

Family Law Factsheet No. 2 Spousal Maintenance



This factsheet is to help you understand when you can obtain financial assistance from your spouse or partner after you separate.

What is spousal maintenance?

Spousal maintenance is money paid by a party to their spouse or de facto partner after their separation. It is maintenance for the benefit of the spouse or de facto partner. It is different from child support and can be sought in addition to child support.

Who can seek spousal maintenance?

Spousal maintenance can be sought by a spouse or de facto partner. The person seeking spousal maintenance must be able to show that they cannot afford to meet their expenses including payment of their debts.

How do you seek spousal maintenance?

If a party does not agree to pay spousal maintenance, you can apply to the Family Court or Federal Circuit Court.

The court can make an urgent order, an interim order until the parties' property settlement has been completed or a final order to assist a person for a period. This can include until the children start school or a person finishes a course to help them obtain work.

Spousal maintenance is usually paid either weekly, fortnightly, or monthly.

Can I live in the house or have use of the family car?

Yes, the court can order that a person be allowed to live in a house and that the other person move out. It can also give a person the use of a car, even if it isn't in their name.

When will a court make an order for spousal maintenance?

The court will make an order when the person seeking maintenance can show that they need financial assistance because they are unable to pay their debts and their expenses **and** that the other person has the ability to pay.

What does the court consider when making an order for spousal maintenance?

The court will look at several factors which include:

- the age and state of health of you and your spouse or partner
- the income and financial position of you and your spouse or partner
- the ability of each of you to obtain work
- whether you or your spouse or partner have the care of any children
- whether you, or your spouse or partner have a responsibility to care for another person

- whether you are entitled to a pension or other benefit such as superannuation
- the length of the marriage or relationship and the extent to which it has affected a person's ability to work
- whether a parent wants to continue their role as a homemaker
- a standard of living that is reasonable
- if either party is living with another person, the financial circumstances of that person.

The court will not consider any benefits received by you or your spouse or partner from Centrelink.

Is there a time limit to apply for spousal maintenance?

Yes, there is a time limit. If you are divorced, then the application must be made within twelve months of your divorce becoming final.

If you are in a de facto relationship, then an application must be made within two years of the date of your separation.

Can I apply for spousal maintenance out of time?

Yes, if you have a good reason for the delay and the court thinks you will experience financial hardship if you are not allowed to commence an application out of time.

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