

Left out of a will?

by Stephen Bourke

ESTATE PLANNING

Last month we talked about Will kits. This month we are discussing what you can do if you have been left out of a Will.

In the ACT, the Family Provision Act 1969 aims to remedy unfair treatment of people who have been left without proper provision being made for them in a Will.

This means that the protections of the Act apply not only if you have been left out of a Will but also if you have been named in the Will but have not been adequately provided for.

Let's have a look at some of the legal stuff. To make a claim you must be an eligible person. In relation to the deceased an eligible person can be a **wife or husband; partner living in a domestic relationship (this includes defacto couples and same sex couples); child; grandchild living the in same household as the deceased; former wife or husband; or person with a whole or partial dependence on the deceased.**

The eligible person has 12 months from the date when administration or probate of the estate has been granted to apply.

This makes it important to act quickly to ensure that your claim is lodged. In deciding whether a family provision claim should be granted, the court must consider a wide variety of matters including:

- Do any other people have competing claims?
- Is the estate of sufficient in size to support the extra payments which will result should provision be made under the Act?
- The character and conduct of the person making the claim.
- Any contribution made by the eligible person towards the deceased's property or welfare.
- Has some provision already been made in the will for the person who is challenging?
- Other matters that the court considers important (e.g. the financial means, resources and needs of the applicant).

The Family Provision Act is designed to provide a balance between a person's freedom to make a Will in the way they wish as against ensuring that those left behind are not stranded or abandoned upon the death of someone with whom they had a dependency relationship, i.e someone they depended upon.

It is also good public policy as otherwise someone who has not adequately been provided for may become a drain on the public purse through Centrelink payments or other social costs.

While you cannot make a Will to completely exclude challenges, it is possible to minimise conflict over your Estate. A professionally prepared will together with a family conference greatly reduces the potential for a family provision claim.



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