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Review of Succession Act Queensland – proposed changes to intestacy rules

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In September 2023, the Queensland government released a public policy paper, "Intestacy Entitlements and Family Provision Applications". The paper outlines proposed legislative changes aimed at modernising sections of the Succession Act ("the Act") primarily related to the current intestacy rules. The rules surrounding the distribution of an estate where a Will is invalid, not made at all, or improperly executed are referred to as intestacy rules.

A brief overview of the law on Wills and estates in Queensland

The Succession Act 1981 (Qld) establishes the law regarding the creation of Wills, administration of estates of deceased persons, and other related matters. Succession law includes rules regarding distribution of estates, particularly in situations where a Will does not address all aspects of the estate or where a Will is invalid (e.g., if there is a finding of undue influence or fraud, for example).

Generally, the law does not interfere with an individual's decisions and choices surrounding their Will and how their estate is administered. However, there are situations that allow the court to make decisions with respect to an estate's administration where, for example, a family member may challenge a Will and apply to be included in the Will or to receive a benefit (or a greater benefit) from the estate.

A common example of intestacy rules are applications by individuals entitled to benefit from the deceased estate who:

- have not received anything out of the estate; or
- do not believe they have received an adequate benefit from the estate (referred to as 'proper maintenance and support')

Notably, these applications can occur in instances of a valid Will as well. That is, the option to contest a Will is not only limited to invalid Wills.

These forms of application are referred to as family provision applications, and if accepted, the court will decide whether the applicant is entitled to a greater provision. Currently, the law enables dependents, children, stepchildren, and spouses to contest (or challenge) a Will and apply for a family provision.

Part of Queensland's new proposal is with respect to these succession rules.

Three key proposals for changes to the Succession Act QLD

Below we briefly summarise some key proposals to change the Queensland Succession Act 1981.

Monetary limit to estate contest

One of the more important new proposals suggests that children, stepchildren, and dependents should not be eligible to contest deceased estates equal to or less than $250,000.00.

Estate administration can be very costly, particularly in instances where intestacy rules apply. As a result, the proposal aims to address the unfortunate consequence of estate administration where contest is involved resulting in significant legal costs. The effect of this is ultimately on the value of the estate.

However, children or dependents who meet one of several conditions would be exempt from the cap, enabling them to make applications with respect to the estate.

Children who:

Have a disability; or

Are under 18 years of age; or

Are under 25 years of age and financially dependent on the deceased; or

Receive a government pension and hold a pensioner concession card,

may contest a Will.

The reason why children meeting the above criteria may contest a Will, valid or otherwise, is to enable individuals who were financially dependent on the deceased to apply for contest.

In addition to this primary concern of estate administration in the new proposal, the Queensland government proposes to implement ‘fast-track procedures’ for smaller estates whereby any family provision applications are submitted at an early stage of administration to avoid excessive accumulation of costs.

New definition of spouse

Secondary to the capping consideration is the expansion of the definition of ‘spouse’ under the Act. If accepted, the Act will be amended to include de facto spouses who have a minor child of the relationship at the date of death and whose de facto relationship subsists at the date of death.

Additionally, the new definition of spouse will **exclude** spouses of the deceased where:

the deceased was separated from that spouse at the date of death; and

the deceased was privy to a final property settlement with that spouse pursuant to the Family Law Act 1975 by final order or via a financial agreement.

The purpose of these amendments is varied, but they are primarily aimed at avoiding undue delay and ensuring an equitable process for beneficiaries to the estate.

New family provision application procedures when contesting a Will

Currently, personal representatives are not obligated to provide copies of the Will to any beneficiaries or entitled persons unless requested by an entitled person under the Succession Act. Similarly, there is no obligation on a personal representative to notify all beneficiaries of the deceased’s estate to have an early opportunity to consider family provision applications.

However, the Queensland government is considering imposing procedures that require ‘personal representatives’ to notify all beneficiaries of the deceased’s estate. This is aimed

at allowing potential beneficiaries (or members who believe they should benefit from the administration of the estate) to assess whether they may seek to enforce family provision application rights against the estate (that is, to contest the Will).

The personal representative would be required to issue notice only if the names and contact information of the eligible person (e.g., beneficiary, guardian, attorney or administrator of the eligible person) is known to the personal representative. This includes eligible persons who are to be ‘reasonably ascertained’ via reasonable enquiries conducted by the personal representative.

The idea is that by putting beneficiaries on notice of their potential interest in the estate, it allows beneficiaries to consider whether they may need to apply for family provision, which is a time sensitive consideration.

A related aspect of this notice proposal is that beneficiaries would also be put on notice of their right to apply for family provisions. Not only will this proposal promote efficient estate administration, but will reduce the likelihood of legal conflicts and costs that can diminish an estate’s value significantly.

What these proposals could mean when contesting a Will

Overall, the amendments reflect the Queensland government’s attempt to better reflect today’s society by identifying new procedures, limits and terms that better encompass the modern family.

These proposals will require careful reflection on family units and assurance that the totality of relationships is documented. The overall impact of these amendments will likely improve Queensland’s estate administration processes.

Public submissions were sought on various aspects of the proposed changes, and that process closed in October 2023. That community consultation will form part of the further review to determine if any or all of the proposed reforms will take effect. Overall, the proposed amendments are positive and will protect deceased estates from delay and incurring excessive and unnecessary costs.

Get help from a Wills and estates lawyer

IM Lawyers are experienced (and stay up-to-date) in estate planning and deceased estates management. It is prudent to seek legal advice regarding deceased estates, especially if matters are in dispute.

To inquire (at no cost) about your estate planning, or if you are the executor of a Will and require assistance with administration of an estate, get in touch with IM Lawyers. It costs you nothing to find out where you stand.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.