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# Preferred Approach Paper: Frequently Asked Questions

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## What is the Preferred Approach Paper?

The Law Commission's [Preferred Approach Paper: Review of the Property \(Relationships\) Act 1976: Preferred Approach: Te Arotake I te Property \(Relationships\) Act 1976: He Aronga I Mariu ai](#), sets out the key proposals the Law Commission intends to make in its final report to the Government. The final report will be published in 2019.

Anyone is welcome to give feedback on the proposals in Preferred Approach Paper before **14 December 2018** by emailing [pra@lawcom.govt.nz](mailto:pra@lawcom.govt.nz).

## Why does the law need to change?

The PRA was enacted 42 years ago. Although important changes were made in 2001 (such as extending the law to de facto couples), the fundamentals of the law remained the same.

In 2018, many things have changed. In the 1970s the paradigm relationship involved a marriage between a man and a woman, in which children were raised and wealth was accumulated over time. Now, fewer people are marrying and more people are living in de facto relationships. More relationships end in separation, and re-partnering is more common.

The Law Commission has also found that public attitudes have shifted. A [recent survey of public attitudes and values](#) has found that, for some matters, New Zealanders have expectations about relationship property division that are different to the current law. The change in attitudes was also evident in the submissions the Law Commission received during its public consultation between October 2017 and February 2018.

The Law Commission has concluded that the PRA needs to change so that property sharing is appropriate for the changing social context and reflects most New Zealanders' expectations of fairness.

## What are the key reforms the Law Commission has proposed?

The Law Commission has proposed many changes. The full list of the proposed changes is set out on page 2 of the [Preferred Approach Paper](#).

The key changes include:

- The full value of the family home should no longer always be shared 50-50. Instead, if one partner owned the home before the relationship, only the increase in value during the relationship should be shared equally. Homes acquired during the relationship should still be shared equally.
- People who have children, have been together for 10 years or more, or who have built or sacrificed careers because of the relationship should be eligible for Family Income Sharing Arrangements or “FISAs”. Under a FISA, the partners would be required to share their combined income for a limited period after they separate, to ensure the economic advantages and disadvantages from the relationship are shared more fairly.
- A court should have greater powers to share trust property when a trust holds property that was produced, preserved or enhanced by the relationship.
- The rules should continue to apply to all marriages, civil unions and de facto relationships lasting three years, unless the partners enter into a contracting out agreement.
- Partners should still be entitled to share equally in all relationship property, subject to limited exceptions.
- Children’s best interests should be given greater priority under the PRA. This includes giving the primary caregiver of children a default right to stay in the family home in the period immediately following separation.
- A range of measures to promote the just and efficient resolution of PRA matters and to address behaviour that causes delay and increases costs. This includes making sure partners properly disclose to each other all relevant information about their property, whether or not they go to court.

### **Is the Law Commission proposing to abolish the ‘50-50 split’?**

No, the Law Commission proposes to retain equal sharing because it is a simple rule which most people are aware of and think is fair.

However, the Law Commission proposes a change to *what* property gets shared. The Commission considers that only property acquired during the relationship, or acquired for the couple’s common use or benefit, should be shared equally.

### **What does the Law Commission say should happen to the family home?**

Under the current law, the full value of the family home is always shared equally. The feedback the Commission has received, and the survey of public attitudes has shown, that many people think this rule can be unfair – especially where one partner bought the home long before the relationship began.

The Law Commission proposes a reform so that, where one partner acquired the family home before the relationship, only the increase in the home’s value during the relationship is shared equally. If, however, the partners buy a new family home during the relationship, the full value

of that family home should be shared equally regardless of which partner contributed the purchase money.

The Law Commission recognises that, for some relationships, the change would mean there is less relationship property to be shared. This may disadvantage some people. But, under the current law, having to share the full value of a person's home can also cause disadvantage, particularly if the person whose home it was then doesn't have enough money or income to acquire a new home.

The Law Commission also proposes several changes which will benefit partners in other ways. Under the proposed FISA orders, a partner may be entitled to an equal share of the couple's combined income after separation. The Law Commission also proposes to strengthen the rights of the partner with primary childcare responsibilities, such as giving them a default right to continue to occupy the family home with the children for a time after separation. The Law Commission also proposes giving the courts greater powers to share trust property that was produced, preserved or enhanced by the relationship.

### **How would the proposed family income sharing arrangements (FISAs) work?**

The purpose of a FISA is to recognise that during a relationship the partners will take on different functions that may mean they gain economic advantages or suffer economic disadvantages. A common example is where one partner stops work to look after children while the other continues their career. At the end of the relationship, the partner who has stopped work has impaired their career, whereas the partner who has been freed up has developed their career.

The current law does not adequately share the economic advantages and disadvantages. That is why the Law Commission proposes to introduce FISAs. Under a FISA, the partners would be required to share their combined income after the relationship for a set period.

#### ***When would a FISA apply?***

A partner (Partner A) would be entitled to a FISA where:

- (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.

#### ***How much income would the partners have to share under a FISA?***

Each partner would be entitled to half the partners' combined net (post tax) income. If a partner fails to declare their income, or deliberately deprives themselves of income (such as refusing employment), a court may impute income to that partner.

Any child support paid or received, or State benefits, would be excluded from a partner's income when calculating the combined income to be shared.

The partners would share their combined income by the partner with the higher income making periodic payments to the other partner. The partners could agree to capitalise a FISA through a lump sum payment or a transfer of property.

### ***How long would partners share income under a FISA?***

The partners would be required to share their income for a period that is approximately half the length of the relationship, up to a maximum of five years.

### ***Can a FISA be challenged or adjusted?***

Yes. A partner could apply to the court to adjust a FISA if:

- (a) having regard to the extent to which the partners have been economically advantaged or disadvantaged by the relationship, the FISA would result in serious injustice; or
- (b) the partners' income increases or decreases.

A partner could also apply to the court to challenge a FISA on the basis that the partners' circumstances do not qualify for a FISA; A FISA must still be paid until the challenge is determined by the court.

### ***Example of how FISAs might work***

#### **Entitlement to a FISA: Anne and Bob**

Anne and Bob were in a de facto relationship for 12 years and have three children aged three, five and eight when the partners separate. Anne had stopped work to stay at home with the children. Anne is entitled to a FISA for five years. On separation Bob is earning \$95,000 (post tax) and Anne is earning \$35,000 (post tax). Bob pays child support for the three children of \$14,000 annually. Bob's income for the purposes of the statutory formula is \$81,000. Anne's income for the purposes of the statutory formula is \$35,000. The family income is \$116,000 and each partner is entitled to an equal share of \$58,000. In order to raise Anne's income from \$35,000 to her half share of \$58,000, Bob must pay Anne \$23,000 per annum.

### ***What does the Law Commission propose in relation to trusts?***

The Law Commission recognises that in some cases a trust can prevent the fair sharing of property. The law applying to trusts is also complex, which makes disputes hard to resolve.

The Law Commission has proposed extending a court's powers under the PRA to share trust property whenever a trust holds property that was produced, preserved or enhanced by the relationship. This will include situations where a partner has disposed of property to a trust, or where a partner's contributions during the relationship have increased the value of the trust property.

When exercising its powers, the court would have to take into account several factors, such as the interests of other beneficiaries of the trust, and whether both partners understood and consented to property being placed on trust.

## **What does the Law Commission propose in relation to children's interests?**

The Law Commission proposes that children's interests should be a primary consideration under the PRA. The courts should have an overarching obligation to have regard to the best interests of any minor or dependent children of the relationship. The general rule of equal sharing of relationship property still applies but where the court is exercising discretion, it will need to take the best interests of children into account as a primary consideration.

It should be easier for the primary caregiver of any minor or dependent children to occupy the home for a period of time after separation.

In some cases, the courts should have power to set relationship property aside for the benefit of any minor or dependent children of the relationship.

The courts should have greater powers to order that household property be used for the children's interests. The actual division of property between the partners should be delayed if the division would cause hardship for any minor or dependent children.

It should be easier for a lawyer to be appointed to represent children's interests in court proceedings.

The Law Commission has also signalled there is a need to review the effectiveness of the Child Support Act 1991.

## **When will the proposed changes take effect?**

Whether the Law Commission's proposals take effect is something for the Government, and ultimately Parliament, to decide.

The Law Commission will present its final report to the Government in 2019. The Government will then consider whether, and if so when, to introduce legislation to Parliament to make the reforms.