

## INADEQUATE TESTATOR'S MAINTENANCE QUANTITIFICATION

**Inadequate testator's maintenance** refers to a situation where the provisions made in a deceased person's will (or the statutory intestacy provisions) are deemed insufficient to adequately provide for the **proper maintenance, support, education, or advancement in life** of a claimant. What is appropriate can vary greatly and so quantification of individual circumstances and assist in achieving a successful outcome or alternatively showing it is not needed. The NetActuary projection can take the anticipate future Age Pension entitlement into account – something that requires a more sophisticated financial model.

Let's delve into the details:

### 1. Threshold Question:

- The court assesses whether the deceased's will has made adequate provision for the claimant's needs.
- The term "adequate" is relative and flexible, considering the claimant's station in life and the nature of their relationship with the deceased.
- The court evaluates competing needs and considers both current and future requirements of the claimant.

### 2. Factors Considered by Australian Courts:

- The court takes into account various factors, including:
  - **Family Relationship:** The nature and duration of the relationship between the applicant and the deceased.
  - **Obligations and Responsibilities:** Any obligations or responsibilities owed by the deceased to the applicant or other beneficiaries.
  - **Estate Size and Liabilities:** The extent of the deceased's estate and any liabilities.
  - **Financial Resources and Needs:** The financial resources and needs of the applicant.
  - **Disabilities:** Any physical, intellectual, or mental disabilities.
  - **Age:** The age of the applicant.
  - **Contributions:** Contributions made by the applicant to the deceased's estate.

### 3. Recent Cases:

- The following are recent cases:
  - In *Joss v Joss*, the court awarded a claimant a significant portion of the estate despite strained family relationships, emphasizing the moral duty created by ongoing financial support from the testator<sup>2</sup>.
  - *Iacono v Iacono* affirmed that poor conduct by a claimant does not necessarily disqualify them from receiving further provision<sup>2</sup>.

### 4. Implications:

- If a parent provides ongoing financial support to a child (creating dependency), the child may challenge the parent's estate.
- The court's discretion allows it to remedy a testator's breach of moral responsibility to provide adequately for others<sup>2</sup>.

In summary, inadequate testator's maintenance involves assessing whether a will adequately meets the claimant's needs, considering various factors and the moral duty owed by the testator. Quantification of those issues would be helpful to advance the matter.