# Spousal maintenance questionnaire

Completed by: Click to enter name. on Click to enter a date.

This checklist will assist you to make a preliminary determination of whether there is merit for an application for spousal maintenance, and if there is, to take full instructions from the Applicant.

For eligibility criteria, see [Guideline 6](http://handbook.vla.vic.gov.au/handbook/4-commonwealth-family-law-and-child-support-guidelines/guideline-6-spousal-maintenance) of the Commonwealth Family Law and Child Support Guidelines.

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| Part 1: Establish eligibility for legal assistance To be eligible for assistance, the Applicant must meet both the merit and means tests. Determination of merit will involve application of the threshold test (see below). Obtain the following information to assess eligibility:  |
| The Applicant |
| **Name** | Click to enter name. |
| **Age** | Click to enter age. |
| **State of health** | Click to enter text. |
| **Occupation and/or qualifications** | Click to enter text. |
| **Income** | Click to enter income. |
| **Assets/property/financial resources**Click to enter text. |
| **Lifestyle** |
| Click to enter text. |
| **Is the Applicant bankrupt?** | [ ] Yes [ ] No |
| **Dependants other than children of relationship** (listed on page 3) | [ ] Yes [ ] No |
| Names | Date of birth | Nature of relationship |
| Click to enter text. | DD/MM/YYYY | Click to enter text. |
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| Click to enter text. | DD/MM/YYYY | Click to enter text. |
| Click to enter text. | DD/MM/YYYY | Click to enter text. |
| Person to pay maintenance*Note: Must establish capacity* |
| **Name** | Click or tap here to enter name. |
| **Age** | Click or tap here to enter age. |
| **State of health** | Click or tap here to enter text. |
| **Occupation and/or qualifications** | Click or tap here to enter text. |
| **Income** | Click or tap here to enter income. |
| **Assets/property/financial resources**Click or tap here to enter text. |
| **Lifestyle** |
| Click or tap here to enter text. |
| **Is the Applicant bankrupt?** | [ ] Yes [ ] No |
| **Dependants other than children of relationship** (listed on page 3) | [ ] Yes [ ] No |
| Names | Date of birth | Nature of relationship |
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| Click to enter text. | DD/MM/YYYY | Click to enter text. |
|  |
| **Relationship details** |
| [ ]  Married *(complete a to d)*[ ] De facto *(complete b and c)* |
| * 1. Date of marriage
 | DD/MM/YYYY |
| * 1. Commencement date of cohabitation
 | DD/MM/YYYY |
| * 1. Date of separation
 | DD/MM/YYYY |
| * 1. Date of divorce
 | DD/MM/YYYY |
| *Note: Time limits apply in which an application for spousal maintenance must be made i.e., within 1 year of the date of divorce or 2 years from the date when a de facto relationship ends. The Act allows for leave to apply out of time for both marriage and de facto cases.* |
| Children of the marriage/relationship |
| Are there any children of the marriage/relationship? | [ ]  Yes[ ]  No |
| **Names of children** | **Date of birth** |
| Click to enter text. | DD/MM/YYYY |
| Click to enter text. | DD/MM/YYYY |
| Click to enter text. | DD/MM/YYYY |
| Click to enter text. | DD/MM/YYYY |
| Care arrangements post-separation |
| Click to enter details. |
| Existing spousal maintenance orders |
| Do you already have a spousal maintenance order? | [ ]  Yes[ ]  No |
| Date of order | DD/MM/YYYY |
| Court where order made | Click to enter court details. |
| Copy of order provided | [ ]  Yes[ ]  No |
| Merit threshold test (applicant)For criteria used to determine merit to proceed with the application, see section 72 *Family Law Act* *1975* (FLA) for married parties and section 90 SF (1) FLAfor de facto parties. |
| Capacity to pay and needUnder **s** **72** or **s** **90SE(1)** of the FLA, a right to spousal maintenance exists where:* the respondent spouse is able to support the applicant spouse

and * the applicant spouse is unable to support himself or herself adequately due to any one of the reasons set out in **s** **72(1) or s** **90SF(1)(b).**

These are: (a) by reason of having the care and control of a child of the [marriage](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90ab.html#marriage)/de facto relationship who has not attained the age of 18 years;(b)by reason of age or physical or mental incapacity for appropriate gainful employment; or(c)for any other adequate reason;**Having regard to any relevant matter referred to in** [**s**](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s65lb.html#subsection) **75(2)/s90SF(3)**. |
| What is your initial assessment of need and capacity to pay? |
| Click to enter initial assessment. |
| Relationship and geographic criteria (de facto only)See sections 90SB, 90SM, 90SD of the FLA. |
| Relationship characteristics (ss 90SB & 90SM) |  |
| 1. Is the total period of cohabitation at least 2 years? OR
 | [ ]  Yes[ ]  No |
| 1. Is there a child of the relationship?OR
 | [ ]  Yes[ ]  No |
| 1. Did the applicant for the maintenance order:
 |  |
| * + 1. make substantial contributions, directly or indirectly, whether financial or non-financial, to the acquisition, conservation or improvement of any of the property of the parties to the de facto relationship or either of them?*Note: It is irrelevant whether the property has ceased to be the property of the parties or either of them since the making of the contribution.*OR
 | [ ]  Yes[ ]  No |
| * + 1. make non-financial contributions to the de facto relationship or to the welfare of the family (including any contribution made in the capacity of homemaker or parent)?AND
 | [ ]  Yes[ ]  No |
| * + 1. Where the answer to I or II above is YES, would failure to make the order sought result in serious injustice to the applicant?OR
 | [ ]  Yes[ ]  No |
| 1. Is the de facto relationship registered under a law of a State or Territory?*Note: If yes, obtain the registration certificate.*AND
 | [ ]  Yes[ ]  No |
| Geographical requirement (s90SD)1. Court may make an order under s90SE or 90SG in relation to a defacto relationship only if the Court is satisfied.
 |  |
| 1. That either or both of the parties to the de facto relationship, ordinarily resident in a participating jurisdiction when the application for the order was made,
2. That either
 | [ ]  Yes[ ]  No |
| * + 1. both parties to the de facto relationship were ordinarily resident in a participating jurisdiction during at least a third of the de facto relationship,OR
 | [ ]  Yes[ ]  No |
| * + 1. the applicant for the order made substantial contributions of the kind listed on page 4 above, in one or more States or Territories that are participating jurisdictions when the application was made,OR
 | [ ]  Yes[ ]  No |
| * + 1. the parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the relationship broke down.
 | [ ]  Yes[ ]  No |
|  |  |
| Is it urgent?Sections 77 (married parties) & 90SG (de facto) FLA, give the court power to make an order for urgent spouse maintenance where it appears the party needs immediate assistance. *Note: For de facto parties, the additional threshold relationship criteria (length and geographical requirements) must also be met.* |
| Eligibility for a grant of assistance |
| To check eligibility for an FDRS grant, see [Guideline 6.2](http://handbook.vla.vic.gov.au/handbook/4-commonwealth-family-law-and-child-support-guidelines/guideline-6-spousal-maintenance/guideline-62-fdrs-in-spousal-maintenance-disputes) and [Guideline 6.3](http://handbook.vla.vic.gov.au/handbook/4-commonwealth-family-law-and-child-support-guidelines/guideline-6-spousal-maintenance/guideline-63-litigation-in-spousal-maintenance-disputes) of the Commonwealth Family Law and Child Support Guidelines. |

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| Part 2: Obtaining full instructions |
| If the Applicant meets the threshold test and the guideline criteria, obtain more information addressing the factors listed in sections 75 (2) (for married parties) and 90SF (for de facto parties). |
| The Applicant |
| State of health |
| Details of health problem/disability |
| Click to enter details. |
| How does health problem/disability affect ability to work or find employment? |
| Click to enter details.Note: If unable to work due to poor health, then a detailed medical report is required to confirm:* + diagnosis of health condition/disability
	+ medication and treatment required; and
	+ prognosis relating to inability to be self-supporting.
 |
| Income |
| **What income/part-time job/Centrelink benefits/superannuation payments does the Applicant receive?** *Note: Centrelink payments are disregarded as income* |
| Click to enter details. |
| Is the Applicant receiving, or have they received Child Support from the other party?If yes, state amount Click to enter amount.*Note: Obtain copy of Notice of Assessment* | [ ]  Yes[ ]  No |
| Will the Applicant be seeking Child Support from the other party? If yes, state likely amount Click to enter amount. | [ ]  Yes[ ]  No |
| Can the Applicant’s income be increased? | [ ]  Yes[ ]  No |
| Click to enter details. |
| What has been the impact of the duration of the relationship/marriage on Applicant’s earning capacity? |
| Click to enter details. |
| Would payment of maintenance increase Applicant’s earning capacity (e.g., to undertake a course of education or training or to establish themselves in a business or otherwise to obtain an adequate income)? | [ ]  Yes[ ]  No |
| Click to enter details. |
| Expenses |
| *Note: A* [*Financial Statement*](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/court-forms/form-topics/financial/form-financial-statement) ***must be provided to the*** *Applicant for completion and return. See Annexure A. Explain part N of the statement.* |
| Itemise expenses related to any health problem/disability (medication/ therapy/travel/consultations etc) less Medicare / Private Health rebates (receipts may be required to be produced at hearing) |
| Click to enter expenses. |
| Is the applicant making any contributions towards the upkeep/expenses of children under 18 years old? | [ ]  Yes[ ]  No |
| Click to enter details. |
| Does the Applicant wish to continue in the role as a parent to those children? | [ ]  Yes[ ]  No |
| Click to enter details. |
| Is the applicant is living with a new spouse/partner? | [ ]  Yes[ ]  No |
| If yes, provide details of the financial circumstances relating to the cohabitation |
| Click to enter details. |
| PropertyIs there any property settlement pending? | [ ]  Yes[ ]  No |
| If yes, obtain instructions on the proposed terms of the settlement. |
| Click to enter details. |
| *Note: If taking instructions for a property matter also, use the* [*Balance Sheet*](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/court-forms/form-topics/financial/form-balance-sheet) ***and*** [*Financial Statement*](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/court-forms/form-topics/financial/form-financial-statement) ***annexed to this questionnaire.*** *Obtain instructions on the section 79 (4) or section 90SM (3) & (4) factors, bearing in mind* [*Stanford ‘s case*](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2012/52.html)*(see also summary of case on the* [*intranet*](https://viclegalaid.sharepoint.com/sites/intranet/practiceresources/family-law-resources/Pages/property-settlement-case-notes.aspx)***)*** *where it must be just and equitable at the outset to make a property order.* |
| Is there any financial agreement that is binding on the parties to the [marriage](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90ab.html#marriage)**/relationship?** | [ ]  Yes[ ]  No |
| If yes, what are the terms of the agreement? |
| Click to enter details. |
| If the Applicant is bankrupt |
| * provide details of the vested bankruptcy property
 |
| Click to enter details. |
| * Indicate what would be the effect of a proposed order on the ability of a creditor of a party to recover the debt
 |
| Click to enter details. |
| Are there any other circumstances relevant to the Applicant’s case?  | [ ]  Yes[ ]  No |
| Click to enter details. |
| The Respondent |
| State of health |
| Details of health problem/disability |
| Click to enter details.How does health problem/disability affect ability to work or find employment?Click to enter details.  |
| Income |
| What income/part-time job/Centrelink benefits/superannuation payments does the Respondent receive? *Note: Centrelink payments are disregarded as income* |
| Click to enter details. |
| Is the Respondent receiving, or have they received Child Support from the other party?If yes, state amount Click to enter amount.*Note: Obtain copy of Notice of Assessment* | [ ]  Yes[ ]  No |
| Will the Respondent be seeking Child Support from the other party? If yes, state likely amount Click to enter amount. | [ ]  Yes[ ]  No |
| Can the Respondent’s income be increased? | [ ]  Yes[ ]  No |
| Click to enter details. |
| What has been the impact of the duration of the relationship/marriage on Respondent’s earning capacity? |
| Click to enter details. |
| Expenses |
| *Note: A* [*Financial Statement*](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/court-forms/form-topics/financial/form-financial-statement) ***must be provided to the*** *Respondent for completion and return. See Annexure A. Explain part N of the statement.* |
| Does the Respondent wish to continue in the role as a parent to those children? | [ ]  Yes[ ]  No |
| Click to enter details. |
| Is the Respondent is living with a new spouse/partner?  | [ ]  Yes[ ]  No |
| If yes, provide details of the financial circumstances relating to the cohabitationClick to enter details. |
| Is there any property settlement pending? | [ ]  Yes[ ]  No |
| If yes, obtain instructions on the proposed terms of the settlement. |
| Click to enter details. |
| Is there any financial agreement that is binding on the parties to the [marriage](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s90ab.html#marriage)**/relationship?** | [ ]  Yes[ ]  No |
| Is the respondent making any contributions towards the upkeep/expenses of children under 18 years old? | [ ]  Yes[ ]  No |
| Click to enter details. |
| If the Respondent is bankrupt |
| * provide details of the vested bankruptcy property
 |
| Click to enter details. |
| * Indicate what would be the effect of a proposed order on the ability of a creditor of a party to recover the debt
 |
| Click to enter details. |
| Are there any other circumstances relevant to the Respondent’s case?  | [ ]  Yes[ ]  No |
| Click to enter details. |
| *Note: If the applicant doesn’t know much about the other party’s financial situation the following strategies may assist in determining capacity to pay:* * + *If the applicant is in receipt of child support payments, obtain the Notice of Assessment from the Child Support Agency. If they don’t have an assessment, consider applying;*
	+ *If there was a property settlement, look at the documents filed on the other party’s behalf eg a Financial Statement;*
	+ *Consider a Title/Business/Company search.*
 |
| Part 3: Cessation of spouse maintenance orders |
| Advise the Applicant on the circumstances in which a spousal maintenance order ceases to have effect. See [s82 FLA](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s82.html)**.*** upon the death of the [party](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s102p.html#party)**;**
* upon the re-marriage of the [party](http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fla1975114/s102p.html#party) **unless in special circumstances a court having jurisdiction** under this Act otherwise orders

***Note:*** * *Where a re-marriage takes place, it is the duty of the person for whose benefit the order was made to inform without delay the person liable to make payments under the order of the date of the re-marriage.*
* *Any moneys paid in respect of a period after remarriage may be recovered in a court having jurisdiction under this Act.*
* *Nothing in this section affects the recovery of arrears due under an order at the time when the order ceased to have effect.*
 |
| Explained above to the Applicant | [ ]  Yes[ ]  No |
| Additional notes |
| Click to enter details. |