An Analysis of Conduct, Undue Influence, and the Modern Family Provision Landscape

With reference to Madjeric v Madjeric [2025] QDC 126

12 November 2025

Abstract

This article examines two critical areas of evolution in Australian family provision law that challenge conventional understanding of the field. First, it is contended that the common binary framing of will challenges—either proving incapacity in solemn form or demonstrating applicant need—obscures a more nuanced reality where conduct, undue influence, and suspicious circumstances play determinative roles even absent successful capacity challenges. Second, this article analyses how demographic shifts toward blended families over the past 50 years have reshaped costs allocation and eroded the informal 'every child wins a prize' principle. The recent Queensland decision in *Madjeric v Madjeric* [2025] QDC 126 provides a contemporary lens through which to examine this first trend in particular, demonstrating how courts navigate competing narratives of conduct, and the weight given to testators' explanatory statements.

1. Introduction

Family provision law in Australia exists at a perpetual tension point between testamentary freedom and community expectations of moral duty. Legal practitioners and perhaps the broader public tend to conceptualize will challenges through a simplified binary: either prove the will is invalid (typically through lack of capacity—a notoriously difficult evidentiary burden) or demonstrate the applicant has financial 'need' for further provision. This framing, while capturing the formal structure of family provision applications, obscures crucial aspects of how these cases are actually determined.

This article argues that this conventional understanding represents a form of professional folklore that fails to acknowledge the real ascendancy of conduct-based considerations, even where they are not explicitly admitted as determinative by courts. Furthermore, the dramatic social changes of the past half-century—particularly the rise of serial marriages and blended families—have fundamentally altered the family provision landscape in ways that deserve careful analysis.

The decision in *Madjeric v Madjeric* [2025] QDC 126, while unremarkable in its formal application of the two-stage *Singer v Berghouse*[1] test,[2] provides a revealing case study of both phenomena. The applicant, Eric Madjeric, succeeded in obtaining $250,000 from his late mother's estate despite: (a) having received substantial lifetime gifts totaling over

---

[1] (1994) 181 CLR 201.

[2] *Singer v Berghouse* (1994) 181 CLR 201, 210.

$400,000; (b) facing allegations of financial misconduct as attorney; (c) competing with his brother for limited estate assets; and (d) a statutory declaration by the testator essentially disinheriting him. The decision illuminates how conduct considerations—on both sides—actually operate, and how courts navigate the competing claims characteristic of blended family dynamics.

2. Part I: The False Binary - Beyond Capacity and Need

2.1 The Conventional Framework

The standard narrative presented to clients and taught in legal education presents family provision challenges through a binary lens:

Path 1: Challenge the Will's Validity

Attack the will in solemn form, typically on grounds of:

- Lack of testamentary capacity
- Want of knowledge and approval
- Undue influence
- Fraud or forgery

However, this path faces formidable obstacles. The evidentiary burden is high, the testator cannot testify, and courts are reluctant to override clear testamentary intentions expressed in properly executed documents. The test for undue influence requires proof of actual coercion—the testator must have been in such a condition that 'if he could speak his wishes to the last, he would say, "This is not my wish but I must do it"'.[3] This standard is rarely met.[4]

Path 2: Accept the Will's Validity, Prove Need

Proceed via family provision application under the relevant state legislation, demonstrating:

- Eligibility (relationship to deceased)
- Inadequate provision for 'proper maintenance and support'
- Financial need justifying further provision

---

[3] *Wingrove v Wingrove* (1885) 11 PD 81.
[4] Burns, Fiona R, 'Elders and Testamentary Undue Influence in Australia' [2005] UNSWLawJl 8; (2005) 28(1) *UNSW Law Journal* 145.

This narrative suggests that once Path 1 is rejected (as it almost always is), the case becomes purely about the applicant's financial circumstances and needs, with the testator's expressed wishes relegated to one factor among many.

2.2 The Unspoken Reality: Conduct and Suspicious Circumstances

What this binary framing misses is the substantial 'middle ground' where conduct, circumstances surrounding will preparation, and relationship dynamics exert real influence on outcomes—even where no formal capacity or undue influence challenge succeeds.

Courts consider numerous factors beyond mere financial need: the character and conduct of the applicant before and after the date of death; any evidence of physical, verbal, psychological or sexual abuse by a claimant against a deceased person may weigh against that person's claim. The more morally reprehensible the conduct, the lesser the court may regard the deceased's moral duty to provide for the applicant, assessed according to 'accepted social and community values'.[5]

But conduct operates bidirectionally. Courts also scrutinize:

- The conduct of other persons before and after death
- The circumstances surrounding will preparation
- Patterns of influence over the testator
- Timing and context of testamentary changes
- The testator's relationship with competing beneficiaries

This creates what may be termed 'evidential undue influence'—a constellation of suspicious circumstances that, while insufficient to invalidate the will, nonetheless shapes the court's assessment of moral obligations and appropriate provision.

2.3 Undue Influence: The High Bar That Still Matters

The formal doctrine of undue influence remains narrowly defined. Undue influence cannot be presumed; the person making the allegation must show, on the balance of probabilities, that coercion was actually exercised and the execution of the will was a result of that coercive conduct.

Pressure such as advice and persuasion from a family member is deemed acceptable and will not amount to undue influence if the testator is free to make a decision and is not deprived of their free will. The test that courts use is 'actual coercion,' not merely persuasion, influence, or opportunity.

---

[5] *Cowap v Cowap* [2020] NSWCA 19, [26]–[27].

However, the practical reality is more nuanced. The modified doctrine shifts focus from whether a beneficiary acted coercively to the substantial issue: whether the testator executed a will expressing his true desires where there may have been competing influences.[6] Rather than seeking direct evidence of coercive conduct, parties present all relevant direct and circumstantial evidence to construct the likely course of events.[7]

This 'modified doctrine' approach means that evidence falling short of proving actual undue influence may nonetheless inform the family provision analysis—particularly when assessing the testator's moral obligations and the 'wise and just testator' standard.

2.4 Madjeric's Contribution to Understanding Conduct

Madjeric v Madjeric provides an instructive example of how conduct considerations operate in practice, even where no formal capacity or undue influence challenge is mounted.

The Statutory Declaration

The testator made a statutory declaration on 8 February 2022 stating that Eric 'has already received more than his fair share from my estate, and is therefore entitled to nothing more as his inheritance.' The declaration included serious allegations: 'My son, Zdrako Eric Madjeric (Eric), while acting as my Attorney, requested and accepted funds from me, and removed funds from my bank accounts for his own personal use from 2014 to 2021, contrary to Queensland Public Guardian guidelines.'

Sheridan DCJ's treatment of this declaration is revealing:

> 'I consider the statutory declaration made by the testator must be viewed in light of other evidence that I do accept. I accept the evidence that it is apparent that the testator developed a paranoia and distrust of others and had accused many people of stealing, including Lou, and that those allegations were unsubstantiated.'[8]

The judge continued: 'Given that tendency, it is likely that she accepted what had been told to her by Lou regarding what Lou considered to be unauthorised withdrawals from his mother's bank account by Eric... I consider the correspondence on that issue was driven by Lou and not his mother; albeit accepted by his mother and forming the basis for a belief that additional funds had been received by Eric in her lifetime.'[9]

This represents a sophisticated analysis that:

- Acknowledges the declaration's existence and probative value
- Contextualizes it within evidence of the testator's psychological state

---

[6] *Bridgewater v Leahy* (1998) 194 CLR 457, 473.
[7] Burns, above n 4, 161–162.
[8] *Madjeric v Madjeric* [2025] QDC 126, [146].
[9] *Ibid* [147]–[148].

- Examines the circumstances of its creation
- Identifies the likely influence of the competing beneficiary
- Adjusts the weight given to the testator's expressed wishes accordingly

Notably, no formal undue influence claim was made or proven. Yet the court's analysis effectively discounted the statutory declaration based on circumstantial evidence of influence—evidence that would never meet the strict 'actual coercion' test for invalidating the will.

Comparative Conduct Analysis

The decision also demonstrates how courts weigh competing conduct:

Eric's conduct:

- Received substantial lifetime gifts ($405,000)
- Made withdrawals as attorney that became subject to dispute
- Had limited contact with testator in final 18–24 months (though this was characterized as enforced by Lou)

Lou's conduct:

- Admitted taking money from joint flats account during unemployment (2012–2015)
- Initiated legal correspondence regarding Eric's attorney withdrawals
- Refused to allow Eric access to the property where the testator lived
- Extended this prohibition to Eric's children visiting their dying grandmother
- When asked why he restricted access even when testator was in palliative care, admitted: 'I didn't trust him... I thought he might do something that I didn't want him to do'[10]

The judge's finding is particularly significant:

> 'I do not accept Lou's evidence that he would have walked the testator to the gate in order for her to spend time with Eric. Given his evidence as to his total lack of trust in Eric, which extended to a total lack of trust in Eric's children to a point where he did not wish Eric's children to visit their dying grandmother, I do not accept that Lou would have permitted, or assisted in permitting, visits by the testator with Eric of which he was aware.'[11]

---

[10] *Ibid* [60].
[11] *Ibid* [150].

This comparative conduct analysis—while not formally labeled as such—clearly influenced the court's assessment of the testator's moral obligations and the appropriate provision.

The Pattern in Will Changes

The decision chronicles multiple will changes between 2019 and 2022, coinciding with periods when Lou and the testator were either reconciled or estranged. The court notes: 'This does give some insight into the preparation by the testator of her various wills and her willingness at various times to change her allegiances. That behaviour further sheds light on the weight that should be given to the statutory declaration.'[12]

Again, no formal challenge to any will is sustained, yet these circumstances materially affect the family provision analysis.

The 'Conduct Shadow' Doctrine

What emerges from *Madjeric* is what may be termed the 'conduct shadow' doctrine: where circumstances surrounding will preparation and beneficiary behaviour suggest influence, overreaching, or questionable conduct—even if insufficient to invalidate the will—courts will:

- Give reduced weight to testamentary explanations and declarations
- Scrutinize the relationship dynamics more carefully
- View the competing beneficiary's position less favourably
- Be more willing to find inadequate provision
- Make more generous awards to the applicant

This operates as a practical counterweight to strict undue influence doctrine, allowing courts to address perceived injustice without the impossible burden of proving actual coercion.

3. Part II: The Changing Landscape of Modern Family Provision

3.1 Serial Marriages and Blended Families: The Demographic Reality

The Australian family has undergone profound transformation over the past 50 years. Blended families account for just over 3.7% of all families, while step-families comprise a further 6.3%. The nuclear family is no longer the most common family form in Australia, with one-parent families with dependent children comprising around 8% of all families.[13]

---

[12] *Ibid* [153].
[13] Australian Bureau of Statistics, *Family Blending* (2016 Census).

These statistics understate the impact on succession law. The increasing incidence of blended families is partly driven by longer life expectancy and increasing divorce rates, providing more opportunities for a testator to repartner in a significant second (or third) relationship after the divorce or death of their first partner.[14]

This demographic shift creates unique tensions: the testator's children and the testator's second partner each have legitimate expectations. The testator's children may consider that their parent's money is 'family money' that should flow to them, and not be lost to the second partner and ultimately the second partner's own children.

The result is a fundamental change in the nature of family provision litigation. In New South Wales, there have been increasing cases involving step-children, though the number of matters filed in the Family Provision List has decreased from 2017, which is somewhat surprising given the rise in blended families and the aging population.[15] The suspected reason is that more legal practitioners are attempting to resolve matters collaboratively before filing, but likely other reasons apply beyond the purview of this article.[16]

3.2 The Erosion of 'Every Child Wins a Prize'

For much of the 20th century, there existed an informal expectation—never formally articulated but widely understood—that biological children would generally receive some provision from a parent's estate, regardless of their financial circumstances. Courts often found ways to award modest sums even to adult children with independent means, reflecting community expectations that parents should recognize their children.

This 'every child wins a prize' mentality has undergone significant erosion in recent decades, particularly as courts have confronted adult children with substantial independent wealth making claims against modest estates.

Traditionally, adult children, and particularly sons, have had to show a special need or special claim to succeed.[17] However, recent authorities confirm that significant wealth will not be an insuperable hurdle to a successful claim, and applicants may succeed even if they have more than sufficient resources of their own, on the basis that all relevant factors must be balanced.[18]

Yet the practical reality shows increased judicial scepticism. In recent times, particularly in New South Wales, courts have been more demanding of adult children making family

---

[14] *Ibid*.
[15] White, Ben et al, 'Estate Contestation in Australia: An Empirical Study of a Year of Case Law' (2015) 38(3) *UNSW Law Journal* 880, 889.
[16] *Ibid* 890.
[17] *Hughes v National Trustees Executors and Agency Co of Australasia Ltd* (1979) 143 CLR 134, 147–148 (Gibbs J).
[18] *Vigolo v Bostin* [2005] 221 CLR 191, [111]–[112].

provision claims when they are reasonably well off.[19] Courts have made clear that status as a child does not confer an automatic entitlement.[20]

There is often a misconception that an adult child will receive an equal portion of an estate if they contest the will. This is not the case. The applicant must prove the testator did not make adequate provision. If the applicant does not have clear financial need, the claim will likely fail.

The shift is particularly pronounced where:

- The child is financially independent and comfortable
- The estate is modest relative to competing claims
- The deceased provided for the child during lifetime
- There is estrangement (particularly if caused by the child)
- A surviving spouse has strong needs

In the Western Australian case of *Mills v Piller*[21] the applicant daughter was unemployed, had no assets, lived with the deceased, and received Centrelink benefits. The estate was valued at $2.2 million, meaning each of five children would receive about $400,000. The claim was unsuccessful.

3.3 The Costs Revolution

Perhaps the most significant evolution in family provision law has been the transformation of costs practice. The traditional principle, articulated in *Singer v Berghouse*, held that 'family provision cases stand apart from cases in which costs follow the event...costs in family provision cases generally depend on the overall justice of the case'.[22]

This was widely interpreted to mean that both parties' costs would typically come from the estate regardless of outcome—eliminating the usual litigation disincentive of an adverse costs order. This interpretation had profound effects: small estates were not immune from contest. Where estate value was stated, 60 per cent of contested estates were valued below $1 million and just over half of those estates were worth less than $500,000.[23] This may reflect the position with costs in these cases, where the traditional disincentive to litigating (the threat of an adverse costs order) was not present in the same way.[24]

---

[19] See generally Gregory George, *Annual Summary of Family Provision Decisions* (NSW Supreme Court, 2023–2024).
[20] *Mallitt v Gow* [2022] NSWSC 1012, [45].
[21] *Mills v Piller* [2017] WASC 45.
[22] *Singer v Berghouse* (1994) 181 CLR 201, 212 (Mason CJ, Deane and McHugh JJ).
[23] White et al, above n 15, 891–892.
[24] *Ibid* 892.

The Shift

In recent years, courts have become markedly less generous with costs, particularly toward unsuccessful applicants. The awarding of legal costs is extremely difficult to advise upon. Costs don't necessarily follow the event, and the court has discretion in how it awards costs based upon the overall justice of the case. However, in recent years courts are not averse to making costs orders against claimants.

A successful applicant can generally expect that their costs will be paid out of the estate, whereas an unsuccessful applicant will generally be responsible for paying at least some of the costs. The merit of the applicant's case is relevant. A party will often be liable for costs where their claim was frivolous or vexatious.

Costs Capping

Some jurisdictions have introduced formal costs caps. In Western Australia, item 12 of the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2018* specifies that, unless otherwise ordered, a successful claimant cannot seek costs in excess of the amount of provision they are awarded.[25]

This was reportedly in response to cases where total legal costs for a modest estate were at least 50% (and potentially up to 80%) of the value of the estate.[26]

Even without formal caps, courts increasingly scrutinize costs in family provision matters. In *Nudd v Mannix*, the trial judge regarded the appellant's costs as 'grossly excessive' given the size of the estate. The appellant received a legacy of $120,000 and an order was made capping her costs at $60,000 (reduced from $82,200).[27]

Implications

These costs developments have multiple effects:

- **Increased Settlement Pressure:** Executors facing potential costs exposure are more motivated to settle, even weak claims
- **No-Win-No-Fee Proliferation:** This is perpetuated by the increased prevalence of solicitors operating family provision claims on a 'no win, no fee' costs structure
- **Merit Filtering:** The costs risk may deter borderline claims
- **Disproportionate Impact on Modest Estates:** Costs caps and scrutiny are most intense where estates are smaller

---

[25] *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2018* (WA) item 12.
[26] White et al, above n 15, 892.
[27] *Nudd v Mannix* [2015] NSWCA 404, [53]–[56].

The cumulative effect challenges the traditional conception of family provision as a low-risk remedy for disappointed beneficiaries.

3.4 Stepchildren and Competing Claims

The rise of blended families has brought stepchildren's claims into prominence, with courts wrestling with difficult questions about moral obligations in reconstituted family units.

Less than 20 years ago, courts considered it 'novel' to suggest that a step-parent has an obligation to provide for a stepchild.[28] With recent cases, 'the time when stepchildren should be considered to have a far inferior claim to the natural child of a testator has well passed'.[29]

However, stepchildren face unique hurdles. Because the stepchild is not kin to the testator, they do not have the same statutory right to contest a will as a biological or legally adopted child. A step-child must provide evidence of eligibility, whereas a biological or adopted child is automatically eligible to apply.

The eligibility requirements vary by jurisdiction but typically require proof that:

- The stepchild was a member of the household
- The stepchild was wholly or partially dependent on the deceased
- Additional factors warrant the application

In Queensland, the position is governed by section 41(1)(b) of the *Succession Act 1981* (Qld), which defines 'child' to include 'a person in relation to whom the deceased person was, at any time, *in loco parentis*'.[30] The test requires that the deceased stood in the position of a parent to the stepchild, whether at the time of death or at any time when the person was a minor. The courts have emphasized that the *in loco parentis* relationship involves more than mere residence; it requires the deceased to have assumed 'the status and obligations of a parent' toward the child.[31] Key factors include financial support, provision of accommodation, involvement in education and discipline, and the duration and quality of the relationship. Significantly, Queensland courts have held that temporary or intermittent periods of *in loco parentis* may be sufficient if there was a genuine parent-child relationship during those periods.[32]

Problems often arise in situations where step-children feel they should be included in a person's will and share in their estate. Difficulties commonly arise when a person dies

---

[28] *Nicholson v Knaggs* [2009] VSC 64, [82]–[85] (Forrest J).
[29] *Underwood v Underwood* [2009] QSC 107, [30] (Muir J).
[30] *Succession Act 1981* (Qld) s 41(1)(b); *Re Fulop* [1987] 2 Qd R 291; *Lambeff v Farmers* [2012] QSC 119, [47]–[52] (McMurdo J).
[31] *Re Fulop* [1987] 2 Qd R 291, 294.
[32] *Lambeff v Farmers* [2012] QSC 119, [49]–[52] (McMurdo J).

leaving their entire estate to a later partner, potentially leaving children from a prior relationship with no direct provision from their parent's estate.

Strategic Considerations

The family provision legislation may effectively compel a testator's children to claim against the testator's estate.[33] This is because the testator's children are automatically eligible applicants against the testator's estate, but there may be difficulties claiming against the testator's spouse's estate.

This creates the 'sequential inheritance problem': children must claim against the first parent's estate (pitting themselves against the surviving spouse), because they may have no claim when the second parent dies.[34]

Estate Planning Responses

Testators in blended family situations have attempted various strategies:

- Mutual will agreements (fraught with difficulties)
- Life interests with capital protected trusts
- Family provision releases (problematic and often unenforceable)
- Specific legacies to children with residue to spouse

None of these solutions is perfect, and all carry risks of challenge or circumvention.

3.5 Madjeric as Exemplar of Modern Complexity

While *Madjeric* did not involve a blended family in the traditional sense (no stepchildren), it exemplifies modern family provision complexity:

Competing Adult Children

Lou (age 78) and Eric (age 69) were each from a different father, both retired, both in reasonable financial positions, both with adult children. The estate ($870,000 net) was modest relative to their needs and expectations. Neither had overwhelming financial need, but both had legitimate moral claims based on relationship and contribution.

Lifetime Provision Consideration

Eric received $405,000 in lifetime gifts (though Lou disputed some characterizations). Lou received $120,000 in lifetime gifts/benefits. (He also had his principal place of residence at Caboolture improved by a secondary dwelling installed by the testator at her considerable

---

[33] *Camernick v Reholc* [2012] NSWSC 1537, [157]–[159] (Hallen J).
[34] See *Bower v Wood* [2007] SASC 327, [66]–[71] (Gray J).

cost.[35]) The court carefully analysed various of these transactions, demonstrating the increasing importance of inter vivos transfers in family provision analysis.

'Small Estate' Litigation

Despite the relatively modest net estate value, the parties proceeded to a three-day hearing with substantial legal costs, an example of emotionally-driven litigation even where the financial stakes don't justify the costs.

The Award

Eric received $250,000 from an $870,000 net estate—roughly 28.7% after his gift was essentially repaid to other family members. This represents a compromise outcome typical of cases where both parties have arguable positions, with the court effectively redistributing to reflect comparative moral claims.

4. Conclusion: Toward a More Honest Discourse

The family provision landscape has evolved substantially, yet professional discourse often lags behind practical reality. This article urges greater candour about two key realities:

First: The Conduct Shadow

Legal practitioners should acknowledge that conduct, circumstances, and relationship dynamics play far more determinative roles than the formal 'capacity or need' binary suggests. While proving formal undue influence remains exceptionally difficult, evidence of influence, overreaching, isolation, or suspicious circumstances materially affects outcomes—even where the will remains formally valid.

Madjeric demonstrates this principle clearly. No capacity challenge was mounted, no undue influence was proven, yet the statutory declaration was effectively discounted based on contextual evidence about the testator's psychological vulnerabilities, the probable influence of the competing beneficiary, the circumstances of will preparation, and the pattern of testamentary changes.

Courts are, in practice, willing to look behind formally valid wills where the circumstances warrant scepticism. This is not improper—it reflects the inherent flexibility of the 'wise and just testator' standard[36] and the broad statutory language requiring courts to consider 'all the circumstances.'

Practitioners should: (1) investigate circumstances thoroughly, even where capacity cannot be challenged; (2) document patterns of influence and relationship changes; (3) obtain evidence about competing beneficiaries' conduct; (4) frame family provision arguments to

---

[35] *Madjeric v Madjeric* [2025] QDC 126, [37], [74]–[77].
[36] *Coates v National Trustees Executors & Agency Co Ltd* (1956) 95 CLR 494, 523 (Fullagar J).

highlight concerning circumstances; and (5) advise executors to scrutinize testamentary explanations critically.

Second: The End of Easy Provision

The notion that biological children will routinely receive some provision regardless of circumstances is increasingly obsolete. Courts now: require genuine financial need, not mere disappointed expectations; heavily weight lifetime provision and assistance; consider character and conduct as potentially disentitling; scrutinize adult children's claims more sceptically; award more modest provision in competing claim scenarios; and impose costs consequences for weak or unreasonable claims.

The 'every child wins a prize' mentality, to the extent it ever existed as judicial practice rather than claimant expectation, has given way to more rigorous needs-based analysis.

Additionally, costs developments mean family provision is no longer the low-risk remedy it once appeared. Unsuccessful applicants face real costs exposure, and even successful applicants may see their awards substantially eroded by capped or scrutinized costs orders.

These changes reflect broader jurisprudential shifts: increased respect for testamentary freedom;[37] recognition that adult children should be self-supporting; acknowledgment that parents may legitimately prefer some children over others; and response to concerns about unmeritorious claims consuming estate assets.

The Blended Family Challenge

Perhaps most significantly, the rise of serial marriages and blended families has fundamentally altered the moral landscape. Courts must now navigate competing claims between spouses and children from prior relationships; stepchildren's moral claims against step-parents; the impact of lifetime transfers between spouses; questions about whose 'family money' estate assets represent; and sequential inheritance problems where children must claim against the first parent.

These scenarios defy simplistic analysis and require sophisticated estate planning and thoughtful litigation strategy.

Madjeric v Madjeric exemplifies many of these modern complexities. It is not a groundbreaking decision in terms of doctrine—it applies established *Singer v Berghouse* principles in orthodox fashion. Yet it reveals, through careful reading, how courts actually analyse these cases: weighing conduct, scrutinizing circumstances, evaluating comparative moral claims, and reaching pragmatic compromise outcomes.

The Path Forward

---

[37] *Pontifical Society for the Propagation of the Faith v Scales* (1962) 107 CLR 9, 19 (Dixon CJ).

Honest professional discourse requires acknowledging these practical realities rather than maintaining the fiction of a simple 'capacity or need' dichotomy. Clients deserve accurate advice about how conduct evidence will actually affect their case; the genuine difficulty adult children face absent real need; the costs risks of proceeding with marginal claims; and the complex dynamics of blended family situations.

Similarly, testators planning their estates need realistic guidance about the limited protection offered by statutory declarations (as *Madjeric* shows); the genuine vulnerability of second spouses; the difficulty of protecting estate assets for ultimate distribution; and the advisability of lifetime family provision discussions.

Family provision law has always required balancing competing interests and navigating emotional family dynamics. The modern era—with its blended families, sceptical cost-consciousness, and more demanding judicial scrutiny—makes this balancing act ever more complex. Professional excellence requires acknowledging this complexity rather than retreating to comfortable oversimplifications.[38]

The binary of 'capacity or need' never captured the full story. In an age of serial families and cost-conscious courts, it captures even less. *Madjeric v Madjeric* reminds us that family provision law, like the families it serves, is far more nuanced than any simple formula can reflect.

5. References

Legislation

- *Administration and Probate Act 1958* (Vic)
- *Family Provision Act 1972* (WA)
- *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2018* (WA)
- *Succession Act 1981* (Qld)
- *Succession Act 2006* (NSW)

Cases

- *Bower v Wood* [2007] SASC 327
- *Bridgewater v Leahy* (1998) 194 CLR 457
- *Camernick v Reholc* [2012] NSWSC 1537
- *Coates v National Trustees Executors & Agency Co Ltd* (1956) 95 CLR 494

---

[38] *Palmer v Dolman* [2005] NSWCA 361, [110] (Ipp JA).

- *Cowap v Cowap* [2020] NSWCA 19
- *Hughes v National Trustees Executors and Agency Co of Australasia Ltd* (1979) 143 CLR 134
- *Lambeff v Farmers* [2012] QSC 119
- *Madjeric v Madjeric* [2025] QDC 126
- *Mallitt v Gow* [2022] NSWSC 1012
- *Mills v Piller* [2017] WASC 45
- *Nicholson v Knaggs* [2009] VSC 64
- *Nudd v Mannix* [2015] NSWCA 404
- *Palmer v Dolman* [2005] NSWCA 361
- *Pontifical Society for the Propagation of the Faith v Scales* (1962) 107 CLR 9
- *Re Fulop* [1987] 2 Qd R 291
- *Singer v Berghouse* (1994) 181 CLR 201
- *Underwood v Underwood* [2009] QSC 107
- *Vigolo v Bostin* [2005] 221 CLR 191
- *Wingrove v Wingrove* (1885) 11 PD 81

Secondary Sources

- Australian Bureau of Statistics, *Family Blending* (2016 Census)
- Burns, Fiona R, 'Elders and Testamentary Undue Influence in Australia' [2005] UNSWLawJl 8; (2005) 28(1) *UNSW Law Journal* 145
- Gregory George, *Annual Summary of Family Provision Decisions* (NSW Supreme Court, 2023–2024)
- White, Ben; Tilse, Cheryl; Wilson, Jill; Rosenman, Linda; Purser, Kelly; Coe, Sandra, 'Estate Contestation in Australia: An Empirical Study of a Year of Case Law' (2015) 38(3) *UNSW Law Journal* 880

Disclaimer

This article is intended for academic discussion and educational purposes only. It does not constitute legal advice. Practitioners should conduct their own research and analysis before advising clients on family provision matters.

Date of Publication: 12 November 2025