Concerned your step-children may challenge your Will in New South Wales?

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Blended families can add complexity to estate planning, particularly when step-children are involved. A common concern in New South Wales is whether step-children can challenge a Will if they are excluded or left little provision.

This article explains when step-children may be able to make a Family Provision Claim under NSW succession law, the factors courts consider, and practical steps you can take now to reduce the risk of a dispute and protect your estate planning intentions.

Do step-children have an automatic right to inherit in NSW?

No, step-children do not automatically inherit under NSW succession law.

If a person dies without a Will, the intestacy rules apply. These rules generally only recognise biological or legally adopted children. Step-children are not included or considered children of the deceased unless they were legally adopted by the deceased.

You can read more about the intestacy rules in our earlier blog, "Why should I Have a Will and what happens if I die without one?"

This can lead to unintended outcomes for families who have lived together for many years and for step-parents who treat their step-children as one of their own.

Where a step-parent wants to ensure their step-children are provided for, it is essential that they consider preparing a Will that provides for them accordingly.

Under a Will, you are generally free to decide who benefits from your estate, and who does not. However, this is subject to the potential for a claim to be made against an estate.

Can step-children challenge a Will in NSW?

Yes, in some cases step-children can challenge a Will, but they are not automatically entitled to do so. Often, it would be more difficult for a stepchild to challenge a Will, and it would depend on the circumstances of their relationship with their step-parent.

A stepchild may be able to challenge a Will by making a Family Provision Claim (challenging the Will) under the *Succession Act 2006* (NSW). To make a Family Provision Claim, the step-child must first establish that they are an "eligible person".

While a biological or adopted child would qualify as an "eligible person" due to their relationship with the deceased, a stepchild does not automatically qualify.

For step-children, eligibility is more limited and fact-specific.

When might a stepchild be eligible to make a claim?

A stepchild may be eligible if they can show one or more of the following:

- They were wholly or partly financially dependent on you; and
- They were a member of your household at some point; or
- You had taken on a parent-like role in their life.

Importantly, being emotionally close is not usually enough on its own. The Court looks for evidence of real dependency by the stepchild on you, such as financial support, accommodation, education costs, or ongoing care.

Adult step-children who were financially independent and living separate lives often face significant difficulty establishing eligibility to make a claim.

Even if eligible, success with a Family Provision Claim is not guaranteed

Even if a stepchild qualifies as an eligible person, the Court must then decide whether you failed to make adequate provision for their proper maintenance and support, and whether it is appropriate to alter the provision made for beneficiaries under your Will.

The Court does not make this decision lightly, and will weigh many factors, including:

- the size of your estate;
- your relationship with the stepchild;

- your obligations to others (such as a spouse or biological children);
- the stepchild's financial position and needs; and
- the reasons for your estate planning decisions.

The above are only some of the considerations that the Court would weigh in the event of a Family Provision Claim.

What you can do now to reduce the risk of a challenge to your Will

If your concern is minimising the risk of your step-children challenging your Will, proactive planning is recommended.

Make sure your Will is clear and up to date

Ambiguous language in a Will can cause disputes.

Phrases like "my children" can create uncertainty in blended families. Providing a clear definition of who is and who is not included in the term "my children" can help to provide clarity as to your intentions.

Consider including a statement of reasons

While not legally binding, a Statement of Reasons (sometimes called a memorandum of wishes) can be very helpful in outlining your thoughts behind the preparation of your Will.

This document usually explains, in your own words, why certain people are included or excluded, and the considerations that influenced your decisions.

Careful consideration should be given to the reasoning included in such a statement, as it could be subject to scrutiny in the future, and poor or inaccurate explanations can sometimes be counterproductive.

Review the balance between spouses and children

Estate planning for blended families often involves carefully balancing the interests of a current spouse and children from previous relationships.

These arrangements can be more complex, as expectations around inheritance may differ and family dynamics may change over time.

Without clear planning, this complexity can increase the risk of misunderstandings or disputes after death.

Taking the time to consider how an estate should be structured and documenting those intentions clearly can help reduce uncertainty and manage the risk of dispute.

Get advice before excluding someone from your Will completely

Excluding a stepchild entirely is not necessarily wrong, but care should be taken to assess the risk it could create.

A lawyer experienced in estate planning can:

- assess the likelihood of a Family Provision Claim,
- help structure your Will and estate plan to minimise exposure to risk; and
- ensure your intentions are clearly documented.

Often, proactive advice can prevent expensive disputes later.

Review your Will regularly

Family circumstances change, and relationships evolve. A Will prepared many years ago may no longer reflect your current intentions or the reality of your family.

Regular reviews of your Will (and other estate planning documents) help ensure your estate plan correctly reflects your intentions.

Early advice matters

Once a person passes away, options become more limited, and disputes can become harder and more costly to manage.

Early advice allows you to reduce uncertainty, protect loved ones, and ensure your wishes are respected, so that your family is not left dealing with avoidable conflict.

Conclusion

Blended families bring complexity, but early and careful planning can assist in relieving some of this complexity. Stepchildren do not have an automatic right to inherit. With the right planning, the risk of a successful challenge by a stepchild can often be significantly reduced.

If your family situation has changed, or if your Will has not been reviewed in some time, it is worth getting tailored advice to ensure your estate plan still reflects your intentions.

How E&A Lawyers can help

E&A Lawyers has extensive experience helping clients across the Northern Beaches and NSW prepare Wills that are practical, tax-effective and legally sound. Our approach is client-focused, and we provide clear, practical advice to help you understand your options.

If you are considering preparing your Will, or you are unsure whether your existing Will is valid, E&A Lawyers can assist in providing personalised advice.

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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