

# Contesting a Will (Part IV Claims)

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## What is a Part IV Claim?

A Part IV Claim is an application made to a Court for an Order that provision is made for a person from the assets of a deceased's estate. Generally speaking, the person making the application ("Claimant") must show that the deceased had a moral obligation to make provision for the Claimant in their Will.

## Who can make a Part IV Claim?

From 1 January 2015, to make a Part IV Claim, a person must prove that they are an eligible person in accordance with the Administration and Probate Act 1958 (Vic). An eligible person includes:

- a spouse or domestic partner of the deceased at the time of the deceased's death;
- a child or stepchild of the deceased;
- a child of the deceased, including an adopted child or stepchild who, at the time of the deceased's death, was under the age of 18 years, a full-time student aged between 18 and 25 years, or under a disability;
- a person who, for a substantial period during the deceased's life, believed that the deceased was their parent and was treated by the deceased as their natural child;
- a person who, for a substantial period during the deceased's life, believed that the deceased was their parent and was treated by the deceased as their natural child who, at the time of the deceased's death, was under the age of 18 years, a full-time student aged between 18 and 25 years, or under a disability;
- a former spouse or domestic partner of the deceased if a property settlement was not reached with the deceased following their separation;
- a registered caring partner of the deceased;
- a grandchild of the deceased;
- a spouse or domestic partner of a child of the deceased, if the child dies within one year of the deceased's death; and
- a member of the household of which the deceased was or had been in the past and would have likely been in the near future.

## What are the Time Restrictions on Making a Part IV Claim?

A Part IV Claim must be made within 6 months of the date of the Grant of Probate. An application can be made to the Court to seek an extension of time, but this is only applicable in very limited cases.

## What will the Court consider when Determining a Part IV Claim?

In determining whether to make an order for further provision, the Court will have regard to:

- the deceased's Will;
- evidence of the deceased's reason for making the Will in the term that they did; and
- any other evidence about the deceased's intentions concerning the Claimant.

The Court may have regard to:

- the relationship between the deceased and the Claimant, including the nature of the relationship and the length of the relationship;
- any obligations or responsibilities of the deceased to the Claimant, any other eligible claimants and the beneficiaries of the estate;
- the size and nature of the estate;
- the financial resources and needs of the Claimant, other eligible claimants and the beneficiaries of the estate;
- any physical, mental or intellectual disability of the Claimant, other eligible claimants or any beneficiaries of the estate;
- the age of the Claimant;
- any contribution made by the Claimant to the deceased's estate;
- any benefits previously given by the deceased to the Claimant, other eligible claimants or any beneficiaries of the estate;
- whether the Claimant was being maintained by the deceased either wholly or partly before the deceased's death;
- the effect that the order would have on the amount other beneficiaries would receive;
- the character and conduct of the Claimant; and
- any other matter the Court considers relevant.

## **How do I Contest the Will?**

To facilitate a competitive market, lawyers' services and fees vary. An estimate of the fees will be provided to you once the scope of your matter has been determined.

## **Contact and disclaimer**

If you are unsure whether or not you are eligible to make a claim, please contact us at [admin@ballaratlawyers.com.au](mailto:admin@ballaratlawyers.com.au) or on 5303 0281.

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