



## Fact Sheet 4 – Who should be able to make a claim?

### Who can make a claim under the current South Australian law?

Under section 6 of the *Inheritance (Family Provision) Act 1972 (SA)*, a relatively wide range of people may be able to make a claim for family provision under the Act. These include the deceased person's child, grandchild, husband or wife, ex husband or wife, or domestic partner (this includes heterosexual or non-heterosexual couples who live together for at least three years or have a child together, or who have registered their relationship).

A parent or sibling of the deceased person may also be able to make a claim, provided he or she also satisfies the court that they cared for, or contributed to the maintenance of, the deceased person during their lifetime. Similarly, a step child of the deceased person may be able to make a claim, but only if the deceased person was practically or legally responsible for the step-child's care.

As discussed in Fact Sheet 5, a person in one of these categories will not automatically be entitled to part of the deceased person's estate. They must first meet the other criteria prescribed by the Act.

### What about in other States and Territories?

Efforts have been made by law reform bodies around Australia to develop a standard list of categories of eligibility to make a family provision application.

For example, the National Committee for Uniform Succession Laws has suggested that the list should only include the following family members:

- > a person who was the wife or husband of the deceased person at the time of the deceased person's death;
- > a person who was the de facto partner (similar to 'domestic partner' in South Australia) of the deceased person at the time of the deceased person's death;
- > a non-adult child of the deceased person (defined as a person who was under the age of 18 at the time of the deceased person's death; including natural and adopted children, but not stepchildren); and
- > a person to whom the deceased person owed a responsibility to provide maintenance, education or advancement in life.

A broader approach has been taken in New South Wales, where, in addition to the list above, grandchildren of the deceased person are included, as is:

- > a member of the deceased person's household who was, at any time, wholly or partly dependent on the deceased person; and
- > a person with whom the deceased person was living in a close personal relationship at the time of the deceased person's death.

However, under the NSW law, the court may only make an order in favour of this second group of applicants if there are 'factors warranting the making of the application'.

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SALRI is interested in your thoughts on what categories of eligible family members should be included within the *Inheritance (Family Provision) Act 1972* (SA), keeping in mind the other eligibility criteria discussed in Fact Sheet 5.

## Discussion Questions

1. Do you think all or only some family members should be able to make a family provision claim?
2. Is a simple eligibility list (like that proposed by the National Committee) the best solution, or should some categories of family members only be eligible in certain circumstances (such as the NSW approach)?
3. What categories of family members should be eligible *in all circumstances*?
  - a. Current spouses or domestic partners of the deceased?
  - b. Former spouses or domestic partners of the deceased?
  - c. Non-adult children? Natural, adopted or step children?
  - d. Grandchildren?
  - e. Other dependents?
  - f. Other categories - please describe.
4. What categories of family members should be eligible *in certain circumstances*?
  - a. Current spouses or domestic partners of the deceased?
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  - d. Grandchildren?
  - e. Other dependents?
  - f. Other categories - please describe.

**Please note: SALRI does not, and cannot, provide legal advice to individuals. If you are in need of legal advice we encourage you to speak to a lawyer and/or contact a community legal service or the South Australian Legal Services Commission's [Legal Advice Helpline](#) on 1300 366 424.**

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