

## **MEDIA RELEASE**

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Tumu Whakarae Tuarua | Deputy President  
Te Aka Matua o te Ture | Law Commission

### **LAW COMMISSION PROPOSES CHANGES TO SUCCESSION LAW**

Te Aka Matua o te Ture | Law Commission is proposing changes to succession law, which addresses who inherits a person's property when they die. In an issues paper and a consultation website released today, the Commission has identified some issues with the law and has presented options for reform. The Commission is seeking public feedback by 10 June 2021.

Aotearoa New Zealand's succession law has not been reformed in many years. Generally, the law allows people to gift property through their will as they wish. However, certain people, particularly close family, may challenge the will and claim further provision from the estate.

If people die without a will, the law directs which family members should receive the property in the estate and in what shares.

Helen McQueen, lead Commissioner on the review, said:

"Succession law affects every New Zealander, yet much of the key legislation was drafted in the mid-twentieth century. Aotearoa New Zealand has changed significantly since then, affecting the relationships we enter and what we think family means. Societal attitudes and values have changed, and we think some of these laws are now out of date."

"We are consulting on fundamental questions. How important is the freedom to choose what happens to our property after we die? Do we have a duty to provide for our family and whānau? Should succession law reflect the obligations to partners and family that exist during our lifetimes? How can the law help families avoid and resolve disputes about a loved one's estate?"

The Commission notes the potentially different perspectives among Māori.

"Succession is an important kaupapa for Māori and engaging Māori voices in our consultation is a priority for the Commission. We ask about the relationship between tikanga and state law in any reform."

After consultation, the Commission will finalise its recommendations for reform in a report to the Government due by the end of 2021.

\*\*\* END \*\*\*

## What is Te Aka Matua o te Ture | Law Commission proposing?

The Commission's Issues Paper invites feedback on three parts.

Part One examines the basis for good succession law in contemporary Aotearoa New Zealand. It includes a proposal that there should be a single, comprehensive new Act that governs claims against estates, subject to feedback on a framework for developing good succession law from an ao Māori perspective.

Part Two addresses the entitlements to and claims against estates. The Commission's proposals for reform include the following:

- a. A surviving partner should continue to have the right to the same property from the estate that they would get if the couple had separated rather than the deceased partner dying. The surviving partner should be able to choose to divide the couple's relationship property or to take only what is provided to them under the deceased's will or in an intestacy.
- b. Certain family members should be able to claim from a deceased relative's estate to meet their needs if they are not properly provided for in the deceased's will or in an intestacy. Our preferred option is that the deceased's surviving partner and children under a prescribed age should be able to claim "family provision" from the estate. We ask whether the age limit for children should be 18, 20 or 25 years. Two other options we raise are whether disabled adult children should also be able to claim family provision and whether all children should be able to claim a limited award to recognise the parent-child relationship.
- c. People who have contributed significant benefits to the deceased or their estate but received no compensation should be able to make a claim against the estate under the proposed new Act.
- d. The rules that apply to the distribution of intestate estates should be reformed to better reflect the way most intestate people in contemporary Aotearoa New Zealand would want their estate distributed when they die. Where there is a partner but no descendants, we suggest that the partner should get the whole estate, with the parents no longer entitled to a share. If there is no partner, we suggest that the descendants should continue to share the estate. Where there is a surviving partner and descendants, we identify three options for how the estate should be shared, asking whether this should be affected by whether the surviving partner was also the parent of the deceased's children.
- e. Succession of taonga could be governed by tikanga Māori and not general succession law.
- f. We consider how tikanga Māori might recognise and respond to various aspects of succession including the expression of testamentary wishes, obligations to a surviving partner and other whānau members (particularly tamariki), and obligations to someone who has contributed to a deceased or their estate. We ask how tikanga Māori and other shared values might be reflected in new law applicable to all New Zealanders.

Part Two is also the focus of the Commission's consultation website — [www.succession-consultation.lawcom.govt.nz](http://www.succession-consultation.lawcom.govt.nz).

Part Three considers making and resolving claims against an estate. It includes proposals about the property that should be available to meet any successful claim, contracting out and settlement agreements, and the jurisdiction of the courts. It also considers the process for resolving disputes in and out of court, and from an ao Māori perspective.

The Commission's proposals are informed by the results of a survey on public attitudes and values towards succession issues undertaken by the University of Otago and funded by the Michael and Suzanne Borrin Foundation.

## **Background**

Te Aka Matua o te Ture | Law Commission is an Independent Crown Entity operating under its own statute, the Law Commission Act 1985. It reports to the Minister Responsible for the Law Commission. The Commission's statutory purpose is to "promote the systematic review, reform and development of the law of New Zealand". The Law Commission receives its work programme for reform and development work as references from the responsible Minister under section 7 of the Law Commission Act and from Parliament. Visit [lawcom.govt.nz](http://lawcom.govt.nz) for more information.

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For further information about the project, see <[www.lawcom.govt.nz/our-projects/review-succession-law](http://www.lawcom.govt.nz/our-projects/review-succession-law)>.