

Family Provision Claims

Eligible family members can bring a family provision claim against a deceased estate if they have been left “without adequate provision for their proper maintenance, education or advancement in life”. Family provision claims are made pursuant to Part 6 of the *Succession Act 2023* (SA) and are brought in the Supreme Court of South Australia. This Act replaces the *Inheritance (Family Provision) Act 1972* (SA). Some significant updates are addressed below.

Family provision claims exist to ensure that family members who are owed a “moral duty” from a deceased person are adequately provided for from an estate.

Eligible Family Members

Family members eligible to claim are:

1. Spouses;
2. Domestic Partners;
3. Former Spouses and Former Domestic Partners;
4. Children;
5. Stepchildren;
6. Grandchildren;
7. Parents; and
8. Siblings.

There are hurdles and additional requirements that need to be satisfied by certain eligible family members before they can bring a family provision claim.

Spouses and Domestic Partners

A spouse is a person that was legally married to the deceased at their date of death.

A domestic partner is a person that:

1. Has been declared a domestic partner under the *Family Relationships Act 1975* (SA) of the deceased at their death; or
2. Was in a registered relationship with the deceased person at their death; or
3. Under the *Family Relationships Act 1975* (SA) a person is a domestic partner if they were in a close personal relationship with their partner.

Under the *Family Relationships Act 1975* (SA) a person is a domestic partner if they were in a close personal relationship with their partner and, before the death of the deceased partner, the couple:

1. Lived together continuously for 3 years; or
2. Within a 4 year period, lived together for a total of 3 years; or
3. Had a child together.

Former Spouses and Former Domestic Partners

Former spouses and former domestic partners cannot bring a claim if they entered into a valid financial agreement (under the *Family Law Act 1975* (Cth)) after 1 January 2025 with the deceased which was binding on them at the date of the deceased's death. However, former spouses and former domestic partners can still bring a family provision claim even if the Family Court has made Orders concerning the separation of the parties (such as Divorce Orders).

Stepchildren

A step child is defined as a child of a spouse or former spouse or a child of a domestic partner or former domestic partner.

A stepchild can only bring a claim if:

1. They were disabled and are significantly vulnerable because of their disability; or
2. They were dependant on the deceased person at the date of their death; or
3. They cared for, or contributed to the maintenance of, the deceased person immediately before the person's death; or
4. They substantially contributed to the estate of the deceased person; or
5. Their biological parent substantially contributed to the estate of the deceased person; or
6. If the stepchild is a minor, they were maintained wholly or partly, or was legally entitled to be maintained wholly or partly, by the deceased person immediately before the person's death.

Grandchildren

A grandchild can only bring a claim if:

1. Their parent, being a child of the grandparent, died before the grandparent; or
2. They were maintained wholly or partly, or was legally entitled to be maintained wholly or partly, by the deceased person immediately before the deceased person's death.

Parents and Siblings

A parent and a sibling can only bring a claim in limited circumstances. In general, they had to have cared for, or contributed to the maintenance of, the deceased person immediately before the person's death. Nonetheless, a parent can also bring claim if they were being cared for by the deceased person before their death.

Moral Duty

While eligible family members can bring a claim, they are not always entitled to provision from a deceased estate. The deceased person has to have had a "moral duty" to provide for the eligible family member. In general, a deceased person has a moral duty to provide for their spouses, domestic partners and children before others. However, the circumstances of each family will dictate whether a moral duty does exist.

Adequate Provision

Once it has been established that a moral duty does exist to provide for an eligible family member and the provision provided is not enough to satisfy that duty, then the Court needs to determine whether the facts of the case give rise to a need to make an Order.

The *Succession Act 2023* (SA) has introduced a requirement that the Court now must consider "the wishes of the deceased person". In addition, the Court must have regard to:

1. Any evidence of the deceased person's reasons for making the dispositions in the deceased person's will;
2. The eligible family members vulnerability and dependence on the deceased;
3. The eligible family members contribution to the estate of the deceased person;
4. The character and conduct of the eligible family member.

Time limit

Family provision claims can only be made within 6 months of the grant of probate or letters of administration being issued. Therefore, it is important that you seek legal advice quickly. While it is possible to obtain extensions of time, it is much easier and cheaper to bring a claim within the time limit.

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