



# **CHILD MAINTENANCE ORDERS**

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# Child Maintenance Orders



- **PART VII, DIVISION 7 – *FAMILY LAW ACT 1975 (CTH)***

- **Section 66B - Objects**

- Ensure that children receive a proper level of financial support from their parents.

- **Section 66C & 66D - Principles**

- Subject to Division 7, parents of a child have the primary duty to maintain the child.
- Subject to Division 7, a step-parent of a child has the duty of maintaining a child if, and only if, a Court, by order under section 66M, determines that it is proper for the step-parent to have that duty.



# Child Maintenance Orders



- **WHAT IS THE RELATIONSHIP WITH THE *CHILD SUPPORT (ASSESSMENT) ACT 1989 (Cth)*?**
- Section 66E – A court must not at any time make, revive or vary a child maintenance order in relation to a child if an application could properly be made, at that time, by the applicant under the *Child Support (Assessment) Act* for the respondent to be assessed in respect of the costs of the child or vice versa.
- The above applies regardless of whether or not an application for administrative assessment of child support has in fact been made.
- However, section 66E does not apply to proceedings under regulations made for the purposes of section 110 or 111A.



# Child Maintenance Orders



## ■ WHO CAN APPLY FOR A CHILD MAINTENANCE ORDER?

- s66F(1)(a) - either or both of the child's parents; or
- s66F(1)(b) - the child; or
- s66F(1)(ba) – a grandparent of the child; or
- s66F(1)(c) - any other person concerned with the care, welfare or development of the child; or
- s66F(2) - if a child who is under the guardianship, or in the care of a person under a child welfare law, it may only be applied for by:
  - The child; or
  - A parent of the child who has the daily care of the child; or
  - A relative of the child who has the daily care of the child; or
  - A child welfare officer of the relevant state or territory.
- If a child is under the guardianship, or in the care of a person under a child welfare law, section 66F(2) applies.



# Child Maintenance Orders



- **HOW DOES THE COURT APPROACH PROCEEDINGS FOR CHILD MAINTENANCE ORDERS?**
  - S66H(a) - Consider the financial support necessary for the maintenance of the child; and
  - S66H(b) - Determine the financial contributions, towards the financial support necessary for the maintenance of the child, that should be made by a party, or by parties, to the proceedings.



# Child Maintenance Orders



## ■ HOW DOES THE COURT APPROACH PROCEEDINGS FOR CHILD MAINTENANCE ORDERS?

- S66H(a) - Consider the financial support necessary for the maintenance of the child (expanded upon in section 66J):
  - The objects of the Division;
  - The proper needs of the child (expanded upon in section 66J(2)):
    - Age of the child; and
    - Manner in which the child is being, and in which the parents expected the child to be, educated or trained; and
    - The special needs of the child; and
    - The Court MAY have regard to any relevant findings of published research in relation to the maintenance of children if the Court considers appropriate.



# Child Maintenance Orders



- **HOW DOES THE COURT APPROACH PROCEEDINGS FOR CHILD MAINTENANCE ORDERS?**
  - S66H(a) - Consider the financial support necessary for the maintenance of the child, (expanded upon in section 66J) :
    - The income, earning capacity , property and financial resources of the child (expanded upon in section 66J(3) including):
      - the capacity of the child to earn or derive an income, including any assets of, under the control of or held for the benefit of the child that do not produce, but are capable of producing income; and
      - The Court must disregard the income, earning capacity, property and financial resources of any other person unless, in the special circumstances of the case, the court considers it appropriate to have regard to them; and
      - Any entitlement of the child or any person to an income tested pension, allowance or benefit.



# Child Maintenance Orders



## ■ HOW DOES THE COURT APPROACH PROCEEDINGS FOR CHILD MAINTENANCE ORDERS?

- S66H(b) – Determine the financial contributions, towards the financial support necessary for the maintenance of the child, that should be made by a party, or by parties, to the proceedings (expanded upon in section 66K):
  - Matters mentioned in sections 66B (Objects), 66C (Principles) and 66D (Principles – step-parents);
  - The income, earning capacity, property and financial resources of the party or each of those parties (expanded upon in section 66K(2) including):
    - the capacity of the party to earn or derive an income, including any assets of, under the control of or held for the benefit of the party that do not produce, but are capable of producing income; and
  - The commitments of the party or each of those parties, that are necessary to enable the party to support himself or herself or any other child or another person that the person has a duty to maintain; and
  - The direct or indirect costs incurred by the parent or other person with whom the child lives in providing care for the child (expanded upon in section 66K(3) including):
    - The court must have regard to the income and earning capacity foregone by the parent or other person in providing that care; and
  - Any special circumstance which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.





# Child Maintenance Orders



## ■ HOW DOES THE COURT APPROACH PROCEEDINGS FOR CHILD MAINTENANCE ORDERS?

- S66H(b) – Determine the financial contributions, towards the financial support necessary for the maintenance of the child, that should be made by a party, or by parties, to the proceedings (expanded upon in section 66K):
  - The court must disregard:
    - Any entitlement to the child, or the person with whom the child lives, to an income tested pension, allowance or benefit; and
    - The income, earning capacity property and financial resources of any person who does not have a duty to maintain the child, or has such a duty but is not a party to the proceedings, unless, in the special circumstances of the case, the court considers it appropriate to have regard to them.
  - The court must consider the capacity of the party, or each of those parties, to provide maintenance by way of periodic payments before considering the capacity of the party, or each of the parties to provide maintenance by way of lump sum payment or by way of transfer or settlement of property or in any other way.



# Child Maintenance Orders



## ■ CHILDREN WHO ARE 18 AND OVER– SECTION 66L

- A court must not make a child maintenance order in relation to a child who is 18 years or over UNLESS it is satisfied that the provision of maintenance is necessary:
  - To enable the child to complete their education; or
  - Because of a mental or physical disability of the child;
- However, the Court may make an order in relation to a child is 17, with the order to take effect when or after the child turns 18;
- A Court may make order in relation to a child that extends beyond the day on which the child will turn 18 if the Court is satisfied that the provision of the maintenance beyond that day is necessary:
  - To enable the child to complete their education; or
  - Because of a mental or physical disability of the child;
- A child maintenance order will cease when a child turns 18 unless the order is expressed to continue in force after then.



# Child Maintenance Orders



## ■ COURT'S POWER IN CHILD MAINTENANCE PROCEEDINGS

- Section 66P – General Powers
- Section 66Q – Urgent child maintenance orders
- Section 66R – Specification in orders of payments etc. for child maintenance purposes
- Section 66S – Modification of child maintenance orders



# Child Maintenance Orders



- **VARYING THE MAINTENANCE OF CERTAIN CHILDREN**
  - Section 66SA
  
- **WHEN CHILD MAINTENANCE ORDERS STOP BEING IN FORCE**
  - Section 66T – Effect of a child turning 18
  - Section 66U - Effect of death of a child, persona liable to pay or person entitled to receive
  - Section 66V - Effect of adoption, marriage or entering into a de facto relationship
  - Section 66VA – Children who are 18 or over: change of circumstances
  - Section 66W - Recovery of arrears
  
- **RECOVERY OF AMOUNTS PAID UNDER MAINTENANCE ORDERS**
  - Section 66X – Recovery of amounts paid, and property transferred or settled, under maintenance orders



# Child Maintenance Orders



## ■ **MATTERS THAT THE COURT TAKES INTO ACCOUNT WHEN CONSIDERING MAKING A CHILD MAINTENANCE ORDER**

- When any financial support made by a parent to the child has stopped and if there is a connection that the child has been dependent upon that financial support.
- The amount of time between making an Application to the Court and when any financial support ceased.
- Whether the parents intended for the child to complete the particular course of study in order for the child to gain employment in the future to support themselves.
- Whether the child is able to complete the course of study.
- Whether the child can maintain themselves whilst completing the course of study.
- Medical Evidence.
- What other assistance that the child may receive.
- The financial circumstances of the parents.
- The relationship between the child and parent.



# QUESTIONS

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