



## FAMILY LAW

### SPOUSAL MAINTENANCE

In certain circumstances, one spouse may be liable to pay the other spousal maintenance. Spousal maintenance is separate to, and independent from, child support (or child maintenance as it used to be known).

Orders for spousal maintenance can be made by consent or can be Court-imposed. Orders can be made on an interim basis or, and more rarely, a final basis.

What is spousal maintenance? Spousal maintenance is financial support that one party may be required to pay to the other party after their marriage or de facto relationship has broken down. It can be in the form of cash or it can take the form of a lump sum allocation from the nett asset pool at the time of reaching a final agreement.

Broadly speaking, the Family Court has the power to order one party to pay spousal maintenance to the other party if:

- one person is unable to support himself or herself adequately; and
- the other person is reasonably able to provide such support.

The obligation for spouses to financially support each other does not change in the event of divorce. However there are time limits which apply if you wish to claim maintenance after divorce, or in the case of a de facto relationship, after you separate.

The sections of the *Family Law Act 1975* that deal with spousal maintenance are sections 72 and 74. Section 72 says that there are three circumstances which may cause the need for the payment of spousal maintenance, namely:

- by reason of having care and control of a child of the marriage who is not yet 18 years of age;

- by reason of age or physical or mental capacity for appropriate gainful employment; or
- for any other reason.

The Court will take into account a variety of factors when assessing an application for spousal maintenance, such as:

- the Applicant's ability to support himself or herself adequately;
- the Respondent's capacity to pay;
- the age and state of health of the parties;
- the income, property and financial resources of the parties;
- the commitments of the parties eg loan repayments;
- standard of living – pre and post the relationship; and
- the capacity and ability of the Applicant to retrain.

Even if an Applicant has a need for maintenance, and the Respondent has the capacity to pay, a Court may not necessarily make an Order in this regard,

There is no general rule as to how much spousal maintenance a person should pay or receive (if any) and for the length of time the payments are to be made.

All family law matters are unique and we encourage you to seek detailed advice on all of the issues so that you can make an informed decision.

This information constitutes general information only. If you require detailed advice on Spousal Maintenance, or any other family law issue, please contact Natalie Dimmock at Murfett Legal Pty Ltd on (08) 9388 3100 or [natalie@murfett.com.au](mailto:natalie@murfett.com.au).