

CLAIMING ADULT CHILD MAINTENANCE

28 September 2020

A child support assessment will usually end when a child turns 18. However, where the Child Support legislation stops, there is scope for the Family Law Act (FLA) to step in. Under the FLA parents can in some cases be required by a Court Order to pay maintenance for a child who is over 18 years of age.

The obligation to pay for an adult child, is worded more as an exception to the rule. Such that “a court must not make an ‘Adult Child Maintenance Order’ in relation to a child who is 18 years old or over unless the court is satisfied that the provision of the financial support is necessary...”

Therefore for a court to make an order that a parent pay child maintenance for an adult child, it must be satisfied that provision of the maintenance is necessary for one of the following reasons:

1. *to enable the child to complete his or her education; or*
2. *because of a mental or physical disability of the child.*

The court recently considered an application for adult child maintenance, filed by the mother of a child who had a mental and physical disability. There was no dispute between the parents of the child’s disability, being born with down syndrome and a congenital heart defect.

In deciding if an order should be made, the court outlined that it must consider the following:

- Necessary expenses of the child;
- The contribution the child is making to their own upkeep. There is an expectation that adult children will contribute to their own support by working part-time where this is possible. If the child has disabilities and is not able to work a medical certificate should be provided; and
- The capacity of each parent to provide financial support. This includes a consideration of each parent’s income, expenses, financial resources and earning capacity.

Necessary expenses include:

- The adult child’s share of food, household supplies, utilities, housing and transport (even if this is paid by a parent);
- Costs to do with study, such as books, internet fees and computer equipment, TAFE fees (but not HELP-HECS and other government student loans). For children with special needs, expenses associated with their disabilities can also be considered; and
- Medical needs including optical, dental, doctors’ visits, prescriptions and other medical expenses.

Maintenance may also pay for clothing, toiletries and hairdressing, car and phone expenses of the child. Entertainment and social expenses are generally not included.

The court may stipulate that the court order stops when:

- The adult child finishes their education, for example, completes their qualification. The court may not make an order for a second degree or qualification if the adult child continues studying; or
- A particular time period has ended, for example, three years to allow the adult child to finish their education. There may be conditions in the order, such as proof of passing subjects. If the adult child fails a subject, the order may stop; or
- The adult child no longer has the particular illness or disability, or after a particular period of time, for example, three years, to review the child's illness or disability.

In the case before the court, it was the mother's position that the child's proper needs were not presently being met and the father should therefore be ordered to pay her an amount per month for adult child maintenance. The mother sought that the father pay \$4,274 per month.

The father submitted that the mother had not established that adult child maintenance was *necessary* and in the alternative, the father's position was that the expenses claimed by the mother, purportedly because of the child's disability were either not necessary, included matters that should not be taken into account or were inflated or excessive.

The court determined that it was proper and necessary that the father provide financial support to the child and ordered that he pay the amount of \$230 per week (or \$920 per month) for a period of 3 years (backdating the commencement date to when the mother filed the application) and with a further requirement that 'arrears' owed to the mother be paid within 28 days of the order.