

FAMILY PROVISION CLAIMS:

Who can Claim?

Section 57 Succession Act 2006:

Eligible Persons:

1. Husband or Wife of the deceased at the time of death;
2. Person living in a de-facto relationship;
3. Child of the deceased;
4. Former wife or husband of the deceased;
5. A person who was at any time wholly or partly dependent on the deceased & a member of the same household as the deceased, ie parents, siblings, step children, former partners, boarders, foster children.
6. Grandchildren;
7. A person with whom the deceased had a close personal (ie domestic) relationship with the deceased.(ie providing domestic & personal care).

When an application may be made?

Section 58:

An application for a family provision claim must be made not later than **12 months** after the date of the death of the deceased person (unless court otherwise orders on sufficient cause being shown).

When Family Provision order MAY be made:

Section 59:

The Court may make a family provision order if satisfied that:

- (a) The person in whose favour the order is made is an **Eligible Person, and**
- (b) Having regard to all the circumstances of the case (past or present) there are factors which warrant the making of the application (in particular note section 60 following) and
- (c) Adequate provision for the proper maintenance, education or advancement in life of the person in whose favour the order is to be made **Has Not** been made by the Will of the deceased person (or by operation of the intestacy rules or both).

Matters to be considered by the Court:

Section 60: (2)

- (a) Nature and duration of the relationship between the claimant & the deceased

- (b) Nature and extent of any obligations or responsibilities owed by the deceased to the applicant
- (c) Nature and extent of the deceased's estate, ie Size & nature of the estate (including property which could be notional estate)
- (d) The financial resources of the applicant (including earning capacity and financial needs) of the applicant & other beneficiaries
- (e) The financial circumstances of any person who is cohabiting with the claimant
- (f) Any physical, intellectual or mental disability of the applicant & any other beneficiary
- (g) The Age of the applicant
- (h) The contribution (financial or otherwise) of the claimant to the acquisition, conservation or improvement of the deceased's estate, ie to the deceased & to the deceased's family (eg funding, support, any contributions by the claimant to the personal welfare of the deceased, ie medical bills, house modifications etc)
- (i) Any provisions already given to the claimant by the deceased (during lifetime & from the estate)
- (j) Evidence of Testamentary intentions, including evidence of statements.
- (k) The extent and basis upon which the claimant was being maintained by the deceased, ie dependency, either wholly or partly.
- (l) Whether any other person is liable to support the claimant
- (m) The character and conduct of the applicant before and after death of deceased (eg criminal record, estrangement & reason for this)
- (n) The character and conduct of other beneficiaries
- (o) Whether any Aboriginal or Torres Strait Islander customary laws;
- (p) Any other matter the Court considers relevant either existence at time of death or when application is made.