

"AM I ENTITLED TO SPOUSE MAINTENANCE?"

Spouse maintenance is available under the Family Law Act, therefore it is a potential entitlement for married couples or for defacto couples (if they have separated after 1 March 2009).

For a spouse maintenance entitlement to arise there must be a significant difference in the spouses income at the date of separation. If the relevant criteria is satisfied then the spouse with the higher income provides financial support to the spouse with the low (or nil) income. Spouse maintenance is not gender specific, so the paying spouse can be the Husband, or the Wife or the other party to the relationship in the case of same-sex couples.

There is no set formula in determining how much spouse maintenance should be paid. If parties cannot reach an agreement, then usually the spouse with the potential entitlement will make an Application to the Court seeking a determination of this issue.

The Family Court looks at what is the "financial need" of the lower income earning spouse and what is the "financial capacity" of the higher income earning spouse to meet that need and then exercises its discretion as to what payment it thinks is reasonable.

In exercising its discretion, the Court will look at the "reasonable" day to day living expenses of the lower income earning spouse. It is important to note that, the entitlement is not designed to keep someone "in the lifestyle they were accustomed to". Likewise, the income earning spouse is entitled to apply funds to their own support when assessing their capacity to meet the other spouse's needs.

Practically, this assessment is done by both parties setting out their income and expenses in a Financial Statement which is exchanged between the parties and, if an Application becomes necessary, provided to the Court.

The major area of dispute tends to be what is considered "reasonable expenses".

Whilst it may be accepted that the low-income spouse has a financial need and the payer has a capacity to meet that need there is still a positive obligation on the low-income spouse to pursue employment and meet his or her reasonable needs.

Whilst there is a positive obligation to seek employment, a low-income earning spouse who has primary care of children under school age, is entitled to commit themselves to that role and the Court does not require the recipient to first deplete matrimonial assets before making an Application for spousal maintenance.

Spousal maintenance can either be paid on a periodic basis or it can be calculated as a lump sum payment. Whether spousal maintenance is paid on a periodic basis or in a lump sum amount will turn on each party's particular circumstances.