
Property & Financial Matters Family Dispute Resolution

Spousal Maintenance For Married Couples & Maintenance Of A Party To A De Facto Relationship

Under The Family Law Act

- A spouse or de facto partner of either sex may have a duty to support their partner to the extent that they are able, if and only if, that partner is unable to support themselves.
- That obligation may continue when they separate, and even after a divorce order is made.
- The Court will only order spousal maintenance if it is satisfied:
 - that the person applying for it actually needs financial support;
 - that the other person has the capacity to pay it.

The Court can order maintenance to a party to a de facto relationship if it is satisfied:

- the de facto partners have lived together for at least two years in total (or less if they have children); and
- lived in New South Wales for at least one third of the period of the relationship;
- made substantial contributions to the parties' assets or financial resources; and
- at least one of them continues to live in New South Wales and ended their relationship after the 1st March, 2009.

Need

In determining whether there are reasons why one spouse or de facto partner is unable to support themselves, and therefore needs maintenance, the Court will consider, amongst other things:

- their age and state of health (including physical and mental);
- whether they have care of the children;
- how their years as homemaker have affected their ability to get back into the workforce;
- their capacity for appropriate employment;
- their assets and financial resources.

The fact that the person is on a pension does not mean that the Court will decide that they have less of a need.

Capacity To Pay

In determining a person's capacity to pay the Court will consider, amongst other things, their income, assets, financial resources, employment, expenses and other commitments. The reason for the breakdown of the relationship and the arrangements for time with children are not relevant in determining maintenance. The Court does not award maintenance as a punishment.

How Can It Be Paid?

Maintenance can be paid in many different ways e.g.:

- periodic cash payments;
- lump sum payments;
- transfer of property under a property settlement;
- the right to occupy the matrimonial home or use of the family car;
- mortgage repayments or other payments in kind.

If maintenance is included in a property settlement, the order or agreement should specify what percentage is identifiable as maintenance.

Cash payments can either be arranged privately between the parties or if ordered by the Court or specified in a court registered maintenance agreement, collected by the Child Support Agency.

When Can I Apply?

An application for spousal maintenance can be made before divorce and up to twelve months after divorce. Applications outside twelve months will be allowed in special circumstances.

After the breakdown of a de facto relationship, a court may make such order as it considers proper for the maintenance of one of the parties to the de facto relationship.

When Can I Stop Paying?

Maintenance automatically ceases if:

- either party dies;
- the person receiving it remarries or enters into a de facto relationship.

What If We Can Reach An Agreement?

If a couple is able to agree on maintenance, the agreement can be formalised and filed with the Court (see Making Agreements Legally Binding).

What If We Can't Agree?

If you and your former partner cannot agree on maintenance an application can be made to the Family Court, Federal Circuit Court of Australia, or a local Magistrates Court.

Note: De facto partner's liability to contribute towards child bearing expenses

A woman is entitled to claim for maintenance for herself from her former partner for the period shortly before and after their child is born.

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We strongly recommend the obtaining of specific independent legal advice.