



Wills & Deceased Estates Team

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## The *Succession Act 2023* and what it means for you

The *Succession Act 2023* (the **Succession Act**) commenced on 1 January 2025, and it represents an overhaul of the law in South Australia relating to deceased estates, namely the *Wills Act 1936*, *Administration and Probate Act 1919* and *Inheritance (Family Provision) Act 1972*, by combining these Acts into one. It brings with it a number of important changes, such as who can inspect your will after you die, who can make a claim against your estate, and how your wishes are to be viewed by the court if someone makes a claim against your estate.

This article will discuss:

- Who can inspect your will after you die
- Who can make a claim against your estate after you die
- How your wishes will impact any claim made against your estate

Before we get into these matters, we take this opportunity to remind you that you should check your will regularly (say every 3–5 years) to see if it still reflects your wishes and circumstances. You should consider revising your will in the event of:

- Marriage, or if you have been in a domestic partnership for 2 years or more, or if you have registered your relationship
- Divorce or separation
- Having or recently had a child
- Significant changes to your assets
- Someone named in your will has died
- An executor named in your will has died or is incapacitated

This is not an exhaustive list. If there has been any change to your circumstances that might affect your wishes, it is best to speak to a solicitor to review your estate planning.

### Who can inspect your will after you die?

The *Succession Act* brings with it a new statutory right for certain persons to inspect a copy of your will after you die. Whoever holds your will after you die (ie your solicitor or executor) must allow the following persons to inspect your will:

- A person named or referred to in the will (whether they are a beneficiary or not)
- A person name or referred to in a previous will as a beneficiary
- Your surviving spouse, domestic partner, child or stepchild
- A former spouse or domestic partner
- Your parent or guardian
- A person who would be entitled to a share of your estate if you had died intestate (ie without a will) – this will be your surviving closest surviving next of kin
- A parent or guardian of a minor child referred to in the will or who would be entitled to a share of the estate if you died intestate
- A person who manages your estate under a guardianship or administration order

Any of the above persons who wish to inspect your will must do so at their own expense. The Supreme Court can also order that other persons (including grandchildren and creditors of your estate) can inspect your will.

### Who can make a claim against your estate?

If you have not made provision or adequate provision in your will for a family member, that person can make a claim against your estate so that adequate provision is made for them. The *Inheritance (Family Provision)*

*Act 1972* previously listed those persons entitled to make such a claim. They included:

- Your spouse or domestic partner
- A former spouse
- A child
- A grandchild
- A parent
- A sibling

The *Succession Act* now adds to that list:

- A former domestic partner
- A stepchild

There are some qualifications for any former spouse or domestic partner, stepchild, grandchild, parent or sibling to be allowed to make a claim against your estate. For example, the ability of your former spouse or former domestic partner to make a claim may be affected by any family law financial agreement in place.

A parent or a sibling can make a claim if they were responsible for your care or contributed to your care.

Stepchildren can only make a claim against your estate in particular circumstances, including experiencing a disability or being dependent on you at the time of your death. Stepchildren and grandchildren will more likely be allowed to make a claim if they have been 'maintained' by you in some way, which usually involves some level of financial or social responsibility for that child's needs.

A stepchild may also be able to make a claim against your estate if their biological parent has died and their parent substantially contributed to your assets. For example, if you and their parent purchased and maintained a house together which passed to you by survivorship, and you have not provided for your stepchild in your will.

## How your wishes will impact any claim made against your estate

When a court decides whether to make provision for any of the abovenamed persons from your estate, your wishes are now the primary consideration. The court must also consider:

- Evidence that shows your reasons for making provision to the persons you have named in your will
- How vulnerable or dependent the person making the claim was on you during your lifetime
- What contribution the person making the claim has made to your estate
- The character and conduct of the person making the claim

The court can also take into consideration anything else it considers relevant to the claim. Amongst other things, the court must consider what government entitlements a claimant receives, and if receiving further provision from the estate might make their financial situation worse.

There are many reasons why you might decide not to include a family member in your will. Human relationships can sometimes be difficult and unfair. If you want to leave a family member out of your will, it may be a good idea to prepare a separate statutory declaration when making your will, giving your reasons for doing so. At the very least, you should explain to your solicitor why you are not making provision for that family member under your will so they can keep a record of your reasons. It is a good idea to involve a solicitor because they will take steps to be satisfied that any such decision that you make is of your own free will, which can help defend against allegations made after your death that your decision was as a result of duress on you or that you lacked mental capacity.

## What this means for you

In addition to frequently reviewing your will to ensure that it reflects your wishes and circumstances, you should think about who you name in your will and why. If you are not making provision for a spouse or domestic partner, a former spouse or domestic partner, child, stepchild, grandchild, parent or sibling, your reasons why should be recorded somewhere.

If you need to update your will, or if you need to make your first will, our Wills and Deceased Estates Team would be happy to help. Our Wills and Deceased Estates Team can assist with everything from estate planning to estate administration to acting in disputes involving estates.



*... it is best to speak to a solicitor to review your estate planning.*



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