

Spousal Maintenance

How does the Family Court decide whether your spouse is legally obligated to financially support you?

Aneta Dimoska Di Marco
PRINCIPAL



Guideline

For general information purposes only

The following guide is given as general information only and may or may not be suited to your specific needs. Always seek legal advice to ensure that your particular circumstances are met.

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What is Spousal Maintenance?

Spousal maintenance is financial support paid by one spouse to the other following the end of a marriage or de facto relationship. Under Australian family law, if one partner cannot support themselves after separation or divorce, the other may be required to provide financial assistance.

Who is Eligible for Spousal Maintenance?

You may be eligible for spousal maintenance if:

- You cannot meet your reasonable living expenses on your own.
- Your ex-partner has the financial ability to assist you.

The Family Law Act 1975 governs spousal maintenance and considers various factors, including:

- Your age, health, income, property, and ability to work.
- Whether the marriage or relationship affected your earning capacity.
- If the relationship involved children, their needs and who is the primary caregiver.

The Court will assess these and other factors to decide if spousal maintenance is appropriate and, if so, how much should be paid.

How to Apply for Spousal Maintenance

If you're seeking spousal maintenance, you can file an application in the Family Court of Australia or the Federal Circuit and Family Court of Australia. Here's a step-by-step guide:

1. Complete the Application for Spousal Maintenance:
 - You'll need to fill out a Financial Statement (Form 13), detailing your income, assets, expenses, and liabilities. Be as accurate as possible, as the court relies on this information to determine your needs.
2. Prepare Supporting Documents:
 - Gather any evidence that supports your claim, such as bank statements, pay slips, tax returns, and receipts for your expenses.
3. File Your Application:
 - You can file your application and documents online through the Commonwealth Courts Portal or submit them at a family court registry.
4. Serve the Documents:
 - After filing, you must serve the application and supporting documents to your former partner. If you are unsure how to do this, check the Court's guidelines on service procedures or ask court staff for assistance.
5. Attend Court Proceedings:
 - Once served, a court date will be set, where both parties can present their cases. Be prepared to discuss your financial situation and justify your request for maintenance.

Important Points to Remember

- **Timing Matters:** If you were married, you must apply within 12 months of your divorce. For de facto relationships, the limit is two years after separation.
- **Types of Spousal Maintenance:** Maintenance may be paid as a lump sum, periodic payments, or property transfer, depending on your situation and what the court deems fair.
- **Interim Maintenance Orders:** If you need urgent financial assistance, you may apply for an interim order for temporary support until the court makes a final decision.

What if I'm the One Paying?

- If your ex-partner is requesting spousal maintenance from you:
- **Prepare Your Financial Information:** You'll need to complete and file a Financial Statement to show the court your income, expenses, assets, and liabilities.
- **Show Your Ability to Pay:** If you believe you can't afford to pay spousal maintenance, be prepared to demonstrate this clearly to the court, providing supporting documents as evidence.
- **Negotiate:** Sometimes, agreeing to a reasonable amount can save you time and avoid a lengthy court process. Consider seeking mediation to explore mutually acceptable terms.

Tips for Self-Represented Litigants

- **Know Your Rights and Responsibilities:** Familiarise yourself with family law and spousal maintenance rules in Australia. Resources on the Family Court website can help.
- **Organise Your Documents:** Clear, comprehensive records make your case stronger. Keep all relevant paperwork handy.
- **Be Respectful in Court:** Show respect to the judge and court staff. Stick to factual information and avoid emotional arguments.
- **Seek Support:** Free legal advice services, like community legal centres or Legal Aid, may provide guidance, even if you're representing yourself.

Where to Get Help

- **Family Court Website:** www.familycourt.gov.au
- **Commonwealth Courts Portal:** For filing documents online.
- **Legal Aid:** Each state has Legal Aid offices offering free or low-cost advice.
- **Community Legal Centres:** Many centres offer free consultations or low-cost assistance.

FAQs

1. What if my situation changes?

If either party's financial situation changes significantly, you can apply to the court to review the spousal maintenance arrangement.

2. Can spousal maintenance be a temporary arrangement?

Yes. Courts often grant maintenance on a temporary basis, especially if you need time to adjust or re-enter the workforce.

3. What if my ex-partner refuses to pay?

If the court orders spousal maintenance and your ex-partner does not pay, you can apply to the court for enforcement.

Understanding the basics of spousal maintenance and following these steps can make a complex process more manageable. Remember, while self-representation is possible, support is available if you need it.



**Questions?
Contact us.**

www.heraslaw.com.au

info@heraslaw.com.au