

## **Adult Child Maintenance – For a child with a disability**

Parents caring for a child or children with a disability often have ongoing costs in supporting the child/ren, above and beyond what is provide for by the NDIS or other supports. Where parents have separated, those costs can end up falling on one parent. A Child Support Agreement or a Child Support Assessment often apply in these cases and usually addresses the other parents contribution to these ongoing costs, although these payments cease when a child turns 18.

However, a child that has turned 18 that has a mental or physical disability may continue to receive Adult Child Maintenance from one or both parents. If the parents cannot agree for provision of that maintenance after the child turns 18, then an application can be made for a court order for a parent or parent/s to provide the maintenance.

The relevant provision in the Family Law Act 1975 ('the Act') is section 66L:

### **Children who are 18 or over**

(1) A court must not make a child maintenance order in relation to a child who is 18 or over unless the court is satisfied that the provision of the maintenance is necessary:

- (a) to enable the child to complete his or her education; or
- (b) because of a mental or physical disability of the child.

The court may make such a child maintenance order, in relation to a child who is 17, to take effect when or after the child turns 18.

(2) A court must not make a child maintenance order in relation to a child that extends beyond the day on which the child will turn 18 unless the court is satisfied that the provision of the maintenance beyond that day is necessary:

- (a) to enable the child to complete his or her education; or
- (b) because of a mental or physical disability of the child.

(3) A child maintenance order in relation to a child stops being in force when the child turns 18 unless the order is expressed to continue in force after then.

### **At what time can an Application be made**

An Application can be made after a child turns 17, but before 18 with an order to commence from the 18th Birthday.

An Application can be made after the child turns 18, whether the relevant disability arises before or after the child's 18th birthday, for example, when a 25 year old child is in a car accident which results in a disability, the disability doesn't need to be a permanent one.

### **When will an order be made**

The Courts have consistently decided that the making of such an order is at the discretion of the Court, even if the circumstances meet the requirements in s 66L of the Act. Furthermore, the '*guiding principle*' used by the Courts is, what in all the circumstances, is '*reasonable*'.

**For more legal advice make an appointment with the Legal Practitioner who specialises in Adult Child Maintenance, call Disability Law Queensland on 3622 1250.**