

**Commonwealth Consolidated Acts****FAMILY LAW ACT 1975 - SECT 75 Matters to be taken into consideration in relation to spousal maintenance****FAMILY LAW ACT 1975 - SECT 75****Matters to be taken into consideration in relation to spousal maintenance**

(1) In exercising jurisdiction under section 74, the court shall take into account only the matters referred to in [subsection \(2\)](#).

(2) The matters to be so taken into account are:

(a) the age and state of health of each of the parties; and

(b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment; and

(c) whether either [party](#) has the care or control of a child of the [marriage](#) who has not attained the age of 18 years; and

(d) commitments of each of the parties that are necessary to enable the [party](#) to support:

(i) himself or herself; and

(ii) a child or another person that the [party](#) has a duty to maintain; and

(e) the responsibilities of either [party](#) to support any other person; and

(f) subject to [subsection \(3\)](#), the eligibility of either [party](#) for a pension, allowance or benefit under:

(i) any law of the Commonwealth, of a State or [Territory](#) or of [another country](#); or

(ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside [Australia](#);

and the rate of any such pension, allowance or benefit being paid to either party; and

(g) where the parties have separated or divorced, a standard of living that in all the circumstances is reasonable; and

(h) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income; and

(ha) the effect of any proposed order on the ability of a creditor of a party to recover the creditor's debt, so far as that effect is relevant; and

(j) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party; and

(k) the duration of the marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration; and

(l) the need to protect a party who wishes to continue that party's role as a parent; and

(m) if either party is cohabiting with another person--the financial circumstances relating to the cohabitation; and

(n) the terms of any order made or proposed to be made under section 79 in relation to:

(i) the property of the parties; or

(ii) vested bankruptcy property in relation to a bankrupt party; and

(naa) the terms of any order or declaration made, or proposed to be made, under Part VIIIAB in relation to:

(i) a party to the marriage; or

(ii) a person who is a party to a de facto relationship with a party to the marriage; or

(iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or

(iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii); and

(na) any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage; and

(o) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and

(p) the terms of any financial agreement that is binding on the parties to the marriage; and

(q) the terms of any Part VIIIAB financial agreement that is binding on a party to the marriage.

(3) In exercising its jurisdiction under section 74, a court shall disregard any entitlement of the party whose maintenance is under consideration to an income tested pension, allowance or benefit.

(4) In this section:

**"party "** means a party to the marriage concerned.