

A light blue silhouette of the Australian continent is positioned in the background, spanning the width of the page.

Spousal Maintenance in Australia: 2021 Expert Guide

Learn more about spousal maintenance with our comprehensive expert guide

www.unifiedlawyers.com.au

This guide will step you through **spousal maintenance in Australia**, including **frequently asked questions presented in a helpful Q&A format.**

01. WHAT IS SPOUSAL MAINTENANCE?

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WHAT IS SPOUSAL MAINTENANCE?



"Spousal maintenance is financial support paid by one spouse to the other spouse after the breakdown of their relationship."

- Dominic Nguyen, Solicitor Director, Unified Lawyers



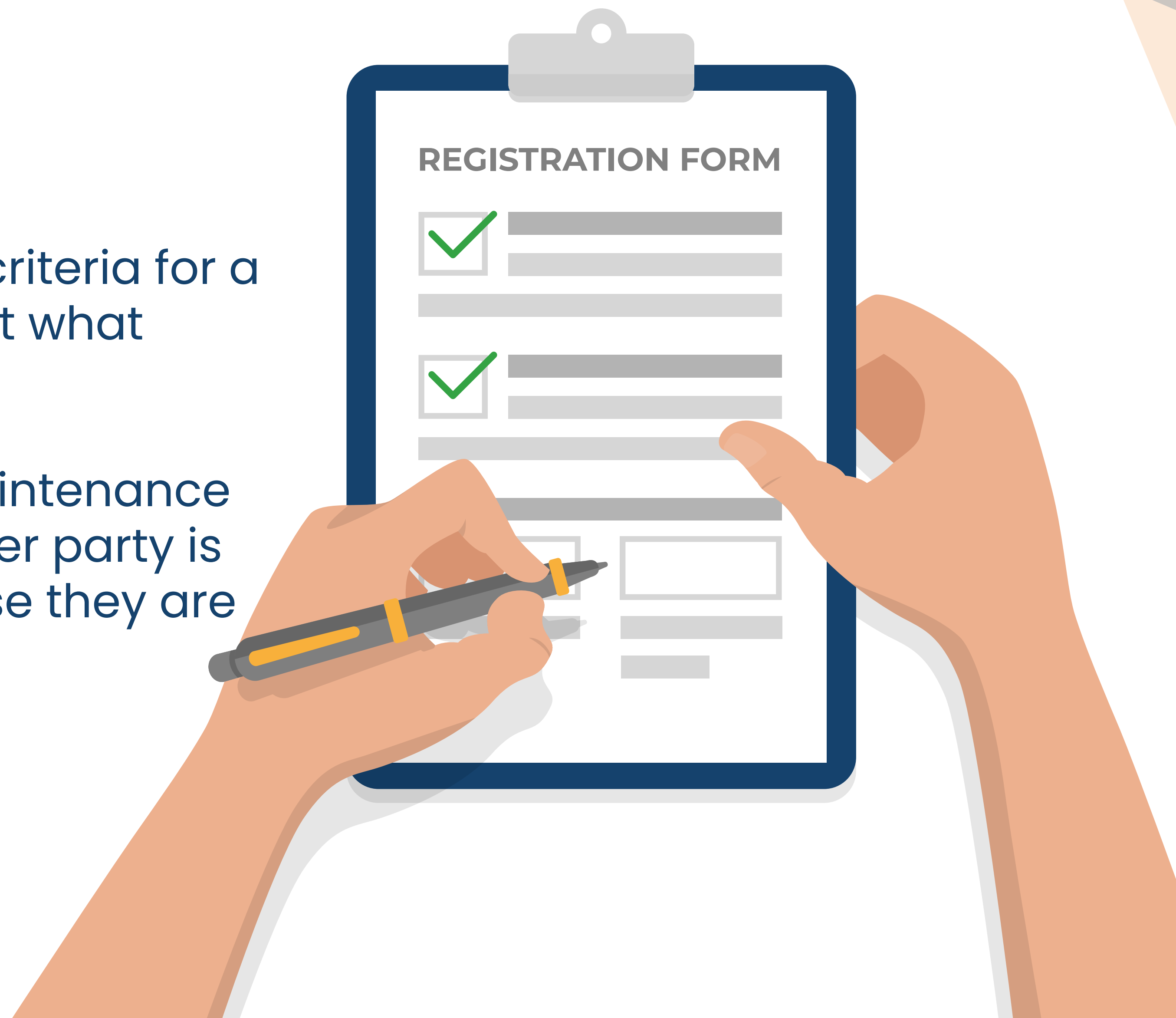
Spousal maintenance is usually **ordered by a court**, or agreed to by the parties. The aim is to ensure appropriate financial support in circumstances where one party may be unable to adequately support themselves.

WHO IS ENTITLED TO SPOUSAL MAINTENANCE?



Australian family laws set out the criteria for a court to consider when working out what should be paid (if anything).

The party applying for spousal maintenance is known as **the applicant**. The other party is known as **the respondent** (because they are responding to the application).



You can apply for spousal maintenance if:

01. You and your spouse are **separated but still married**
02. You and your former partner were in a **de facto relationship**



Spousal maintenance and marriage

If you are or were married, the law says that both you and your former spouse have **a duty to financially support each other** and maintain a reasonable standard of living.

It's essential to be clear about your **date of separation**. If you're not sure or disagree about the date, you may need legal advice.



Spousal maintenance and de facto relationships

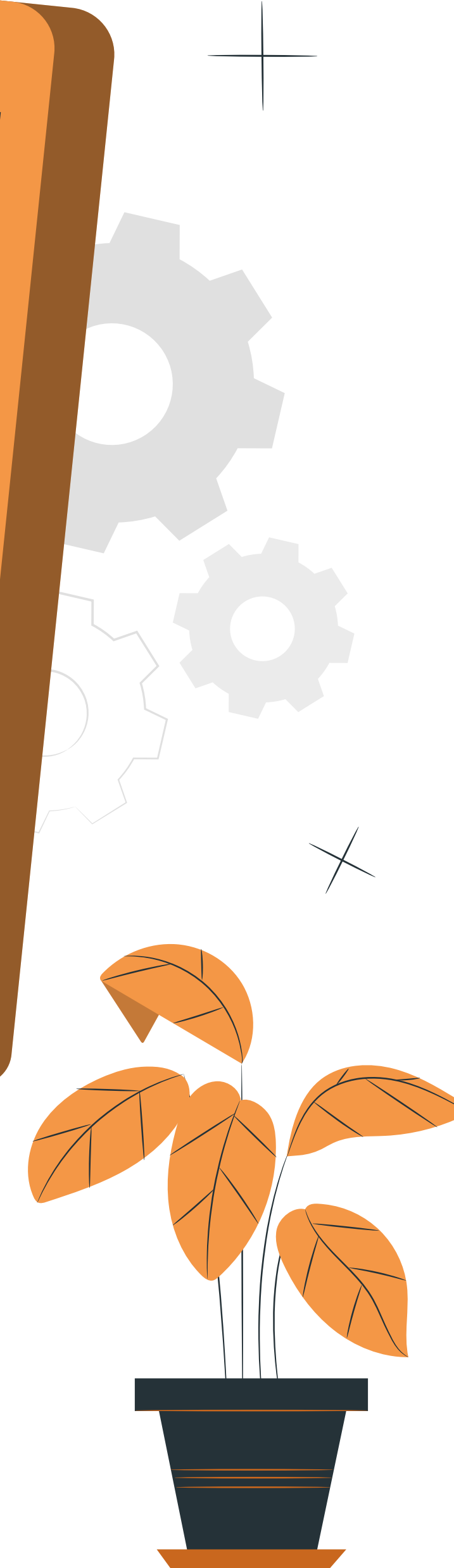
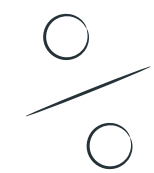
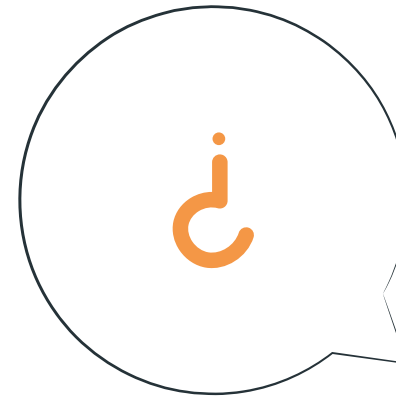
You apply for **de facto partner maintenance**, which is similar to spousal maintenance, if you and your former partner **lived together but never married**, so long as you meet one of the following criteria:

1. You lived together as a couple for **at least two years**; or
2. You lived together as a couple for less than two years, and you **have at least one child together**

You must apply for de facto partner maintenance **within two years of separation**, so it's crucial that you know your separation date.



HOW MUCH IS SPOUSAL MAINTENANCE? HOW IS IT CALCULATED?



Spousal maintenance and property settlements

There are different ways to set up spousal maintenance. Sometimes, it's possible **to agree with your former partner without going to court.**

Financial settlements are also known as property settlements. They aim to settle all financial and property issues between the parties. Although spousal maintenance and financial settlements are different, many parties find it convenient to negotiate spousal maintenance when working through the property settlement.



You can negotiate with help from:

- ➔ Your lawyer (if you have engaged one)
- ➔ Free legal advice, such as a community legal service
- ➔ [Family dispute resolution](#)

If you and your former partner can agree, you may be able to make a **binding financial agreement (BFA)**. It can also be done by way of Application for Consent Orders. A BFA operates and is enforced like a contract. You can also agree to:

- ➔ Ask a court to make consent orders based on the BFA or a Application for Consent Orders.
- ➔ Payment terms for spousal maintenance, for example, a lump sum or regular payments.



Court-ordered spousal maintenance

If you and your ex-partner can't agree on spousal maintenance, you can apply to a court for spousal maintenance orders. It is a requirement that parties negotiate before commencing court proceedings.

The court will consider many different factors and may order spousal maintenance as **a lump sum or by instalments**. It can say when the payments should end, for example:

- If you or your former partner remarry
- If you or your former partner start a new de facto relationship
- If the applicant gets a job
- On a specific date
- If you or your former partner dies

There's **no one-size-fits-all approach** to calculating maintenance payments. Many factors and issues are considered, including the present-day and future needs of both parties.

It's a process of careful balancing. If you apply to a court for spousal maintenance, it will consider how circumstances impact both parties, including:



- ↪ Age
- ↪ Health
- ↪ Care for dependents (for example, children and elderly relatives)
- ↪ Child support payments
- ↪ Entitlement to Centrelink payments
- ↪ Standards of living
- ↪ Financial and non-financial contributions to the relationship
- ↪ Earning potential
- ↪ The need for retraining
- ↪ New relationships
- ↪ Any BFA or property settlement

You can seek legal advice from a private lawyer or community legal service.

HOW TO APPLY FOR SPOUSAL MAINTENANCE



Before applying, we recommend seeking independent legal advice from a private lawyer or community legal service. For some financial orders, you **must** have **independent legal advice**

The Federal Circuit Court (FCC) usually conducts spousal maintenance hearings. It can make an order after a hearing or if both parties ask for consent orders (meaning that everyone agrees to the orders).

To apply for spousal maintenance, you need to commence Court proceedings and file an Initiating Application, supporting affidavit and Financial Statement.

The FCC will charge a fee for filing your application. You may be able to negotiate to share the cost with your former partner. Sometimes, the Court may decide not to charge the fee. [See the FCC website for more information about filing fees.](#)

The FCC may then set a hearing date (or it may do this later in the process).



You'll also need to provide evidence of your:

- Income, bills and debts
- Caring obligations for any dependents
- Lifestyle needs

You must give a copy of the application to the respondent, following [*special rules*](#). This is known as service. The rules aim to ensure the respondent has **fair notice of the application and the chance to respond**. If you have a lawyer, they will arrange service.



The FCC's process depends on many things, including:

- The complexity of the issues
- Whether either party needs to locate any documents
- Whether other issues first need to be resolved
- The level of cooperation between the parties

The FCC will schedule a hearing, at which you will have a chance to **put forward everything you would like the Court to consider.**



Time limit for application

There are **strict time limits** for applying. If late, you may lose the chance to secure spousal maintenance.

If you were **married**, you must apply for spousal maintenance **within 12 months** of your [divorce order](#).

If you were in a **de facto relationship**, you must apply for de facto partner maintenance within **two years of separation**.

If it is out of time, you will need to seek leave from the Court to hear the matter.



MORE FAQs

ABOUT SPOUSAL MAINTENANCE



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What's the difference between spousal maintenance and alimony?

Alimony is the **American term for spousal financial support.**

American alimony laws differ from Australian family laws in many ways. While a court may order **alimony for the spouse's lifetime**, spousal maintenance is usually either:

- ➔ Ordered for a limited period; or
- ➔ Ends when a certain event occurs

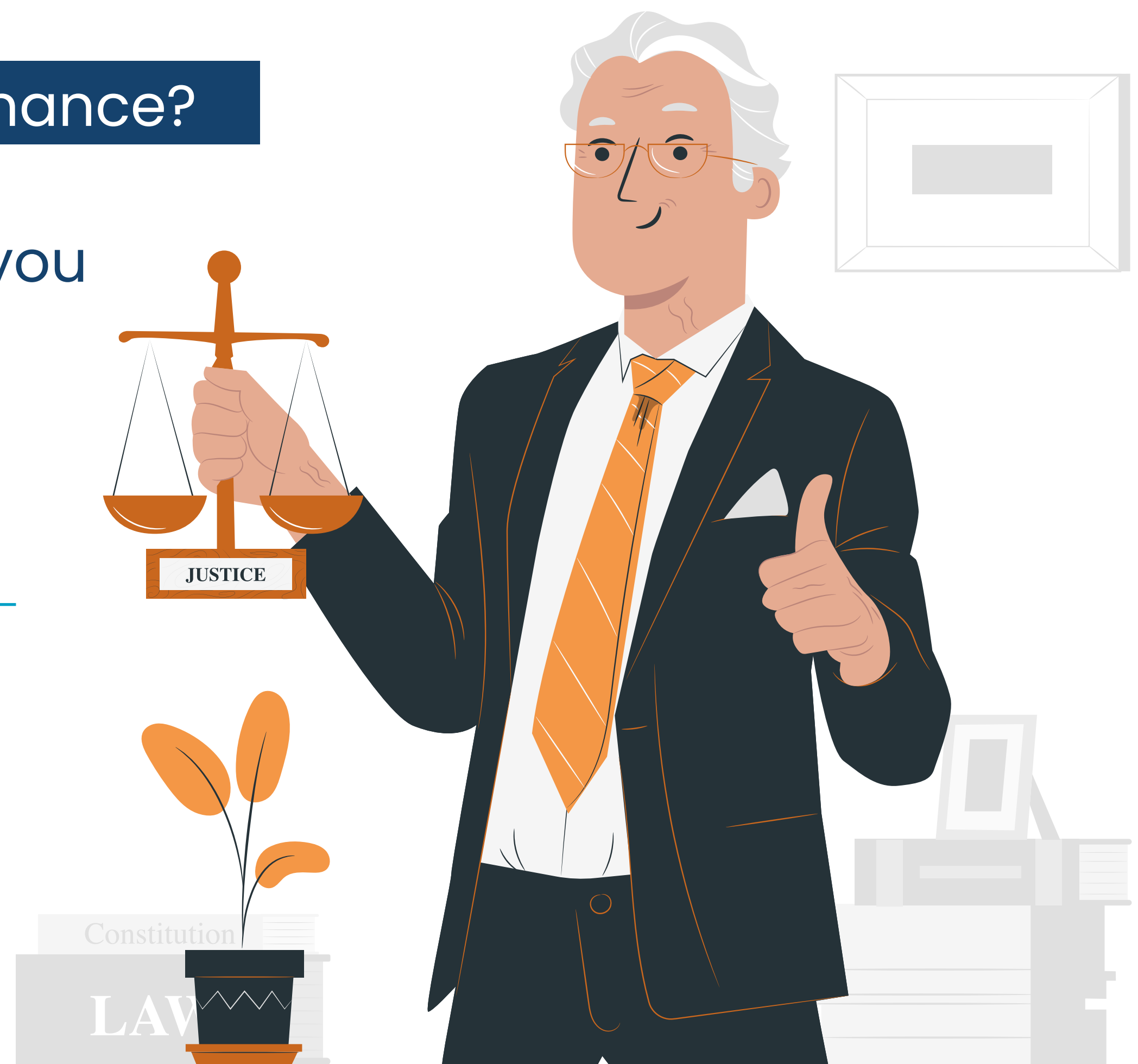
In Australia, the correct legal term is spousal maintenance.



Do I need a lawyer to apply for spousal maintenance?

It's not necessary to have a lawyer. However, if you want a court order, you may be **required to get independent legal advice**. You can contact a community legal service or a private lawyer.

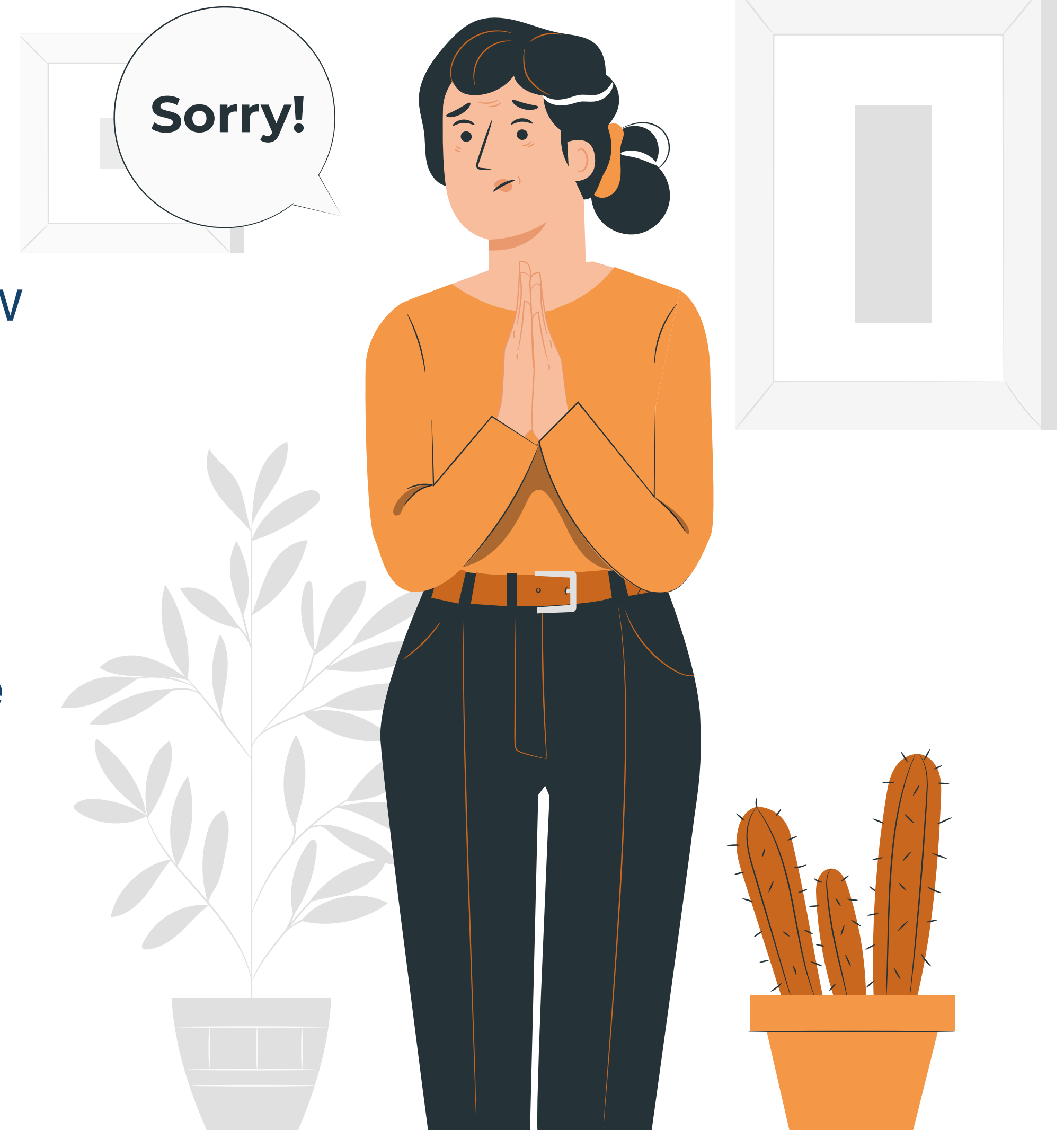
[You can also get more information on the FCC website.](#)



Is fault taken into consideration?

The **Australian family law system is no-fault.** These days, fault isn't relevant to most family law issues, including spousal maintenance.

In some situations concerning children and parenting, fault may be relevant if the child's wellbeing or safety is threatened because of the conduct.



Is it possible to avoid paying spousal maintenance?

Under a BFA for spousal maintenance, if you don't pay, your former partner could **take legal action against you for breach of contract**. The BFA would be evidence of your agreement, and a court may decide that you must repay the amount of the missed payments, plus interest, plus legal costs.



Can I change the amount of spousal maintenance?

If you have a BFA (but no consent orders) you can change the maintenance amount by **making a new agreement** with your former partner.

If they disagree, you may need to apply to a court. The FCC will change an agreement **only in rare circumstances**.



If you already have orders, you must apply to the same Court to change them. **The Court won't change orders for minor reasons.** The changes must be material (significant), for example:

- New marriage or de facto relationship
- Job loss
- Pay decrease
- New job
- Pay rise
- Change in child-caring responsibilities
- Significant health issues
- Fraud or dishonesty

Seek legal advice from a private lawyer or a community legal service for any changes to spousal maintenance.

TAKEAWAY POINTS



If you're seeking maintenance, you need to consider your income potential and how your needs may change. Weigh up the impact of other issues such as age, health and caring responsibilities. If you're responding to a claim, consider how much you can afford to pay.

It helps to discuss these issues with an expert – a private lawyer, a community legal service, a family mediator, or even an accountant.

Taking this step now can help you to a more secure future.

[Contact us to learn more about spousal maintenance.](#)

