

What is adult child maintenance?

Date: Monday November 14, 2022

Division 7 of Part VII of the *Family Law Act 1975* (Cth) deals with what is referred to as “adult child maintenance” or “child maintenance”. The purpose of this Division is to ensure a proper level of financial support of children by their parents, having regard to their respective means.

A parent has a primary duty to maintain a child. Often, we would be referencing a child under the age of 18, however, there are circumstances where a child over the age of 18 will be eligible for child maintenance.

When may the Court consider an adult child maintenance application?

The Court may make a child maintenance order in relation to an adult child if it is satisfied that the provision of maintenance is necessary:

to enable the child to complete his or her education; or

because of a mental or physical disability of the child.

The Court must not make a child maintenance order if an application could properly be made under the *Child Support Administration Act* (Cth), which deals with parents’ child support liabilities and obligations after separation.

Who can make an application for adult child maintenance?

An application for child maintenance (including adult child maintenance) can be made by:

a parent;

the child;

a grandparent; or

any other person concerned with the care, welfare or development of the child.

What must the Court have regard to when considering adult child maintenance?

When considering whether to make an order for adult child maintenance, the Court must:

consider the financial support necessary for the maintenance of the child; and

determine the financial contribution that the parties should make towards that support.

When considering what “necessary financial support” is, the Court must take the following into account:

The proper needs of the child (including an adult child).

This includes taking into consideration:

the child’s age;

the manner in which the child is being, and the parents expect the child to be, educated or trained (for example, did the child receive a public or private education, is the child enrolled in TAFE or tertiary education?); and

any special needs of the child (for example, does the child have any disability or diagnosed physical or mental health disorder or condition).

The child’s income, earning capacity, property and financial resources, including any assets of the child under the control of or held for the benefit of the child, that do not produce but are capable of producing income. When considering the child’s income,

the Court must disregard any entitlement of the child or any other person (on behalf of the child) to receive any income-tested pension, allowance, or benefit.

When considering what contribution should be made by the parties, the Court must take the following into account:

The income, earning capacity, property and financial resources of each party. When considering the party's income, the Court must disregard any entitlement of the child or the person with whom the child lives, to receive an income-tested pension, allowance or benefit. The Court must also disregard the means of any person who is not a party to proceedings (even if this is a parent) or who does not have a duty to maintain the child (such as a step-parent or other third party who plays a significant role in caring for that child but is not a parent);

The commitments of each party necessary to enable their own support or that of any other child or person that they have a duty to maintain (for example, they may have a duty to maintain a child of another relationship or a duty to maintain a former spouse);

The direct and indirect costs in providing care for the child, including the income and earning capacity forgone by the parent or person providing the child care;

Any special circumstances which, if not taken into account, would result in injustice or undue hardship to any person.

Simply put, child maintenance is somewhat similar to spousal maintenance. It is an assessment of need vs. capacity to pay.

You can learn more about the differences in our blog, "Difference between child support and spousal maintenance".

When does child maintenance end?

A child maintenance order ends, for minor or adult children, upon either:

the death of the child;

the death of the payer or person entitled to receive the payments (on behalf of the child), unless the order provides otherwise;

the child being adopted;

the child marrying;

the child entering into a de facto relationship;

the child ceasing the education; or

the child ceasing to have a disability.

Get help from a family lawyer

If you’re considering lodging an adult child maintenance application or you’re having issues with an application or Court order related to child maintenance, you should seek advice from a lawyer experienced in family law.

We can assist you with child maintenance applications, along with any other issues you may be having related to your family law matter.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.