



Wills & Deceased Estates Team July 2025

Making an inheritance (or family provision) claim

It is common to hear people talk about 'challenging the will' of someone who has died. There are two main reasons for challenging a will. The first reason is that there is something wrong with the will document itself, and that is the subject of our article [Invalid and unclear wills](#).

The second reason for challenging a will is on the basis that the person who died ('the deceased') did not leave as much for a family member as they ought to have. In other words, that family member's inheritance is inadequate because the inheritance is too small – or they were left out of the will. An inadequate inheritance can also arise when the deceased had no will and the laws which then divide up the deceased's estate do not leave enough inheritance for a particular family member.

Where a family member is left with an inadequate inheritance, and the deceased lived in or owned property in South Australia, that family member may have grounds to claim for more by way of an inheritance claim (also known as a family provision claim) under the *Succession Act 2023*.

Only certain family members are eligible to make an inheritance claim. Spouses, ex-spouses, domestic partners (ie de facto partners), ex-domestic partners and children are all eligible to make claims. In more limited circumstances step-children, grandchildren, parents and siblings can make claims.

However, just because a family member is eligible to make a claim, it does not mean that their claim will succeed.

To succeed with a claim the family member must establish that they have been left without adequate provision from the deceased's estate for their 'maintenance, education or advancement in life'. Generally, a decision whether a family member has been left without adequate provision involves a

consideration of various factors including the following:

1. the personal circumstances of the family member (including finances, assets, employment, family arrangements, health and lifestyle; consideration of such circumstances might extend to the family member's family around them, including any spouses and children);
2. the family member's contribution (if any) to the building up of the deceased's estate;
3. the family member's relationship with the deceased (including consideration of any estrangement between the family member and the deceased);
4. the deceased's relationships with others who have legitimate claims against the deceased's estate (which can include other family members, friends and even any charities that have been left gifts in the deceased's will);
5. the size and nature of the deceased's estate.

The family member must demonstrate that they have a 'need' for provision from the deceased's estate for their maintenance, education or advancement in life. The concept of need is relative – as shown by examples of wealthy children who have successfully convinced courts that they were left with inadequate provision by their even-wealthier late parents. The family member must also demonstrate that the deceased was under a 'moral duty' to provide for the family member and that the deceased had breached that duty.

It is important to note that the wishes of the deceased person are now the court's primary consideration when determining whether to make an order for provision. The court will consider any evidence of the deceased's reasons for making the dispositions they

did under their will, and will balance this against the other considerations already mentioned. The court may also have regard to the character and conduct of the person applying for provision.

Accordingly, whether a family member has an inheritance claim worth pursuing will depend upon a wide range of circumstances. Proper legal advice is essential. A family member should also consider the consequences of making a claim upon their relationships with others; there may be a risk that the family member will end up in court fighting against other family members and friends of the deceased.

There are time limits for making an inheritance claim, and if an application is made too late then there is a risk that the estate will have already been distributed to beneficiaries – leaving little or no money in the estate for the family member to make a claim against. It is therefore important for anyone who is considering making an inheritance claim to seek legal advice as early as possible.



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How we can help you

O'Loughlins Lawyers has a team of lawyers who are highly experienced in dealing with deceased estates and conducting estate litigation.

We can assist you by providing you with legal advice about your circumstances and represent you in any inheritance claim, including in any court proceedings that may arise.

Our clients include the full range of parties who can be involved in an inheritance claim. We act for family members who want to make inheritance claims, for family members who want to oppose inheritance claims brought by other family members, for executors or administrators of deceased estates and even for charities who are beneficiaries of deceased estates under the will.

Disclaimer

This newsletter is merely an overview and accordingly it is not to be relied on as legal or other advice or on any other basis whatsoever. All legal liability arising from use of information contained in this newsletter is disclaimed to the maximum extent permitted by law. Readers should obtain independent legal and other professional advice suitable to their individual circumstances.

If you require any further information, please contact a member of O'Loughlins' Wills & Deceased Estates Team:



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