



## Maintenance

Upon separation, there is no automatic right to receive maintenance from, or a duty to pay maintenance to a former spouse/partner.

### What is maintenance?

The *Family Law Act 1975* (Cth) provides that one party to the marriage is liable to maintain the other party to the marriage to the extent that:

- one party is unable to adequately meet his or her own reasonable needs; and
- the other party has the capacity to pay.

You may also be entitled to claim maintenance if you were in a de facto relationship and separated after 1 March 2009.

### What factors will the court consider?

There are a number of factors which the court considers in determining whether one party is able to adequately support themselves. Some examples include where one party has the care and control of a child under the age of 18 years or, by reason of age or physical or mental incapacity, is unable to obtain appropriate gainful employment.

The court, in determining any liability for maintenance and the amount of maintenance, will consider what is proper. Some of the factors the court may take into account (for both parties) include:

- income, property, financial resources and liabilities;
- age and state of health;
- ability to earn an income, and whether this has been affected by the marriage/relationship;
- what is considered to be a reasonable standard of living considering all the circumstances; and
- whether the children live with you, or the other party.

It is important to remember that, even if one party is unable to adequately support themselves, then the other party is only liable to support that party so far as they are reasonably able to do so.

In certain situations, the court also has the power to award maintenance in a lump sum, rather than periodic payments.

The court also has the power to make urgent and interim orders for maintenance until a final trial is reached.

### What is the time limit?

Applications for maintenance must be made within 12 months of your divorce becoming final if you were married or within two years from the date that your de facto relationship ended if you separated after 1 March 2009.

Later applications may only be brought with leave from the court.

The Family Law Act allows parties to enter into a financial agreement about how much, if any, maintenance will be paid from one party to the other. To be binding, the financial agreement must comply with requirements under the Family Law Act, including:

- the agreement must be signed by both parties;
- each party must obtain independent legal advice about the advantages and disadvantages of entering into the financial agreement; and
- each party must receive and send to the other party a signed statement from their legal representative confirming this advice was given.

In most instances a financial agreement will prevent the court from making an order that one party pay the other maintenance. However, the court retains the power to set aside the financial agreement in certain circumstances, including where there has been a change in the circumstances that make the financial agreement impracticable or which relate to the care, welfare and development of a child of the marriage/relationship and where keeping the financial agreement in place would cause hardship. A financial agreement will also not preclude a court from making an order for maintenance if a party is entitled to an income tested pension, benefit or allowance.

For more information, please contact: [contactus@hopgoodganim.com.au](mailto:contactus@hopgoodganim.com.au) or visit [hgprivate.com.au](http://hgprivate.com.au)

The contents of this paper are not intended to be a complete statement of the law on any subject and should not be used as a substitute for legal advice in specific fact situations. HopgoodGanim Lawyers cannot accept any liability or responsibility for loss occurring as a result of anyone acting or refraining from acting in reliance on any material contained in this paper.