

Family Property Law: out of step with society's expectations?

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Property (Relationships) Act 1976:

- Presumption of equal sharing of relationship property
- Applicable to marriage and 3+ years de facto relationships
- On separation and, if surviving spouse/partner elects, on death.



Family Protection Act 1955:

- Adopted in 1950 to prevent destitution of spouse or children and dependence on the State
- Court may order provision from the estate if the deceased failed to make “adequate provision for proper maintenance and support” for their surviving spouse or partner, child, or grandchild.



Problems with Property (Relationships) Act

Significant social change since 1976:

- Greater ethnic diversity
- Marriage no longer paradigm form of partnership
- People living longer
- High rate of separation
- Repartnering common
- Complex family structures



Problems with Property (Relationships) Act

Consequences of social change:

- Opt out system problematic for de facto relationships
- Classification of relationship property problematic
- Limited exceptions to equal division
- Contracting out agreements unreliable
- Extensive use of trusts to avoid the PRA

2019 Law Commission Review:

PRA not fit for purpose!



2019 Law Commission's PRA Proposals

- Retain opt out regime for marriage and 3+ year de facto relationships
- Retain presumption of equal sharing, **but**
- Change classification of family home:
 - Home brought in by one partner remains separate property of that partner
 - Only increase in value during relationship is relationship property
 - If home replaced during relationship, home fully relationship property.
- Remove exception to equal division for short duration relationships
- Broad powers to make orders against assets held in trusts
- Act to apply on separation, not death



2019 Law Commission's PRA Proposals

Example:

- Jo and Tom start a de facto relationship
- Jo is 65, Tom is 62
- Both have two children from prior relationships.
- Tom has few savings and no home. He moves into Jo's mortgage free house; they mostly live off her pension.
- They marry a year later.
- They separate after two years of marriage.



2019 Law Commission's PRA Proposals

PRA:

Tom takes half of Jo's home

New Act:

Tom takes half the increase in value.

If Jo replaced the home during her marriage to Tom, he takes half her home.



2019 Law Commission's PRA Proposals

What could Jo do to protect her home?

1. Contract out of the Act.
2. Put her home into trust.
3. Not buy a replacement home.



2019 Law Commission's PRA Proposals

What do you think of the Law Commission's proposals?



What if Jo dies?

Jo's estate:

House \$1 million

Savings \$300,000 (Jo's separate property)





Jo's will:

1. Tom right to occupy home for one year and \$50,000 legacy
2. Rest of my estate to my children

What are Tom's rights under current law?

Election under the PRA 1976

Option A:

Division of relationship property:
½ house (\$500,000)



Option B:

Inherit under Jo's will:
1 year Occupation + \$50,000

Under the Family Protection Act 1955

- Paramount Jo has duty to support Tom
- Competing interests of Jo's children
- Jo's stepchildren only if being maintained by her at death



What if Jo's will said:

1. All to Tom
2. If he predeceases me, all to my children

Jo's children adult and financially secure, but unhappy with Jo's will

What are Jo's children's rights?

Family Protection Act: Provide “proper maintenance and support” to children

“Support” means:

“not only financial provision to meet economic need, but also **recognition of belonging to the family and having been an important part of the overall life of the deceased**”. [2000] NZCA

1. **Would you award Jo's children a share of her estate?**
2. **If so, how much?**

2021 Law Commission's Succession Law Review

Spouses and partners

- Take inheritance
- If less than share of relationship property entitlement, top up
- Family provision for such period so as to ensure reasonable, independent standard of living

What do you think?

2021 Law Commission's Succession Law Review

Children: includes “accepted” children and whangai

- **Option 1: all children eligible**

if deceased unjustly failed to provide for their financial need or to recognize the child.

- **Option 2: only children under 25 and disabled children eligible**

To ensure sufficient resources for reasonable standard of maintenance, education and assistance to attainment of economic independence

Which option do you prefer?

The image shows the New Zealand flag, which features a red cross on a white background with a blue field and a red star, flying in front of a modern building with a curved facade. The flag is partially obscured by a white curved shape on the left side of the slide.

Law Commission's proposals

Are they out of step with society's expectations?