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Clarification sought on aged-care ruling

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ELDERLY and aged-care groups are seeking legal clarification after a Family Court ruling it has the power to split the assets of elderly couples who remain married but are "physically separated" because one of them is living in a nursing home.

Council of the Ageing chief executive Ian Yates said the decision had shocked aged-care groups, who were uncertain as to what the ruling meant for their clients.

The decision by the full bench of the court, reported in *The Australian* yesterday, upheld a magistrate's ruling that "most of the elements of a normal marital relationship have ceased to exist" when a wife was admitted to a high-care nursing home while her husband lived at the family home.

The court heard that the husband in that case visited his wife up to three times a week, but sided with the woman's daughter from a previous marriage in ordering he sell the house in order to pay for a more expensive aged-care facility for his spouse.

"What is bemusing me is that if one partner needs to go into aged care and the other person's still staying in the home, the home doesn't come into the calculations of the asset means test," Mr Yates said.

"We will clearly be seeking

some urgent clarification of whether this is a correct decision in that context, no matter what the Family Court thinks is its power to separate assets."

Alan Graham, the South Australian representative of industry group Aged and Community Services Australia, said the decision was surprising.

"It was an interesting precedent and it's a whole new dynamic," Mr Graham said.

Richard Hearn, the chief executive of the Uniting Church's Resthaven group of aged-care homes, said illness-caused separations alone were usually not enough to cause relationship breakdowns among the elderly.

But he did admit that such separations could be extremely difficult.

"(But) the separate living environments have little impact on the individual couples' perception of their relationship," Mr Hearn said.

"From our understanding, most still consider themselves to be a couple within their cognitive capacity."

Adelaide nursing home manager Terry Kirkwood was adamant when asked if an elderly wife moving into aged care while the husband stayed at their house was tantamount to divorce.

"No, not at all," Ms Kirkwood said from the Malvern facility. "In fact I think, if anything, the husband and wife relationship becomes closer in a lot of ways."