
List of proposals

CHAPTER 1: INTRODUCTION

PROPOSALS

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.

Note: For ease of reading, the proposals in the rest of the paper will continue to refer to the Property (Relationships) Act 1976 (PRA) rather than a new statute.

CHAPTER 2: CLASSIFICATION**PROPOSALS****P5**

Property owned by either or both partners should be classified as relationship property if it:

- a. was acquired before the relationship, for the partners' common use or common benefit;
- b. was acquired during the relationship, other than as a third party gift or inheritance; or
- c. is a family chattel.

P6

Property acquired by one partner before the relationship began, or from a third party as a gift or inheritance during the relationship, should be classified as separate property.

P7

Payments received under the Accident Compensation Act 2001 or under a private insurance policy for a personal injury should be classified as separate property, except to the extent the payment compensates for loss of income during the relationship.

P8

Any increase in the value of any separate property, or any income or gains derived from separate property, that is attributable to the application of relationship property or to the actions of either or both partners, should be classified as relationship property. Section 15A should be repealed.

P9

When the family home is separate property, any increase in the value of the family home occurring during the relationship should be classified as relationship property in every case.

P10

The burden of proof of establishing whether property is separate property should be on the owning partner.

CHAPTER 3: DIVISION

PROPOSALS

P11

The PRA should continue to provide that each partner is entitled to share equally in all relationship property, subject to limited exceptions.

P12

The PRA should be amended to clarify that a court can take into account a partner's misconduct that satisfies the threshold in section 18A(3) when deciding whether there are extraordinary circumstances which make equal sharing repugnant to justice under section 13.

P13

The Government should consider the division of property at the end of a relationship under the PRA, in the context of its wider response to family violence.

CHAPTER 4: QUALIFYING RELATIONSHIPS

PROPOSALS

P14

The PRA should apply in the same way to all marriages, civil unions and qualifying de facto relationships.

P15

The eligibility criteria for de facto relationships should retain the existing definition of de facto relationship and the existing three year qualifying period.

P16

The provisions for short-term relationships should be repealed and the ordinary rules of division should apply to all marriages, civil unions and qualifying de facto relationships.

P17

A "qualifying de facto relationship" should include a de facto relationship that does not satisfy the three year qualifying period if it meets the following additional eligibility criteria:

- a. there is a child of the relationship, and a court considers it just to make an order for division; or
- b. the applicant has made substantial contributions to the relationship, and a court considers it just to make an order for division.

CHAPTER 5: SECTION 15

PROPOSALS

- P18** Section 15 of the PRA and maintenance under Part 6 of the Family Proceedings Act 1980 should be repealed and replaced with a new, limited entitlement to share future family income through a Family Income Sharing Arrangement or FISA.
- P19** A partner (Partner A) should be entitled to a FISA in the following circumstances:
- a. the partners have a child together; or
 - b. the relationship was 10 years or longer; or
 - c. during the relationship:
 - (i) Partner A stopped, reduced or did not ever undertake paid work, took a lesser paying job or declined a promotion or other career advancement opportunity, in order to make contributions to the relationship; or
 - (ii) Partner B was enabled to undertake training, education and/or other career sustaining or advancing opportunities due to the contributions of Partner A to the relationship.
- P20** The amount and duration of a FISA should be determined by a statutory formula that equalises the partners' incomes for a period of time that is approximately half the length of the relationship, up to a maximum of five years.
- P21** Entitlement to a FISA should arise from the date of separation and default rules should provide for the implementation of a FISA by way of monthly periodic payments, unless the partners agree otherwise.
- P22** Partners should be able to make their own agreement as to the amount, duration and implementation of a FISA. The PRA should specify when an agreement should be regarded as a settlement agreement under section 21A, requiring compliance with the safeguards in section 21F in order for it to be enforceable.
- P23** A court should be able to adjust a FISA and depart from the statutory formula and/or default rules of entitlement if satisfied failure to grant the application would result in serious injustice, having regard to a number of specified considerations.
- P24** Partners should be able to contract out of the FISA provisions before or during the relationship under section 21 of the PRA.
- P25** Strict enforcement measures should be put in place to ensure that, when partners cannot reach agreement, a FISA is implemented in accordance with the statutory formula and default rules of implementation or as otherwise ordered by the court.
- P26** The Government should consider extending the existing administration and enforcement role of the Inland Revenue Department under the Child Support Act 1991 to include the administration and enforcement of FISAs.

CHAPTER 6: TRUSTS**PROPOSALS****P27**

Section 44C of the PRA should be amended to provide a single, comprehensive remedy that will enable a court to grant relief when a trust holds property that was produced, preserved or enhanced by the relationship.

P28

An amended section 44C would apply in three different situations:

- a. where either or both partners have disposed of property to a trust, at a time when the qualifying relationship was reasonably contemplated or since the qualifying relationship began, and that disposition has had the effect of defeating the claim or rights of either or both of the partners under any other provision of the PRA; or
- b. where trust property has been sustained by the application of relationship property or the actions of either or both partners; or
- c. where any increase in the value of trust property, or any income or gains derived from the trust property, is attributable to the application of relationship property or the actions of either or both partners.

P29

The court should have broad powers that include ordering one partner to pay compensation to the other, ordering the trustees to distribute capital from the trust, varying the terms of the trust, and resettling some or all of the trust property on a new trust or trusts.

P30

A court must be satisfied that making an order is "just", having regard to a number of specified considerations. These considerations are designed to ensure the amended section 44C achieves an appropriate balance between protecting partners' entitlements under the PRA and the preservation of trusts.

P31

Partners should be able to agree not to make any claim under section 44C for the purposes of contracting out of the PRA under section 21, and to settle claims for the purposes of section 21A.

P32

Section 182 of the Family Proceedings Act 1980 should be repealed.

P33

Section 44 should remain unchanged and should continue to provide a remedy for other avoidance mechanisms.

CHAPTER 7: CHILDREN'S INTERESTS

PROPOSALS

P34

Children's best interests should be a primary consideration under the PRA. This should be given effect through:

- a. a statutory principle, to guide the achievement of the purpose of the PRA;
- b. an overarching obligation on the courts to have regard to the best interests of any minor or dependent children of the relationship (replacing the existing obligation in section 26); and
- c. procedural rules, to ensure a court is provided with the information it needs in order to effectively perform its obligation at (b) above, and to promote to parents, practitioners and the court the importance of considering children's best interests and the tools available for meeting children's needs.

P35

A court should have the power to set relationship property aside for the benefit of any minor or dependent children of the relationship, if it considers it just (replacing the existing power in section 26). The court should be directed to have particular regard to any unmet needs of the child or children during minority or dependency.

P36

There should be a presumption in favour of granting a temporary or interim occupation or tenancy order on application by the primary caregiver of any minor or dependent children of the relationship. A court may decline to make an order if the respondent partner satisfies the court that an application is not in the child's best interests, or would otherwise result in serious injustice.

P37

The other tools available to meet children's needs should be improved by:

- a. broadening the jurisdiction of furniture orders to include family chattels as defined in section 2, and clarifying that a court must have particular regard to children's needs when making furniture orders;
- b. requiring a court to postpone vesting, if immediate vesting would cause undue hardship for any minor or dependent child of the relationship; and
- c. clarifying that an order made to benefit children under current sections 26, 27 or 28A is not grounds for departure from formula-assessed child support obligations under the Child Support Act 1991.

P38

Children's participation in proceedings should be strengthened by lowering the threshold for appointing a lawyer for child to "necessary or desirable", consistent with the Family Proceedings Act 1980.

P39

There is a need to review the effectiveness of the Child Support Act 1991 in meeting children's needs and setting the level of financial support to be provided by parents for their children.

CHAPTER 8: CONTRACTING OUT AND SETTLEMENT AGREEMENTS

PROPOSALS

P40

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. The procedural requirements in section 21F should continue to apply.

P41

A new provision should be included in Part 6 of the PRA to the effect that a lawyer may use audio-visual technology to witness a partner signing a contracting out or settlement agreement under section 21F(4).

P42

Section 21E of the PRA and the Property (Relationships) Model Form of Agreement Regulations 2001 should be repealed.

P43

A court should have the additional powers under section 21J to set aside an agreement in part, or to vary an agreement if, having regard to all the circumstances, it is satisfied that giving effect to the agreement would cause serious injustice.

P44

Section 21J(4) should be amended to require a court to have regard to the best interests of any minor or dependent children of the relationship in deciding whether giving effect to a contracting out or settlement agreement would cause serious injustice.

CHAPTER 9: TIKANGA MĀORI**PROPOSALS**

- P45** The PRA framework should continue to accommodate and respond to matters of tikanga Māori.
- P46** Consideration should be given to providing remedies in relation to family homes built on Māori land through Te Ture Whenua Māori Act 1993.
- P47** Taonga should be defined in the PRA within a tikanga Māori construct.
- P48** Taonga should be classified as a special item of separate property that cannot become relationship property in any circumstances, and a court should not be able to make orders requiring a partner to relinquish taonga as compensation to the other partner.
- P49** The Family Court should be enabled to appoint a person to make an inquiry into matters of tikanga Māori and report to the Court.
- P50** Family Court judges should receive education on tikanga Māori.
- P51** Further consideration should be given to warranting Māori Land Court judges to sit alongside judges in the Family Court where there is a difficult matter of tikanga Māori at issue.

CHAPTER 10: RESOLUTION**PROPOSALS****P52**

The Ministry of Justice should develop a comprehensive information guide for separating partners that explains the PRA and provides information about the different options for resolving PRA matters.

P53

The Ministry of Justice should consider funding community organisations to provide person-to-person support for people who have difficulty accessing, navigating and applying the information guide in order to enable first steps in the resolution process to be identified and taken.

P54

The Ministry of Justice should review the existing provision and funding for legal advice on PRA matters in order to ensure appropriate access to affordable legal advice when resolving PRA matters out of court.

P55

Voluntary out of court dispute resolution for PRA matters should be promoted by:

- a. including in the PRA statutory endorsement of voluntary dispute resolution to resolve PRA matters out of court;
- b. including new "pre-action procedures" in the Family Court Rules 2002 (proposed under Proposal 59 below), including a requirement to make a genuine effort to resolve PRA matters out of court prior to making an application to court; and
- c. requiring applicants to court to acknowledge in court application forms that they have received information about the availability of out of court dispute resolution services.

P56

The Government should consider extending a voluntary, modified Family Dispute Resolution service or other form of State-funded dispute resolution service to PRA matters following the outcome of the review of the 2014 family justice reforms.

P57

The PRA should include an express duty of disclosure.

P58

A Family Court Rules Committee should be established for the purpose of developing specific procedural rules and guidance for PRA matters.

P59

The Family Court Rules should be amended to include:

- a. pre-action procedures that set out dispute resolution and disclosure requirements prior to making an application to the court; and
- b. a clear procedure for initial and subsequent disclosure tailored to the needs of PRA proceedings.

P60

Clearer and stricter consequences for non-disclosure should be provided. We propose that:

- a. the consequences for non-compliance with disclosure obligations should be clearly set out in the Family Court Rules;
- b. guidance should be provided on the imposition of costs and other consequences for non-disclosure; and
- c. case management processes that facilitate application for, and imposition of, costs for non-disclosure should be considered.

P61

The Ministry of Justice should:

- a. provide clearer guidance to parties about how to complete key court documentation, including information about the potential consequences of non-compliance; and
- b. develop process guides to better prepare self-represented litigants for court processes.

P62

The Family Court Rules should be amended to include case management procedures tailored to the needs of PRA proceedings.

P63

The PRA and Family Court Rules should be amended to:

- a. clarify the powers of a person appointed by the Family Court under section 38; and
- b. enable the Court to inquire into such matters it considers may assist it to deal effectively with the matters before it.

P64

Guidance should be provided on the imposition of costs and other consequences for non-compliance with procedural requirements and for the exercise of the Court's discretion to make costs orders that are not for the purpose of penalising non-compliance.

P65

A separate scale of costs for PRA cases should be established.

P66

The Ministry of Justice should consider reducing the application and hearing fees for PRA proceedings.

CHAPTER 11: CREDITORS**PROPOSALS****P67**

The Government should undertake further policy work that considers the options for amending or repealing the protected interest provisions within a broader investigation into the relationship between the insolvency regime and the interests of partners under the PRA. Such an investigation should also:

- a. reach a concluded policy decision on the availability of retirement savings to creditors in bankruptcy;
- b. consider whether to give greater rights to bankrupts and their families over unsecured creditors in the Insolvency Act 2006; and
- c. progress the repeal of the Joint Family Homes Act 1964.

P68

The PRA should clarify that a creditor may only challenge an agreement, disposition or other transaction between the partners that has the effect of defeating the rights of creditors as void within two years of the agreement, disposition or transaction being made.

P69

The Official Assignee should be able to treat an agreement, disposition or other transaction between the partners as an insolvent transaction under the Insolvency Act 2006 if it:

- a. enabled a partner to receive more than they would in the other partner's bankruptcy; and
- b. was made within the two years immediately before the partner is adjudicated bankrupt.

P70

An application by the Official Assignee to set aside an insolvent transaction should displace any claims by other creditors that an agreement, disposition or other transaction has the effect of defeating creditors' rights.

P71

A court should not be able to order recovery from a partner who receives property under a section 21A agreement if the recipient:

- a. received the property in good faith from the other partner;
- b. did not suspect the other partner was insolvent; and
- c. gave value for the property or altered their position in the reasonably held belief that the transfer of property was valid and would not be cancelled.