Written evidence submitted by Margaret Briggs [HAB00383]

Re: Supplementary evidence on the status of de facto relationships in New Zealand

1. What tests must cohabitants satisfy to claim remedies?

New Zealand law uses the term "de facto relationship" when referring to relationships between unmarried cohabitants. There are two different statutory definitions of "de facto relationship" that apply in different legal contexts.

Legislation Act 2019

Section 14 of the Legislation Act 2019 defines a de facto relationship as a relationship between two people, regardless of their sex, sexual orientation, or gender identity, who live together as a couple in a relationship in the nature of marriage or civil union, are not married to, or in a civil union with, each other and are both aged 16 years or older. Section 14 is the default definition of de facto relationship that applies to all legislation unless an enactment provides otherwise.

The decision-maker has a broad remit when determining whether the parties are living together as a couple in a relationship "in the nature of marriage or civil union". Regard must be had to the context or the purpose of the law in which the question is to be determined as well as all the circumstances of the case.[1] In the context of welfare benefit eligibility, for instance, the Court of Appeal has held that emotional commitment and financial interdependence were both necessary requirements.[2] Decisions are necessarily case-specific and are often based on the policies and guidelines developed by the relevant state agencies.[3]

Property (Relationships) Act 1976

The Property (Relationships) Act 1976 provides the second of the two statutory definitions of "de facto relationship". Some other statutes, including the Family Protection Act 1955, the Administration Act 1969 and the Family Proceedings Act 1980 apply the Property (Relationships) Act definition. The Legislation Act 2019 "default" definition does not apply to those Acts.

It is important to note at the outset that the stakes are very high in determining whether there is a "qualifying de facto relationship" for the purposes of the Property (Relationships) Act 1976. This is because, once a qualifying de facto relationship is found to exist, the same tests for classifying and dividing the couple's property automatically apply to de facto relationships, marriages and civil unions (see below).

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[1] Legislation Act 201, s 14(3).

[2] *Ruka v Department of Social Welfare* [1997] 1 NZLR 154 (CA).

[3] Eligibility for certain welfare benefits, or the rate at which they are paid, depends on whether the claimant is in a relationship in the nature of marriage. Departmental policy guidelines broadly follow *Ruka* and require a degree of companionship that includes "being emotionally committed to each other for the foreseeable future, and financially interdependent": <www.workandincome.govt.nz/on-a-benefit/tell-us/are-you-in-a-relationship.html>; Social Security Act 2018. The Family Violence Act 2018, s 12(a) provides that a person is in a "family relationship" with another person if they are the spouse or partner of that person. Partners, married or otherwise, are "eligible" and thus "compellable" to give evidence in civil and criminal proceedings: Evidence Act 2006, s 71.

A "qualifying" period is required for de facto relationships because of their informal nature compared to marriages and civil unions.[4] When the current laws were being considered, various qualifying periods of between 2-5 years were mooted, and 3 years was settled on. Three years is considered "an appropriate length of time…before the property-sharing regime takes effect".[5] The Act aims to capture relationships that have achieved a degree of permanence rather than those of a more transitory nature. Relationships of less than three years are relationships of "short duration"[6] and are excluded from the Act unless the court is satisfied that there is a child of the de facto relationship,[7] or that the applicant has made a substantial contribution to the de facto relationship and that failure to make the order would result in serious injustice.[8] Relationships may be intermittent, and the court can exclude short periods of resumed cohabitation (lasting no longer than three months) when computing the duration of a relationship.[9] A relationship of longer than three years may be treated by the court as a relationship of short duration if, having regard to all the circumstances of the relationship, it considers it just to do so.[10]

Section 2D defines a "de facto relationship" as a relationship between two persons (different-sex or same-sex) who are both aged 18 years or older, live together as a couple and who are not married to, or in a civil union with one another.[11] The key inquiry is whether the parties "live together as a couple".[12] All the circumstances of the relationship are taken into account, including any of the nine matters specified in section 2D(2) that are relevant in a particular case:[13]

- relationship duration;
- nature and extent of common residence;
- whether or not a sexual relationship exists;
- degree of financial dependence or interdependence;
- ownership, use, and acquisition of property;
- degree of mutual commitment to a shared life;
- care and support of children;
- performance of household duties; and
- reputation and public aspects of the relationship.

The matters are indicators of living together as a couple rather than conclusive evidence.[14] Courts weigh up the matters in an evaluative task,[15] and try to avoid "an overly-mechanical application of non-exhaustive statutory criteria".[16]

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[4] Law Commission, *Dividing Relationship Property – time for change?* (NZLC IP41, 2017) pp 312-15.
[5] Matrimonial Property Amendment Bill 1998 and Supplementary Order Paper No 25 2000 (109-3) (select committee report) pp 9-10.
[6] Section 2E(1)(b)(i).
[7] Section 2.
[8] Section14A(2).
[9] Section 2E(2).
[10] Section 2E (1)(b)(ii).
[11] Property (Relationships) Act 1976, s 2D(1). A person is another person's "de facto partner" if they have a de facto relationship with each other: s 2C. A de facto partner may be in more than one relationship at the same time, and the PRA establishes rules for determining competing claims: ss 52A, 52B.
[12] Section 2D(1).
[13] Section 2D(2).
[14] No finding in respect of any of the matters, or any combination of them, is to be regarded as necessary: s 2D(3)(a). A court may have regard to such matters as may seem appropriate in the circumstances of the case: s 2D(3)(b).

Given that a lot is at stake for the contesting parties, there is a predictably large body of case law on what it means to "live together as a couple". Parties often disagree over whether their relationship meets the qualifying criteria required for a de facto relationship to be caught by the Act. The start and end dates of a relationship are also matters which are frequently contested in the courts. These dates can be very important in terms of assessing the overall length of the relationship (recall that 3 years is the usual requirement). The start and end dates of a relationship can also be very important for determining what property is available for division between the partners. The case law can be of limited precedent value, however, as cases tend to be very fact specific. Common residence has been held not to be a determinative factor, and parties have successfully claimed a de facto relationship where the couple "lived apart" in separate dwellings for large parts of the relationship.[17] There is also dicta to the effect that the existence of a sexual relationship is not a prerequisite to "living together as a couple".[18]

The Act operates a system of deferred community of relationship property that starts operating on the occurrence of a crystallising event: separation or death. The end of a de facto relationship is a question of fact and there are no formal or procedural requirements for its termination. Where a marriage or civil union was immediately preceded by a de facto relationship, the de facto relationship must be treated as if it were part of the marriage or civil union.[19] This can be important in determining whether the relationship is one of short duration.

As noted above, when a de facto relationship is found to be a "qualifying" relationship, the same tests for classifying and dividing the relationship property apply to marriages, civil unions and de facto relationships alike. To identify the property available for division, the partners' property[20] is classified as "relationship" property[21] or "separate" property.[22] The general rule is that the partners "are entitled to share equally in" all the relationship property.[23] Note that superannuation (pension) scheme entitlements[24] are relationship property to the extent of the proportion of the value of the entitlements that are "attributable" to the relationship.[25] Further note that, on separation, the court may make orders granting a partner

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[15] *Scragg v Scott* [2006] NZFLR 1076 at [64].

[16] *B v F* [2010] NZFLR 67 at [51], per Heath J.

[17] In *Scragg v Scott* [2006] NZFLR 1076, there was a de facto relationship notwithstanding that the couple spent more time living apart in different countries than they spent together. In *B v F* [2010] NZFLR 67 at [61], Heath J observed that "a person may share a family residence while electing not to sleep at that property exclusively, during the period of the relationship."

[18] In *Horsefield v Giltrap* (2001) 20 FRNZ 404 (CA), the partners maintained separate homes and abstained from a sexual relationship because of their religious beliefs. However, they spent much of their time together, were emotionally dependent and had joint investments. The case was decided before the Act was enacted, but the Court in *Scragg v Scott* [2006] NZFLR 1076 at [37], had no doubt that the relationship would have qualified as a de facto relationship under the Act.

[19] Sections 2B, 2BAA.

[20] "Property" is defined in s 2.

[21] Section 8. Relationship property includes the family home and family chattels whenever acquired, property acquired during the relationship, property acquired by either partner in contemplation of the relationship if the property was intended for the common use or benefit of both parties.

[22] Sections 9, 9A, 10. Separate property is property that is not relationship property, including income or gains from separate property.

[23] Section 11. Debts are also classified as either 'relationship' or 'personal': s 20.

[24] See s 2 for the definition of superannuation scheme entitlement.

[25] Section 8(1)(i).

the right to occupy the family home to the exclusion of the other party,[26] as well as orders in respect of furniture and household items.[27]

There are some limited exceptions to equal sharing which include: relationships of short duration;[28] extraordinary circumstances;[29] and where parties contract out of the Act (see below).[30] In some circumstances, the general rules are also modified where there are: post-separation contributions or the dissipation of property;[31] economic disparity claims;[32] and dispositions of property to trusts and companies.[33]

Maintenance

In New Zealand, maintenance claims are made separately from relationship property claims. The Family Proceedings Act 1980 regulates maintenance. After a marriage or civil union is dissolved, or a de facto relationship has ended, one party is liable to maintain the other to the extent necessary to meet that party's reasonable needs if the other party cannot meet all or part of those needs and the inability to meet those needs is the result of the effects of one or more of the circumstances listed in the statutory provision.[34] However, maintenance is atypical of the general rule that the same rights and duties apply generally across all relationship types during the subsistence of the relationship. Spouses and civil union partners may claim maintenance either during or after their relationship is dissolved,[35] whereas de facto partners can claim only when their relationship has ended.[36] The reason for the distinction can be explained by the fact that marriages and civil unions do not end until the legal relationship is formally dissolved, whereas a de facto relationship ends on separation.

2. Legal effects for de facto partners (cohabitants) on death of a partner

Wills

In New Zealand, anyone aged 18 years or older can make, change, revoke or revive a will.[37] A de facto partner is free to leave all or part of their estate to the other partner. In two respects, however, the Wills Act 2007 does not treat de facto partners the same as spouses and civil union partners. A prior will is automatically revoked if the will-maker subsequently marries or enters into a civil union unless the will was made in contemplation of marriage,[38]

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[26] Section 27. Where the parties do not own a family home, the court can make an order vesting in either partner the tenancy of a dwelling: s 28.
[27] Sections 28B, 28C, 28D.
[28] Sections 14, 14AA, 14A.
[29] Section 13.
[30] Part 6.
[31] Sections 18B, 18C.
[32] Sections 15, 15A.
[33] Sections 44, 44C, 44F.
[34] Family Proceedings Act 1980, s 64. The "circumstances" are the ability to become self-supporting having regard to the division of functions during the relationship, likely earning capacity, responsibilities for children, the standard of living enjoyed during the relationship and the undertaking of a reasonable period of education or training designed to increase earning capacity or to reduce or eliminate the need for maintenance: s 64(2).
[35] Family Proceedings Act 1980, ss 63, 64.
[36] Family Proceedings Act 1980, s 64. "De facto relationship" has the same meaning as in the Property (Relationships) Act: s 60.
[37] Wills Act 2007, s 9. "Will" is defined in s 8. Section 6 adopts the meaning of "de facto relationship" in the Legislation Act 2019, s 14. Minors under the age of 18 can do the same if they are or were married, in a civil union or de facto relationship.
[38] Wills Act 2007, s 18.

but the commencement of a de facto relationship does not revoke a prior will of either partner. Secondly, unlike the dissolution of a marriage or civil union, the end of a de facto relationship does not automatically revoke provision made in favour of the will-maker's former partner.[39] The will-maker must actively change their will in order to prevent their former de facto partner from taking under the will.

Intestacy

Surviving de facto partners are entitled to succeed on the intestacy of their deceased partner if the partners were living together in a qualifying de facto relationship when the partner died.[40] The requirement that the partners were living together when the deceased died recognises that it is a question of fact whether there is a de facto relationship.[41] There is a continuing legal relationship between spouses and civil union partners after separation, but a de facto relationship ends when the parties cease to live together. Where there was a qualifying de facto relationship at the date of death, the same formula for the distribution of the estate is applied to surviving spouses, civil union partners and de facto partners.[42]

Family Protection Act claims

The distribution of property under a will or the intestacy rules may be affected by third party claims for provision for maintenance from the deceased estate pursuant to the Family Protection Act 1955. Claims are made on the basis that adequate provision is not available from the estate for the proper maintenance and support of the applicant. The court can order any provision it thinks fit to be made out of the deceased's estate for all or any of the claimants.[43] Claims for provision may be made by different family members including de facto partners living with their deceased partner at death.[44] A separated de facto partner will not have standing to bring a claim under the Family Protection Act.

Property (Relationship) Act claims

A surviving de facto partner in a qualifying relationship is entitled to share in the relationship property under the Property (Relationship) Act. The Act applies on death as well as on separation,[45] and the entitlement of a surviving spouse or partner under the Act has priority over beneficial interests under the deceased's will or intestacy as well as orders made in respect of the Family Protection Act 1955.[46] The surviving partner may choose one of two options for sharing the property. Under option A the survivor elects to apply for a division of the relationship property under the Act. By choosing option A, the survivor cannot succeed under the deceased's will or the intestacy rules.[47] Under option B, the survivor elects not to choose option A. Instead, the survivor retains the assets they own, takes by survivorship

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[39] Wills Act 2007, s 19.

[40] Administration Act 1969, s 77. "De facto relationship" has the meaning given to it by the P (Relationships) Act, and de facto partners who have lived together for less than three years are generally not entitled to succeed on intestacy: s 77B.

[41] See *Public Trust v Whyman* [2005] 2 NZLR 696 (CA).

[42] Administration Act 1969, s 77 supplies the statutory formula for distributing the estate.

[43] Family Protection Act 1955, s 4.

[44] Section 3.

[45] Property (Relationships) Act 1976, Part 8.

[46] Section 78.

[47] Section 61. The reason why succession rights are revoked under option A is to avoid the surviving partner receiving more property than the deceased intended: Law Commission, *Review of Succession Law: Rights to a person's property on death* (NZLC IP46, 2021) p 45. There are two exceptions: (i) where the will expresses a contrary intention (s 76); or (ii) where the court allows the survivor to take some or all of the inheritance (s 77).

property that was jointly owned with the deceased, and inherits whatever provision is available under the deceased's will.

Other claims

Surviving de facto partners are generally included with spouses and civil unions partners when state support is available following the death of a partner. For example, financial support is available to the surviving de facto partner in the form of assistance with funeral and burial costs[48] and living expenses.[49] Additionally, the Accident Compensation Act 2001 provides a tailored scheme where death was the result of an accident.[50]

Note that in New Zealand, no tax is paid on inheritance by beneficiaries.[51]

3. Opting-out of the Property (Relationships) Act 1976

The Property (Relationships) Act 1976 is an opt-out system that applies unless the parties have made their own arrangements.[52] Spouses, civil union partners, or de facto partners, or any two persons in contemplation of entering into a marriage, civil union, or de facto relationship, may make any agreement they think fit with respect to the status, ownership, and division of their property (including future property).[53] Parties can also make an agreement after separation to settle their property rights.[54] The subject matter of contracting out agreements is limited to the property rights under the Property (Relationships) Act.[55] Separate agreements should be made to address matters such as maintenance, and the care and support of children.

Contracting out agreements are void unless they comply with certain procedural formalities: the agreement must be in writing and signed by both parties; each party must have independent legal advice before signing the agreement; the signature of each party must be witnessed by a lawyer; and the lawyer who witnesses the signature of a party must certify that, before that party signed the agreement, the lawyer explained to that party the effect and implications of the agreement.[56] The purpose of these formalities is to ensure that both parties are fully informed and independently advised as to what they stand to gain or lose by waiving their statutory entitlements.

Notwithstanding that an agreement satisfies the procedural requirements, a court may set aside the agreement if, having regard to all the circumstances, it is satisfied that giving effect

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[48] See <www.workandincome.govt.nz/products/a-z-benefits/funeral-grant.html>

[49] See <www.workandincome.govt.nz/online-services/eligibility/index.html>

[50] An eligible "partner" includes a person with whom the deceased claimant was in a de facto relationship immediately before his or her death, including where they were living apart because of work, health or imprisonment: Accident Compensation Act 2001, s 18A. Assistance includes survivor's one-off grants, weekly compensation for the partner and children, and childcare. See s 69, Schedule 1, clauses 65, 66, 70, 76; <www.acc.co.nz/im-injured/financial-support/financial-support-after-death/>

[51] The Estate Duty Abolition Act 1993, s 3, abolished estate duty in of respect of deaths occurring on or after 17 December 1992.

[52] Property (Relationships) Act 1976, Part 6.

[53] Section 21(1). Agreements may apply during the joint lives of the spouses or partners or when one of the spouses or partners dies: s 21(2).

[54] Section 21A.

[55] Section 21D.

[56] Section 21F. However, the court may give effect to agreements that do not comply with the requirements if neither party has been materially prejudiced by not complying with the requirements: s 21H.

to the agreement would cause "serious injustice". In deciding whether giving effect to an agreement would cause serious injustice, the court must have regard to: the provisions of the agreement; the length of time since the agreement was made; whether the agreement was unfair or unreasonable in the light of all the circumstances at the time it was made; whether the agreement has become unfair or unreasonable in the light of any changes in circumstances since it was made (whether or not those changes were foreseen by the parties); the fact that the parties wished to achieve certainty as to the status, ownership, and division of property by entering into the agreement; and any other matters that the court considers relevant.[57]

Contracting out agreements are made at the start of a relationship, before the parties have begun to accumulate rights under the Act. The purpose of contracting out agreements is thus to avoid the imposition of statutory equal sharing of relationship property on the couple at the end of their relationship. The courts have therefore imposed a high threshold for setting aside contracting out agreements for serious injustice. The Court of Appeal has found that economic disparity, even where it is significant, between a party's entitlement under an agreement and what they would otherwise have stood to receive under the Act, is insufficient by itself to set aside an agreement. There would also need to be evidence of procedural irregularity.[58]

By contrast, separation agreements made at the end of the relationship are potentially more vulnerable to challenge if they do not broadly reflect the parties' entitlements already accrued under the Act:[59]

> In most compromise cases, the parties will presumably set out to provide for a division of property which accords, at least broadly, to what would be ordered under the statutory regime. So where there is a significant discrepancy between what the agreement provides and the way in which the relevant statutory regime would have operated, this in itself may well suggest that the agreement is unfair or unreasonable and, as well, may well require explanation. In the case of a contracting out agreement, of course, the very purpose of the parties is to make provision which differs from the statutory regime.

The right to contract out of the Property (Relationships) Act is regarded as fundamental. Despite that, only a small percentage of couples make contracting out agreements.[60] A recent survey of more than 1,300 members of the New Zealand public aged 18 years and over revealed that while 25 per cent of respondents had considered a contracting out agreement at some point, only 7 per cent of the total sample had made an enforceable agreement. Just under half of those who had considered an agreement had never discussed it with a partner.[61] The reasons given for such reticence included: considering the relationship was not serious enough; believing they did not have sufficient relationship property; and concerns about the negative impact such a discussion would have on the quality of their relationship. Among those who did discuss a pre-nuptial agreement with their partner: 47 per cent certified the

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[57] Section 21J.
[58] *Harrison v Harrison* [2005] 2 NZLR 349 (CA).
[59] *Harrison* at [81].
[60] Anecdotal accounts from practitioners the writer has spoken with suggest contracting out agreements are made for a variety of reasons including: those who have had previously experienced a relationship breakdown and do not want to go through the process of sharing property under the Property (Relationships) Act again; those with children from previous relationships who they want to protect when entering a new relationship; those coming to a relationship with significantly more property than the other partner.
[61] *Relationship Property Division in New Zealand: Public Attitudes and Values* (Borrin Foundation, General Population Survey, October 2018) at 7.
<https://www.borrinfoundation.nz/wp-content/uploads/2020/09/Relationship-Property-Research-Summary-2018.pdf>

agreement with a lawyer; 38 per cent reported as having made an informal/verbal agreement without involving a lawyer (ie, their agreement would not be enforceable, further suggesting a lack of understanding of the contracting out rules under the Act); and 12 per cent failed to reach agreement with their partner. General awareness of the equal sharing law was strongly linked with taking action on pre-nuptial agreements (for example, those who were aware of the law were more likely to have had a discussion and more likely to have involved a lawyer).[62]

When de facto couples were included in the Property (Relationships) Act in 2001, the opt-out scheme was regarded as providing them with more protection than an opt-in scheme. It was thought that an opt-out scheme would protect more vulnerable people (predominantly women) who were likely unaware of their rights or unable to get their partner to agree to opt-in to the Act.[63] One potential problem remains for de facto couples, however. Whereas marriages and civil unions are formalised opt-in relationships that have a definite start date, there is often much uncertainty regarding the existence and commencement of qualifying de facto relationships under the Act: "The law may impose the legal status of a de facto relationship retrospectively upon parties whose relationship gradually and without conscious election assumed that character."[64] Thus, some de facto partners may not know that they are subject to the Act, or from what date their relationship is subject to the Act. For these couples, the opt-out scheme remains problematic: it is surely not possible to contract out of a relationship that one is not aware one is in until its existence and duration is subsequently determined by a court.

4. Law Reform

A number of law reform initiatives are currently underway in New Zealand. In 2019 the Law Commission published a report on the Property (Relationships) Act.[65] The Commission concluded that the Act is no longer fit for purpose for New Zealand in the 21st century, and it recommends that it should be replaced with a new Act.[66] The Commission recommended bringing the minimum age requirement for qualifying de facto relationships into line with marriages and civil unions, with effect that the current age requirement of 18 years would be reduced to 16 years.[67] The Commission was largely satisfied that the definition of de facto relationship and the three-year qualifying period remain appropriate, although it suggested that partners should be given greater guidance about when a relationship is likely to be a qualifying relationship. To that end, it recommended a rebuttable statutory presumption that

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[62] Approximately 79 per cent of respondents were aware of the equal sharing rules, with 68 per cent being aware that Property (Relationships) Act applies to both married and unmarried couples. Just 48 per cent were aware that the Act applies to couples who have lived together for three years or longer: *Relationship Property Division in New Zealand: Public Attitudes and Values* (Borrin Foundation, General Population Survey, October 2018) at 3.

[63] Justice and Electoral Committee report on the Matrimonial Property Amendment Bill and the Supplementary Order Paper 2001(25) Matrimonial Property Bill (109-3) 10.

[64] *DM v MP* [2012] NZFLR 385 at [23], per Miller J.

[65] Law Commission, *Review of the Property (Relationships) Act 1976* (NZLC R143, 2019). <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC - PRA Review Project - Final Report R143_0.pdf >

[66] Ibid.

[67] Ibid, p 170. Note also, the Law Commission did not recommend extending the Act to polyamorous relationships or non-intimate domestic relationships: pp 181-86.

the partners are in a qualifying relationship if they maintain a "common household" for three years or more.[68]

Among the Commission's other recommendations was that the rules applying to relationships ending on death be examined separately, within the context of a broader review of succession law. Following the publication of its report on the Property (Relationships) Act, the Law Commission undertook a wide-ranging review of succession law. The Law Commission completed its review of succession law in November 2021.[69] It concluded that many of New Zealand's current succession laws are out of date and that new law is needed to keep up with social change to better reflect the diversity of family relationships and to meet New Zealanders' reasonable expectations.[70] One of the key recommendations is the introduction of a new Inheritance (Claims Against Estates) Act which would be the principal source of law regarding entitlements to and claims against estates. Claims on death would be removed from the Property (Relationships) Act, although surviving partners' rights to a division of relationship property when their partner dies would continue under the new Act.[71]

As recommended in the review of the Property (Relationships) Act in 2019, the Commission has again recommended that the new Inheritance (Claims Against Estates) Act should include a presumption that two people are in a qualifying de facto relationship when they have maintained a common household for a period of at least three years. De facto relationships of less than three years would still not qualify for a relationship property division on the death of a partner unless the relationship meets the additional eligibility criteria.

The Law Commission also addressed the concerns outlined earlier regarding the unequal treatment of de facto partners in relation to the revocation of wills under the Wills Act.[72] It recommends repealing the automatic revocation rule[73] and amending the rule that dissolution invalidates a will to a former spouse or civil union partner so as to include de facto relationships.[74]

The New Zealand Parliament will now consider the Law Commission's recommendations in both the 2019 and 2021 reports and decide whether to reform the law.

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[68] Ibid, pp 151-55.
[69] Law Commission, *Review of succession law: rights to a person's property on death* (NZLC R145, 2021).
[70] <https://www.lawcom.govt.nz/our-projects/review-succession-law?id=1684>
[71] The Commission recommended revising the rules so that instead of forfeiting the gifts under the will (the current approach where option A is elected), the value of the gifts would be taken into account (a "top-up" approach). For a discussion of relationship property entitlements on death see, NZLC R145, chapter 4.
[72] See the discussion at: NZLC R145, 16.34 – 16.52.
[73] Wills Act 2007, s 18. The rule presumes that the will would no longer reflect the person's testamentary intentions. However, the Commission notes that fails to take into account that today many couples are in a de facto relationship before they get married.
[74] Wills Act 2007, s 19. The Commission recommended that s 19 be amended to apply two years after the point when the partners cease to live together as a couple.