



Mediation in family provision matters

Understanding the mediation process

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Understanding Estate Litigation



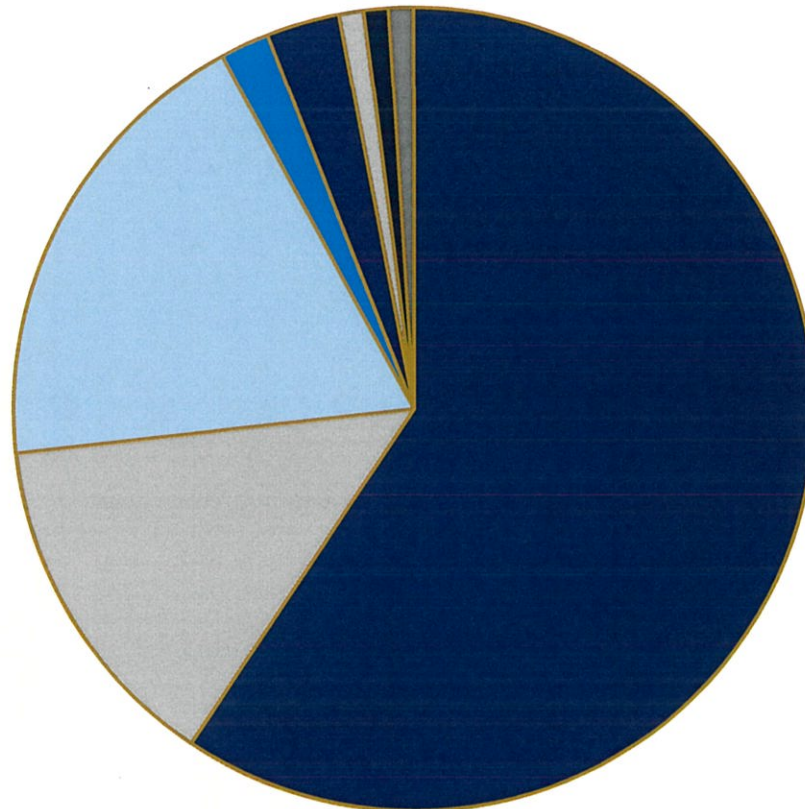
Mediation in family provision matters

- Approximately 200 estates throughout Australia are litigated every year
- Over 100 of those estates are subject to family provision claims
- Disputes over the validity and/or construction of a Will account for approximately 30% of estate litigation

Family Provision throughout Australia

Mediation in family provision matters

Percentage of Claims throughout Australia



■ NSW ■ QLD ■ VIC ■ SA ■ WA ■ TAS ■ ACT ■ NT

Understanding Estate Litigation



Mediation in family provision matters

- Who bears the brunt of the financial burden family provision orders?
 - An estate is not a magic pudding.
 - Costs and provision must be borne by the estate.
 - Generally, non-dependent beneficiaries such as charities and other beneficiaries not related to the Deceased

Understanding the Family Provision Process



Stages of Family Provision Process

- Death of the testator
- Legal Personal Representative applies for a Grant
- The Claimant for Provision files their Claim with the Court
- Legal Personal Representative provides a notice of the claim to beneficiaries and other Eligible Persons
- The Court will then set down a timetable for the Parties to file and serve their evidence

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Stages of Family Provision Process

- The Legal Personal Representative will ask if you wish to be heard in the proceedings. This is your opportunity to put forward information your organisation may have about:
 - Your charity, its history and works
 - Your charity's relationship with the Deceased
 - Any representations made by the Deceased to your charity during their lifetime
 - How will your charity use its gift?

- Matter proceeds to mediation

Understanding Mediation



The Mediation Process

- The parties gathered together in a room at neutral location
- The mediator will make opening remarks
- The claimant is given an opportunity to state their position
- The Legal Personal Representative is given an opportunity to state the position of the Estate
- Other interested parties will be asked to state their position
- Discussions begin to resolve the dispute
- The mediator will move between the parties encouraging them to come to a mutual agreement
- This process may go back and forth for some time, until the parties have reached an agreement

Understanding Mediation



The Mediation Process

- The matter may resolve at mediation
- If it is not resolved, the Court will list the matter for hearing
- Often the parties will continue to endeavour to settle prior to hearing
- Only about 5% of all Family Provision matters will progress to hearing

Understanding Mediation



The Power of Mediation

- Mediation has a profound impact on the psychology of parties to a dispute
- Parties are more likely to understand each other's needs if they are compelled to physically sit opposite each other and actually listen to their concerns
- Mediation gives the parties an opportunity to maintain some control over the outcome
- If successful, it can create significant savings in legal fees for the parties

Questions

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