



Difference between child support and spousal maintenance

Date: Monday March 28, 2022

Following separation, one of the first issues people turn their minds to is what if any, financial support they may be entitled to from their former partner. Child support and spousal maintenance can provide financial support to a spouse who may not have sufficient income to support themselves and their children after separation.

However, it is not uncommon for confusion to arise about the differences between child support and spousal maintenance. These two options for financial support have different assessment criteria and different purposes, and importantly, some parties may be required to pay both child support **and** spousal maintenance to their former partner.

Child support v spousal maintenance

Although child support and spousal maintenance are both intended to achieve a similar goal, that is to provide financial support to a former partner, they are both assessed in different ways.

Child support may be paid by one party to the other to assist with supporting a child or children of the relationship after separation.

Spousal maintenance may be required to be paid by one party to the other if the former spouse is not able to meet their own financial needs after separation, whether on a short-term or long-term basis.

How do I seek child support?

Child support is most commonly sought by application to the [child support division of Services Australia](#).

Parties can reach their own agreement outside of the assessment process of Services Australia

If parties cannot agree on the rate of child support, either party can seek an assessment from Services Australia. The assessment process uses a formula that considers, amongst other factors, each party's income, the ages of the children and the children's living arrangements. You can learn more about this in our article, ["How is child support determined in Australia?"](#)

How much child support is payable?

The Services Australia website provides a useful [online child support estimator tool](#), which can be used to estimate the amount of child support that may be either payable or receivable.

How is child support collected?

Child support may be paid by private collection between the parties, or alternatively, Services Australia can monitor the payment of child support.

Parties are also able to enter into private agreements that cover child support and broader financial support for children. In our blog, ["The difference between a Binding Child Support Agreement and a Limited Child Support Agreement"](#), we explored the options available to parties to enter these private agreements, including the advantages and disadvantages of these agreements.

How do I seek spousal maintenance?

[Spousal maintenance](#) is financial support provided by one party to the other after separation. It is payable when one former partner is unable to adequately support themselves, and the other party has the financial capacity to support their former spouse.

If parties cannot agree between themselves on the level of financial support, if any, a party seeking spousal maintenance needs to make an application to the [Federal Circuit and Family Court of Australia](#) or the Family Court of Western Australia.

Difference between interim and final spousal maintenance

Spousal maintenance can be sought on an interim or a final basis.

Interim spousal maintenance is to apply for a short period of time, such as until the parties are able to [finalise their property settlement](#).

Final spousal maintenance orders may apply for a longer period of time, such as until children have completed school. This allows, for example, the party with care of the children an opportunity to obtain full-time work again, overcome a health issue or until a party undertakes training to assist them to gain employment.

What does the Court consider when determining spousal maintenance?

If an application is made for spousal maintenance, the Court will consider the applicant's ability to support themselves and whether they have a need for spousal maintenance. For example, if a party is unable to meet their usual weekly expenditure (eg, food, rent,

petrol, utility bills etc) from their weekly income, they may have a need for financial support from the other party to meet any shortfall.

The Court will consider the other party's financial capacity to meet a spousal maintenance order. For example, they will consider whether it is likely that the other party will have surplus funds available from their income each week after meeting their own reasonable weekly expenses.

There are also other factors the Court can take into account when considering spousal maintenance. Such factors are set out in Section 75(2) of the *Family Law Act 1975* (Cth), including the age and state of health of the parties, the income of the parties and their capacity to obtain employment and care arrangements for children.

The different types of spousal maintenance

There are different types of spousal maintenance that can be sought or agreed upon between parties, depending on their particular circumstances. These can include:

- a periodic payment order, such as weekly, fortnightly or monthly payment that correlates to meeting the amount of the shortfall between a party's income and their reasonable living expenses;

- a direct contribution to expenses, for example, payments towards the mortgage, electricity, utilities, loan repayments or other non-periodic costs; or

- a lump sum order.

Get help from a family lawyer

Have you recently separated and need assistance in relation to what, if any, financial support for child support and/or spousal maintenance you are entitled to from your former spouse?

Meillon & Bright's team of experienced family lawyers can assist you and provide you with information about the options available to alleviate your financial stress and formalise any arrangements for financial support.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.