



Can I make a claim for spousal maintenance?

What is spousal maintenance?

Spousal maintenance is a payment that a person may be required to make to their former spouse or de facto partner to assist them in meeting the cost of their reasonable living expenses. It is a payment that is made between former partners that is paid separately to child support payments or any property settlement. It can be paid on a periodic basis (i.e. weekly or fortnightly), for a specified length of time or be paid by way of one lump sum or a combination of both.

When does spousal maintenance need to be paid?

In accordance with the Family Law Act 1975 (“the Act”), one party may be “liable to maintain the other party, to the extent that the first mentioned party is reasonably able to do so, if, and only if,

that other party is unable to support herself or himself adequately”.

To be eligible for spousal maintenance, a party must be able to prove that they are unable to support themselves adequately due to one of the following:-

1. By reason of having the care and control of a child of the relationship who is under the age of 18 years
2. By reason of their age or physical or mental incapacity for appropriate gainful employment;
or
3. Any other adequate reason.

Once it has been established that a party is unable to adequately support themselves, which is usually done by a comprehensive analysis of that person’s income and expenses, the question then turns to whether the other party has the ability to pay spousal maintenance. Capacity to pay spousal maintenance is assessed by determining the other party’s “surplus” funds after paying their necessary commitments.

Sometimes one party might agree to pay their former partner spousal maintenance because they accept that it should be paid in accordance with the provisions of the Act. This is often the case when there are young children involved and one parent has a reduced work capacity by virtue of caring for the children and the other party has a significantly higher earning capacity. It can also occur when one party has a significant health issue that prevents them from working.

If there is no agreement about whether spousal maintenance should be paid to a party, then it may be necessary to apply to the Federal Circuit and Family Court of Australia and seek a formal order for spousal maintenance to be paid.

An application for spousal maintenance can be made on an urgent basis; that is maintenance that is paid immediately due to an urgent need for it. It can be sought on an interim basis, which is paid for a set period whilst the parties sort out their final division of assets and liabilities and implement a formal property settlement. Final Orders for spousal maintenance may also be sought and made where the maintenance is required in addition to a division of property.

Even if you have already separated your assets with your former partner, you may still be entitled to spousal maintenance in addition to that division of property.

Upon hearing an application for spousal maintenance, the Court will consider a number of different factors in order to determine if a party is or is not eligible to receive spousal maintenance payments and whether or not the other party is reasonably able to make those payments. Each matter is determined on a case by case basis and two cases will be the same.

Time limits for spousal maintenance

It is important to note that when two parties get divorced, the parties have only 12 months from the date of the divorce to make an application for spousal maintenance. Similarly, former de facto partners have 2 years from the date of their separation to make such application.

If you are the party that may end up paying spousal maintenance then you should consider whether or not you can come to an agreement with your former spouse or de facto partner about the issue. If

you are able to do so, then you must instruct a solicitor to prepare a legal document properly recording that agreement in order to protect yourself from a future claim being made by the other party contrary to the agreement reached.

How can Andersons help?

It is important that separating parties seek independent legal advice about their rights with respect to paying or receiving spousal maintenance as early as possible.

Our experienced **Family law team** at Andersons Solicitors can help answer any questions you may have about spousal maintenance and your rights and obligations. If you would like further information, please call our office on 8238 6666 or email enquiry@andersons.com.au.