



7 February 2018

Law Commission
PO Box 2590
Wellington 6140
E-mail: pra@lawcom.govt.nz

Re: Submission to the Review of the Property (Relationships) Act 1976

This submission is from the NZ Federation of Business and Professional Women (BPW NZ) Inc.

Executive Summary

BPW New Zealand believes that relationship-property legislation should ensure fair and just protection of each spouse in the case of a relationship break-up. Our policy also recommends that children be considered when determining how assets are split.

As a women's advocacy group, we point out that women are traditionally disadvantaged when a relationship ends. Women often come into a relationship with fewer assets and/or a lower income as well as taking on more of the unpaid/unrecognised work such as caregiving. Although we understand the existing legislation addresses this, we are concerned that as modern relationships become more complicated, that basic concern is subsumed in the fight for outcomes to be strictly "equitable".

In addition, we recognise that there are specific groups that suffer from considerable inherent disadvantages, including but not limited to those with lower incomes, refugees and immigrants, the disabled, the elderly and victims of domestic abuse. In an environment where about 95 percent of relationship disputes are settled out of court, with the help of lawyers, these are groups that often don't have the resources to draw on good legal counsel.

As such our submission is focused on ensuring that women and those groups are supported.





General Comments

We suggest that the present legislation would be better served if people more regularly completed fair Contracting Out Agreements that allow for graduated sharing, but we recognize the expense required to obtain legal advice in doing so. In addition, in a relationship there may be one individual with more means and experience in seeking legal advice, and traditionally this is not the woman in a relationship.

BPW NEW ZEALAND

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If the current legislation is not overhauled, New Zealanders would benefit from better education on how the Act works and why Contracting Out Agreements are required. Women and disadvantaged New Zealanders should be provided with better education and awareness of options as well as strong support to help them protect their rights.

The Commission has posed more specific questions as part of the review and we have addressed these below:

What relationships should the Property (Relationships) Act 1976 cover?

Since 1994, our policy has recognised that defacto relationships should be recognised.

What property should the Property (Relationships) Act 1976 cover?

Loans and Gifts should only ever be treated as Loans if they are formally documented as such.

How should the Property (Relationships) Act 1976 divide property?

Spousal Maintenance and Economic Disparity should be codified within the Act to ensure protection of both parties and particularly those that were responsible for unpaid roles within the home during the relationship.

How should the Property (Relationships) Act 1976 treat short-term relationships?

With a relationship of less than three years, there is a concern that if one person is the primary earner and the other having been an unpaid caregiver for children and/or parents, that person has lost the opportunity for income during that time and may be left far worse off than when they entered the relationship. An assessment should be made with fair compensation for this disparity when dividing up assets however it is difficult to provide for this by law without making further timeframe definitions.

What should happen when equal sharing does not lead to equality?

In these circumstances it is very difficult for parties to always feel they have been treated fair and equitably, regardless of equal sharing as the benchmark. The equations for debt and asset equalisation should account for parties feeling an element of fairness as far as is possible. When these tests and equations have been applied appropriately and other matters considered within the equation, there will always be an element of unfairness felt given the outcomes are usually less than positive. This cannot be remedied through the law.

What should happen to property held on trusts?

Trust assets should be treated as part of this legislation. Trusts can be used to create disparity in a relationship and typically, the person in control of the trust is the one that has the resources and experience to seek and have stronger legal support. The current system compounds the disadvantage that the party without power suffers from. A Contracting Out agreement is a more appropriate vehicle to ensure each party obtains appropriate representation when deciding on a graduated break-up of assets.

How should people resolve property matters in and out of court?

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Presently, most matters are resolved out of court. Our concern is that those that don't have the same resources for legal advice are offered support or a Mediation or Mediation/Arbitration option that does not require lawyers. Those resolved outside of court would perhaps be more likely to be less equitable due to lack of legal involvement. Making brochures and information available online and at courthouses and community centres regarding rights of parties on separation, is essential to ensure that all people are aware of their entitlements under the law.

How should the law recognise children's interests?

Children's interests should be paramount and should be taken into account in relationship property discussions. The protracted nature of negotiations or court involvement is the primary reason that these clauses are rarely exercised. The decisions around children and where residences and living arrangements are concerned, are normally resolved by necessity before courts are involved unless there are risks involved for the children. The ability for the court to make such decisions should still remain in the act to ensure these options are available if required. The provision in the Act to look at Children's interests needs to be re-assessed as it is rarely (if ever) used.

Can partners make their own agreement about property?

If this is in a Contracting Out agreement or another legal contract and it is compliant with the current law it should be possible for parties to prepare their own agreements. The concern with this is around receiving legal advice and the likelihood of the disadvantaged partner being unaware of their rights prior to signing the agreement/contract or signing under duress. If a partner does not receive legal advice prior to signing, the contract should be void as currently provided for under the act. As per comments above, the primary concern of our organisation is increasing awareness of rights and options available, to ensure women particularly are not disadvantaged when separation occurs. Currently, the procedure allowed under the act allows people to enter into their own agreement only if they both receive legal advice prior to signing. This certainly should not change.

Tikanga Māori and the Property (Relationships) Act 1976

The act should function in a manner that ensures protection of both parties rights and freedoms and to express their culture as is our organisations policy. With regard to the question around tāonga, if there are tāonga of value within the relationship, that should remain within a whānau line, these should be removed from the relationship property equation. Particularly where family are merely the caretakers or kaitiaki of these for the next generation. Similarly there should be provision for a family heirloom of value to remain in a family line regardless of its value and its time spent in the relationship. There would however need to be thresholds to meet to categorise such items.

Should the Property (Relationships) Act 1976 affect the rights of creditors?

No - if debts are outstanding then they should be addressed in the overall decision and balanced equitably.

What should happen when people or property have a link to another country?

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Where a partner has a connection with another country, the biggest focus should first be on the children and the risk of one party being alienated from the children. Protecting these rights ahead of property issues is key.

Women of other cultures living in New Zealand need the protection our laws presently provide and to be offered support to ensure they can access the same protections as any other New Zealander.

Where a spouse has property in another country it should be treated in the same manner as property within the New Zealand jurisdiction in so far as division of property is concerned. This is not the case currently if the property is immovable and located overseas. The current act allows parties to agree which country's law will apply to their property in the event that they separate. This will however more than likely favour the partner with the greatest property holdings. If the act would recognise immovable property being treated as with all other relationship property in New Zealand, there would be the ability to ensure greater equity overall.

What should happen when one partner dies?

Our policy recommends that in the event of a death, the surviving spouse should not be more disadvantaged than in the case of a divorce.

Our policies

BPW NZ first introduced policy about matrimonial property in 1977, endorsing the principal that in the event of a death, the surviving spouse is not more disadvantaged than in the event of a divorce, and that the assets of the first marriage should not become the assets of the second marriage to the extent that the children of the first marriage do not have inheritance rights. The first element was reaffirmed in 1986.

In 1994, BPW NZ introduced further policy, urging the Government to prioritise and action the Report of the Working Group on Matrimonial Property and Family Protection 1988, to introduce legislation to correct the anomalies resulting from de facto relationships.

Our Organisation

Our organisation's aims are to link professional and business women throughout the world, to provide support, to lobby for change and to promote the ongoing advancement of women. We work for equal opportunities and status for all women in economic, civil and political life and the removal of discrimination in all countries. We promote our aims and organise our operating structure without distinction as to race, language or religion.

Our structure is comprised of a National Executive, 14 branches and a number of individual members in areas where there is no branch. We are an apolitical organization.

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International Status:

BPW International has General Consultative Status at the United Nations through the UN Economic & Social Council (ECOSOC). This enables BPW International to appoint official representatives to UN agencies worldwide and to accredit members to attend specific UN meetings.

Recommendation Summary

We recommend that any legislative change include a comprehensive understanding as well as protections for disadvantaged New Zealanders, including women, those with lower incomes, refugees and immigrants, the disabled, the elderly and victims of domestic abuse.

Thank you for the opportunity to speak to our submission and we hope that our comments are of use to you.

On behalf of

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