

**Commonwealth Consolidated Acts****FAMILY LAW ACT 1975 - SECT 90SF Matters to be taken into consideration in relation to maintenance****FAMILY LAW ACT 1975 - SECT 90SF****Matters to be taken into consideration in relation to maintenance**

(1) In exercising jurisdiction under section 90SE (after being satisfied of the matters in [subsections 44\(5\) and \(6\)](#) and [sections 90SB and 90SD](#)), the court must apply the principle that a [party](#) to a de facto relationship must maintain the other [party](#) to the de facto relationship:

(a) only to the extent that the first-mentioned [party](#) is reasonably able to do so;
and

(b) only if the second-mentioned [party](#) is unable to support himself or herself adequately whether:

(i) by reason of having the care and control of a child of the de facto relationship who has not attained the age of 18 years; or

(ii) by reason of age or physical or mental incapacity for appropriate gainful employment; or

(iii) for any other adequate reason.

Note: For ***child of a de facto relationship***, see section 90RB.

(2) In applying this principle, the court must take into account only the matters referred to in [subsection \(3\)](#).

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

(a) the age and state of health of each of the parties to the de facto relationship (the ***subject de facto relationship***); 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 de facto relationship 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 (4), 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) 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

(i) 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 de facto relationship 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 90SM in relation to:

(i) the property of the parties; or

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

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

(i) a party to the subject de facto relationship (in relation to another de facto relationship); or

(ii) a person who is a party to another de facto relationship with a party to the subject de facto relationship; 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

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

(i) a party to the subject de facto relationship; or

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

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

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

(s) the terms of any Part VIIIAB financial agreement that is binding on either or both of the parties to the subject de facto relationship; and

(t) the terms of any financial agreement that is binding on a party to the subject de facto relationship.

(4) In exercising its jurisdiction under section 90SE, a court must disregard any entitlement of the party whose maintenance is under consideration to an income tested pension, allowance or benefit.