

Spousal Maintenance | Empower Family Law & Mediation

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Spousal Maintenance

If you can't meet your reasonable living expenses after separation and your former spouse or de facto partner can afford to help, you could be entitled to spousal maintenance.

Equally, if you've been asked to pay, you have rights and the amount and duration depend on both parties' circumstances, not a fixed formula.

Below, we set out how spousal maintenance works, who can apply, and how we can help.

What is spousal maintenance?

Spousal maintenance is financial support paid by one party to a marriage, or one party to a de facto relationship, to their former partner where that partner can't adequately support themselves. The Family Law Act 1975 places a duty on both married and de facto partners to help support each other after separation in circumstances where one person is in genuine need and the other has the capacity to help.

It is usually a short-to-medium-term arrangement intended to help a person adequately support themselves. It is not designed to equalise incomes or guarantee the lifestyle you had during the relationship, although that standard of living can be one factor the Court considers.

Spousal maintenance is not the same as child support.

Child support is paid for the benefit of a child; spousal maintenance is paid to support a former partner. While the two can run alongside each other, they are assessed separately and according to different criteria.

Am I eligible for spousal maintenance?

To succeed in a spousal maintenance claim, you first need to show that you can't adequately support yourself from your own income and assets, for one of the following reasons:

You have care of a child of the relationship who is under 18;

Your age, or a physical or mental incapacity, affects your ability to work; or

Any other adequate reasons, for example, a long absence from the workforce during the relationship.

You will also need to show your former partner has the capacity to pay spousal maintenance to you, while still needing to meet their own reasonable needs and still afford to contribute to yours.

In determining an application for spousal maintenance both parties will be required to provide full and frank disclosure of their income, expenses, assets and liabilities.

De facto relationships and spousal maintenance

If you were in a de facto relationship and never married, you can apply for spousal maintenance if any of the following apply:

You and your former partner lived together as a couple for at least 2 years;

You lived together for less than 2 years but had a child together;

Your relationship was registered on a relationships register in your state or territory; or

You made substantial contributions to the relationship and if no Order was made, you would suffer a serious injustice if you couldn't apply.

You only need to meet one of these, they are alternative pathways, not cumulative requirements. If you're unsure whether your relationship qualifies, we can assess this with you.

How is the amount calculated?

There is no fixed formula or calculator for spousal maintenance. Every case is decided on its own facts. The Court looks first at what amount the person who is seeking maintenance, actually needs to meet their reasonable living expenses, and then at what the other person can genuinely afford, before deciding whether an order is appropriate and, if so, how much.

In reaching that decision, the Court will take into account:

The income, expenses, liabilities and financial resources of both parties;

The age and state of health of both parties;

The length of the relationship and each party's financial and non-financial contributions to it;

The care arrangements for any children of the relationship;

The economic effect of any family violence one party has subjected the other to or exposed them to- for example, being forced to leave the family home, or having employment or finances controlled or sabotaged; and

Any other relevant factor.

Spousal maintenance can be paid periodically (for example, weekly or monthly) or as a lump sum, or a combination of both. Each option has different practical and tax consequences, so it's worth getting advice on which structure suits your circumstances before an agreement or order is finalised.

Time limits and what happens if you miss one

If you were married, you must apply to the Court for spousal maintenance within 12 months of your divorce being granted. If you were in a de facto relationship, you must apply within 2 years from the date of separation.

If you've missed the deadline, you may still be able to apply but usually only with the Court's permission ("leave"). The Court will only grant leave if it's satisfied that:

You (or a child of the relationship) would suffer hardship if leave were refused; or

At the end of the time limit, you would have been unable to support yourself without an income-tested pension or benefit.

Urgent spousal maintenance

If you need financial help urgently and there isn't time to work out exactly what a final order should look like, the Court can make an urgent maintenance order for whatever periodic amount it considers reasonable in the circumstances, pending a full hearing.

How we can help

At Empower Family Law & Mediation, we regularly act for both applicants and respondents in spousal maintenance matters. We can help you:

Assess whether you're likely to be eligible to claim, or liable to pay, spousal maintenance;

Understand the risks and advantages of bringing an application;

Negotiate an agreement without the need for Court proceedings, where possible; and

Respond to a claim and protect your income and asset base if you're the one being asked to pay.

If you need financial support from a former partner, or you've received a request or an application for spousal maintenance, please contact us on (03) 7020 6542 .

Speak with us

Your first 30-minute consultation is free. Call (03) 7020 6542 or contact our team to discuss your circumstances and next steps.

Phone : (03) 7020 6542

Email : info@empowerfamilylaw.com.au

Let us be your voice in troubled times.

Contact Us

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Who may qualify for spousal maintenance after separation?

Spousal maintenance is financial support for a former spouse or de facto partner who cannot adequately meet reasonable living expenses and whose former partner has capacity to contribute. The applicant must show need connected with circumstances such as caring for a child under 18, age, physical or mental incapacity, or another adequate reason such as a long absence from the workforce. The other person's reasonable needs and ability to pay also matter. Maintenance does not automatically equalise incomes or guarantee the former marital standard of living, although that standard can be one consideration. It is separate from child support and can operate alongside it. Both parties must provide full and frank disclosure of income, expenses, assets, liabilities and financial resources so the actual need and capacity can be assessed.

Can a former de facto partner apply for spousal maintenance?

A former de facto partner may apply if a qualifying gateway is met. The page lists four alternatives: the couple lived together as a couple for at least two years; they had a child together; the relationship was registered under a State or Territory scheme; or the applicant made substantial contributions and serious injustice would result if no order could be sought. Only one pathway needs to apply. Meeting a relationship gateway does not by itself establish a maintenance entitlement. The applicant must still show that they cannot adequately support themselves for a recognised reason, and that the other person has capacity to contribute after meeting their own reasonable needs. Evidence about the relationship, care of children, income, expenditure, health, work capacity and financial resources will therefore be important.

How is the amount and duration of spousal maintenance decided?

There is no fixed calculator. The Court first examines the applicant's reasonable living expenses and available income and assets, then the respondent's genuine capacity to pay. Relevant matters can include each person's income, expenses, liabilities, financial resources, age, health, relationship length, contributions, care of children and the economic effect of family violence. The order must fit the facts rather than a standard percentage. Maintenance may be periodic, such as weekly or monthly, a lump sum, or a combination. It is often intended as short-to-medium-term support, though duration depends on need, capacity and the proposed path toward greater self-support. Different structures can have practical and tax consequences. Detailed budgets and disclosure are needed before an amount can be

sensibly negotiated or sought from the Court.

What deadlines and urgent options apply to spousal maintenance?

A married person generally must apply within 12 months after the divorce is granted or becomes effective under the applicable rule. A former de facto partner generally must apply within two years after separation. If the period has expired, Court permission is usually required. The page explains that leave may depend on hardship to the applicant or a child, or on whether the applicant would otherwise have been unable to support themselves without an income-tested pension or benefit. Where financial help is urgently needed and there is not enough time to determine a final order, the Court can make an urgent maintenance order for a reasonable periodic amount pending a fuller hearing. Urgency does not remove the need for evidence. Prepare a realistic budget, income information and details of immediate shortfalls, and seek advice promptly.