

FOSTER CHILDREN AND INHERITANCE RIGHTS

In general, foster children don't have any automatic rights or entitlements to the estate of their foster carers.

However, in some cases (because of the particular circumstances of the particular case), a foster child may be entitled to make a claim of their deceased carer's estate. They must satisfy all the following conditions:

A foster child may be eligible to make a claim on his or her foster carer's estate where:

- the child had been wholly or partly dependent on the deceased person, and
- the child was a member of the household of which the deceased person was a member, and
- having regard to all the circumstances of the case there are factors which warrant the making of the claim, and
- adequate provision for the proper maintenance, education or advancement in life of the child has not been made by the will of the deceased person, or by the operation of the intestacy rules.

Claims by foster children on their carer's estates are not frequent. In cases where a foster child's claim has been successful, the court has found that factors such as the following warranted making provision for the child from the estate:

- evidence of a close family relationship between the deceased and the applicants, more like children than foster children, during childhood and into their adulthood
- letters where the deceased referred to herself and her husband as "Mum and Dad" showing family care and love
- continuing support (financial and otherwise) that was provided by the deceased for the applicants after the foster children moved from the family home, married, had children, and divorced
- a large estate where the competing claims of biological children can be readily accommodated.

Foster carers should seek legal advice regarding making a will and what, if any, provision they should make for foster children in their long term care.

Where a foster carer has the long term care of a foster child (until the child turns 18 or over), that child is an integral part of the carer's household and the child is regarded by the carer as their child (that is, akin to a parent/child relationship), it is recommended the carer seek advice regarding whether they should make provision for that child in their will.

Any foster carer may choose to make provision for their foster child in their will, regardless of whether or not the child is likely to have a legal claim or entitlement to their estate.

Disclaimer: This information does not constitute legal advice and was based upon information provided by FACS Legal.