

## Challenging a Will - recent changes

On 1 January 2015, the laws relating to testator family maintenance claims (will challenges) in Victoria changed significantly.

### Previous Position

Under the old laws, a challenge to a deceased will could essentially be made by a broad range of claimants as there was no requirement for any blood or familial connection. Rather, the courts focused on whether the deceased had an obligation to make adequate provision for the proper maintenance and support of a claimant, and if so, whether any provision under the Will was adequate.

### Eligibility to challenge an estate from 1 January 2015

The recast laws narrow who can challenge a deceased will. An "eligible person" who can challenge a will now broadly is:

1. A spouse or domestic partner of the deceased at the time of the deceased death;
2. A former spouse or domestic partner of the deceased at the time of the deceased death if no property settlement had been reached for the purposes of the Family Law Act 1975; and
3. A child, stepchild, or person who believed they were a child, provided that person:
  - is under 18 years of age;
  - is between 18 and 25 years of age and is a full time student; or
  - has a disability; and
4. A further class of individuals that includes a child, stepchild that are not included in the above definitions, a grandchild, a registered caring partner, a spouse or domestic partner of a child of the deceased, and a member of the deceased's household.

The amended laws also remove the requirement for an adult child to be financially dependent on the deceased at the time of their death. However, in determining the amount of the provision to be made for an adult child, the Court must have regard to the "*degree to which [the person] is not capable, by reasonable means, of providing adequately for [their own] proper maintenance and support.*" This is likely to also limit the provision to an adult child with

In relation to the people listed at 4 above, they can only make a claim if they can show that they were "*wholly or partly dependent on the deceased for [their] proper maintenance and support at the time of the deceased death.*"

The changes have not disturbed the six month time frame from the date of grant of probate for a claimant to make a claim.

## **Effect of changes**

As mentioned previously, the law has now significantly narrowed the class of people who can make a claim. This should restrict many claims including by non familial persons and independent adult children/grandchildren.

With regards to a will maker, the changes should assist a will maker to more effectively minimise the risk of challenges to the estate.

Please contact us if you need further information.

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