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Submission No.

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Victorian Law Reform Commission – Succession Laws – Submission

As per your request for submissions to the above subject, I would like to contribute to the review in the following manner and in line with the Law Reform Commissions community engagement principles.

Firstly I would like the Commission to define what constitutes a 'small estate'.

I would like to draw your attention to my family's only experience in this area of the law by referring you to **VSC 204 White v Muldoon & Others dated 8 June 2006**. The result of this case shows where there has been equal provision made for all beneficiaries under a will, the Judge can over-rule my mother's wishes and make a bigger distribution for a member of our family who had wasted every opportunity they had in life and we were being punished by the law for being responsible contributors to society. The freedom of the will maker to have their wishes adhered to, should not be overridden by the courts.

I believe the jurisdiction of the Supreme Court for small estates is not the right place to have matters settled as it is the most expensive court and therefore diminishes the residual estate. There must be a better way of settling things and reducing costs.

Family Provision

Part IV of the Administration and Probate Act 1958 needs a complete overhaul due to the fact that a deceased may allow a dependency to exist, but that should not automatically entitle a beneficiary to claim a larger amount of the estate than was allowed for under the will, particularly when that beneficiary had already been bleeding the deceased prior to their death.

In our case the beneficiary who enjoyed a larger share of the estate only lived for 15 months after the judgement and therefore the proceeds went to the daughter who initiated the action on her father's behalf [REDACTED]

If people contesting wills had to pay costs themselves and not out of the estate, I am sure there would be far fewer cases clogging up the Supreme Court system.

Unfortunately, as a result of our one encounter with the Courts, we now have little faith in the Justice system, particularly this area of the Law.

I hope this submission has assisted you to look at this area of the law from a different perspective rather than a lawyer's view of wills and probate.

Deirdre Lampard