

Wills and Probate

A will is a document that outlines how you wish your assets to be allocated after you pass away. It is a number of legal requirements and it is advisable that you seek a lawyer to write your will for you. Wills that do not meet legal requirements may be held invalid and if so, the assets will be distributed according to a formula set by legislation. Furthermore, issues such as tax planning, superannuation and future control of non-estate assets are complex and require careful consideration.

We provide services in:

- Preparing your will;
- Amending an existing will;
- Advice in challenging a will;
- Advice with non-estate assets such as family trust assets and superannuation benefits;
- Storage of will;
- Preparing Powers of Attorney;
- Probate.

Challenging a will

In recent times, the category of persons who are eligible to challenge a will has been greatly broadened. White Barnes can advise you on the likely success of an application for a share or a greater share of a deceased estate.

There are strict time limits without which documents to challenge a will must be filed in the Courts, so it is important that you contact us immediately if you believe you have a claim against an estate.

Challenging a will –Fact sheet

Eligible persons

In order to challenge a will, you must be an “eligible person” as defined in Section 6 of the [Family Provisions Act](#), which states that:

a) a person:

- (i) who was the wife or husband of the [deceased person](#) at the time of the [deceased person](#)'s death, or
- (ii) with whom the [deceased person](#) was living in a [domestic relationship](#) at the time of the [deceased person](#)'s death, or

(b) a child of the [deceased person](#) or, if the [deceased person](#) was, at the time of his or her death, a party to a [domestic relationship](#), a person who is, for the purposes of the [Property \(Relationships\) Act 1984](#), a child of that relationship, or

(c) a former wife or husband of the [deceased person](#), or

(d) a person:

- (i) who was, at any particular time, wholly or partly dependent upon the [deceased person](#), and
- (ii) who is a grandchild of the [deceased person](#) or was, at that particular time or at any other time, a member of a household of which the [deceased person](#) was a member.

Time limits

People who wish to challenge a will *must* do so within 18 months of the date that the deceased passed away.

Circumstances in which a will may be challenged

A will may be challenged if:

- The deceased did not have the testamentary capacity to make a will at the time he/she signed it;
- Parts of the will was changed after it was signed;
- The will was made under duress or the deceased's decisions were influenced inappropriately by others;
- The will presented has been revoked;
- The spouse or de facto and/or children of the deceased believe that they have not been left a fair share of the assets.

Section 7 of the *Family Provisions Act* notes that the Court will make an order in light of the eligible person's maintenance, education or advancement in life, and will consider same if detrimental change has occurred to the eligible person under Section 8 of the Act.

In deciding this, the Court will consider (s9(3) the Act):

- (a) any contribution made by the [eligible person](#), whether of a financial nature or not and whether by way of providing services of any kind or in any other manner, being a contribution directly or indirectly to:
 - (i) the acquisition, conservation or improvement of [property](#) of the [deceased person](#), or
 - (ii) the welfare of the [deceased person](#), including a contribution as a homemaker,
- (b) the character and conduct of the [eligible person](#) before and after the death of the [deceased person](#),
- (c) circumstances existing before and after the death of the [deceased person](#), and
- (d) any other matter which it considers relevant in the circumstances.