

**Government Response to the report of Te Aka Matua o te Ture |
Law Commission:**

**He arotake i te āheinga ki ngā rewa a te tangata ka mate ana |
Review of Succession Law: Rights to a person's property on death**

Presented to the House of Representatives

Government response to the Te Aka Matua o te Ture | Law Commission report

He arotake i te āheinga ki ngā rewa a te tangata ka mate ana | Review of Succession Law: rights to a person's property on death

Introduction

The Government has carefully considered te Aka Matua o te Ture | Law Commission's report, *He arotake i te āheinga ki ngā rewa a te tangata ka mate ana | Review of Succession Law: rights to a person's property on death* (the succession report).

The Government thanks te Aka Matua o te Ture | Law Commission (the Law Commission) for the extensive work it has undertaken to comprehensively review the laws of succession in New Zealand.

The succession report was presented to the House of Representatives on 15 December 2021, and the Government responds to it in accordance with Cabinet Office circular CO (09) 1.

The succession report

The Law Commission's review of succession law follows its earlier review of the Property (Relationships) Act 1976, which it completed in 2019. The resulting report (the relationship property report) made 140 recommendations and proposed the introduction of a new Relationship Property Act to be enacted as the principal source of law applying to the division of property when relationships end on separation.

In July 2019, the Minister Responsible for the Law Commission requested that the Law Commission review succession law. The Government response to the relationship property report noted that the Government intended to consider its recommendations after the Law Commission had completed a broader review of succession law, to ensure the two topics would be considered concurrently.

The succession report is nearly 400 pages long, contains 15 chapters, and like the earlier review of the Property (Relationships) Act makes 140 recommendations and proposes new legislation. The Law Commission considers the current law on succession is old, out of date, and inaccessible. It concludes that reform is required to achieve simple and clear law, and to reflect te ao Māori perspectives in succession.

The Law Commission's recommendations

The Law Commission recommends that a new Inheritance (Claims Against Estates) Act (the new Act) should be enacted in place of Part 8 of the Property (Relationships) Act, the Family Protection Act 1955, and the Law Reform (Testamentary Promises) Act 1949 (Testamentary Promises Act) in full. The Law Commission also recommends that the provisions relating to intestacy should be reformed but remain in the Administration Act 1969.

Several recommendations represent a significant shift in current law and policy

The Law Commission's report makes several recommendations that, if accepted, would result in significant changes to current law and policy. The Government will need to take time to work through these proposals. Some of these recommendations follow.

a) Succession and taonga:

The succession report recommends that the Wills Act 2007, the Administration Act, and the new Act should ensure that succession to taonga is determined by the tikanga of the relevant whānau or hapū. It also recommends that taonga should not be available to meet any entitlement or claim under the new Act or intestacy provisions.

b) Jurisdiction of the Courts:

That Te Kooti Whenua Māori | Māori Land Court, te Kōti Whānau | Family Court and te Kōti Matua | High Court should have concurrent jurisdiction to hear and determine succession matters.

c) Relationship property entitlements:

The Law Commission recommends retaining the right of a surviving partner to apply for a division of relationship property under the Property (Relationships) Act as an alternative to taking their entitlement under the will or intestacy. However, the Law Commission recommends that the Property (Relationships)

Act entitlement should be based on the new classification and division rules recommended in the relationship property report.

The succession report makes a number of recommendations on what a person's entitlement should look like when a relationship ends by death, including:

- bringing into the new Act the Law Commission's recommendations from the relationship property report around what a qualifying relationship is, and
- a top-up approach, instead of forfeiting gifts under a will when a surviving partner elects a division of relationship property.

d) Family provision claims:

Because of the divided views that emerged during its consultation on whether adult children should be eligible to challenge a will under the Family Protection Act to claim family provision, the Law Commission was unable to present a single option for reform that would represent public opinion. It provided two options for the Government to consider: allowing children and grandchildren of all ages to claim family provision, or only allowing children under 25 years old or those who are disabled to claim.

e) Intestacy entitlements:

The succession report recommends reforming the intestacy regime set out in the Administration Act to reflect what most people who die intestate would do with their estate had they made a will. This includes the surviving partner inheriting the intestate's property as a proportion of the estate rather than a prescribed amount and inheriting the "family chattels" (i.e. household furniture, appliances, and other articles used wholly or principally for family purposes).

The Law Commission also recommends new intestacy rules to respond to the growing number of blended families by setting out how much a partner and children from current or past relationships should inherit when a person dies without a will.

f) Contracting out and settlement agreements:

The Law Commission recommends that contracting out provisions, which allow partners to agree on an alternate division of their property, should be available to partners under the new Act for all relationship property entitlements and family provision claims, subject to similar procedural safeguards as those in the Property (Relationships) Act. This is currently

allowed under the Property (Relationships) Act but not the Family Protection Act.

g) Anti-avoidance:

A new anti-avoidance provision would be introduced. It would enable a court to recover certain property of the deceased that does not form part of their estate when they die. It would apply in two situations. First, property that has been disposed of with intent to defeat an entitlement or claim under the new Act could be recovered. Second, property that was owned by the deceased as a joint tenant that has accrued to the remaining joint tenants by survivorship could be recovered.

Areas that require further consideration

The Law Commission identifies areas that would require further consideration by the Government. These include, for instance, whether to increase the threshold for distributing estate money without a grant of administration, the role of the Māori Land Court in succession and estate administration, and whether other legislation relevant to testate and intestate succession could be consolidated into one Act.

Government response

The Government thanks the Law Commission and all those who have contributed to the thorough reviews of both the Property (Relationships) Act and succession law.

Prior to the Law Commission's reviews, the existing law relating to both succession and relationship property had not received first principles reviews and some of the legislation relating to succession is 70 years old. The Government accepts in-principle that reform, including new legislation, is required.

The Government considers that reform of the laws relating to the division of property upon separation and the distribution of property upon death could better enable the law to reflect te ao Māori perspectives in succession and recognise a more diverse range of family structures and relationships.

The Government acknowledges the view of the Law Commission that good succession law should:

- reflect the Crown's obligations under te Tiriti o Waitangi to exercise kāwanatanga in a responsible manner, including facilitating the exercise of tino rangatiratanga by Māori, in the context of succession,
- be simple, accessible and reflect New Zealanders' reasonable expectations,
- be consistent with fundamental human rights and international obligations,

- balance mana and property rights (including testamentary freedom) with obligations to family and whānau in order to promote whanaungatanga and other positive outcomes for families, whānau and wider society, and
- facilitate efficient estate administration and dispute resolution.

Further work is required to carefully work through the Law Commission's recommendations

Reform of these areas of law will be a significant undertaking. The Commission has provided us with two comprehensive and detailed reviews. Nonetheless, the Government will need to take the time to work through the policy detail of implementing many of the Law Commission's comprehensive recommendations on both relationship property and succession law.

There is significant overlap in considerations around relationships ending in separation and relationships ending in death. Examining these areas of the law concurrently will support equity in outcomes for both widowed and separated partners.

The Ministry of Justice will consider the Law Commission's recommendations on succession and relationship property, and any additional policy work required to reform and modernise the law in these areas.

Reform of these areas of the law will not only benefit the lives of all New Zealanders but enable the law to better facilitate Māori to exercise tino rangatiratanga over succession. Given the scope of the Law Commission's recommendations, the complexity of these areas of law, and the engagement required with a broad range of stakeholders, the Ministry's work to achieve these reforms will take a period of years and will need to be balanced against other Government priorities.