

THE AUSTRALIAN BUSINESS REVIEW

Wednesday, June 19, 2024

Impatient grandkids are suing for bigger inheritance payouts from their grandparent's estate

By **Jame Kirby**

Wealth Editor

The next time you give your grandkids a financial gift, keep this in mind. The more you give them, the more grounds they have to sue your estate later on.

And grandkids pole-vaulting the interests of the middle generation are increasingly suing in Australian courts.

In fact, a recent case - *Curtis v Curtis* - may trigger more claims after an initial judgement appeared to lower the bar for claims from aggrieved grandchildren.

Fee arrangements where many external claims end up being paid by the estate are also underpinning a wave of activity from adult grandchildren.

As lawyer Matthew Burgess, of View Legal explains: 'Why wouldn't they have a go? This is the TikTok generation, and the word gets out pretty fast if there are new ways to make money.'

Until very recently, the issue of anyone suing their grandparent's estate had been marginal because grandparents rarely gifted large sums to grandchildren.

In fact, a recent case *Curtis v Curtis* may trigger more claims after an initial judgement appeared to lower the bar for claims from aggrieved grandchildren.

Until very recently, the issue of anyone suing their grandparent's estate had been marginal because grandparents rarely gifted large sums to grandchildren.

Instead, action in the courts largely related to 'in loco parentis' special claims.

Typically this included distinct financial dependency where a child might have been living in the grandparents' home.

But as property prices have escalated and legal culture has changed to include 'no win, no fee' operators, disputes are growing and may also include death benefits paid out by super fund.

According to Burgess it is "set to grow exponentially - we have a perfect storm where there is more wealth, grandparents are living much longer and the law is still evolving".

Burgess says the *Curtis v Curtis* (2023) case where an uncle remained in the picture and involved two grandkids pushing ahead with a claim on their grandparent's estate, is instructive

He says that even when a grandparent doesn't provide money or even gifts, it did not necessarily prevent the court from concluding a partial dependence existed.

The initial judgement in the case was later overturned on appeal earlier this year. However, lawyers suggest the successful appeal has left many questions unanswered.

More importantly, lawyers have been left to consider the conclusion from the earlier judgement, which said dependency under Australian law does not require "financial or other material assistance".

'We will have to see where it goes from here' says Donal Griffin of Legacy Law. But people need to be aware of what is happening.

Griffin suggests the concept of dependency is being continually tested as grandparents get more financially involved with their grandkids, often paying substantial school fees or even helping with home deposits.

What can grandparents do?

Legal experts suggest concerned grandparents should get an affidavit signed that spells out their intentions in relation to gifts - specifically, that those gifts are not to be seen as an indicator of dependency.

Such affidavits are now increasingly common in legal practices, especially those who work closely with private wealth managers.

Writing in a recent specialist legal article, Burgess of View Legal suggested: "Aggrieved beneficiaries challenging estates - including challenging decisions made by trustees of a superannuation fund in relation to payment of a death benefit - are arguably a 'growth industry'; with no signs of a slowdown in the growth. Indeed, if tougher financial times are in the immediate future, it is likely that this will further stimulate the industry."