



Are you entitled to Spousal Maintenance?

If you've separated from your spouse or de facto partners and are unable to work due to illness, having to care for young children or your capacity for employment is limited because you've been out of the workforce for a significant period of time, you may be entitled to Spousal Maintenance if you're unable to financially support yourself.

What is Spousal Maintenance?

Spousal Maintenance is either periodical or lump sum payments made by one spouse or de facto partner to their former spouse or de facto partner to assist them to support themselves after separation. It's a different form of financial assistance to Child Support and unlike Child Support there's no government agency that sets the amount payable or collects the support payments. Spousal Maintenance is only payable if the parties reach an agreement for it to be paid or the Family Court otherwise makes a Spousal Maintenance order.

Who can apply for Spousal Maintenance?

Generally, for a spouse or de facto partner to have an entitlement to bring a Spousal Maintenance application there needs to be a significant disparity in the respective parties' incomes at the date of separation. In most instances Spousal Maintenance will only be made for a short period of time following separation to enable the party receiving the payments to re-establish themselves, for example undertaking a course of study or retraining.

The rationale behind one party paying Spousal Maintenance to another party stems from the understanding that in many instances, especially in traditional relationships, one of the parties will sacrifice career progression and income earning capacity to stay at home and raise children whilst the other party has the ability to progress their career and income earning capacity over the course of the relationship. It follows that after a certain period of time, when the parties separate, that there is a situation where one of the parties is still the primary caregiver for the children and is unable to realise their full income earning capacity or because they have been out of the workforce for a considerable period of time are significantly disadvantaged in respect to income earning capacity compared to their former partner.

When can you apply?

An application for Spousal Maintenance can be brought at any time after the parties to a marriage or de facto relationship separate. There are however time limits which apply to making a Spousal Maintenance application these being:

- If you were married, your application for Spousal Maintenance must be made within 12 months of your Divorce.
- If you were in a de facto relationship, your application must be made within 2 years of the date of separation.



Establishing a right to Spousal Maintenance

To be successful on an application for Spousal Maintenance, the applicant must establish an inability to support themselves adequately from their own income earning capacity or financial resources by reason of having:

- the care/control of a child of the relationship under 18; or
- a physical or mental incapacity restricting employment; or
- any other adequate reason including but not limited to the age and state of health of the parties, the income, property and financial resources of each of the parties and the commitments of each party.

In addition, the applicant must also establish that the other party is reasonably able to support them. In essence it's a "need verses ability to pay" test and if the Court is satisfied that an applicant is unable to support themselves and the other party has capacity to make payments to assist them then the Court may determine whether to make a Spousal Maintenance Order.

In determining the amount of Spousal Maintenance, the Court will consider a standard of living that is reasonable in all circumstances. This doesn't necessarily mean the same standard of living that the applicant had prior to the breakdown of their relationship as a respondent to is entitled to apply their income to meet their own day to day living expenses first before assessing their capacity to meet an applicant's financial needs.

When do Spousal Maintenance payments cease?

Spousal Maintenance payments will usually end when the parties agree on a property settlement or when this is decided by a Court. Payments will also cease upon the death of the applicant and if he or she re-marries they are usually not entitled to continuing Spousal Maintenance. If applicants enter into a new de facto relationship the Court will consider the financial relationship between them and their new de facto partner when determining whether the applicant should continue receiving the benefit of a Spousal Maintenance order.

If you're struggling to make ends meet following separation or you've been served with an application to pay Spousal Maintenance, it's important that you get legal advice to ascertain your entitlements or obligations as well as assistance with initial negotiations and mediation in respect to any Court proceedings instituted to seek a Spousal Maintenance Order.

At Bateman Battersby we have a number of experienced Lawyers who specialise in Family Law matters. If you need help or more information about making a Spousal Maintenance application or wish to discuss any family law issue, please feel free to contact [Oliver Hagen](mailto:Oliver.Hagen@batemanbattersby.com.au) or [Ken Gray](mailto:Ken.Gray@batemanbattersby.com.au) on (02) 4731 5899 or email us at familylaw@batemanbattersby.com.au.