

## Spousal maintenance

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation.

### What is spousal maintenance?

Spousal maintenance is financial support paid by a party to a marriage to their former husband or wife in circumstances where they are unable to adequately support themselves. A person has a responsibility to financially assist their spouse or former de facto partner, if that person cannot meet their own reasonable expenses from their personal income or assets.

Where the need exists, both parties have an equal duty to support and maintain each other as far as they can. This obligation can continue even after separation and divorce. The extent of the support depends on what the other party can afford to pay.

It is important to note that spousal maintenance is not child support. Child support is paid for the benefit of children. The Family Court can order a party to pay spousal maintenance in addition to any child support they may be required to pay

### What does the Court consider?

The Court considers the needs of an applicant and the respondent's capacity to pay. The Court considers the following about both of you:

- your age and health
- your income, property, and financial resources
- your ability to work
- what is a suitable standard of living, and
- if the marriage has affected your ability to earn an income.

The court also takes into account with whom the children (under 18 years of age or adult children who are disabled) live.

Spousal maintenance is not automatic, and often is considered as part of an overall settlement of financial matters. It is most likely to be ordered in cases where one party is "house bound" with the care of young children and therefore unable to exercise their income earning capacity.

It might also be ordered where one party has been out of the workforce for a significant period of time raising the children and has become de-skilled or unemployable due to age. A further example would be if one party was unable to work due to illness.

A party's income earning capacity is quite distinct from their income. A party who reduces their income by their own choice, perhaps in an attempt to avoid spousal maintenance obligations, will be deemed to earn a higher income because of their income earning capacity. A party cannot simply 'sit on their hands'; they must exercise their income earning capacity to its full extent.

In determining the amount of spousal maintenance the Court will give consideration to a standard of living that is reasonable in all the circumstances. Here, reasonable does not necessarily mean the standard of living that the applicant led prior to the breakdown of the relationship, however this is a consideration of the Court.

A party's obligation to pay spousal maintenance may be discharged in various ways including through periodic and regular payments or by way of a lump sum payment. It may also exist for different periods of time. Although spousal maintenance is generally intended to operate only for a short period of time following separation to enable applicants to get back on their feet, in certain circumstances, it may be appropriate that spousal maintenance be paid for a longer period of time.

Usually the payment of spousal maintenance may be tailored to end upon the occurrence of a specific event, for example, the person receiving maintenance completing training or re-skilling, securing employment or commencing a new de facto relationship.

## I need more help

**If you would like some legal advice specific to your circumstances please make an appointment at the Fremantle Community Legal Centre on 08 9432 9790.**

**We are located at:**

Shop 11, Queensgate Building, 10 William Street, Fremantle  
08 9432 9790 (9.00 am- 4.00 pm weekdays)

**You might also find the following services useful:**

**Legal Aid WA**

Telephone infoline: 1300 650 579

(General enquiries) Infoline open Monday to Friday 8.30 am to 4.30 pm (Australian Western Standard Time) except public holidays

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