



Changes to Family Provision Legislation

The Family Provision Act 1982 has now been repealed and has been replaced with the Succession Amendment (*Family Provision*) Act 2008. This new Act forms Chapter 3 of the Succession Act 2006.

This legislation gives the Court power to amend a deceased's Will. The purpose of giving the Court this power is to protect the family of the deceased by ensuring proper provision is made for their maintenance, education and advancement, in circumstances where the deceased has not made adequate provision in his or her Will.

The new legislation commenced on 1 March 2009 and will be applicable to estates where the date of death is on or after 1 March 2009.

Important Changes to the Legislation

There have been several important changes to the legislation.

Eligible persons who are able to make a claim now include "a person with whom the deceased person was living in a close personal relationship at the time of the deceased person's death." A close personal relationship is defined as "a close personal relationship (other than a marriage or a de facto relationship) between two adult persons, whether or not related by family, who are living together, one or each of whom provides the other with domestic support and personal care." This does not include a relationship for which the domestic support and personal care is paid.

Under the old legislation a person had 18 months from the date of death in which to make a claim. Under the new legislation that period has been reduced to 12 months.

In making a claim the Court is required to consider certain matters. These matters include the applicant's need, whether the applicant is "deserving", and the size of the estate, weighing the claims of the applicant against the claims of other people for whom the deceased person had a moral obligation to make provision. Under the new legislation these matters have been expanded, and now include considerations such as whether there is any applicable Aboriginal or Torres Strait Islander customary law.

The new legislation also requires the parties to attend mediation before the Court will consider the application.

At Everingham Solomons we have the expertise to assist you with all matters relating to family provision claims, because ***Helping You is Our Business.***



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