



Adult child maintenance

What is adult child maintenance?

A parent's financial responsibility towards their child does not necessarily cease when a child reaches the age of 18.

Section 66L of the *Family Law Act 1975* (Cth) provides that a court can order one or both parents to provide financial support to a child over the age of 18 if it is necessary:

- to enable the child to complete their education (including tertiary education, vocational training, professional sports training or an apprenticeship); or
- because of a mental or physical disability of the child.

Who may apply?

The following people may make an application to the court for an adult child maintenance order:

- the child;
- the parent of the child who has the daily care of the child;
- a grandparent of the children who has the daily care of the child; or
- any other person concerned with the care, welfare or development of the child.

What factors will the court consider?

The court will consider the following:

- the income, earning capacity, property and financial resources of the parents of the child;
- the amount each parent requires to support themselves (reasonably) or other children the parent has a legal duty to maintain;

- the capacity of the adult child to earn an income, taking into account their study or disability (however, any entitlement to government income and allowances is disregarded); and
- whether the 'nexus' of dependence between the child and the parent has ceased.

If the adult child maintenance application is to enable the child to complete their education, the court will consider the following additional factors:

- whether the parent expected the child to be educated or trained on the basis proposed by the child;
- whether the course to be pursued by the child will ultimately assist the child to earn an income;
- the likelihood that the child will finish the course of study;
- whether the child is qualified to pursue, and will profit from, the course; and
- what hardship would result to the child if they had to abandon the course through lack of means, and whether the course can be completed without adult child maintenance.

The court can also take into consideration the relationship between the child and the parent who is being asked to pay adult child maintenance. The court may take into consideration whether a parent would be asked for advice or guidance from the child in relation to the child's academic decisions and whether they would receive

any 'thanks' for the financial support.

However, a parent who is estranged from their child is not exempt from having an adult child maintenance awarded against them. However, it may reduce the amount that to be paid by the estranged parent, but it may not.

If the adult child maintenance application is for a disabled child, the court will consider the reasonable expenses of the disabled child.

What expenses can an adult child maintenance order cover?

The court will only award maintenance 'necessary' as opposed to 'desirable' to enable the child to complete their education. This can include accommodation costs, utilities, food, clothing, toiletries, haircuts, telephone bills, medical and dental expenses and motor vehicle expenses. Entertainment and social expenses are generally not included, as they are not considered 'necessary' for the child's education.

Expenses associated with the course of study might also be included such as internet fees, computer equipment and study costs. However, tuition fees which can be deferred by HECS, FEE-HELP or government loans are excluded.

A court may make an order that the parent/s pay adult child maintenance on a periodic basis or by way of a lump-sum payment.

For more information, please contact: contactus@hopgoodganim.com.au or visit hgprivate.com.au

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