

Spousal Maintenance

Article by Townsville Family Lawyer, Jodi Dingwall

6 June 2021

When you separate from a spouse, there are times where one party may need financial support to help them bounce back after separation.

A party to a relationship / marriage may need to continue to financially support their former spouse if they are not able to do so themselves after separation and divorce.

What is Spousal Maintenance?

Spousal maintenance is the amount of financial support that is paid to one party following the breakdown of their marriage / relationship.

The amount of maintenance to be paid (if at all) will depend on various factors (these are referred to below).

How much is paid?

When an application for spousal maintenance is being considered, the Court will look at various factors to determine how much maintenance ought to be paid.

The factors that are looked at include things like:

1. The age and health of the parties.
 2. What is considered to be a fair standard of living.
 3. Whether a party has the care or control of a child or children of the marriage/relationship that have not attained the age of 18 years.
 4. If the person receiving the spousal maintenance is in need of support.
 5. The capacity of the person proposing to receive the support's ability to earn an income.
 6. The income, financial resources, property and other investments of the parties.
 7. The eligibility of either party for a pension, allowance or benefit and the rate of any such pension, allowance or benefit being paid to either party.
 8. The extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income.
 9. The duration of the marriage / relationship and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration.
 10. If either party is cohabiting with another person—the financial circumstances relating to the cohabitation.
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The Court must also be satisfied that:

1. One person has the capacity (financial) to provide financial support to the other party; and
 2. The other party has a need. They are unable to support themselves adequately from their own income stream.
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Is there a time limit for making an application for spouse maintenance?

If you were married, applications for spouse maintenance must be made within 12 months of your divorce becoming final.

If you were in a de facto relationship, your applications for de facto partner maintenance must be made within 2 years of the breakdown of your de facto relationship.

If you do not apply within these time limits, you will need special permission of a court. This is not always granted.

When does the obligation to pay spousal maintenance cease?

If an order for spousal maintenance is made, then that amount must be paid until the period for which the Order requires spousal maintenance to be paid expires.

An end date is usually always included in a spousal maintenance order, that might be a date in the future or upon an event occurring – for example the party receiving the payment becoming employed on a full time basis.

If the Order that is made does not specify an end point, then an application to court will be required to seek an order terminating the obligation to pay.

There are certain events which will terminate the liability to pay spousal maintenance. They are:

- (a) The death of payer.
- (b) The death of the payee.
- (c) The marriage of the payee (to another person) or entry into a de facto relationship (with another person).

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You are not entitled to maintenance if you marry another person unless the court otherwise orders.

If you start a new de facto relationship the court will take into account the financial relationship between you and your new de facto partner when considering whether you are able to support yourself adequately.

Where to from here?

Everyone's situation is unique. It is always sensible to consult with a family lawyer to discuss your situation and obtain advice about how this process specifically applies to you.

O'Shea Dyer Townsville has experienced family lawyers who practice exclusively in Family Law.

We offer first appointments at a low fixed fee so everyone can afford to obtain advice about their situation.

Please call us on 47 725 155 to make an appointment.
