



In Australia, the law recognises that a will maker may sometimes fail to make adequate provision for close family or dependants. In that situation, certain people can ask the Supreme Court for a share, or a larger share, of the deceased's estate. This is usually called a family provision claim or a claim against a deceased estate.

Although each state and territory has its own Act, they all broadly follow the same idea:

- » You must be an eligible person, and
- » You must show that you've been left without adequate provision for your proper maintenance and support.

Who is generally allowed to claim?

The exact list differs slightly by state, but across Australia the following categories are commonly eligible:

1. Spouses and de facto partners

- » A husband or wife at the time of death.
- » A de facto partner who was living with the deceased in a genuine domestic relationship.

2. Children

- » Biological and adopted children are generally eligible in every jurisdiction.
- » Step-children may be eligible in some states either directly (for example in Victoria and Western Australia) or where they were financially dependent or part of the deceased's household.

3. Former spouses or partners

Most states allow a former spouse or domestic partner to claim, usually where there has not already been a full and final family law property settlement, or where there are special "factors warranting" an application.

4. Other dependants

Many Acts also allow claims by:

- » Grandchildren who were financially dependent on the deceased or were, in substance, brought up by them.
- » Other household members (for example, a step-child, parent, or other relative living in the same household) who were wholly or partly dependent on the deceased.
- » A person in a "close personal relationship" with the deceased. This might include a long-term carer or companion providing domestic support and personal care. This is most clearly recognised in New South Wales but similar ideas appear elsewhere.

Because the detail differs, someone who is eligible in one state may not be eligible in exactly the same way in another, so local advice is important.

Being eligible is only the first step

Even if you fit into one of these categories, the Court will not automatically change the will. It must decide whether, looking at all the circumstances, adequate provision has been made for you.

continued overleaf ➡

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.

Who can make a claim against a deceased estate? ... cont

Across Australia, courts generally look at similar factors, such as:

- » The nature and length of your relationship with the deceased
- » Any obligations or responsibilities the deceased had towards you (compared with other beneficiaries)
- » The size and nature of the estate
- » Your financial position, health, age and future needs
- » Any significant contributions you made to the deceased or their property
- » Any gifts or support you already received during the deceased's lifetime

- » Any serious misconduct or long-term estrangement, in appropriate cases.

Judges often talk about “what a wise and just” person, or what the “community” would generally regard as fair in the circumstances would have done, without simply rewriting the will from scratch.

Time limits and next steps

Time limits to make a family provision claim are strict and vary by state. The Court will only extend time beyond these time limits in limited situations.

If you think you may have a claim, it is generally sensible to get prompt advice from a wills and estates lawyer. 💰

Could you be missing out on thousands in lost super?... cont

One important practical tip is that if you locate lost super and want to move it into your SMSF, but your SMSF doesn't show up as a transfer option in ATO online services, it's often due to the fund's compliance status. Take a moment to confirm your SMSF is listed as “complying” or “registered” on Super Fund Lookup.

HOW TO CHECK FOR LOST SUPER (IT ONLY TAKES MINUTES)

The ATO has made this super simple (pun intended!). You can:

1. Log in to myGov and go to ATO online services
2. Navigate to the Super section to view:
 - » Super held by the ATO
 - » Any lost or unclaimed accounts
3. Request a transfer to an eligible super account.

Even if you don't find anything, you'll at least know everything is where it should be.

SIMPLE HABITS THAT HELP YOU STAY ON TOP OF SUPER

Finding lost super is great but preventing it from happening at all is even better. A few easy habits can make a big difference:

- » **Keep your details up to date with your fund and the ATO** so you stay contactable.

- » **Check whether you've got more than one account.** Multiple accounts can mean multiple fees and duplicated insurance.
- » **Consider consolidating if it suits your situation.** Fewer accounts can mean lower fees and easier management but just be sure to check any insurance you might lose before rolling over.
- » **Read your annual statement.** It's a quick way to confirm contributions, fees, returns, investment mix and beneficiaries.

WHY ACTING NOW MATTERS

Since 2022, the ATO has already reunited Australians with about \$5.5 billion in previously unclaimed super. But there's still nearly \$19 billion waiting to be found.

A few minutes today could translate into a healthier retirement balance later.

FINAL WORD

It's easy to put super in the “deal with it later” basket, but it's still your hard-earned money. If you want a hand finding lost super, combining accounts, or moving money into your SMSF, reach out to us. We can guide you through the steps and make sure you're able to claim any lost super without any hassles. 💰

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