

CHALLENGING A WILL

Even if a Will is created correctly, disputes can arise after a person's death. A Will can be challenged where the deceased Testator has failed to provide adequate support and maintenance for any person who the deceased has responsibility to make provision. Prior to the introduction of the *Wills Act 1997* ("the Act"), those who could make such a claim were limited to Widows, Widowers or children of the deceased.

Since the introduction of this Act the categories of claimants have expanded to include de facto spouses, wider family members and people whom the deceased had lived with or had contributed to financially.

Anyone wishing to make such a claim must do so within 6 months of the date of the Grant of Probate. After the expiration of 6 months, the right to make application ceases unless the Court grants leave.

Section 91 of the Act sets out the considerations which a Court will take into account when any person makes a claim on the estate. Section 91(4) of the Act states that the Court, in determining whether proper provision has been made for the proper maintenance and support of the person must assess whether or not the deceased had responsibility to make provision for a person and whether or not the distribution of the estate of the deceased person was effected by their Will or the operation of the Act or both. The Court will have regard to the following:-

- any family or other relationship between the deceased and the Applicant;
- any obligations that the deceased had to the Applicant;
- the size and nature of the estate;
- the financial resources and needs of the Applicant;
- any physical, mental or intellectual disability of the Applicant;
- the age of the Applicant;
- any contribution that the Applicant made to the deceased estate;
- any benefits previously given by the deceased to the Applicant;
- whether the deceased was maintaining any of the Applicants prior to their death;
- the liability of any other person to maintain the Applicant;
- the character and conduct of the Applicant;
- any other matters which the Court considers relevant.

The Act is only in place to ensure that the deceased's legal obligation to support the claimant is observed by the distribution under the Will. It is not to be about fairness or any equity between claimants or to redress any wrongs which reward any member of the family against another.

For further details please contact Adrian Riccioni at Lilydale on 9739 7377 and Frank Lamari at Carlton on 9344 1700.

DISCLAIMER: The above information is general in nature and believed to be correct at the time of writing. All matters should be discussed fully with your solicitor before any action is taken. No responsibility will be accepted by this firm for any loss or damage suffered by anyone as a result of the information contained above.