

IMPORTANT BULLETIN

Changes to who can challenge a will

In October the Victorian State Government passed the Justice Legislation Amendment (Succession and Surrogacy) Act ("the Act") which limits the group of people who may bring a claim for provision out of a deceased's estate. The Act will come into effect on 1 January 2015 and will apply to the estates of all persons who die on or after this date.

Prior to 1 January 2015

Until the Act comes into operation, the current regime continues to operate pursuant to which the Court may order provision out of an estate for the proper maintenance and support of any person whom the will maker had a responsibility to make provision. At the moment there is no limitation on the group of persons who can bring a claim.

What will change?

From 1 January 2015, only a person defined by the Act as an eligible person may apply for a family provision order. The group of eligible persons is limited to:

- a person who was the spouse or domestic partner of the deceased at the time of the deceased's death;
- a child or stepchild of the deceased;
- a person who, for a substantial period during the life of the deceased, believed that the deceased was a parent of the person and was treated by the deceased as a natural child of the deceased;
- a former spouse or former domestic partner of the deceased if the person, at the time of the deceased's death, has not yet taken or finalised Family Law proceedings;

or, provided the person was wholly or partly dependent on the deceased for their proper maintenance and support:

- a registered caring partner of the deceased;
- a grandchild of the deceased;
- a spouse or domestic partner of a child of the deceased (including a stepchild or a person who, for a substantial period during the life of the

deceased, believed that the deceased was a parent of the person and was treated by the deceased as a natural child of the deceased) if the child of the deceased dies within one year of the deceased's death;

- a person who, at the time of the deceased's death, is (or had been in the past and would have been likely in the near future, had the deceased not died, to again become) a member of the household of which the deceased was also a member.

In the case of an eligible person other than a spouse, domestic partner, and children (including step children and persons who believed that the deceased was a parent) who are under the age of 18, full-time students (between 18 and 25) or have a disability, the Court must take into account the degree to which the eligible person is not capable, by reasonable means, of providing adequately for their own proper maintenance and support.

What do the changes mean?

The Act defines the group of eligible persons who can bring a claim for provision out of a deceased's estate. It is anticipated that this will lead to a reduction in the number of opportunistic claims and provide will makers with more confidence that their final wishes will not be challenged.

Although contemplated in the draft Bill, adult children and stepchildren will still be entitled to bring a claim irrespective of whether they are financially dependent on the deceased. Also, the option of "contracting out" of making a claim will not be available under the new Act.

It is expected that as a result of these changes the number of people registering their "caring relationship" with the Office of Births Deaths and Marriages will increase.

If you have any queries in relation to the new Act or any other estate matters, please contact Geoff Park or Ines Kallweit.

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