

# DEMYSTIFYING SPOUSAL MAINTENANCE, CHILD SUPPORT & CHILD MAINTENANCE

13 JANUARY 2014 | GENERAL

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When parties to a relationship separate and one party has a limited financial capacity or children are involved, issues regarding support payments by one party to the other may arise. Depending on the individual circumstances, the lower income earner may be entitled to receive spousal maintenance and/or, if children are involved, child support or child maintenance. So what is the difference?

## SPOUSAL MAINTENANCE

Spousal maintenance involves one party to a relationship making payments to the other when an income disparity exists between them. It is not necessary for there to be children of the relationship.

The *Family Law Act 1975* (Cth) provides that a person may apply for spousal maintenance if they are unable to adequately support themselves from their own income (ignoring government benefits) and the other party is reasonably able to provide financial support from a surplus from their income.

There is no exact formula which can be applied to determine the amount of spousal maintenance payable. The Court has discretion and can order any amount it deems is proper in the circumstances. Relevant factors considered by the Court are the age, health, income and property of the parties, the mental and physical capacity of the parties to gain employment, the duration of the relationship and any responsibilities to care for children. An order for spousal maintenance may be made on a periodic or lump sum basis.

## CHILD SUPPORT

When parties separate and there are children of the relationship, both parties are required to support the children, irrespective of the living arrangements of the children. Parents can reach a private agreement regarding the amount of child support to be paid or one parent may make an application to the Child Support Agency for an administrative assessment.

The amount payable pursuant to an administrative assessment is determined by a complex formula which takes into account both parents' income, the time each parent spends caring for the children and the general costs associated with raising the children having regard to their age. However, the child support legislation is only applicable to children under the age of 18 years.

## CHILD MAINTENANCE

Child maintenance is similar in nature to child support. However, an order for child maintenance under the *Family Law Act* cannot be made if the child support legislation is applicable. The most usual circumstances in which a child maintenance order is sought is for a child over the age of 18 who has financial needs due to their ongoing tertiary education or some mental or physical disability. Relevant factors for consideration by the Court include:

1. the age and any special needs of the child;
2. the income, earning capacity, property and financial resources of the child; and
3. the manner in which the child is being, and in which the parents expected the child to be, educated or trained.

Unlike child support, the amount payable is not determined by the Child Support Agency but rather is determined in a similar manner to spousal maintenance. It is for the Court to determine the proper amount, giving consideration to what is necessary to maintain the child, the child's age, any education the child is undertaking and any special needs of the child.

Trying to determine how [spousal maintenance](#), [child support](#) and [child maintenance](#) payments differ can often be confusing. If you have any questions regarding your liability to pay, or your eligibility to receive, spousal maintenance, child support or child maintenance please [contact our team](#) of experienced Brisbane family lawyers.

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