

DISCLAIMER

This Factsheet provides an outline of family provision laws regarding inheritance as they exist in South Australian common law and in statute. This factsheet is **not intended to be a substitute for professional legal advice** and no reliance should be placed on the information as if it were such.

Please consult YLP Legal should you have any questions regarding your specific situation or inquiries about family provision claims.

Liability limited by a scheme approved under Professional Standards Legislation

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Introduction

In South Australia, a deceased person has a moral obligation to financially provide for their family members even after their death. Where a family member of a deceased person believes that they have not been adequately provided for (whether or not there is a valid will), they may be able to apply to the Supreme Court of South Australia to ask that they receive funds from the estate.

Even a beneficiary that has been named in a will may be able to apply to the Court to receive additional funds from the deceased’s estate if they believe that they have been left without adequate provision.

In South Australia, an inheritance claim can be made where:-

- A person has died while residing in South Australia or owns real or personal property located in South Australia; and
- A person who is entitled to claim a benefit under the *Inheritance (Family Provision) Act 1972 (SA)* (*‘The Act’*) is left without adequate provision for their proper maintenance, education or advancement in life.

Eligible Applicants

The individuals entitled to make an application (also referred to as bringing a claim) for further provision from an estate under the Act are currently as follows:-

- ✓ Spouse
- ✓ Former spouse
- ✓ Domestic partner
- ✓ Child
- ✓ Child of a spouse or domestic partner (with conditions)
- ✓ Grandchild
- ✓ Parent (who cared for deceased immediately before the deceased’s death)
- ✓ Sibling (who cared for deceased immediately before the deceased’s death)

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Time Limit

The time limit within which an application can be made is six (6) months from the date of the Grant of Probate or Letters of Administration.

Costs

Significant legal fees may be incurred in applying for and defending any claim for provision.

If a claim is brought against an estate, then the ability of the estate to benefit the intended beneficiaries may be significantly affected. This is because legal and other costs of all of the parties involved with the claim may be paid from the assets of the estate. There are however exceptions to this. This will reduce the value of the estate that is available for distribution to the beneficiaries and the applicant.

Estate claims are a complex area of wills and estates law. If you are concerned that someone may make a claim against your estate, it is important that you receive professional advice and have a will drafted by an experienced wills and estates lawyer that takes into account your circumstances.

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