Article Information

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Succession Act (SA) 2023 – Changes in SA – Part 1

After a lengthy period of promulgation, the Succession Act (SA) 2023 has been proclaimed and will come into operation on 1 January 2025. Advisers will need to be prepared for this date which inconveniently falls in the midst of a traditional holiday period.

The Succession Act represents a significant shift and modernisation to important aspects of the succession law in South Australia. It has repealed and consolidated into one Act some quite dusty legislation being the:

1. Inheritance (Family Provision) Act (SA) 1972;
2. Administration and Probate Act (SA) 1919; and
3. Wills Act (SA) 1936.

Piper Alderman's Private Clients Team has reviewed the changes and presents a three part Insight series into the affect the Succession Act changes will make in this area.

The first in this series is a comparison of the applicants eligible to make a claim for further provision against the estate of a deceased person and the conditions which may attach to that right to bring that claim.

Comparison of Eligible Applicants for Family Provision

Category of applicant	Inheritance Family Provision Act 1972, section 6 (repealed Act)	Succession Act 2023, section 115
Spouse or Domestic Partner, s 115(1)	Eligible	Eligible
Former Spouse, s 115(2)	Eligible	Eligible subject to: • must satisfy the Court that immediately before death there has not been a matrimonial property settlement or agreement between the former spouse and the deceased and which is in force.
Former Domestic Partner, s 115(2)	Not eligible	Eligible subject to: • must satisfy the Court that there has not been a matrimonial property settlement or agreement between the former domestic partner and the deceased which is in force.
Child, s 115(1)	Eligible	Eligible

Category of applicant	Inheritance Family Provision Act 1972, section 6 (repealed Act)	Succession Act 2023, section 115
Step Child, s 115(3)	Eligible (being a child of a spouse or domestic partner), subject to: • must be wholly or partly maintained or legally entitled to be maintained by the deceased immediately before death.	Eligible (being a child of a spouse or domestic partner OR a former spouse or domestic partner), subject to the step child satisfying one of the following: • disabled and therefore significantly vulnerable; • dependent on the deceased at the date of death; • cared for, contributed to the maintenance of the deceased immediately before date of death; • substantially contributed to the estate of the deceased person; • step-child's parent substantially contributed to the estate of the deceased person; or • a minor step-child, maintained wholly, partly or legally entitled to be wholly or partly maintained by the deceased person immediately prior to death.
Grandchild, s 115(4); 115(5)	Eligible	Eligible subject to: • the grandchild's parent (being a child of the deceased) died before the deceased; or • the grandchild was wholly or partly maintained or legally entitled to be maintained by the deceased immediately before death.
Parent, s 115(6)	Eligible, subject to: • must satisfy the Court that the parent cared for or contributed to the maintenance of the deceased during their life.	Eligible, subject to: • if the deceased died in a residential facility (as defined in *Aged Care Act (Cth)*), the parent cared for or contributed to the maintenance of the deceased immediately before they entered the residential facility; or • otherwise, if: ◦ the parent cared for, contributed to the maintenance of the deceased immediately before death; or ◦ the parent was wholly or partly maintained by the deceased immediately before death.
Sibling , s115(7)	Eligible, subject to: • must satisfy the Court that the sibling cared for or contributed to the maintenance of the deceased during their life.	Eligible, subject to: • if the deceased died in a residential facility, the sibling cared for or contributed to the maintenance of the deceased immediately before they entered the residential facility; or • otherwise, if the sibling cared for, contributed to the maintenance of the deceased immediately before death.

The Succession Act introduces some new concepts and terms that will no doubt be the subject of further debate and clarification. For example:

- when will a matrimonial property settlement agreement be regarded as *" in force"*;
- when will a step child be considered *"significantly vulnerable"*
- to what extent must a step child's parent have *"substantially contributed"* to the estate of a deceased person;

- when does a grandchild become "*entitled*" to be maintained by a deceased person;
- to what extent must a parent or sibling have "*contributed to the maintenance*" of a deceased child or sibling.