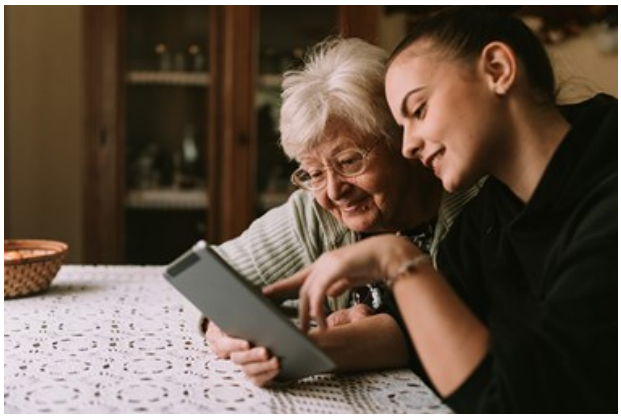


Can grandchildren challenge a grandparent's Will?

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Not every grandchild has the right to contest a grandparent's Will in NSW. Grandchildren are not automatically entitled to claim under the *Succession Act 2006* (NSW), but in some cases they may qualify as "eligible persons". This blog explains the rules around eligibility, what "dependency" and "factors warranting" mean, and how courts decide whether a grandchild should receive provision from an estate.

Are grandchildren "eligible persons" under the *Succession Act 2006* (NSW)?

The answer is sometimes. Grandchildren are not automatically entitled to claim provision under the Will. If a grandchild seeks to contest a Will, they will have to meet the criteria of "eligible person" as provided for by Section 57 *Succession Act 2006* (NSW).

Under section 57 of the *Succession Act 2006* (NSW), a grandchild can be an eligible person only if they can show that, at some time:

- they were wholly or partly dependant on the deceased; and
- they are a grandchild of the deceased; or
- they were a member of the deceased's household at some time in a substantial way.

Even if grandchildren can establish eligibility, they must also show there are "factors warranting" the making of the application.

If eligibility and "factors warranting" are established, the Supreme Court of NSW then decides whether adequate provision has been made for the grandchild's proper maintenance, education and advancement in life. If not, then it is decided what order should

be made.

What is dependency and factors warranting?

Meaning of dependency

Dependency is a practical question which investigates whether regular financial support was offered by way of living or schooling costs, or providing ongoing accommodation and necessities. These factors can qualify depending on the extent of the support offered. Occasional gifts will not qualify.

Example of factors warranting?

Factors warranting are circumstances that make it appropriate for a grandchild to ask the Court to intervene. Examples include a long period where the deceased acted in the capacity as parent such as in a close caregiving relationship with the grandchild where they cared for their housing and day to day needs as a parent would.

Case law: adult grandson's family provision claim dismissed

In the matter of *Broadus v Cradduck [2025] NSWSC 402*, the deceased created a Will leaving his entire estate to his sole surviving son. The adult grandson of the deceased was not included as a primary beneficiary. The grandchild claimed to have been financially and emotionally dependent on the deceased and sought a family provision order under the *Succession Act 2006* (NSW).

The key contested issues were:

- the grandchild's eligibility to make a family provision claim; and
- whether factors warranted provision for him; and
- whether the deceased's Will reflected his testamentary intentions.

The grandchild's financial claims ranged widely before being reduced to a claim for $115,000 in final submissions, which, if granted, would have imposed a significant burden on the deceased's son and may have necessitated the sale or mortgaging of the inherited property.

Ultimately, the evidence did not support the contention that the grandchild was a member of the deceased's household. The deceased had no legal, moral, or social obligation to make testamentary provision for his grandchild, and the Will appropriately reflected the considered testamentary intention of the deceased.

No "factors warranting" the application were established, as prevailing community standards did not impose an obligation on the deceased to provide for his grandchild.

Ultimately, the grandchild failed to demonstrate financial or emotional dependency on the deceased. Evidence of transient visits and occasional financial support did not amount to dependency. The grandchild did not meet the criteria of being a member of the deceased's household, as the evidence indicated only sporadic presence and the use of a "spare room" at the deceased's property.

The absence of "factors warranting" provision was based on prevailing community standards, being that the deceased owed no testamentary duty to his grandchild as an adult grandchild, and the claims of the deceased's son and his family outweighed those of the grandchild.

The Court rejected the grandchild's claims as inconsistent with the deceased's deliberate and rational testamentary intentions and found the Will to accord with what a "just and wise" testator would have done. The grandchild's summons was dismissed.

Get help from a Wills &Estates lawyer

This judgment serves as a cautionary tale of the high bar for adult grandchildren to clear the eligibility and warranting thresholds before the Court will consider any provision.

If you believe you have not been adequately provided for in a Will, it's important to understand your eligibility for a family provision claim. If you're unsure about your entitlement, our lawyers can assist you with determining eligibility and meeting the warranting thresholds.

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 to leave money or gifts to your grandchildren in your Will
- Should I treat my children equally in my Will? Navigating unequal gifts
- Defending a Will against a Family Provision Claim in New South Wales

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