

Significant reform proposed for "outdated" Property (Relationships) Act 1976

The Law Commission has recently published its final report on the Property (Relationships) Act 1976 (PRA). The PRA governs how relationship property should be divided when a relationship ends by separation.

The Commission has concluded that the PRA is outdated and ought to be repealed and replaced. To that end, the Commission has made a number of significant recommendations to fundamentally alter the financial obligations that separating parties owe to one another.

Family home

The Commission has proposed important changes to the treatment of the family home when parties separate. Currently, the family home is treated as relationship property, regardless of when it was acquired, and divided equally. The Commission concludes that this is no longer an appropriate remedy. Instead, it is suggested that where the family home is owned by one partner before a relationship began, only the increase in the value of the home should be shared.

Financial obligations on separation

The Commission also contend that more needs to be done to address the economic disadvantages some partners face on separation. Presently, separating parties have two options to claim financial relief:

- Section 15 of the PRA permits one partner to claim an increased share of relationship property where there is "significant disparity" in the income and living standards of the partners. This disparity must be caused by the division of functions within the relationship.

- Part 6 of the Family Proceedings Act 1980 grants a court powers to order one partner to pay maintenance to the other. These payments are designed to meet a disadvantaged partner's financial needs. However, maintenance is typically a temporary remedy.

The Commission argue both solutions are inadequate and a new Act should provide for an entitlement to share income via a Family Income Sharing Arrangement (FISA). A FISA would work where:

- partners have a child together; or
- the relationship has lasted 10 years or longer; or
- during the relationship one partner has stopped, reduced or did not work in order to make domestic contributions to the relationship; or
- one partner enabled the other to undertake further training or education.

Partners would share income for a period of time that is approximately half the length of the relationship, up to a maximum of five years. Family income would be determined by a statutory formula based on what the partners earned in the three years before separation. It is important to note the Commission considers that parties should be able to contract out of a FISA before or during a relationship.

Trust property

The Commission also argues more needs to be done to address property held on trust. Many New Zealanders use trusts to hold property, where this is done legal ownership passes to the trustees. This means, in most cases, trust property falls outside the PRA.

The Commission recommends courts should be given broader powers to grant relief where a trust holds property that was produced, enhanced or preserved by a relationship. Some of the suggested remedies include:

Significant reform proposed for "outdated" Property (Relationships) Act 1976 (Continued)

- ordering one partner to pay compensation;
- ordering trustees to distribute capital from the trust;
- varying the terms of the trust;
- resettling some, or all, of the trust property on a new trust; or
- removing, appointing or replacing trustees.

What's next

The report has been tabled in Parliament by the Minister of Justice and the Government is to give further consideration to the Commission's recommendations. Although it is unlikely that any legislative reform will be immediate, we do not see that the proposed changes will lessen the need for parties to protect their property interests.

Want to know more?

If you have any questions about relationship property issues, please contact our specialist [Private Client](#) team.