

Adult Maintenance for Children over 18

The *Family Law Act* makes provision for orders to be made for the financial support necessary for the maintenance of a child.

In making orders, the Court must, among other things, take into account the proper needs of the child and have regard to the age, the manner in which the child is being educated or trained and any special needs of the child.

The Act (at Section 66L) makes specific provision that a Court must not make a child maintenance order in relation to a child who is aged 18 years or over unless the Court is satisfied that the provision of maintenance for such child is "necessary". Necessary to enable the child to complete their education, or because of a mental or physical disability of the child.

The power of the Court to make orders for maintenance for children aged over 18 is not often exercised, leading to a perception amongst separated parents that the person or persons making payment of maintenance for a child will not be required to do so beyond the age of 18. This is plainly wrong.

The issue has gained some prominence given recent publicity to the plight of many students attending University who are effectively living in poverty as they undertake tertiary training and are without adequate funds to do so.

Our Family Law Group were recently involved in an application for maintenance for a child, aged over 18, who was attending University. She sought a Maintenance Order to assist with her necessary educational expenses as she undertook her tertiary training. Among other things, she sought contribution from her father in payment of her University expenses including HECS fees. In the case in question, the child had been estranged from her father for some time, although he had continued to pay Child Support to the child's mother.

In determining whether the Court would make an order in her circumstances, the Court had to consider whether the estranged relationship would disentitle her to an order being made in her favour. The conduct which might disentitle her to an order would need to be extreme and to have demonstrated that the child had forfeited all rights. Other matters that the Court would need to take into account was whether the application amounted to a resurrection of a dependency that had previously been broken; the child's period of independence, and the delay in making the

application. The Act also requires the Court to ignore the assistance or benefits that the child is entitled to or has received including any Government benefits.

It might be considered that in an appropriate case the necessities for a University student would include accommodation, food, transport costs, healthcare, books, clothing etc. The obligation for payment of HECS fees however would not be considered a necessity, as the liability is a contingent liability.

Unfortunately for a paying parent, a child's entitlement to Austudy benefits will not be taken into consideration in determining a child's needs. This is based on public policy considerations. It should be noted that the provisions for a payment of maintenance for a child, whether under or over 18 years of age also includes step-children.

For more information on this topic or for Family Law information generally, please contact one of our Family Law workgroup.

Meaghan Smyth

Lawyer

T: 03 5366 3888

email: msmyth@nevetford.com.au

Ballarat office

40 Armstrong Street North
Ballarat Victoria 3350

T 03 5331 4444

email:

ballarat@nevetford.com.au

Bacchus Marsh office

183 Main Street
Bacchus Marsh Victoria 3340

T 03 5366 3888

email:

bacchusmarsh@nevetford.com.au

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