



Maintenance applications

www.familycourt.wa.gov.au

Family Law Rules, Division 4.2.4

This brochure provides information for parties to an application to the Court concerning maintenance.

The information in this brochure is set out in the following parts:

- **PART 1 General information about maintenance.**
- **PART 2 Information about the steps to be taken by applicants only** – if you are making the application to the Court you are known as the applicant.
- **PART 3 Information about the steps to be taken by respondents only** – if you are named in the application as the respondent.
- **PART 4 Information for both the applicant and the respondent.**

The forms and brochures referred to in this brochure may be located on the Family Court website at www.familycourt.wa.gov.au or obtained from any registry of the Family Court.

Part 1 *General information about maintenance*

The procedures in this brochure apply to a party to an application for maintenance. This includes where there is an existing order for maintenance and a party wants the order:

- changed (for example, by increasing or reducing the amount to be paid), or
- discharged.

Maintenance is money which a person pays to help financially support his or her former spouse (known as spousal maintenance) or children (child maintenance).

Spousal and defacto spousal maintenance

Under the law a person has a responsibility to financially assist his or her spouse if that spouse cannot meet his or her reasonable expenses from their own income or assets. Where the need exists, both spouses have an equal duty to support and maintain each other as far as they can. This obligation continues even after separation and divorce. The extent of the support depends on what the other spouse can afford to pay. This means that in deciding a maintenance application, the Court takes into account the needs of the party seeking to be paid maintenance and the other party's capacity to pay.

IMPORTANT NOTE: There are strict time limits for making an application for spousal maintenance. You should seek legal advice about these limits.

Child maintenance

Under the law, an application can be made for a person to pay maintenance for a child in certain circumstances. However, if you are considering making an application for child maintenance, and the child was born after 1 October 1989, or you and your partner separated after 1 October 1989, the Act may not apply. If this is your situation, you should contact the Child Support Agency on 131272 for further information.

Part 2 *Information for applicants only*

HOW TO APPLY

Step 1 Completing the application

Complete :

- an Application for Final Orders (Form 1); and
- a Financial Statement (Form 13).

Before completing the Application for Final Orders, read it and any instructions carefully. What you write in the application will be the basis of your case.

In completing the application, you should take particular care in setting out what orders you want the Court to make. If you are seeking that maintenance be paid, you must state clearly:

- how much maintenance you are applying for;
- how often you want the payments made; and
- who the payments are for.

If you are seeking to change or discharge a maintenance order you must clearly state what changes to the order you want. It is recommended that you seek legal advice.

You will need the original and two copies of the Application (Form 1) and the Financial Statement (Form 13) for filing. The original will be kept by the Court, one copy is for you and the other copy is for service on the respondent.

Step 2 Filing the application

You need to file the following documents at a registry of the Court:

- Application for Final Orders (Form 1);
- Financial Statement (Form 13); and
- either a Marriage Certificate, or the child's Birth Certificate, as applicable (refer to Rule 2.02).

On filing, your application will be given a date for a hearing. You will also be given:

- a *Service Kit* containing:
 - ~ an Acknowledgment of Service (Form 6); and
 - ~ an Affidavit of Service (Form 7);
- 2 copies of the costs of children figures – this is an estimate of costs of maintaining children published by the Australian Institute of Family Studies (this can be accessed through the Family Court's website: www.familycourt.wa.gov.au);
- 2 copies of the following Court brochures:
 - ~ *Maintenance Applications* (this brochure)
 - ~ *Marriage, Families and Separation; and*
 - ~ *Mediation – Pathway to Agreement*

Step 3 Serving the application on the respondent

You must arrange to serve the respondent by special service:

- a copy of the Application for Final Orders (on which the Court has written the date, time and place for the hearing), and any documents filed with it, including the Financial Statement;
- the following Family Court brochures
 - ~ *Maintenance Applications* (this brochure)
 - ~ *Marriage, Families and Separation*; and
 - ~ *Mediation – Pathway to Agreement*
- cost of children figures, published by the Australian Institute of Family Studies.

If serving the documents by post or electronic means you must also include an Acknowledgment of Service (Form 6) and when by post, a stamped self addressed envelope so the respondent can acknowledge receipt of the documents.

If the respondent or other party does not send back the Acknowledgment of Service you may need to arrange service by hand.

Read the *Service Kit* as it may help you carry out service.

You must serve these documents as soon as practicable after filing. If you don't, your application may not proceed on the Court date.

Once service is completed you must complete the Affidavit of Service (Form 7) and file it at the Court.

Go to Steps 4 and 5 – under Information for Applicants and Respondents at PART 4

Part 3 *Information for respondents only*

Following is a summary of the steps you may need to take in responding to an application for maintenance.

Step 1 **The documents served on you**

You should have received this brochure at the same time as the following documents were served on you:

- an Application for Final Orders (Form 1) with the date, time and place for a hearing shown in the top right corner of the front page;
- a Financial Statement (Form 13);
- the following Family Court brochures
 - ~ *Marriage, Families and Separation*
 - ~ *Mediation – Pathway to Agreement*; and
 - ~ cost of children figures, published by the Australian Institute of Family Studies.

If you received these documents by post or electronic means you will also have received an Acknowledgment of Service (Form 6). To acknowledge that you have received the documents served on you, you should sign the Acknowledgment of Service and return it to the applicant.

Carefully read all of these documents. If any of these documents were not served on you, you may obtain a copy from a registry of the Court.

You are entitled to proper notice of the application and if you believe that you have not been given enough time, you should talk to the applicant as soon as possible to seek postponement of the hearing. If the applicant will not agree to postpone the hearing, the Court may at your request, in certain circumstances, adjourn the hearing to another date. However, you will need to attend Court on the date stated on the top right hand of the Application for Final Orders to make that request.

Step 2 **Filing a response**

If you disagree with the orders asked for by the applicant or seek different orders, you must complete and file in the registry of the Court where the application was filed, a Response to an Application for Final Orders (Form 1A) and a Financial Statement (Form 13). You must do this at least 7 days before the date of the hearing. This date will be written on the top right hand corner of the Application for Final Orders (Form 1).

You must file the original and two copies of your Response and Financial Statement. The original will be kept by the Court, you keep one copy and you arrange to have the other copy served on the applicant.

Step 3 **Serving your response documents on the applicant**

You must serve the applicant with the documents you have filed at least 7 days before the hearing. If necessary you should read the Court's Service Kit as it may help you carry out service.

See also Steps 4 and 5 – under Information for Applicants and Respondents at PART 4

Part 4 *Information for both the applicant and respondent*

Step 4 **The Hearing**

You must attend the hearing on the date you have been given (the Court will have put the date, time and place on the top right hand corner of the application). If the applicant fails to attend this hearing the Court may dismiss the application. If the respondent fails to attend, the Court may make the orders asked for by the applicant. The Court may also make orders for costs against either party.

It is possible, in some circumstances, to ask for the Court's permission to attend the hearing by telephone, provided this is done at least 7 days prior to the hearing and you have informed the other party of your request. You should contact the registry about the procedure for this.

WHAT TO BRING TO THE HEARING

You must bring to the hearing (and to any subsequent hearing) any documents you have or can obtain which are relevant to the application. In particular, under Rule 4.15 you are required to bring:

- a copy of your taxation return for the most recent financial year;
- your taxation assessment for the most recent financial year;
- your bank records for the 12 months ending on the date when the application was filed;
- if you receive wage or salary payments, your 3 most recent pay slips;
- if you own or control a business – the Business Activity Statements for the business for the previous 12 months; and
- any other document relevant to determining your income, needs and financial resources. This might include:
 - ~ passbook statements from your bank, building society, credit union or other financial institution;
 - ~ receipts or statements relating to hire purchase, personal loans, mortgage, lease, rent, etc;
 - ~ receipts for expenses claimed in the Financial Statement (Form 13).

The Court will allow:

- The **respondent** to ask the applicant questions about the information in the application and any affidavit or Financial Statement (Form 13) filed by the applicant.
- The **applicant** to ask the respondent questions on the information in the response and any affidavit or Financial Statement (Form 13) filed by the respondent .

After this cross-examination the Court may allow both parties to make a short statement summarising the case and any relevant law. The Court will then reach its decision and make orders or reserve its decision and make orders at a later date. The Order will be prepared by the registry and a copy posted to you.

Community advisory services

LEGAL AID OFFICES AND COMMISSIONS

Adelaide	☎ (08) 8463 3555
Alice Springs	☎ (08) 8951 5377
Brisbane	☎ 1300 651188
Burnie	☎ (03) 6434 6444
Canberra	☎ (02) 6243 3411
Darwin	☎ (08) 8999 3000
Hobart	☎ (03) 6233 8383
Launceston	☎ (03) 6336 2050
Melbourne	☎ (03) 9269 0234
Perth	☎ 1300 650 579
Sydney	☎ (02) 9219 5000

COMMUNITY LEGAL CENTRES

ACT	WOMEN'S LEGAL SERVICE ☎ (02) 6257 4499 OR toll free: 1800 634 669
NSW	Redfern ☎ (02) 9698 7277 Kingsford ☎ (02) 9398 6366 Marrickville ☎ (02) 9559 2899
QLD	Caxton ☎ (07) 3254 1811 WOMEN'S LEGAL SERVICE ☎ (07) 3392 0670
SA	Noarlunga ☎ (08) 8384 5222 Parks ☎ (08) 8243 5521
TAS	Hobart ☎ (03) 6223 2500 Launceston ☎ (03) 6334 1577
VIC	Western Suburbs ☎ (03) 9391 2244 EASTERN COMMUNITY LEGAL CENTRE ☎ (03) 9877 5777
WA	Gosnells ☎ (08) 9398 1455 Northern Suburbs ☎ (08) 9440 1663 Sussex Street ☎ (08) 9470 2676

Further information

If you want more information about the procedure to apply for maintenance you may phone any registry of the Family Court of Australia or, if in Western Australia, the Family Court of Western Australia. Contact numbers are on the back of this brochure.

If you want more information on your legal rights or obligations or you wish to obtain independent legal advice, you need to contact a lawyer. If you have any difficulty obtaining independent legal advice, you might get assistance from a law society, a legal aid office or a community legal centre. Contact numbers for some of these are listed at right.

About the terms used in this brochure

- "the Rules" means the Family Law Rules.
- "the Act" means the *Family Law Act 1975*.

Registries

ALBURY ☎ (02) 6021 8944	LAUNCESTON ☎ (03) 6334 2111
ALICE SPRINGS ☎ (08) 8952 8222	LISMORE ☎ (02) 6621 8977
ADELAIDE ☎ (08) 8205 2666	MELBOURNE ☎ (03) 8600 3777
BRISBANE ☎ (07) 3248 2200	NEWCASTLE ☎ (02) 4926 1255
CAIRNS ☎ (07) 4041 2377	PARRAMATTA ☎ (02) 9893 5555
CANBERRA ☎ (02) 6267 0511	ROCKHAMPTON ☎ (07) 4921 2939
COFFS HARBOUR Contact the Brisbane Registry ☎ (07) 3248 2200	SYDNEY ☎ (02) 9217 7111
DANDENONG ☎ (03) 9767 6200	TOWNSVILLE ☎ (07) 4722 9333
DARWIN ☎ (08) 8981 1488	WOLLONGONG ☎ (02) 4226 8200
DUBBO ☎ (02) 6841 5000	WESTERN AUSTRALIA Family Court of Western Australia ☎ (08) 9224 8222
HOBART ☎ (03) 6232 1725	