



# Should I treat my children equally in my Will? Navigating unequal gifts

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Date: Sunday September 14, 2025

When [preparing a Will](#), many parents are guided by a desire to be fair to their children. For some, this means dividing their estate equally among their children. For others, fairness may look different, taking into account past financial assistance, differing personal circumstances, differing relationships, or the contributions one child has made to their parent's care.

There is no particular reason or legal obligation that will require a parent to treat their children equally under their Will. But while the law gives you the freedom to distribute your estate however you wish, unequal gifts can carry consequences, both legal and emotional.

## Understanding unequal gifts in your Will

Every family is different, and there are many legitimate reasons why a parent might choose not to divide their estate equally among their children. Common examples include:

### Past financial assistance

You may have already assisted one child significantly during your lifetime, perhaps with a house deposit, private school fees for their children, or helping them through a financial hardship. Particularly where this financial assistance has not been provided to other children, it might feel fair to reduce their inheritance to reflect the earlier support.

## Different financial circumstances

Not all children have the same financial needs. One may be financially secure, while another struggles to make ends meet or lives with a disability. You may wish to leave more to the child who needs greater support.

## Contributions to your care, particularly as you age

It is common for one child to take on the bulk of caring responsibilities in your later years. You may feel they deserve a greater share of your estate in recognition of their time and effort.

## Estrangement or conflict

Family relationships can become strained over time. If you are no longer in contact with one of your children, or the relationship has broken down, you may feel they should not benefit from your estate in the same way as your other children.

## Providing for grandchildren or other family members

You might want to pass some of your wealth [directly to grandchildren](#) or to provide for a relative who is financially dependent on one of your children. This can result in unequal distributions among children.

Whatever your reasons, the way you implement them in your Will is crucial.

## Legal considerations: testamentary freedom vs risk of a family provision claim

Testamentary freedom refers to the legal principle that allows a person to decide how their estate will be distributed after their death. In other words, it gives individuals the right to choose who inherits their property, assets, and belongings through their Will.

However, in New South Wales (and other Australian states), testamentary freedom is not absolute. It is subject to the right for certain people, such as a spouse, child, or dependent, to challenge the provision left to them under a Will (that is, [contest the Will](#)) if they believe they have not been adequately provided for in the Will. This is known as a family provision claim.

So, while you generally have the freedom to leave your estate to whomever you choose and however you wish to provide for them, the law balances that freedom with a right for someone who may be financially dependent on you to pursue greater provision from your estate.

This means that even if you have carefully documented your intentions in your Will, a child can still bring a family provision claim against your estate. And if the Court considers that the child has been left without adequate provision for their "proper maintenance,

education or advancement in life,” they may be awarded a greater share of the estate, sometimes significantly more than you intended.

## Factors the Court will consider in a family provision claim

When assessing whether to award provision (or further provision) to an applicant, the Court considers a range of factors, including:

- the size and nature of your estate;
- the financial circumstances of the applicant and any other beneficiaries;
- the relationship between you and the applicant, including the history of the relationship;
- contributions made by the applicant to your estate or welfare;
- any provision you made for the applicant during your lifetime;
- your reasons for the distribution as set out in your Will or a separate statement.

Even if you were estranged from your child, or had clear reasons for an unequal distribution, the Court may still find that they are entitled to further provision from your estate, particularly if they are in financial need.

## Does treating children equally avoid disputes?

Providing for all children in equal shares will not always prevent a dispute among children, but it can help.

Disputes can arise for reasons beyond the provision left to beneficiaries under a Will. They can also be spurred on because the beneficiary feels hurt, left out, or blindsided. Unequal gifts can inflame these emotions, especially if they come as a surprise.

Treating your children equally can reduce the likelihood of disputes and help preserve family harmony. But in some families, an equal split may not reflect what is truly fair or just among the children. If you do decide to make unequal gifts, it can be important to take proactive steps to reduce the risk of a challenge.

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## Minimising the risk of a challenge to your Will

### Seek tailored legal advice

A solicitor experienced in estate planning can help you structure your Will in a way that supports your intentions and mitigates the risk of a successful family provision claim. They can also assess the strength of a potential claim from a disappointed child and help you weigh up your options.

### Include a Statement of Reasons

If you are making unequal gifts, it is often helpful to prepare a Statement of Reasons or Letter of Wishes explaining why. The Will is typically very dry and legally worded without any explanation as to why it has been prepared in the way it has.

While a statement or letter of wishes is not a legally binding document, and it cannot prevent a claim from being made, it can assist your family and the Court in understanding your intentions, particularly if your Will is challenged.

It is important to be clear in a statement or letter of wishes and to avoid unnecessarily inflammatory language. A carefully worded explanation can show that your decision was reasoned and not made out of spite or coercion.

### Talk to your family (if appropriate)

Having an open and honest conversation with your children about your intentions can help avoid misunderstandings and reduce the shock factor after you are gone.

We understand that not every family is able to have this kind of conversation. In some cases, it may do more harm than good. But where the relationship allows, setting expectations early can be a powerful way to reduce future conflict.

This may include arranging a round table discussion with all children present, or you may choose to have one on one conversations with the children. It may also be helpful to follow this up with a written outline of your reasons if there is potential that the children may forget your reasons or leave with a different recollection of your discussions.

## What happens if my Will Is challenged?

If a family provision claim is made, the Court will often encourage mediation before proceeding to a hearing. Many of these matters settle out of Court, but the legal fees and emotional toll can be significant and damaging to family relationships in the future.

A successful claim can alter the distribution under your Will, increase the cost of administration, and reduce the estate available for other beneficiaries. In some cases, the legal costs of all parties are paid out of the estate, meaning less for everyone.

## How we can help

At E&A Lawyers, we understand that no two families are alike. Whether you are considering unequal gifts, [navigating a blended family](#), or concerned about protecting your estate from disputes, we can help you plan with confidence.

We will work closely with you to understand your circumstances, provide honest advice about the risks, and ensure your wishes are expressed clearly and legally.

If you would like to speak to a lawyer about preparing or updating your Will, please get in touch with our team today.

## Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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## Further reading

- [How can I stop my kids from challenging my Will?](#)
- [Can I stop my children receiving inheritance at 18?](#)
- [Defending a Will against a Family Provision Claim in New South Wales](#)
- [Can I leave someone \\$1 in my Will to prevent them making a claim against my estate?](#)

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