

Family Law Fact Sheet

Spousal maintenance

While most people think about the day-to-day living expenses for a household as one sum of money, under Family Law principles, the support of a spouse is determined as spousal maintenance whilst the support of the children is determined as child support.

Spousal maintenance is a separate right to property settlement.

Spousal maintenance orders

A spousal maintenance order can be made if:

- One party to the relationship is unable to support themselves from their own income, property and financial resources; and
- After payment of their own personal living expenses, the other party is able to make a contribution in support of the first party.

Unless there is both a need for maintenance and the capacity to pay, spousal maintenance will not be ordered.

Spousal maintenance is usually appropriate where one party to a relationship has foregone career opportunities to perform the role of homemaker and carer, and is unable to return to the workforce easily.

Types of spousal maintenance

Spousal maintenance can be ordered on an interim basis, covering only the time between separation and the final determination of the property orders following a settlement or Trial.

Spousal maintenance can also be ordered on a final basis, though this is usually for a period of two to three years following the separation to enable a spouse to re-train or undertake a course of study in order that they may update their skills to re-enter the workforce. It is unusual that spousal maintenance is ordered on a final basis for longer than two or three years after separation.

Income earning capacity

In determining the need of a separating spouse for spousal maintenance, the law considers income earning capacity.

The fact that a separated spouse is not working and cannot support themselves is not conclusive of whether they have a need for maintenance. A Court would usually look at their capacity to earn an income in determining whether or not there is a need for maintenance.

The level of maintenance is what is “adequate” in all the circumstances. The Family Court has held specifically that it is not at a mere subsistence level.

In some circumstances the right of a spouse to seek spousal maintenance from the other can extend beyond a final property settlement. It is important to deal with spousal maintenance rights in the context of the resolution of all financial matters between separated spouses.

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