,000, thus there would have been ashortfallof about $150,000. It seems to me to be more probable than not thatthe husband obtained $100,000 from his father to meet in partthisshortfall. Iam of the view that the parties endeavours complemented each other duringtheir seventeen years of cohabitation. No submissionwas put on behalf of thehusband that his initial contributions, primarily the equity in the Suburb Dproperty and superannuation,should lead to a finding in his favour as at thedate of trial. The wife made significant contributions during the nextseventeenyears, particularly as homemaker and parent during the husbandsextensive overseas absences for employment purposes. I findthat the partiesmade equal contributions to the net assets and superannuation in PoolTwo. Section 75(2) Factors Counselfor the husband properly conceded that there should be an adjustment in favourof the wife on account of section 75(2) factors. Counsel for the wifesubmitted that there should be an adjustment in her favour of ten per centif the [AA Pty Ltd] shares are a resource. Counsel for thehusband agreed with that submission on behalf of the wife. Itseems to me that confinement of the wifes shareholding to a separatepool, coupled with a finding of contribution theretoof 100 per cent in herfavour, has the same practical effect as treatment of her interest in AA PtyLimited as a financial resource. Effectively that asset stands in isolationfrom the net assets and superannuation to be divided between the parties andwill assumea real value to the wife at some time considerably into thefuture. Independentlyof the agreement of counsel, I am comfortably satisfied that an adjustment often per cent of the net assets and superannuationin Pool Two in favour of thewife is appropriate on account of section 75(2) factors. The husband enjoys asubstantial income earning capacity, which is significantly superior to that ofthe wife. In hisFinancial Statement of 12 May 2014 he deposed to a grossweekly income of $13,573 and income tax of $6,345, which leaves a net figureofaround $7,000 per week. I will examine more closely at the husbands netincome below in these reasons, when I

considerthe wifes application forperiodic spouse maintenance. By contrast, the wife is in the process ofcompleting tertiary qualificationswith a view to employment as an academic. Her uncontradicted evidence was that she would earn approximately $55,000 grossper annum,if she were to take on employment in that field immediately. Areasonable expectation thus is that the husband will re-establishhimselffinancially in a relatively short time period. Anotherrelevant consideration, in the context of section 75(2) factors, is that thewife is and will continue to be responsible for most of the care of theparties two children. The youngerof the children is only six years old,so that responsibility will remain with the wife for a considerable period intothe future. The husband pays child support in an amount commensurate with hisincome. Iam comfortably satisfied, and I find, that it is appropriate to make anadjustment in favour of the wife on account of section 75(2) factors. I findthat the wife should receive an amount equal to ten per cent of the net value ofthe assets and superannuation inPool Two. Conclusion as to Alteration of Property Interests Ithus find that the wife should receive 100 per cent of the net assets in Pool 1.The husband and the wife should receive 40 percent and 60 per cent respectivelyof the net assets and superannuation in Pool Two. Those percentages equate toapproximately $518,798to the husband and $778,198 to the wife. Bothparties sought orders for the sale of the former matrimonial home at Suburb C,although the wife proposed that this step be deferreduntil December 2015 toenable their child L to complete her Higher School Certificate. Counsel for thewife, however, conceded thatsuch a delayed sale would be a bit of anask. I agree with that observation, in circumstances where theseproceedings have been on foot since 2010, and I will order an immediatesale ofthis property. Thehusband will retain the following assets andsuperannuation: 1. Z Street, City A $703,346 2. HSBC Account $24,484 3. National Australia Bank Account $130 4. Hummer motor vehicle $18,315 5. Household Contents at City A Property $2,725 6. Coin Collection $2,632 7. Colonial First State Superannuation $81,397 8. Colonial First State Superannuation $37,773 9. AMP Superannuation $174,986 $1,045,788 The husband retains the mortgage debt of $369,286 on the City A property whichmeans that he will thus hold net assets and superannuationto the valuation of$676,502. That amount exceeds his entitlement by $157,704. Thewife will retain the following assets andsuperannuation: 1. National Australia Bank Account $761

2. Commonwealth Bank Account $124 3. Mercedes motor vehicle $12,500 4. Household Contents $11,640 5. Jewellery $1,060 6. Additional Items $500 7. REST Superannuation $3,909 $30,494 The wife will assume no liabilities, thus she will hold net assets andsuperannuation to the value of $30,494. That figure fallsshort of herentitlement by $747,704. Theequity in the Suburb C property amounts to approximately $590,000, all of whichshould pass to the wife as part of her entitlement. The balance ofapproximately $157,700 could come only from a splitting order in relation to thehusbands superannuation,as there exist insufficient liquid assets fromwhich he could pay that amount to the wife. The suggestion of a splitting ordercamefrom the wifes counsel only in final submissions, thus no notice wasafforded to the trustee of the fund. I will make provisionthat the operativetime is 28 days from service of final orders upon the trustee and allow aliberty to apply during that period. The only fund with sufficient value toaccommodate a splitting order of $157,700 in favour of the wife is thehusbands AMPbenefit. Spouse Maintenance Thewife sought an order for periodic spouse maintenance but there was no clearindication as to the quantum or duration of any sucharrangement. In finalsubmissions counsel for the wife suggested that a spouse maintenance ordershould operate until mid-2016 orthe end of that year. The only reference tospouse maintenance in the Minute submitted on behalf of the wife was thefollowing proposedorder: 1. That all existing orders continue pending completion of the sale of the homereferred to in order 2 hereof save and except order1 of the orders made 17December 2010 which shall be varied to be $7,500 per calendar month pendingfurther order. Inher Amended Initiating Application filed on 12 May 2010 the wife sought, interalia, an order that the husband pay to her a sumof $1,875 per week by way ofspouse maintenance. She further sought that the husband pay, by way of spousemaintenance, all outgoingsin respect of the former matrimonial home, runningcosts relating to her motor vehicle and medical expenses. Infinal submissions, counsel for the husband conceded that he should payspouse maintenance for a closed period but suggested thatthe quantum is difficult to assess. In my view, I amentitled to treat these remarks as a concession that the wife has a need for andthe husband a capacity to pay spousemaintenance. Pursuantto the orders for settlement of property, the wife will receive an amount inexcess of $500,000 in cash from the proceedsof sale of the former

matrimonialhome. She has a responsibility to accommodate the parties two children,however, and noother funds available to achieve that purpose. In thesecircumstances, I do not consider that the wifes access to cash persenegates a need for spouse maintenance. Accordingto her Financial Statement of 17 April 2014, the wifes total weeklyincome is $2,233. That figure is constitutedby $499 per week in governmentbenefits, which must be disregarded for present purposes, child support of $515and spouse maintenanceof $923. Interms of the wifes need for spouse maintenance, it seems to me that thereal issue is whether she has a capacity to earnincome which she chooses not toexercise at present. In her affidavit the wife gave persuasive evidence thatshe is undertakingpostgraduate studies with the intention to embark upon anacademic career or to enhance her prospects of full time employment inherfield. Thewife deposed that she is concerned as to her physical stamina to sustainemployment in her field. To some extent, that concernwas verified by evidencefrom her general practitioner Dr CC. In her report of 9 December 2011 and oralevidence Dr CC referredto recurrent respiratory infections suffered by thewife. Dr CC attributed these infections to exposure to viruses in her role asatrainee in her field and stress associated with her workload and the breakdownof the marriage. Thewife deposed that she intends to complete her postgraduate studies at the end of2015. It seems to me that she should be affordedan opportunity to do so and toestablish a secure career path, rather than abandon these studies and enter theworkforce immediately. The parties daughter F is only six years of ageand they both have an ongoing responsibility for her financial support foraconsiderable period into the future. It seems to me that the wife is takingconstructive steps to secure her own financial futureand that of her child. Tohis credit, the husband conceded that he should pay spouse maintenance for anunspecified period. Thehusband has paid spouse maintenance in a sum of $4,000 per month since theorders of 17 December 2010, in addition to all outgoingsin respect of theformer matrimonial home. There was no evidence that the husband has fallen intoarrears in relation to any ofthese payments during the last three and a halfyears. In cross-examination the husband conceded that sale of the formermatrimonialhome will save me approximately $75,000 per annum from themortgage and insurance premiums. That figure equates to some $1,442per week. Inhis oral evidence the husband

said that his gross annual income for the 2013 taxyear was $765,563 or $14,722 per week. Ultimatelyit was accepted on behalf ofthe wife that he pays tax of $5,320 per week, leaving a net weekly income of$9,402. Inhis Financial Statement of 12 May 2014 the husband deposed to total weeklyexpenditure of $14,517. There was no testing of thisevidence by way ofcross-examination but a relatively cursory analysis suggests that this figuremay well include inflated estimates,double dipping oramounts which the husband will not be obliged to pay after the sale of theformer matrimonial home. It seemed to me that examplesof such alleged expensesincluded the following: Suburb Cmortgage $1,391 Suburb C rates $91 holidays andincidental travel costs (excluding travel to Australia) $250 clothing,entertainment and hobbies $150 gifts $50 incidentals$150 interim spousemaintenance $923. Forall of these reasons I am satisfied that the husband has a capacity to payspouse maintenance. Given the state of the evidence,selection of a quantuminvolves an element of arbitrariness. I will order that the husband pay to thewife the sum of $1,200 perweek by way of spouse maintenance until 31 December2015. Child Support Departure Order Inher Amended Initiating Application and Minute the wife sought orders for childsupport departure or, alternatively, child maintenance. At the commencement ofthe trial counsel informed me that there was agreement that the Child SupportAgency lacks jurisdiction asthe husband is a permanent resident of the UnitedStates. There was no cross-examination nor submissions made in respect of theApplication for Child Maintenance. Accordingly, I will deem that both of theseapplications were abandoned by the wife. I certify that thepreceding ninety four (94) paragraphs are a true copy of the reasons forjudgment of the Honourable Justice Stevensondelivered on 12 September2014. Associate: Date: 12 September 2014