

## CHAPTER 1

---

# Introduction

---

### IN THIS CHAPTER, WE:

- introduce our preferred approach to reforming the Property (Relationships) Act 1976 (PRA);
- explain the scope of the Law Commission's review; and
- set out our general approach to reforms, including proposals to improve the PRA framework and raise public awareness of the PRA.

### INTRODUCING OUR PREFERRED APPROACH

- 1.1 Dividing property when relationships end is often a challenging task, and one which typically comes at a time of emotional upheaval.<sup>1</sup> When relationships end as a result of separation, both partners will generally be worse off financially, because the resources that were being used to support one household must now support two. How property is divided can significantly affect the financial recovery of partners and their children. Different issues arise when a relationship ends on the death of one partner. The interests of the surviving partner may have to be balanced against competing interests, for example the interests of any children of the deceased.
- 1.2 The Property (Relationships) Act 1976 (PRA) sets out the rules for how property is to be divided when relationships end. In our Issues Paper, *Dividing relationship property: time for change? Te ātotoha rawa tokerau – Kua eke te wā?*, we asked whether, in contemporary New Zealand, the PRA is achieving a just division of property at the end of relationships.
- 1.3 This paper sets out our preferred approach in respect of the key issues arising from our review.
- 1.4 We think a just division of property remains the right objective for the PRA. A qualifying relationship is treated as a family joint venture, to which the partners contribute equally,

---

<sup>1</sup> In this paper we use the term "relationship" to refer to marriages, civil unions and de facto relationships, unless we are referring to a specific relationship type. Likewise, we use the term "partner" to refer to a spouse, civil union partner or de facto partner. Often the discussion in this paper concerns situations arising after a relationship ends, but for simplicity we will continue to refer to "partners" rather than "former partners". In this paper we also anonymise some court decisions under the Property (Relationships) Act 1976, by replacing the names of parties with initials, when our discussion of the facts of a case includes sensitive information which could identify individuals who may be vulnerable.

although perhaps in different ways. Each partner is therefore entitled to an equal share in the "fruits" of the family joint venture if the relationship ends.

- 1.5 We also think that a regime that is based on clear statutory rules, rather than judicial discretion, remains appropriate for New Zealand. Couples should know how they are to divide property after they separate. They can then decide whether they want to make their own agreement as to how their property should be divided, instead of relying on the rules in the PRA. Clear statutory rules also reduce the need to go to court to resolve disagreement.
- 1.6 Some of the PRA's key rules remain sound. In particular, we think that the PRA should continue to apply to all marriages, civil unions and qualifying de facto relationships, although we propose simplifying the eligibility criteria by abolishing the separate regimes for short-term relationships (see Chapter 4: Qualifying relationships). We also think that the PRA should continue to provide that each partner is entitled to share equally in all relationship property, subject to limited exceptions (see Chapter 3: Division). In addition, the PRA should continue to enable partners to make their own agreement about how to divide their property during or in anticipation of entering into a relationship, and in order to settle any differences that arise between them (see Chapter 8: Contracting out and settlement agreements).
- 1.7 But significant changes to some of the rules are needed to better ensure that the regime reflects the reasonable expectations of New Zealanders. Our key proposals will change the pool of resources to be divided on separation and emphasise sharing the fruits of the family joint venture in a way we think is consistent with those expectations. In particular, we propose that:
  - (a) Partners should only share property that was acquired during the relationship, or before the relationship began if it was acquired for the partners' common use and common benefit (see Chapter 2: Classification). We think that property should no longer be shared simply because it is used by the partners during the relationship.<sup>2</sup> This would mean that the family home is no longer to be automatically shared equally if it was owned by one partner before the relationship began.
  - (b) Partners should share future income in some situations, in order to ensure the economic advantages and disadvantages arising from a relationship or its end are shared (see Chapter 5: Section 15). We propose that this replaces the current compensatory provision in section 15 and the maintenance regime in the Family Proceedings Act 1980.
  - (c) The courts should have greater powers to grant relief where a trust holds property that was produced, preserved or enhanced by the relationship (see Chapter 6: Trusts). This will make it easier to access the pool of resources that reflects the fruits of the relationship, on separation.
- 1.8 In this paper we also make proposals that intend to give children's interests greater priority in PRA proceedings (see Chapter 7: Children's interests). We address problems with resolving PRA matters in practice and propose a range of measures to promote just and efficient resolution and to address behaviour that causes delay and increases costs (See Chapter 10: Resolution). We also make proposals in relation to key areas where the

---

<sup>2</sup> We propose retaining the current approach in relation to family chattels. In the absence of any strong call for reform, we think that treating all family chattels as relationship property to be shared equally deters arguments over what are generally assets of low value, and will promote settlement of disputes.

PRA and tikanga Māori interact (see Chapter 9: Tikanga Māori), and in relation to how the rights of creditors are affected by the PRA (see Chapter 11: Creditors).

- 1.9 These changes will be best achieved in a new statute, following modern drafting practice to make the law as clear and accessible as possible.
- 1.10 Our preferred approach presents a package of reforms. The proposals in this paper are designed to work together to achieve a regime that meets most New Zealanders' expectations of fairness when a relationship ends on separation.
- 1.11 This paper focuses on our preferred approach for the division of property when relationships end on separation. The context for dividing property on the death of a partner is different. As a result, tensions arise in attempting to apply the rules of the PRA on the death of a partner. We think the just division of property on the death of a partner is best set out in a separate statute in the context of succession law and discuss this further below at paragraphs 1.33 to 1.38.
- 1.12 We invite feedback on whether or not people agree with the proposals outlined in this paper. We are open to altering the proposals if it is shown that they will not work as intended or that there is a better approach.

## OUR REVIEW

### The terms of reference

- 1.13 The terms of reference for this review are set out in Appendix 1. They are wide-ranging, and require consideration of the PRA rules and how PRA matters are resolved in practice.
- 1.14 The terms of reference do not include other areas of family and social legislation such as the child support regime in the Child Support Act 1991, the maintenance regime in the Family Proceedings Act or the social security regime in the Social Security Act 1964. Nonetheless the PRA cannot be considered in isolation from these regimes. We discuss the maintenance regime in Chapter 5: Section 15, and propose its repeal. We also discuss the child support regime in Chapter 7: Children's interests, where we propose a review of the effectiveness of the regime in meeting children's needs and setting the level of financial support to be provided by parents for their children.

### Our process so far

- 1.15 The terms of reference were published in May 2016. In October 2017, following extensive research and preliminary consultation, we published the Issues Paper *Dividing relationship property: time for change? Te ātotoha rawa tokerau – Kua eke te wā?* (NZLC IP41, 2017). We also researched the social context, and published our findings in the accompanying Study Paper *Relationships and Families in Contemporary New Zealand: He hononga tangata, he hononga whānau i Aotearoa o nāianeī* (NZLC SP22, 2017). We prepared a Consultation Paper, which summarised the key issues identified in the Issues Paper for members of the public. We created a consultation website, which enabled people to tell us their own story about how the PRA has affected them and to answer any of the consultation questions online.
- 1.16 The Commission received 313 submissions, which included 255 submissions from individual members of the public, 24 submissions from individual legal practitioners, judges, academics and other experts and 34 submissions from organisations, including

Government organisations, law firms, dispute resolution service providers and community organisations. A list of organisations who submitted is at Appendix 2.

- 1.17 In addition to receiving submissions, the Commission hosted 16 public consultation meetings throughout the country, at which we received many useful contributions. We also met with lawyers, academics, Judges of the Family Court and the Māori Land Court and other experts.
- 1.18 Given the breadth and depth of issues arising out of the review, we concluded that a paper which set out our preferred approach on key matters would help us refine our recommendations and provide an opportunity for further focused consultation.
- 1.19 Throughout this process we have been guided by an Expert Advisory Group and have sought guidance from the Law Commission's Māori Liaison Committee on those matters that may be of particular concern to Māori.
- 1.20 Our final report to the Minister Responsible for the Law Commission will be completed in 2019.

### Key themes from consultation

- 1.21 Consultation on the Issues Paper and related documents provided valuable insights into the way the PRA works for New Zealanders. Consultation identified some key themes:
- (a) **Equal sharing of pre-relationship property after three years is unfair.** This was the most common concern raised by members of the public. It was also identified as an issue by individual practitioner and academic experts, and some organisations. Many submitters thought that equal sharing of pre-relationship property after three years was particularly unfair in the case of de facto relationships, as there has been no deliberate decision by the partners to formalise their relationship by getting married or entering a civil union. Most submitters were concerned in particular with the family home, and how, under the PRA, it is shared equally regardless of whether it was owned by one partner before the relationship. We address this theme in Chapter 2: Classification.
  - (b) **Section 15 (orders to redress economic disparity) requires reform.** This was a strong theme in submissions from individual practitioner and academic experts, organisations, as well as from some members of the public. Submitters generally agreed on the need for reform to achieve a just outcome that recognises the reality of what one partner had gained and one partner had given up in terms of their respective careers and the contributions made during the relationship. Many submitters mentioned the inadequacy of child support and maintenance. Submitters in favour of some form of redress for economic disadvantage noted it should be accessible and should be available without a long and expensive court dispute. We address this theme in Chapter 5: Section 15.
  - (c) **Partners should not be able to avoid the PRA through the use of a trust.** Most submitters who commented on trusts agreed that they are often used to avoid the property sharing rules under the PRA, and that the existing remedies in respect of trust property are complex. We address this theme in Chapter 6: Trusts.
  - (d) **The PRA should give more priority to children's interests.** There were diverse views on whether the PRA gives children's interests adequate priority. Many submitters thought the PRA should do more to recognise children's interests and meet their needs, but some felt that, while children's needs must be provided for

after separation, this was not the role of the PRA but of other, more child-centred legislation, such as the Child Support Act and the Care of Children Act 2004. We address this theme in Chapter 7: Children's interests.

- (e) **The PRA does not facilitate inexpensive, simple and speedy resolution.** Many submitters told us that resolution of PRA disputes is expensive and slow, that power and information imbalances between former partners impair access to justice, and that people want more freedom to resolve PRA matters themselves. We address this theme in Chapter 10: Resolution.
- (f) **Better education about the PRA is needed.** The need for more public awareness about how the PRA operates was a common submission among members of the public, lawyers and other experts in the area. Some submissions also demonstrated a need for better understanding of some of the key PRA rules and requirements, including when the PRA applies, what property is divided, how property is divided, what happens when one partner dies, and the requirements for contracting out of the PRA. We address this theme below.

### Borrin Foundation research on relationship property matters

- 1.22 The Law Commission has had the benefit of a survey of public attitudes and values on relationship property division in New Zealand, carried out by the University of Otago and funded by the Michael and Suzanne Borrin Foundation (the Borrin Survey). The results of the Borrin Survey have been published in *Relationship Property Division in New Zealand: Public Attitudes and Values – A general population survey*.<sup>3</sup> The Borrin Survey is the first time research of this nature has been carried out in New Zealand.
- 1.23 The Borrin Survey was a nationwide, statistically representative telephone survey of 1,361 individuals, designed to address the Commission's need for information about how New Zealanders think couples should share their property following separation. Results of the Borrin Survey provide a sound basis for measuring and analysing:
  - (a) public awareness of, and general support for key PRA rules;
  - (b) whether the PRA reflects what most people think is fair on separation; and
  - (c) the prevalence of contracting out of the PRA.
- 1.24 Results of the Borrin Survey are referred to throughout this paper where relevant.
- 1.25 The University of Otago is carrying out a second phase of research, also funded by the Michael and Suzanne Borrin Foundation, which is due to be completed in May 2020.<sup>4</sup> This research will investigate how separating couples divide their relationship property and resolve any disputes that arise. This will provide an invaluable evidence base for assessing how the PRA is operating in practice. Similar research has been undertaken in Australia,<sup>5</sup> but comparable research has not previously been carried out in New Zealand.

<sup>3</sup> I Binnie and others *Relationship Property Division in New Zealand: Public Attitudes and Values – A general population survey* (Michael and Suzanne Borrin Foundation, Technical research report, October 2018).

<sup>4</sup> Michael and Suzanne Borrin Foundation "Relationship property division research" <[www.borrinfoundation.nz](http://www.borrinfoundation.nz)>.

<sup>5</sup> See for example Lixia Qu and others *Post-separation parenting, property and relationship dynamics after five years* (Australian Institute of Family Studies, 2014).

## PREFERRED APPROACH TO GENERAL ISSUES

P1

A new statute, entitled the Relationship Property Act, should apply to relationships ending on separation.

P2

The rules that apply to relationships ending on death should be the subject of further consideration, within a broader review of succession law.

P3

The purpose of the new Relationship Property Act should be to provide for a just division of property between partners when a relationship ends on separation.

P4

The new Relationship Property Act should include a revised statement of principles to guide the achievement of the purpose of the Act.

1.26 The PRA is social legislation, reflecting the State's expectations as to how the wealth and resources of a family should be shared when relationships end. As former Principal Family Court Judge Peter Boshier has said:<sup>6</sup>

The State ... carries an overarching responsibility to provide a blueprint for societal values which impact the way people live, behave and interact, both with each other and with their children. Within the umbrella of family law, it is appropriate to express such values from time to time. Accordingly, countries amend their laws to reflect perceptions of changing social norms and obligations and this is further carried out through how the courts interpret and apply the law.

1.27 Our preferred approach is intended to achieve a property sharing regime that meets most New Zealanders' expectations of fairness when a relationship ends on separation. It has been informed by what we have learned about New Zealanders' attitudes, values and expectations of property sharing through consultation and the Borrin Survey. It is also informed by what we know about New Zealand's changing social context, and in particular the way in which relationships and families are formed, how they operate and what happens when relationships end.<sup>7</sup>

1.28 We address our preferred approach to general issues arising from our review below.

### A new Relationship Property Act

1.29 We propose that the PRA should be repealed and replaced with a new statute, entitled the Relationship Property Act.

1.30 The PRA was first enacted in 1976 as the Matrimonial Property Act 1976, but few of its provisions have survived unaltered. Significant amendments have been made to both the property sharing rules as well as the scope of those rules, extending over time to capture relationships ending on death, de facto relationships and civil unions. As a result of significant and multiple amendments over the past 42 years, the PRA is an unwieldy and

<sup>6</sup> Peter Boshier and others "The Role of the State in Family Law" (2013) 51 Family Court Review 184 at 190.

<sup>7</sup> New Zealand's changing social context, now and into the future, is explored in Law Commission *Relationships and Families in Contemporary New Zealand – He hononga tangata, he hononga whānau i Aotearoa o nāiane* (NZLC SP22, 2017).

unnecessarily complex statute, which does not meet modern standards of legislative drafting.

- 1.31 We propose that the new Relationship Property Act should, wherever possible, adopt relationship and gender neutral terms (see Issues Paper at [4.54]–[4.56]). This was supported in submissions from the New Zealand Law Society (NZLS), one practitioner and two members of the public, while another practitioner proposed that for simplicity, the PRA should use "marital" and "spouse" to describe all relationships.
- 1.32 In order to minimise confusion, in the rest of this paper we describe our proposals as reforms of the PRA, even though we propose that a new statute is desirable.

### **A separate statute for property division on the death of a partner and the need for further review by the Law Commission**

- 1.33 Our preferred approach is that the new Relationship Property Act should apply only to relationships ending on separation. The rules that apply when a relationship ends on the death of a partner should be the subject of further consideration, within a broader review of succession law.
- 1.34 As we explained in Chapter 36 of the Issues Paper, the context for dividing property on the death of a partner is different to the context for dividing property when a relationship ends by separation. There may be tension between the competing interests of all those potentially affected by the death of a partner, including:
- (a) the deceased's freedom to deal with property under a will as they choose and the deceased's rights under the PRA;
  - (b) the rights of a surviving partner under the deceased's will, the rules of intestacy, the PRA, the Family Protection Act 1955 and/or the Law Reform (Testamentary Promises) Act 1949;
  - (c) the rights of the deceased and the surviving partner to hold property in joint ownership or to have entered a contracting out agreement under section 21 of the PRA; and
  - (d) the rights of third parties who may benefit under the will or the rules of intestacy, or who may have a claim under the Family Protection Act or the Law Reform (Testamentary Promises) Act.
- 1.35 These competing interests need to be considered and resolved as matters of policy before reaching a view on the rules that ought to apply when a relationship ends on the death of a partner. This is something we have been unable to do in a review that is solely focused on the PRA.
- 1.36 It is our view that a single, separate statute is needed to deal comprehensively with relationship property claims, testamentary promises claims and family protection claims on death.<sup>8</sup> This would make the law more accessible and coherent. It would also allow proper consideration of the interests of surviving partners, deceased partners, beneficiaries under a will or the rules of intestacy and potential claimants against the estate. It would likely also assist those advising on estate planning and those administering estates.

---

<sup>8</sup> A similar proposal was made by the Law Commission in its report *Succession Law: A Succession (Adjustment) Act* (NZLC R39, 1997).

- 1.37 Submissions we received on this issue were strongly in favour of a separate succession statute. Many submitters noted concerns about balancing the interests of a surviving partner with the interests of any children of the deceased partner. A common theme in submissions and consultation meetings was the lack of understanding among the public and some practitioners about how the PRA applies on the death of a partner. Practitioners also consistently raised many of the more technical issues we identified in the Issues Paper.
- 1.38 We recognise the unsatisfactory nature of recommending reform of the law in relation to the division of property on separation, while leaving the current law to govern the division of property on the death of one partner.<sup>9</sup> We therefore propose that the Minister Responsible for the Law Commission ask the Law Commission to undertake a separate review of succession law as a matter of priority in our next annual programme.<sup>10</sup> This review should address the division of property on the death of a partner, alongside the Family Protection Act, the Law Reform (Testamentary Promises) Act and the Administration Act 1969 as it relates to intestate estates. It should also consider how relationship property rights should interact with succession in a Māori context.<sup>11</sup>

### Improving the PRA framework

- 1.39 The PRA sets out the rules that govern how property owned by either or both partners is divided when a relationship ends. These rules sit within a broader framework of policy, theory and principles (see Issues Paper at [3.1]–[3.12]).
- 1.40 In the Issues Paper we identified that the policy of the PRA is the just division of property at the end of a relationship. We explained that this policy is underpinned by several theories that explain why division pursuant to the rules of the PRA is a just division.<sup>12</sup> The primary theory of the PRA is based on the entitlement of each partner to an equal share in the property of the relationship. This is supplemented by two secondary theories. The compensation theory recognises that in certain circumstances one partner should receive an additional share of the other's property in order to compensate them for economic disadvantages a partner suffers from the relationship. The needs theory recognises that certain resources could help meet the needs of a partner or children of the relationship. The principles of the PRA (both explicit and implicit) then form the basis for the PRA's rules.
- 1.41 Few submitters addressed the general framework of the PRA. Those who did thought the policy of a just division and theory of entitlement were broadly appropriate. Some noted that other approaches may be necessary to do justice in the circumstances, particularly in light of the greater diversity of relationships.

---

<sup>9</sup> A similar situation occurred when the Matrimonial Property Act 1976 was enacted but did not apply on the death of a spouse, meaning that the Matrimonial Property Act 1963 continued to apply to relationships ending on death until 2001: Law Commission *Dividing Relationship Property – Time for Change? Te mātatoha rawa tokorau – Kua eke te wā?* (NZLC IP41, 2017) at [34.16]–[34.23].

<sup>10</sup> Law Commission Act 1985, s 7.

<sup>11</sup> For a discussion of possible issues that arise for Māori on the death of one partner see Jacinta Ruru "Implications for Māori: Contemporary Legislation" in Nicola Peart, Margaret Briggs and Mark Henaghan (eds) *Relationship Property on Death* (Brookers, Wellington, 2004) 445 at 487–490.

<sup>12</sup> For further discussion see Joanna Miles "Financial Provision and Property Division on Relationship Breakdown: A Theoretical Analysis of the New Zealand Legislation" (2004) 21 NZULR 268.



- 1.42 We propose retaining a rules-based property sharing regime and improving the PRA framework by providing that:
- (a) the PRA is based on the theory that each partner is entitled to share in the fruits of the family joint venture;
  - (b) the purpose of the PRA is to provide for a just division of property between the partners when a relationship ends on separation (replacing section 1M with a new purpose statement); and
  - (c) a revised statement of principles should guide the achievement of the purpose of the PRA (replacing section 1N).

### *Retaining a rules-based regime*

- 1.43 Jurisdictions around the world recognise the need for special rules of property division when relationships end, but differ on what shape these rules should take (Issues Paper at [3.34]–[3.40]). New Zealand, Canada and most European jurisdictions adopt a rules-based approach, while other jurisdictions that New Zealand often compares itself with (Australia, England and Wales and Ireland) adopt a discretionary approach.<sup>13</sup> Scotland falls somewhere in the middle, adopting a discretionary approach that is limited by a set of statutory principles.<sup>14</sup>
- 1.44 We think a rules-based approach continues to be appropriate for New Zealand. It brings greater certainty and predictability, which in turn promote people's ability to make decisions without having to go to court. The PRA will continue to have some discretionary aspects, which act as essential safety valves. With the diversity of human relationships and behaviour, it would be unrealistic to expect that a statute could set rules for every circumstance.

### *Simplifying the theory of the PRA – sharing the fruits of the family joint venture*

- 1.45 Our key proposals in this paper, outlined at paragraph 1.7, redefine what property partners should share at the end of the relationship. These proposals are based on the theory that a "qualifying relationship", being a marriage, civil union or de facto relationship that satisfies the eligibility criteria,<sup>15</sup> is a family joint venture, to which the partners contribute equally, but in different ways. During the relationship, partners contribute to the family joint venture with the expectation that they will continue to share in the fruits of that joint venture – the product of their combined contributions – into the future. If that family joint venture breaks down, the PRA governs the just division of property deriving from the family joint venture.
- 1.46 We consider that an entitlement to share the fruits of the family joint venture should be the central underpinning theory of the PRA. We also consider that the theory of compensation should no longer play a role in explaining what property should be shared when relationships end. This is because our proposals in Chapter 5: Section 15 move

<sup>13</sup> Under a discretionary approach, the partners hold property separately during the relationship, but if that relationship ends a court has discretion to alter the partners' property interests if it considers it just to do so. See Family Law Act 1975 (Cth), s 79; Matrimonial Causes Act 1973 (UK); and Family Law (Divorce) Act 1996 (Ireland).

<sup>14</sup> Family Law (Scotland) Act 1985, ss 9(1) and 10(1).

<sup>15</sup> In Chapter 4: Qualifying relationships we propose that a de facto relationship is a qualifying relationship if it satisfies the definition in s 2D of the Property (Relationships) Act 1976 and either (a) satisfies the three year qualifying period, or (b) there is a child of the relationship, and a court considers it just to make an order for division, or (c) the applicant has made substantial contributions to the relationship, and a court considers it just to make an order for division.

away from requiring one partner to compensate the other when the division of functions during the relationship result in economic disparity on separation. Instead, we propose that partners should share future income in some situations, in order to ensure the economic advantages and disadvantages arising from a relationship or its end are shared.

- 1.47 The theory of need may continue to play a role in the PRA in relation to children's interests, given our proposals in Chapter 7: Children's interests to make the best interests of children a primary consideration, and to continue to enable a court to settle relationship property on a child.

### **A new statutory purpose**

- 1.48 The purpose statement in the PRA requires reform to conform to modern drafting requirements for legislation.<sup>16</sup> Importantly, the purpose statement should reflect the policy objective of the legislation, so that the policy objective is clearly defined and discernible.<sup>17</sup> We propose replacing section 1M of the PRA with a purpose provision that states that the purpose of the PRA is to provide for a just division of property between partners when a relationship ends on separation.

### **New statutory principles**

- 1.49 We propose that the PRA include a revised statement of principles to guide the achievement of the purpose of the Act. We anticipate that some of the principles in section 1N may need to be revised or removed, and new principles added.
- 1.50 As a matter of good drafting practice, legislation that substitutes the general law and introduces rules based on distinct values should include a statement of principles to guide the interpretation and application of that legislation (Issues Paper at [4.18]).<sup>18</sup>
- 1.51 In the Issues Paper we observed that the statement of principles in section 1N of the PRA is incomplete, as it does not include many of the implicit principles of the PRA (Issues Paper at [3.9]–[3.10]). We said that our preliminary view was that, broadly speaking, the principles of the PRA (explicit and implicit) remain sound, but that some principles may need to change to better reflect people's changing values and expectations about what is fair when relationships end (Issues Paper at [4.13]).
- 1.52 We continue to hold the view that the statutory principles should reflect the reasonable expectations of New Zealanders. We will explore, for the final report, what these

<sup>16</sup> See Legislation Design and Advisory Committee *Legislation Guidelines: 2018 edition*, especially ch 2. See also *Scott v Williams* [2017] NZSC 185, [2018] 1 NZLR 507 at [143] confirming the relevance of the statutory purpose and principles to any proceedings under Property (Relationships) Act 1976.

<sup>17</sup> Section 5(1) of the Interpretation Act 1999 provides that "[t]he meaning of an enactment must be ascertained from its text and in the light of its purpose". The Legislation Bill 2017 (275-2) currently before Parliament proposes to repeal and replace the Interpretation Act 1999. Clauses 10–12 of the Bill propose to continue the principle that the meaning of legislation must be ascertained from its text and in the light of its purpose and its context.

<sup>18</sup> See Law Commission *A New Interpretation Act: To Avoid "Prolixity and Tautology"* (NZLC R17, 1990) at [229]; Law Commission *The Format of Legislation* (NZLC R27, 1993) at 9; Law Commission *Legislation Manual: Structure and Style* (NZLC R35, 1996) at [30]. See also R I Carter *Burrows and Carter Statute Law in New Zealand* (5th ed, LexisNexis, Wellington, 2015) at 122–123. See also Law Commission *Review of the Search and Surveillance Act 2012 Ko te Arotake i te Search and Surveillance Act 2012* (NZLC R141, 2017) at [3.1]–[3.8]; and Law Commission *Reforming The Law Of Contempt Of Court: A Modern Statute – Ko te Whakahou i te Ture mō Te Whawhati Tikanga ki te Kōti: He Ture Ao Hou* (NZLC R140, 2017) at [3.4]–[3.9].

principles should be, having regard to the results of consultation and the Borrin Survey, and our final recommendations for reform.

### Raising public awareness of the PRA

- 1.53 Consultation on the Issues Paper highlighted a clear need for greater public education about the PRA. This was also reflected in the results of the Borrin Survey, which identified that, while public awareness of equal sharing was high (79 per cent of all respondents said that they were aware of equal sharing), less than half of all respondents knew that equal sharing applies to couples who have lived together for three years or longer.<sup>19</sup> The need for education will be even greater should the recommendations for reform we make in our final report be adopted into law.
- 1.54 In our final report we will make recommendations as to how best to educate the public about their rights and obligations under the PRA. This may include a public education campaign and the provision of information about the PRA at different points of interaction with Government departments (such as when applying for a marriage or civil union licence). In Chapter 10: Resolution we make a number of proposals intended to improve access to information about the PRA for separating couples.

### OTHER MATTERS TO BE ADDRESSED IN THE FINAL REPORT

- 1.55 This paper sets out our preferred approach in respect of the key issues arising from our review.
- 1.56 Our final report will also address further issues including:
- (a) specific types of relationships;
  - (b) specific items of property;
  - (c) other exceptions to equal sharing (sections 16 to 18C);
  - (d) valuation;
  - (e) relationship and separate debt;
  - (f) the court's powers to make orders under the PRA;
  - (g) jurisdiction of the courts; and
  - (h) cross-border issues.

---

<sup>19</sup> I Binnie and others *Relationship Property Division in New Zealand: Public Attitudes and Values – A general population survey* (Michael and Suzanne Borrin Foundation, Technical research report, October 2018) at [108] and [112].