How should relationship property be divided?

By Susan Glazebrook[1]

This paper deals with how relationship property is currently divided under the Property (Relationships) Act 1976 (the Act) and explores the shortcomings of the current system. I first set out the principles in the Act and provide a brief description of the current provisions relating to the division of assets (essentially equal sharing with some exceptions). After this, I discuss a number of themes relating to the operation of the Act. To ground this discussion, I include data about the pattern of asset holding and wealth distribution in New Zealand.[2] I then discuss some of the exceptions to equal sharing in the Act in more detail before coming to some general conclusions.

Principles

In brief the Act rests on the following purposes and principles. It:

(a) recognises the equal contribution of both parties to a marriage, civil union or de facto partnership (collectively referred to as "the relationship" in this paper, with the individuals involved referred to as "partners");[3]

(b) provides that all forms of contribution[4] should be treated as equal;[5]

(c) rests on the principle that "men and women have equal status, and their equality should be maintained and enhanced";[6]

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[1] Acting Judge of the Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa. This paper was prepared for the National Conference to mark the 50th anniversary of the Property (Relationships) Act 1976 held on 3 July 2026. My thanks to Supreme Court clerks, Gulliver MacDonald and Florence Oakley, for their invaluable assistance with this paper. The views expressed in the paper (and any mistakes) are my own. A truncated version of this paper is to be published in the Otago Law Review, along with the other papers from the Conference.

[2] The paper uses the most recent data available. Points of note relating to particular data will be addressed in footnotes. Not all relevant aspects have up-to-date data. This means that some aspects include data up to June 2026, some to the end of June 2025 and some from earlier years. Another shortcoming is that the data does not address specifically the wealth distribution and asset holding of separating (understandably given it cannot be known which partners will separate) and separated partners. It also does not deal specifically with de facto couples: for example, there is little information on the formation and duration of de facto relationships. The data nevertheless allows some conclusions to be drawn. More up to date and targeted data would be helpful in order to make fully informed decisions about any changes needed to the Act.

[3] Section 1M(b).

[4] Contribution is widely defined in s 18 as including both monetary and non-monetary contributions, including care of children but with no presumption that a contribution of a monetary nature is of greater value than a contribution of a non-monetary nature.

[5] Section 1N(b).

[6] Section 1N(a). I note the Act does not deal explicitly with transgender people or those whose gender identity is nonbinary.

(d) recognises that a just division of relationship property should have regard to the economic advantages or disadvantages to the partners arising from their relationship or the ending of their relationship;[7]

(e) provides for "a just division of relationship property" between the partners when the relationship ends "while taking account of the interests of any children" of the relationship;[8] and

(f) takes account of the principle that "questions arising under this Act about relationship property should be resolved as inexpensively, simply, and speedily as is consistent with justice".[9]

An additional and influential principle is the "clean break" principle: when a relationship breaks down, partners should have complete financial separation as soon as possible allowing them to move on with their lives. While the "clean break" principle is not included in the Act, it permeates the philosophy behind the Act and judicial decisions.[10]

Te Aka Matua o te Ture | Law Commission (the Law Commission), in its review of the Act,[11] does not recommend the "clean break" principle be included as a principle in any new Act. It said that it was "but one factor that is relevant to the overarching purpose of the property sharing regime": to attain a just division of property.[12] It considered that "ongoing use of property or future periodic payments may be necessary", particularly in relation to the principle that economic advantages and disadvantages from the relationship are to be shared and also in considering the best interests of any children.[13]

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7 Section 1N(c).

8 Section 1M(c).

9 Section 1N(d).

10 See Te Aka Matua o te Ture | Law Commission *Review of the Property (Relationships) Act 1976* (NZLC R143, 2019) [Law Commission 2019 Review] at [2.62]–[2.64]. The Law Commission does not recommend it be included as a principle in any new Act.

11 Note that the Law Commission's 2019 Review was presented before the research findings on experiences with the Act — Megan Gollop and others *Relationship Property in New Zealand: The Experiences of Separated People* (University of Otago and Michael & Suzanne Borrin Foundation, October 2021) — were available. The Commission's report was also presented before the 2023 census.

12 At [2.66]. A "clean break" is in any event neither possible nor desirable where children are involved. It also does not fit with broader conceptions of relationships for Māori and Pasifika. It was, however, highly supported by the respondents in research undertaken at the University of Otago: Gollop and others, above n 11, at 172–182. This was largely so the respondent would not need to deal further financially with a difficult partner, which may also be an argument against Family Income Sharing Arrangements [FISAs], discussed further below. I note that any conclusions drawn from this study must take into account the fact that the respondents were predominantly Pākehā women with a high level of education and personal income: at 7.

13 At [2.67].

Division of property

The Act provides for a deferred property sharing regime where partners manage their property separately during the relationship, but share the assets acquired during the relationship on separation.[14]

The default position under the Act is that, on the breakdown of the relationship, each partner is entitled to share equally in all relationship property.[15] This includes the family home,[16] the family chattels and any other relationship property (essentially all property acquired in the course of the relationship).[17]

Separate property, defined in s 9 as all property that is not relationship property, is not shared except where the property has become relationship property under ss 9A[18] or 10. Section 9A provides that an increase in value of one partner's separate property, or any income or gains from that separate property, become relationship property where, under s 9A(1), it is attributable to the application of relationship property, and also, under s 9A(2), to the extent to which it is attributable to the actions of the other partner.[19] Section 10 provides that property acquired from a third person by inheritance, survivorship, as a beneficiary under a trust or by gift is not relationship property,[20] except where the property has been voluntarily intermingled with relationship property such that it is "unreasonable or impracticable" for it to be considered separate property.[21]

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14 See at [2.40]. Other regimes around the world include a community property system where most property acquired during the marriage is considered jointly owned and separate property systems where property acquired during a relationship is not automatically joint property but where the court determines a fair or equitable division on separation. Not all regimes around the world include de facto relationships. See Te Aka Matua o te Ture | Law Commission *Dividing relationship property – time for change?* (NZLC IP41, 2017) [Law Commission 2017 Review] at [3.34]–[3.40].

15 Section 11.

16 Section 16 provides there can be an adjustment when each of the partners owned a home at the date of the relationship capable of being the family home and only one is included in the relationship property to be divided (or if the other partner sold their home in contemplation of the relationship and the proceeds of this are not included in the relationship property).

17 See s 8 for the full definition of relationship property.

18 Where for example the separate property has been voluntarily applied for the acquisition or improvement or to increase the value of relationship property: s 9A(3).

19 This is to be shared according to each partner's contribution. For analyses of s 9A and proposals for reform, see Margaret Briggs and Nicola Peart "Sharing the Increase in Value of Separate Property under the Property (Relationships) Act 1976: A Conceptual Conundrum" (2010) 24 NZULR 1; and Benjamin James Fraser "Section 9A(2) of the Property (Relationships) Act: fixed by the courts?" (2026) 12 NZFLJ 1.

20 This also applies to the proceeds of disposition of, and property acquired out of, such property: s 10(1).

21 See s 10(2). The family home and family chattels, however, are still relationship property unless agreed otherwise in accordance with Part 6: s 10(4).

The value of relationship property is reduced by any relationship debt.[22] Debts are classified in a similar way to relationship property.[23] The Law Commission said that few issues had been raised in relation to the definition of relationship debt, except in relation to debts improperly obtained or applied, but (somewhat oddly in my view) did not recommend that any discretion be provided to the courts in this regard.[24]

There are exceptions where adjustments to equal sharing can be made:

(a) where there are "extraordinary circumstances" that make equal sharing of property "repugnant to justice";[25]

(b) in certain circumstances for relationships of short duration,[26] where the share is determined in accordance with the contribution of each partner to the relationship;[27]

(c) where the income and living standards of one partner are likely to be significantly higher than those of the other partner because of the effects of the division of functions in the relationship while the partners were living together;[28]

(d) where the separate property of a partner has been sustained by the other partner or by the application of relationship property,[29] or where the other partner's deliberate actions or omissions have diminished the value of separate property;[30]

(e) where there are children of the relationship and various orders can be made.[31] Orders can also be made for occupation orders of the family home or any other premises that are relationship property for one partner for a period;[32]

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22 Section 20D.
23 Section 20.
24 See Law Commission Review, above n 10, at [4.7]–[4.14] and [4.18]–[4.30].
25 Section 13.
26 As defined in s 2E.
27 Sections 14, 14AA and 14A.
28 Sections 15 and 15A. Note the link to the principle in s 1N(c).
29 Section 17.
30 Section 17A.
31 Sections 26 and 26A
32 Sections 27–28A. The needs of any children will be given particular consideration, although the fact that there are children is not enough in itself. The particular needs of the property or the partner are also relevant: see Mark Henaghan and others *Family Law in New Zealand: Volume 2* (20th ed, LexisNexis NZ, Wellington, 2021) at 1282; Nicola Peart "Occupation orders under the PRA" [2011] NZLJ 356 at 356; and Nicola Peart (ed) *Family Law — Family Property* (looseleaf ed, Thomson Reuters) at [PR27.03].

(f) for contributions made after separation and for dissipation of relationship property after separation;[33] and

(g) if parties have contracted out,[34] provided certain procedural safeguards are met.[35] A court may set aside an agreement if it would cause serious injustice.[36]

I also note that misconduct can generally not be taken into account.[37] Some of these exceptions will be examined in more detail below.

Some themes

I discuss the operation of the Act under the following headings:

(A) The Act is for the rich;

(B) Real property is king;

(C) Gender gap; and

(D) Ethnic divide.

A The Act is for the rich

A divided nation

As at the end of June 2024, there were 1.985 million households in New Zealand, owning $2.397 trillion in assets with $2.067 trillion in net worth (assets less liabilities).[38]

The top 10 per cent of households owned 48.5 per cent of all wealth. The bottom half of households held only 6.7 per cent. Breaking down these figures, the bottom quintile of households had negative net worth, averaging -$9,000 (-0.2 per cent of total national net worth). The second quintile had an average of $150,000 in net worth (2.9 per cent of total),

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33 Sections 18B and 18C.

34 See ss 21, 21A, 21B and 21D.

35 See ss 21F–21H.

36 Section 21J.

37 Section 18A.

38 Unless otherwise identified, the figures and commentary used in this part of the paper are from MoneyHub "NZ Household Wealth Statistics - Top 10% Own Half of $2 Trillion" (3 January 2026) <www.moneyhub.co.nz> which uses data from the Stats NZ | Tatauranga Aotearoa 2024 Household net worth statistics: see Stats NZ | Tatauranga Aotearoa "Household net worth statistics: Year ended June 2024" (26 September 2025) <www.stats.govt.nz>. The figures are subject to interpretation errors (if any) by MoneyHub and have the same limitations as the original data. The Stats NZ data used by MoneyHub is based on the Household Economic Survey which was replaced by the Household Income and Living Survey from the 2024/2025 year onwards. Limitations include possible sampling errors. This means all of the figures should be treated as estimates rather than exact figures.

the middle quintile had an average of $538,000 in net worth (10.3 per cent of total), the fourth quintile had an average net worth of $1,075,000 (20.7 per cent of total), while the top quintile had an average net worth of $3,454,000 (66.3 per cent of total net worth).

The median household net worth was $529,000.[39] But wealth creates more wealth: households that received an inheritance had a median net worth of $984,000, nearly double the median. There is also an age differential in terms of wealth which peaked at ages 55–64 (an average of $877,000) and then gradually declined as retirees spent their savings. The 35–44 age group carried the most debt ($138,000 on average).[40] For those who studied after 1992, the student loan burden may also increase disparity on the basis of age.[41]

Research has shown that a leading cause of relationship issues in New Zealand is financial stress.[42] It is therefore worth noting that, in the 12 months ending June 2025, 9.1 per cent of people were in households living in material hardship.[43] And children fared worse: 14.3 per cent of children lived in households in material hardship.[44] For disabled

39 This means that half of households had more and half had less. The mean (average) household net worth was $1,041,000, but this figure is distorted by the most wealthy households owning very valuable assets. While median household net worth had increased from $399,000 in June 2021, the distribution of wealth across New Zealand households remained unchanged: Stats NZ | Tatauranga Aotearoa "Household net worth increases, wealth distribution remains unchanged" (26 September 2025) <www.stats.govt.nz>.

40 The so-called "bank of mum and dad" should also be factored into any reforms. A survey from 2022 found that parents had supported their children with a cumulative amount of $22.6 billion: Consumer NZ "Support from the Bank of Mum and Dad make it the fifth biggest owner occupier" (28 April 2022) <www.consumer.org.nz>.

41 Student Loan Scheme Act 1992; MoneyHub "Student Loan Statistics New Zealand 2025 - Understanding the $16.19 Billion Owed" (31 December 2025) <www.moneyhub.co.nz>; and for discussion of effects, see Damien Venuto "This group of Kiwis faces a $30,000 starting penalty. Here's a radical plan to end it" (3 May 2026) Stuff <www.stuff.co.nz>.

42 Celestyna Galicki *CFFC data note: Effect of financial stress on inter-personal relationships* (Te Ara Ahunga Ora | Commission for Financial Capability, September 2020). The Commission for Financial Capability's Financial Capability Barometer Survey of 3,132 adult New Zealanders found in 2020 that financial concerns caused problems with interpersonal relationships (partners, family or close friends) for 1 in 5 (19 per cent) respondents. The rate of financial stress-related problems was highest among the youngest age group and decreased with age. While 24 per cent of those aged 18–34 reported financial stress-related relationship strain, only 7 per cent of respondents aged 65 and over reported such problems.

43 Stats NZ | Tatauranga Aotearoa "Household income and housing-cost statistics: Year ended June 2025" (26 February 2026) <www.stats.govt.nz>. A household is categorised as being in material hardship if it does not have seven or more of 18 items on the MH-18 index, a statistical tool used by Stats NZ (introduced in 2026 as a replacement for the earlier index): see Stats NZ | Tatauranga Aotearoa *Measuring child poverty: Material hardship in the Household Income and Living Survey* (2026). The items include putting off doctor's and dentist's appointments, having to buy cheaper or less meat and being unable to afford having the Internet or a computer at home. See the Ministry of Social Development's recent report: Bryan Perry *Child Poverty in New Zealand* (Ministry of Social Development, July 2026).

44 Stats NZ | Tatauranga Aotearoa "Child poverty statistics: Year ended June 2025" (26 February 2026) <www.stats.govt.nz>. Of the other two measures in the Child Poverty Reduction Act 2018, 12.6 per cent of children lived in households with less than 50 per cent of the median equivalised disposable household income before housing costs were deducted and 17.8 per cent of children lived in households with less than 50 per cent

children the percentage was 26.9 per cent and for children in disabled households it was 27.5 per cent.[45]

Low-to-middle-income working families are also struggling financially: the so-called "squeezed middle".[46] This was recognised recently by the Government in giving these families an extra $50 a week as part of the Government's response to the fuel crisis resulting from the United States–Iran war.[47] This came as a boost to the Working for Families in-work tax credit which is available for families with dependent children where no partner receives a main benefit and at least one partner is in paid employment. Roughly 143,000 families receive the tax credit. In the 2025/2026 tax year the cut-off for receiving the tax credit was around $89,000 annual household income for a one-child family, $112,000 for a two-child family and $135,000 for a three-child family.[48]

Data from late 2025 showed that 33 per cent of surveyed households experienced food insecurity within the past year, and 68 per cent of those households reported the past year was the first time they had experienced such insecurity.[49] Even 30 per cent of those in employment experienced food insecurity, as well as 29 per cent of households with "medium income" and 12 per cent with high income (with incomes of $65,000–$155,999, and over $156,000, respectively).[50] Inflation — combined with low growth — is also putting increasing pressure on families.[51]

The division between the well-off and those who are struggling is increasing.[52] But sadly this is not a new trend: inequality rose more in New Zealand between 1985–2005 than in any other developed country in this period.[53]

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of the median equivalised disposable household income (of the baseline year, the year ended June 2018) after housing costs were deducted. There was no statistically significant change from the previous year. The figures for child poverty in different ethnic groups are set out below.

45 Stats NZ | Tatauranga Aotearoa, above n 44.

46 See NZ Herald "Cost-of-living pressures driving more middle and high income earners to seek financial help" *The New Zealand Herald* (online ed, New Zealand, 3 December 2025); and see generally OECD *Under pressure: The Squeezed Middle Class* (OECD Publishing, 2019).

47 Nicola Willis "$50 a week for lower-income working families" (press release, 25 March 2026).

48 Te Kāwanatanga o Aotearoa | New Zealand Government *In-work tax credit fact sheet* (March 2026) at 1–2.

49 New Zealand Food Network *New Zealand Hunger Monitor 2025* (New Zealand Food Network and Ipsos Public Affairs, March 2026) at 8.

50 At 19.

51 Damien Venuto "Why your mortgage (and other bills) look set to skyrocket" (7 May 2026) Stuff <www.stuff.co.nz>.

52 Verity Johnson "Verity Johnson: This isn't the New Zealand I know any more" (30 April 2026) Stuff <www.stuff.co.nz>.

53 Max Rashbrooke *Too Much Money: How Wealth Disparities Are Unbalancing Aotearoa New Zealand* (Bridget Williams Books, Wellington, 2021) at 49.

Comments

There is no doubt that the default 50/50 split in the Act gives certainty, a clear improvement on the situation prevailing before the Act.[54] However, this certainty is irrelevant for those in the bottom quintile whose net worth is negative, and the situation could only be worsened by a relationship breakdown for those already living in material hardship. Splitting assets is not likely to improve the situation for the "squeezed middle" either.

As to the extent of property available in any relationship breakdown, even those at the median would have only half of $529,000 after a split, less the expenses of valuing and realising any assets.[55] As noted above, wealth peaks at ages 55–64 and debt is highest in the 35–44 age group. To the extent that separating couples are in that latter age group the assets available are therefore likely to be lower.

To put the median post-separation figure into some perspective, I note that it is recommended that households have an emergency fund for unexpected expenses, such as car repairs, medical expenses and job loss, of around $10,000 to $20,000.[56] Each partner would need a sum like this in the event of a relationship breakdown.

And looking forward to retirement, for the year ending 30 June 2025, the projected lump sum required to support a one-person "no[-]frills" household[57] in retirement in a metropolitan area[58] over and above national superannuation payments was estimated at $181,000, while a similar provincial household would need $46,000.[59] For those seeking a "choices" lifestyle,[60] the

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54 See Law Commission 2017 Review, above n 14, at [2.15]–[2.42]; and see Mark Henaghan "Sharing Family Finances at the End of a Relationship" in Jessica Palmer and others (eds) *Law and Policy in Modern Family Finance: Property Division in the 21st Century* (Intersentia, Cambridge, 2017) 293. Practitioners say that the default equal split makes settlement much easier and that most cases do settle. The Otago survey, however, showed that only 37 per cent of respondents divided their property fully consistently with the equal sharing law and 33 per cent partially consistently. Departures from equal sharing were sometimes for positive reasons (such as to better provide for children) and sometimes negative reasons (such as coercion): Megan Gollop and Nicola Taylor *Relationship Property Division in New Zealand: The Experiences of Separated People – Research Summary* (University of Otago Children's Issues Centre, March 2022) at 7–8.

55 Gollop and others, above n 11, at 111. Approximately 50 per cent of survey participants found the time and cost of property division challenging.

56 MoneyHub "Emergency Funds – Save Today to Avoid Stress Later" (9 December 2025) <www.moneyhub.co.nz>; and see Sorted "Start your emergency fund" <https://sorted.org.nz>, which suggests immediately putting away $1,000.

57 This means a basic standard of living with few, if any, luxuries: Claire Matthews *New Zealand Retirement Expenditure Guidelines* (Massey University and NZ Fin-Ed Centre, October 2025) at 5.

58 Encompassing Auckland and Wellington Regional Council areas and Christchurch City: at 23.

59 At 10. For a two-person no-frills household the lump-sum figures are $118,000 and $252,000, respectively. This data assumes a retirement age of 65 with a life expectancy of 90, with the retiree(s) investing in a balanced fund.

60 A lifestyle with "a more comfortable standard of living, which includes some luxuries or treats": at 5.

required savings increase significantly, with one-person metropolitan households needing $273,000, and provincial households needing $253,000.[61] The figures will be much higher for those who do not own their own homes and in the future a greater proportion of retirees are likely to rent or be still paying off mortgages.[62] I discuss housing more fully in the next section.

All of the above means that only those in the top two quintiles (and particularly those in the top 10 per cent) will have meaningful assets to sustain them after separation and it is only for those groups that the legal costs of disputes could be justified. Hence the heading to this section: the Act is for the rich.

B Real property is king[63]

Some data

In the year ended June 2024, real property dominated New Zealand's assets with $1.15 trillion (48.5 per cent of all assets) being in real estate. Owner-occupied dwellings accounted for $926.5 billion (38.7 per cent of all household assets). The percentage of assets in real estate was likely to have been more than 55 per cent if real property held in trust was included.[64] Family trusts held assets of $408s billion, being 17 per cent of all assets, and held property (likely houses and farms) totalling $274.6 billion. Only around 9 per cent of households, however, had a trust.

Consumer items accounted for 10.1 per cent, shares and other investments 9 per cent, cash 6 per cent and business equity (sole traders and partnerships) accounted for 2.2 per cent. KiwiSaver and other retirement schemes accounted for only $123.7 billion (5.7 per cent).

Financial assets, including shares, investment funds and pension funds, comprised the largest share of assets of New Zealand's wealthiest 20 per cent, whereas non-financial assets, such as durable goods and real estate, made up the largest proportion for the remainder of households.[65]

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61 At 10. The figures for a two-person choices household are $1,033,000 and $450,000, respectively.

62 The data is from retirees with high rates of home ownership: at 13; and see Te Ara Ahunga Ora | Retirement Commission "Will NZ Super be enough to support a nation of people paying off mortgages and rent?" (29 August 2022) <https://retirement.govt.nz>.

63 I use the term "king" rather than "queen" given the gender gap discussed below.

64 As noted above, these statistics are from MoneyHub, above n 38. There might be indications that the centrality of real property is changing, however: see Alexia Russell "The Detail: The great property breakup" (7 March 2026) Radio New Zealand <www.rnz.co.nz>.

65 Stats NZ | Tatauranga Aotearoa, above n 39.

Debt was also largely related to real estate. Total household debt was $329.9 billion: 65.4 per cent related to loans secured over owner-occupied homes and 23.8 per cent related to investment property loans.

All this means that, if a household does not own real estate, then they are "excluded from New Zealand's main wealth-building mechanism".[66] Owning their own home — and not age, income or education — is the key factor in predicting a person's financial position. Households that own or partly own their home with no mortgage have an average net worth of $1.81 million, compared to only $185,000 for those who rent. The wealth gap compounds over time.

In the early 20th century, 52.1 per cent of households in New Zealand were owner-occupied and 45.7 per cent were rented. By 1987 the percentage had risen dramatically: 72.7 per cent of households lived in owner-occupied dwellings — but the percentage had fallen by 2006.[67] Looking at more recent figures, the household home-ownership rate (owned or partly owned or held in a family trust[68]) was 66.0 per cent in 2023, a slight increase from 2018.[69] A higher proportion of new residential borrowers were first-home buyers in 2023 compared to in 2014, with the high point being 25 per cent of all new residential mortgage lending in December 2023.[70]

Higher incomes made owning a home more likely. People who had partners were more likely to own their own home or hold it in a trust: 69.3 per cent compared with 29.6 per cent of non-partnered people.[71]

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66 MoneyHub, above n 38.

67 Kay Saville-Smith *Housing Assets: A Paper for the 2013 Review of Retirement Income* (Centre for Research, Evaluation and Social Assessment, March 2013) at 3.

68 In 2023 the percentage of households living in a house held by a family trust was 11.1 per cent, a decrease from 13.3 per cent in 2018 and 14.8 per cent in 2013: Stats NZ | Tatauranga Aotearoa *Housing in Aotearoa New Zealand: 2025* (June 2025) [*Housing in Aotearoa 2025*] at 37.

69 At 36–37. For an historical perspective see Kay Saville-Smith *Housing, New Zealand's Tenure Revolution and Implications for Retirement: A Paper for the 2019 Review of Retirement Income Policies* (Centre for Research, Evaluation and Social Assessment, November 2019).

70 *Housing in Aotearoa 2025*, above n 68, at 43.

71 At 45.

There is an increase in the average age of first-home buyers in New Zealand (from 35–37 in the major cities, around two to three years older compared to in 2019).[72] Some of this is accounted for by lifestyle choices, including travel, but affordability will have played a part.[73]

In the year to June 2024, the median price at which a house sold was $753,500 and the median household equivalised disposable income was $51,597.[74] Buying a median-priced home outright would be, on these figures, a significant challenge for many as the average New Zealand household would need to spend 14.6 times its annual income to do so.[75]

Where housing costs reach 40 per cent of a household's income it is much more difficult to meet other everyday expenses. Of those households not owning their own homes, 28.4 per cent were considered "severely cost-burdened", spending 40 per cent or more of their income on housing costs.[76] By contrast, only 14.8 per cent of households that owned or partly owned their home reached the 40 per cent spending threshold.[77] The likelihood of reaching the 40 per cent threshold is greater for those on lower incomes, whether renting or home owning: where a household has a disposable income of under $72,000, 60.6 per cent of mortgage-holding and 57.7 per cent of renting households spend 40 per cent or more of their income on housing costs.[78]

Comments

The data shows that for most people, apart from the very rich, the main asset is likely to be the family home (if they can afford it) and therefore that this will be the only substantial asset to be divided after a relationship breakdown. Unlike many other investments, real estate must (usually) be sold as a whole (rather than selling off part). There will be high sale costs and

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72 Cotality "First home buyer activity strong, but entering market later" (Press release, 29 May 2025).

73 Cotality and Westpac *First home Buyer Report* (May 2026) at 3 and 8. Although note that there was a slight decrease in the national average age since 2024.

74 This takes into account the household's total income and its size and composition: *Housing in Aotearoa 2025*, above n 68, at 71.

75 At 71–72. In Auckland this figure was much higher at 17.2 times. On average, housing prices in New Zealand rose significantly faster than incomes between 2000–2003. The average household, saving 20 per cent each year, would take 20 years to save a deposit of 20 per cent of the median house price in 2024 — another measure of housing affordability: at 73–74.

76 At 66–67. Nearly half (45.9 per cent) of those not owning their own homes spent 30 per cent or more of their income on housing costs. Although not as much as for those paying 40 per cent of their income on housing costs, some paying 30 per cent may still struggle with unexpected spending, especially for those on lower incomes: see Susan Edmunds "Is 30% of income on rent fair?" (24 May 2026) RNZ <www.rnz.co.nz>.

77 At 67. The rate of increase of household income in the year ended 2025 surpassed that of housing costs: Stats NZ | Tatauranga Aotearoa "Increasing household income offset by higher housing costs in year to June 2025" (26 February 2026) <www.stats.govt.nz>.

78 Stats NZ | Tatauranga Aotearoa, above n 77.

realisation of the home is likely to take some time. There is also likely to be emotional attachment to the family home, especially a long-term family home and where there are children involved.[79]

The issues with housing affordability for those not in the top two quintiles will only be exacerbated by the breakdown of a relationship, another reason for the conclusion that the Act is for the rich.

The issues with trusts and the Act are dealt with in other papers presented at this conference but I note here that a relatively small percentage of households have a trust and, given the percentage and composition of assets held in trusts, I infer that these are again for the (relatively) rich.[80]

C Gender gap

Some data[81]

Based on a survey conducted in January 2026, ownership of property by men (whether live-in or investment) is higher than for women for almost all age groups: 53 per cent of Gen Z (aged 18–29) men, 66 per cent of Millennial (aged 30–44) men and 66 per cent of Gen X (aged 45–64) men owned the property they lived in compared to 33 per cent, 47 per cent and 58 per cent of women, respectively. For investment property, 20 per cent of male Gen Z are owners and 15 per cent of male Millennials, well above the female figures of 13 per cent and 9 per cent, respectively. For Baby Boomers (aged 65 and over) the disparity was again 13 per cent for males compared to 9 per cent for women. The differential among younger age groups is a particular issue as early entry into the property market means there is longer for wealth to accumulate.[82]

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79 See, for example, Gollop and others, above n 11, at 185; and Law Commission 2019 Review, above n 10, at [13].

80 I also comment that the issues with the Act and trusts have likely been compounded by the abolition of estate duty in 1992 and gift duty in 2011: see Estate Duties Abolition Act 1993; and Taxation (Tax Administration and Remedial Matters) Act 2011. Before the abolition of estate duty, mirror trusts (where partners established two separate identical trusts often with the partner not being a beneficiary of their own trust) were common for estate planning reasons and gift duty limited the amounts that could be transferred to trusts without cost.

81 Issues relating to differing roles for women, and in particular those related to children and other caring responsibilities, are discussed below.

82 The data in this paragraph is from Cotality "NZ women significantly under-represented in property ownership, despite desire to own" (26 February 2026) <www.cotality.com>; and see Cotality *Women and Property: Bridging the Generational Divide* (2026) [Cotality report] at 5–6.

Lower property ownership for women reflects differing levels of income: almost 30 per cent of Gen Z women responding to the survey earned less than $40,000 a year compared to approximately 20 per cent of men.[83] On the other hand, 25 per cent of men reported earning at least $100,000 compared to 12 per cent of women. This male/female gap in $100,000 earnings is widest for Millennials, an age when a lot of people tend to buy their first home.[84]

As at June 2025, of those aged 15 and above, 62.8 per cent of women were employed compared to 71.0 per cent of men.[85] In 2024, roughly 75 per cent of two-parent families were "dual-earner families".[86] Women's participation in the labour force was, however, 66.5 per cent[87] compared to 74.7 per cent for men.[88] Data from the March 2025 quarter indicates that 30 per cent of employed women work part time (less than 30 hours a week) compared to 12 per cent of men.[89] This phenomenon is not only in New Zealand: 43.2 per cent of women in Australia work part time, compared to 19.6 per cent of Australian men.[90]

There is a gender pay gap, although for the June 2025 quarter this was down from the June 2024 quarter (5.2 per cent as against 8.2 per cent).[91] Disabled women, however, had a pay gap of 14.8 per cent compared to all men and 9.6 per cent compared to disabled men.[92] Wāhine Māori had a pay gap of 12 per cent when compared to all men (2.1 per cent when compared with Māori men).[93] Pacific women had a pay gap of 15.8 per cent (6.2 per cent when compared to Pacific men).[94]

Men have higher mean pension funds compared to women (in the year ended June 2024, $38,000 compared to $27,000, a 41 per cent difference) — reflecting higher lifetime earnings.[95]

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83 Cotality report, above n 82, at 6.
84 At 6.
85 Manatū Wāhine | Ministry for Women "Labour market participation" <www.women.govt.nz>.
86 Perry, above n 43, at 74. This statistic is for families where at least one of the parents was employed full-time.
87 Manatū Wāhine | Ministry for Women, above n 85. The figure for wāhine Māori is slightly lower at 64.3 per cent. Te Aka Matua o te Ture | Law Commission *Relationships and Families in Contemporary New Zealand: He Hononga Tangata, He Hononga Whānau i Aotearoa o Nāianei* (NZLC SP22, 2017) at 40 notes that women's participation in the workforce increased from 43 per cent in 1976 to 65 per cent in 2016.
88 This measures the proportion of people of working age who are in work or looking for work.
89 Stats NZ | Tatauranga Aotearoa "Economic snapshot: March 2025 quarter" (3 July 2025) <www.stats.govt.nz>.
90 Mahjabeen Zaman "Why work still works differently for women" (6 March 2026) ANZ <www.anz.com>.
91 Manatū Wāhine | Ministry for Women "Gender pay gaps" <www.women.govt.nz>.
92 Manatū Wāhine | Ministry for Women "Disability" <www.women.govt.nz>.
93 Manatū Wāhine | Ministry for Women "report: Wāhine Māori and the Gender Pay Gap" <www.women.govt.nz>.
94 Manatū Wāhine | Ministry for Women "report: Pacific Women and the Gender Pay Gap" <www.women.govt.nz>.
95 MoneyHub, above n 38. Males' KiwiSaver funds also averaged 25 per cent higher than women's: Ben Trollip and William Nelson *KiwiSaver Demographic Study* (Melville Jessup Weaver, February 2025) at 6.

All of the above leads to much worse outcomes for women than for men from a relationship breakdown. In a study using equivalised income as a proxy for living standard, men on average are shown to be made better off by separation and women, on average, worse off.[96] For women the short-term impact on equivalised family incomes is -19.3 per cent while for men it is +15.5 per cent.[97] This differential persists over the medium term.[98] What is more, a significant number of separated parents (and the children who live with them) fall below the poverty line, and this effect is greater for women.[99]

Regarding single-parent households, nearly 80 per cent were in the lowest two income quintiles (under $32,200 and from $32,200 to $45,999) in the year ended June 2024, with the average household equivalised disposable income being $37,921.[100] According to the 2023 census only 17.8 per cent of sole parents with dependent children were men. The percentage of male solo parents had increased from 15.8 per cent in 2013, but men were less likely to be caring for very young children and therefore were more likely to be employed full time than female solo parents.[101]

Comments

While it is not to be expected that the Act could (or even should) fix the issues with gender equality in our society,[102] the fact that women fare less well on separation than men (and particularly where children are involved) means that not only is the Act for the rich but it can also be said to be an Act for rich men.[103]

The Law Commission proposes to change the definition of relationship property to include the family home only if it was acquired for the partners' common use or benefit (including from

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96 Michael Fletcher, David C Maré and Tim Maloney "The Economic Consequences of Marital Separation for Parents in New Zealand: Insights from a Large Administrative Dataset" (2020) 34 IJLPF 289 at 307.
97 At 307.
98 At 308.
99 At 308.
100 Stats NZ | Tatauranga Aotearoa "Household income and housing-cost statistics: Year ended June 2024" (20 February 2025) <www.stats.govt.nz>. I accept that not all of these single parents will necessarily have come from relationships that fall under the Act.
101 Stats NZ | Tatauranga Aotearoa "Families and households in the 2023 census – further insights into how we live" (10 April 2025) <www.stats.govt.nz>.
102 Although I do note the principle in s 1N(a) that "men and women have equal status, and their equality should be maintained and *enhanced*" (emphasis added).
103 This is of course a generalisation as there will also be men disadvantaged by the Act.

the proceeds of previously separate property)[104] or acquired or produced by either partner during the relationship (excluding from third party gifts and inheritance).[105] Given the differential between women and men in relation to real estate ownership outlined above, if enacted, this will only increase the gender bias in the Act and will be particularly difficult for those non-owning partners who have the care of dependent children.[106]

This effect might be mitigated slightly[107] by the proposal that any increase in the value of the family home occurring during the relationship should be classified as relationship property in every case.[108] This proposal is made to recognise the likely emotional attachment to the family home and the fact that both partners are likely to have directly or indirectly contributed to it during the relationship.[109] The other mitigating proposal is to require the non-owning partner to be compensated for half of any reduction in debt during the relationship.[110]

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[104] There are issues with this first limb in terms of partners being aware of the switch from separate property to relationship property on a sale and purchase of another home. The solution proposed at [3.65] of the Law Commission 2019 Review, above n 10, and referred to with apparent approval by the Commission, to have a three-month grace period to allow a partner to "get out of the relationship" if they do not like the consequences is a rather extreme and impractical way to avoid a change in status to relationship property. Additionally, it would not be impossible to trace the separate property into the new asset if the proposal to exclude previously owned family homes is retained. I note that the Hon Robert Fisher KC suggested that proper tracing rules would obviate the need for contracting out of the Act more generally: Robert Fisher "Relationship Property – Should New Zealand's Regime Be Mandatory or Optional?" (paper prepared for the Colloquium on the Property (Relationships) Act 1976, Auckland, 9 December 2016) at 10–12.

[105] Law Commission 2019 Review, above n 10, at [10] and [3.73]–[3.100]. This appears to have been, at least in part, because of the survey of public attitudes. Ian Binnie and others *Relationship Property Division in New Zealand: Public Attitudes and Values – A General Population Survey* (Michael & Suzanne Borrin Foundation, 2018) at [158]– [192] found respondents thought it was unfair for a non-owning partner to share in a home purchased by the other partner before a relationship. While it is important that legislation is not totally out of line with the views of the public, it is also the case that sometimes legislation may legitimately be ahead of and forge public views (as may well have been the case with the 2001 amendments). I note that the survey respondents were not asked to think about a situation where a non-owning partner in a long-term relationship with children is left without any relationship property, which could well have resulted in a different answer.

[106] One of the concerns of the Law Commission appears to have been related to women entering second relationships where there are children from a prior relationship: see at [3.24(h)]. To the extent that the proposal was driven by this concern, it would be important, for evidence-based decision-making, to know how many would be in the position of having to share a previously owned family home after a subsequent relationship break up and how many would, by contrast, be left with no relationship property if the Law Commission's family home change is accepted. In any event, it must be remembered that there would still be the possibility of a person entering into a second relationship to contract out under the Law Commission proposals: see at [3.25]; pt 6 of the Act on contracting out; and Jens M Scherpe "Contracting Out of the Default Relationship Property Regime – Comparative Observations" in Jessica Palmer and others (eds) *Law and Policy in Modern Family Finance: Property Division in the 21st Century* (Intersentia, Cambridge, 2017) 357 at 371.

[107] It is pointed out in Law Commission 2019 Review, above n 10, at [3.79] that occupation and other orders in respect of the family home will still be available.

[108] At [R14]. It is unclear what happens if there is a reduction in value, although if there is an increase in debt on the house this might also be shared by the parties.

[109] At [3.24]; and see below at pages 20–25.

[110] At [3.75]. Another mitigating measure is the proposal for a new limited entitlement to share family income through a FISA: see at [10.54]–[10.57]. I discuss this in more detail below.

While these measures might be mitigating, they appear to add to the compliance costs and also do not deal with a situation where there is a static or reducing market or for a situation where there is a general price correction in the market.[111] Further, many contributions to the property (such as maintenance or improvements which do not impact on the value of the property) will not be recognised. In some instances, the non-owning partner may have used separate property for living expenses for both partners or on shared depreciating assets (such as cars)[112] and even for expenses required to retain the property (such as rates and freeing up funds to enable interest payments on mortgages).[113]

I note there also seems to be an assumption in the Law Commission proposals that there will be relationship property other than the family home to share to mitigate the effects of the new family home proposals for a non-owning spouse in terms of a pool of other relationship property to share.[114] As I point out above, that may be true for the rich but not for most New Zealanders. I suggest that a more targeted provision might have been the answer.[115]

Although trusts are being dealt with in other papers, I do record that the gender gap means that trusts also favour men.[116] It is generally considered that the position relating to trusts is

[111] See a comparison with housing and the New Zealand stock market crash in 1987: Brian Gaynor "Housing – just like the NZX before the crash of '87?" (5 February 2022) BusinessDesk <https://businessdesk.co.nz>. For the implications of a falling market for separating couples, see Susan Edmunds "'The market has moved underneath them': Separating couples watching house prices fall" (24 June 2026) RNZ <www.rnz.co.nz>; and see Duncan Greive "The signs all point to the end of New Zealand's property obsession" (2 December 2025) The Spinoff <https://thespinoff.co.nz>.

[112] Although these would be relationship property themselves.

[113] Recognised at [3.24(g)] of the Law Commission 2019 Review, above n 10. In this respect therefore the Law Commission proposal appears to put the non-owning partner in a worse position than pertained to de facto couples before they were brought into the Act where they could claim an interest under a constructive trust: see discussion of the situation before de facto couples were brought under the regime in Nicky Richardson "De Facto Property Disputes in New Zealand" (1996) 7 Canta LR 369 at 370–378. I do note that, if the non-owning partner can show that relationship property or their actions have sustained the family home, then the court may increase their share of property or order compensation under s 17. This has the drawback of requiring court action if opposed, has to be related to the property and may not pick up all contributions which in any event may not have been fully documented in most cases as discussed further below.

[114] See, for example, the comment at [3.78] that in longer relationships the partners are likely to have accumulated more relationship property and also that they would meet the criteria for FISAs.

[115] The Commission, however, rejected a proposal that the situation be different depending on the length of the relationship, at [3.56]–[3.65], despite recognising that the risk of injustice is greater in shorter relationships: at [3.24(d)]. I acknowledge that there is unfairness if the non-owning partner has separate property not subject to the regime: see at [3.24(f)]. Again, bespoke provisions could address that unfairness — see for a model the current s 16 of the Act.

[116] See, for example, Caitlin Hollings "*Clayton v Clayton*: Addressing the Elephant in the Room" (2017) 1 NZWLJ 215; Nathan Pinder "*Cooper v Pinney*: A Retreat from *Clayton*?" (2025) 31 Auckland U L Rev 344 at 359, n 117; and Nathan Pinder "Partially Valuing Trust Powers as Relationship Property: A Coherent Post-*Clayton* Doctrine" [2025] NZ L Rev 467 at 496.

unsatisfactory.[117] The Law Commission has proposals to remedy this and I make no detailed comment on their proposals.[118] I do, however, comment that it seems a pity that the Law Commission did not follow the Australian lead and recommend a wider definition of property.[119]

D Ethnic divide

Some data

In the year ended June 2024, the median European/Pākehā individual had a net worth of $222,000.[120] The median for Pacific individuals was $26,000, for Māori $52,000,[121] for Asian individuals $61,000 and $85,000 for other ethnic groups.[122]

From 2023 data, Pacific peoples were least likely to own their own home at 19.9 per cent, Māori at 30.4 per cent and people of Asian ethnicity at 42.6 per cent.[123] By contrast, 58.6 per cent of adults with European ethnicity owned their own home. For renting households with at least one person of Māori or Pacific ethnicity, in the year ended June 2024, roughly two-thirds spent at least 30 per cent of their income on rent (for renting households with Māori this was 64.1 per cent, and was 69.9 per cent for renting households with Pacific peoples). The New Zealand total for renting households, however, was 49.2 per cent.[124]

In terms of income, in 2022 the aggregate (all industries) Māori–European pay gap was 14.6 per cent, the Pacific–European gap was 18.8 per cent, and the Asian–European gap was 10.2 per cent.[125] It is worth noting that the percentage of tamariki Māori living in households

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117 See Adam Hofri-Winogradow and Mark Bennett "Looking through Trusts" (2024) 62 Osgoode Hall LJ 485; and Law Commission 2019 Review, above n 10, at [11.15]–[11.49].

118 Law Commission 2019 Review, above n 10, at [11.65]–[11.108].

119 At [3.1]–[3.11]. See *Kennon v Spry* [2008] HCA 56, (2008) 238 CLR 366 at [52]–[81] per French CJ for an approach to property that may include the assets of a trust. *Kennon* is still the leading authority: see, for example, Lisa Young and others *Family Law in Australia* (9th ed, LexisNexis, Chatswood, 2016) at [13.25] and [15.17]; and recent cases drawing on this wider definition of property such as *Daeira v Diamanda* [2026] FedCFamC1A 98 at [46].

120 MoneyHub, above n 38.

121 This excludes collective assets, such as Māori land and trusts: Stats NZ | Tatauranga Aotearoa, above n 38.

122 These gaps have not materially decreased since 2018. Note that the figures are age-standardised to account for differences in age distributions between ethnic groups. It may be, however, that some of these groups have shares in communal family property which the figures may not reflect.

123 *Housing in Aotearoa 2025*, above n 68, at 46.

124 At 60.

125 Leon Iusitini, Lisa Meehan and Gail Pacheco *Gender and ethnic pay gaps: An industry-level portrait of Aotearoa* (New Zealand Policy Research Institute, 2024) at 21. Note that there are gender differentials compounding pay gaps: see the discussion above at 13–14.

in material hardship as at June 2025 was 25.1 per cent and for Pacific children the percentage was 31.0 per cent.[126]

Comments

Given that real property ownership is the main wealth-building mechanism in New Zealand and that wealth begets wealth in terms of inheritance, these figures suggest that not only is the Act for rich men but also that it is for rich European men.

Stats NZ | Tatauranga Aotearoa's median projections with regard to ethnic population are that between 2023 and 2048, the proportion of the population identifying[127] with different ethnicities will change as follows: "European or Other (including New Zealander)" ethnicities will decrease from 67 to 52 per cent; Asian ethnicities will rise from 19 to 33 per cent with Indian ethnicities increasing from 7 to 12 per cent and Chinese ethnicities increasing from 6 to 8 per cent; Māori ethnicity will increase from 18 to 20 per cent; and Pacific ethnicities will increase from 9 to 11 per cent with Samoan ethnicity increasing from 4 to 6 per cent.[128] Given the importance of inheritance for wealth accumulation, this suggests that the ethnic divide may well get worse over time.

Exceptions to equal sharing

In this section of the paper, I discuss some of the specific exceptions to equal sharing in more detail. As a general comment, any exceptions to equal sharing reduce the advantages of the certainty of the default position of equal sharing and place strain on the principle set out in s 1N(d) as to inexpensive, simple and speedy resolution of relationship property issues. This is not to say that exceptions should not exist.[129] It just means that they must be carefully thought through and their existence justified as being required in the context of the other principles in the Act and the themes discussed in this paper.

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[126] Stats NZ | Tatauranga Aotearoa, above n 44.

[127] Stats NZ | Tatauranga Aotearoa "National ethnic population projections: 2023(base)–2048" (11 September 2025). People are included in each ethnic population they identify with and some will identify with multiple ethnic groups, and so the ethnic proportions sum to more than 100 per cent.

[128] Stats NZ | Tatauranga Aotearoa, above n 127. Middle Eastern/Latin American/African ethnicities will increase from 2 to 4 per cent.

[129] The Act's "one size fits all" approach may not always be appropriate, especially for diverse types of relationships and family arrangements: Ian Binnie and others *Relationship Property Division in New Zealand: Public Attitudes and Values – A General Population Survey – Research Summary* (Michael and Suzanne Borrin Foundation, October 2018) at 8.

I note too that the exceptions will usually require legal advice (and other professional services such as valuers) and possible court adjudication. This means that the relationship property pool must be sufficient to sustain those costs and the partners must be able to pay them, either through their income or legal aid. The gender gap may well be relevant here too, as well as power imbalances that might be present in the relationship.[130]

A Section 13

Under s 13(1) the court will depart from equal sharing if there are "extraordinary circumstances" that make equal sharing "repugnant to justice" and the share is to be determined in accordance with the contributions of the partners to the relationship. This is a stringent test.[131]

Many cases have said that the circumstances need to be extreme.[132] Whether circumstances are extraordinary is to be tested against the general norm of relationships.[133] Misconduct, except as provided for in s 18A, is not a relevant factor.[134] Because the test is so stringent, the cases where arguments under s 13 have been successful are relatively rare.[135]

I accept that it is probably necessary to have a provision that can alleviate real injustices that might arise from an equal sharing regime but, in order to retain the advantages in having a default regime, it is appropriate that the test for departing from equal sharing be stringent.[136] The Law Commission recommends that a similar provision be retained in its proposed new Act.[137]

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[130] See, for example, the discussion of former partners stringing out relationship property issues in Gollop and others, above n 11, at 67–68 and 105–109.

[131] See *Martin v Martin* [1979] 1 NZLR 97 (CA) at 102 per Woodhouse J, 106–107 per Cooke J and 111 per Richardson J; *Joseph v Johansen* (1993) 10 FRNZ 302 (CA) at 304 per Cooke P and 307 per Richardson J; and *de Malmanche v de Malmanche* [2002] 2 NZLR 838 (HC), which also held at [114] that the s 14 considered in prior cases is substantively the same as the present s 13.

[132] See, for example, *Joseph v Johansen*, above n 131, at 307 per Richardson J; *Wilson v Wilson* [1991] 1 NZLR 687 (CA) at 697; *Martin v Martin*, above n 131; and *de Malmanche v de Malmanche*, above n 131.

[133] *Joseph v Johansen*, above n 131, at 304 per Cooke P, 307 per Richardson J and 315 per McKay J.

[134] *J v J* (2005) 25 FRNZ 1 (CA) at [11].

[135] Henaghan and others, above n 32, at [7.366.02]. The "rare cases where the test has been satisfied may often involve a combination of factors", including disparity of contributions, conduct to the extent it supports finding a gross disparity of contributions, and a shorter length of relationship where parties have not contributed significantly to the relationship, among others: see at [7.366.03]–[7.366.12].

[136] For a contrary view in support of judicial discretion and a potential lowering of the s 13 standard, see Chloe (Cong) Xiang "Bright lines, blind spots: a call for principled discretion in Aotearoa relationship property law" (2026) 12 NZFLJ 13 at 21–22.

[137] Law Commission 2019 Review, above n 10, at [8.41].

B Sections 15 and 15A

Some data

A 2021 study found that "[w]omen typically do the majority of the unpaid work, or the load at home, while men do the majority of paid work".[138] Women are more likely to work part-time.[139] A 2018 study showed that there was a "motherhood penalty" in the form of lower earnings of on average 4.4 per cent in hourly wages.[140] The drop increased the longer a mother took to return to work. There was no equivalent "fatherhood penalty".[141]

Two thirds of unpaid carers (those who care for friends or family with a disability, health condition or illness who need help with everyday living) are women.[142] Unpaid carers make up 14 per cent of the adult population based on the 2018 Census.[143] The higher incidence of caring responsibilities among non-partnered women may suggest that caring responsibilities can contribute to family breakdowns.[144]

Analysis

Section 15 provides for the court to award compensation from relationship property where the income and living standards of one partner are likely to be significantly higher than those of the other,[145] due to the division of functions within the relationship while they were living together. If this is the case, s 15A provides that an award can be made out of separate property in certain circumstances. In determining whether to make an order under either s 15 or s 15A, the court may have regard to:[146]

> (a) the likely earning capacity of each spouse or partner:
>
> (b) the responsibilities of each spouse or partner for the ongoing daily care of any minor or dependent children of the marriage, civil union, or de facto relationship:
>
> (c) any other relevant circumstances.

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138 Deloitte *Westpac New Zealand: Sharing the Load Report* (May 2021) at 3.

139 At 8.

140 Isabelle Sin, Kabir Dasgupta and Gail Pacheco *Parenthood and labour market outcomes* (Ministry for Women, May 2018) at 34.

141 At 31.

142 Rob Heyes and Dave Grimmond *The economic contribution and sacrifices of unpaid family, whānau and aiga carers in New Zealand* (Infometrics, November 2022) at 17.

143 At 5. The economic contribution of caring is estimated to be $17.6 billion or 5.4 per cent of GDP: at 6.

144 At 6.

145 Living standards will generally be equated with income, although not always: *Scott v Williams* [2017] NZSC 185, [2018] 1 NZLR 507 at [263] per Glazebrook J.

146 Sections 15(2) and 15A(2).

Given the data above about differing roles still persisting, it is likely that the main beneficiaries of s 15 will be women. The leading case on s 15 is *Scott v Williams*.[147] Unhelpfully, there are five sets of reasons, although Elias CJ and Arnold J agreed with the summary in my reasons of the approach to be taken.[148] The starting point is that assessing disparity is "broad" and "must be considered in light of provisions in the [Act] that treat all contributions made by both partners to the relationship as equal".[149]

It is clear from the summary that there is an assumption, especially in long term relationships where roles have been split between home- and child-care and income earning, that any disparity results from the division of roles in the relationship and "is equally attributable to both partners".[150] While this assumption may be rebutted, it would be difficult to do so for long-term relationships. It also may apply to "shorter or differently organised relationships", although "it will likely be much easier to show that all or some of the disparity following separation resulted from something other than the division of functions in the relationship".[151]

This assumption has been seen as one of the most significant aspects of the decision.[152] The other key point is that an order must be just and must compensate for the disparity without creating an injustice for the other party.[153] In other words, "to create a situation of substantive equality by reversing the disadvantage suffered through the division of roles in the relationship".[154] It was also recognised that there can be no one formula for calculating the compensation but there was no agreement on the available valuation methodologies, and the approach "will depend on the individual circumstances of each relationship and each partner".[155] Such orders are also limited by the extent of relationship property.[156]

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147 *Scott v Williams*, above n 145.
148 At [263]–[265] per Glazebrook J, [329] per Arnold J and [331] per Elias CJ.
149 At [264] per Glazebrook J; and s 1M(b), 1N(b) and 18.
150 At [264] per Glazebrook J.
151 At [264] per Glazebrook J.
152 See Bill Atkin *Relationship Property in New Zealand* (3rd ed, LexisNexis, Wellington, 2018) at 112; and Tasneem Haradasa "Causation in Section 15 of the Property (Relationships) Act 1976: Analysing the New Zealand Supreme Court's 'Working Assumption' – Is it Really Working?" (2019) 50 VUWLR 77 at 105.
153 *Scott v Williams*, above n 145, at [265] per Glazebrook J.
154 At [205] per Glazebrook J.
155 At [265] per Glazebrook J.
156 At [265] per Glazebrook J.

Counsel for Ms Scott had argued that:[157]

> [W]here the threshold criteria for s 15 are met, the partner who has undertaken the unpaid roles will have made an irreversible investment in the relationship in the expectation that he or she would share in the ongoing financial benefits of freeing up the other partner to concentrate on paid work. The division of roles is a joint decision of the partners and it would be unjust for the other partner to retain the whole of the financial benefits that flow from that joint decision. It [was] submitted that the just response is to make an order that gives effect to the disadvantaged partner's expectation.

I did not accept counsel's submission that s 15 is directed at fulfilling one partner's expectation that, had the relationship not ended, he or she would have continued to share the income and living standards of the other partner.[158] But I did consider that compensation should relate to the differential results from the division of functions in the relationship and that the suggested "expectation" methodology "accords with the wording of the section, in application if not in conception".[159]

I rejected the submission made by counsel for Mr Williams that this approach did not accord with the legislative history.[160] I recognised that that the Working Group report that preceded the Act "recommended against an approach that treated future earning capacity as an item of property".[161] I also accepted that "case law has confirmed that human capital is not property for the purposes of the Act".[162] However, I said that s 15 does not purport to treat human capital as property but, as long as counsel's methodology was understood as a means of calculating compensation for disparity, it was consistent with the legislative history.[163]

I interpolate here that, conceptually, given the principle that all contributions to the relationship are treated equally, there is a good argument that the definition of property should in fact include human capital. A similar argument arises in the corporate context: that by not listing

157 As set out at [182] per Glazebrook J (footnote omitted).
158 At [196].
159 At [197].
160 At [201].
161 At [201]; and see Department of Justice *Report of the Working Group on Matrimonial Property and Family Protection* (October 1988).
162 At [201].
163 At [201].

human capital on the balance sheet, it is undervalued compared to financial capital (except for CEOs), despite driving 75 per cent of the productivity difference in OECD countries.[164]

Back to valuation methods: my view was that any of the diminution,[165] enhancement[166] or expectation (unjust enrichment) valuation approaches can be adopted if it is "just" in the circumstances.[167] Arnold J set out a valuation method that he considered equated with the expectation methodology.[168] Elias CJ did not consider that the diminution or enhancement methodologies fitted within the statutory scheme.[169] She considered that the task of a court was to consider the extent to which it was just to compensate for the disparity taking into account all the circumstances.[170] O'Regan J considered that that methodology put forward by Arnold J was one for legislative reform and not judicial decision.[171] William Young J would have had recourse to the actuarially based Ogden Tables.[172]

It is hardly surprising, in light of the lack of criteria in the legislation and the different views expressed in *Scott*, that a constant criticism with regard to s 15 has been a lack of consistency of the decisions of the lower courts since *Scott*,[173] although that decisions were inconsistent was also a criticism before that decision.[174] Other criticisms have been that the time and cost

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164 BBVA Research "Global | Human Capital: an essential engine of prosperity" (8 September 2025) <www.bbvaresearch.com>; see Susan Glazebrook "Meeting the challenge of corporate governance in the 21st century" (2019) 34 Aust Jnl of Corp Law 106; and see Renate Wagner "Why it's time to rethink human capital in corporate valuation" (9 January 2024) World Economic Forum <www.weforum.org>.

165 To value "what the disadvantaged partner would have earned in the future absent the division of functions in the relationship": *Scott v Williams*, above n 145, at [157] per Glazebrook J.

166 To assess "how much the advantaged partner's future earning capacity has been enhanced by the division of functions": at [157] per Glazebrook J.

167 See at [157]–[158]. This has been described as the broadest view of valuation in the various judgments: Nikki Chamberlain "The Future of Economic Disparity Redress in New Zealand" (2018) 28 NZULR 293 at 307.

168 *Scott v Williams*, above n 145, at [328].

169 At [347].

170 At [352].

171 At [380].

172 At [456] and [473]. The other Judges also referred to the Ogden Tables: see at [209] per Glazebrook J, [326], n 421 per Arnold J, [386], n 492 per O'Regan J and [459] per William Young J for favourable views of the Tables; and see at [347] per Elias CJ for a view that the analogy with damages for personal injury through using the Tables was inappropriate. For the Tables, see Government Actuary's Department *Actuarial Tables with explanatory notes for use in Personal Injury and Fatal Accident Cases* (7th ed, The Stationery Office, London, 2011).

173 See, for example, Olivia Morgan and Rebekah Vercoe "Persistent difficulties in particularising economic disparity claims" (2022) 24(1) The Family Advocate 27 at 27; Seb Recordon "Rules or discretion? Towards a better approach to quantum in addressing post-separation economic disparities in New Zealand" [2019] NZWLJ 100 at 113; and Chamberlain, above n 167, at 300.

174 See *Scott v Williams*, above n 145, at [157]–[158]; and see Law Commission 2017 Review, above n 14, at [18.85].

involved means that many New Zealanders have been unable to make s 15 claims and that they are in any event no use where the pool of relationship property is small.[175]

These issues led the Law Commission to recommend replacing the Family Proceedings Act 1980's maintenance regime[176] and ss 15 and 15A of the Property (Relationships) Act with Family Income Sharing Arrangements (FISAs).[177] FISAs would entail partners sharing income for a certain period after separation, calculated by a formula which takes into account the partners' pre-separation income and the length of the relationship.[178] A partner would only be entitled to a FISA when, either, the partners have a child, the relationship was at least 10 years long, or the partner's contributions to the relationship diminished their career opportunities or sustained or enabled the advancement of the other partner's career.[179] The Commission also noted in its discussion of how quantum would be determined that consideration should be given to the discounts for life contingencies such as that applied under the Ogden tables.[180] A threshold of serious injustice is proposed before a challenge to quantum can be made.[181]

The Commission further recommended that partners should be able to make their own FISA arrangements before or during a relationship or after separation and that they can agree to satisfy such an agreement by way of a property transfer or lump sum payment.[182] The safeguards applying to other settlement agreements under the Commission's proposed Act would still apply to FISA agreements, including that a court may set an agreement aside if giving it effect would cause "serious injustice".[183]

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175 See Law Commission 2019 Review, above n 10, at [10.15], and see at [10.16].
176 Contained in pt 6 of the Family Proceedings Act 1980.
177 Law Commission 2019 Review, above n 10, at [10.36], and see at [10.33(c)]. Possible issues with FISAs have been explored by Recordon, above n 173, at 116–118. There may be an argument that ss 15 and 15A should be retained as an alternative or in addition to FISAs, especially if the proposed change on the family home goes ahead as this may leave some women with children without any relationship property. There are also questions as to the extent some partners could afford to maintain two households, even if only for a period, and as to what happens if either partner re-partners within the five-year period.
178 FISAs are inconsistent with having a "clean break": see Gollop and others, above n 11, at 172–182. Making FISAs automatic, similar to child support, may alleviate this concern.
179 Law Commission 2019 Review, above n 10, at [10.61]–[10.65].
180 At [10.104].
181 At [10.115]–[10.121] and [10.128].
182 At [10.122]–[10.124], and see at [10.134]–[10.137] for a discussion of contracting out of FISAs. For a more detailed discussion of whether there should be an ability to contract out of a FISA, see Peter Crellan Kelley "Contracting Out Rules for Family Income Sharing Arrangements: Providing Certainty and Protecting the Vulnerable" (2021) 52 VUWLR 89. I am not to be taken as agreeing with his conclusions. Kelley considers that introducing additional procedural requirements for contracting-out agreements will make such agreements fair. See below for the Hon Robert Fisher KC's comments on the difficulties associated with contracting-out agreements.
183 Law Commission 2019 Review, above n 10, at [10.125]–[10.128].

I comment that the power imbalance inherent in situations where FISAs would be relevant (and usually it is women who are disadvantaged as noted above) suggests that contracting out could make the gender gap worse and not better. I do not think contracting out of the statutory formula for FISAs should be allowed — or, if it is, then there should be an onus on the partner seeking to uphold such a contracting-out agreement to show that it is fair and just. Of course, challenging a contracting-out agreement would require a partner to go to court and the disadvantaged partner may not have the means to do so, either emotionally or financially.

C Sections 17 and 17A

Sections 17 and 17A allow adjustment where the separate property of one partner has been sustained by the other partner or by the application of relationship property or where the other partner's deliberate actions or omissions have materially diminished the value of separate property.[184]

There is no definition of "sustained" in s 17 but the courts appear to require "more than merely rendering assistance" with the separate property, and it involves preserving and maintaining the property, although it need not reach the stage that the property would otherwise be in "jeopardy".[185] The onus is on the non-owning spouse to show sustenance.[186] In line with the assumption of equality of contribution and also the fact that the non-owning spouse is more likely to be female, this would appear to operate to the detriment of women. It might accord more with the view of all contributions being equal and with the analogy of a joint venture,[187] if all increases in value of separate property during the relationship were shared, at least as a default position.

In some jurisdictions the default position is that any increase or decrease in value of separate property during the course of the relationship is shared. For example, in Manitoba, increases

[184] The relationship between ss 9A and 17 was discussed by the Court of Appeal in *Hebberd v Hebberd* [1992] 3 NZLR 517 (CA), which considered that s 9A deals with an increase in the value of the property while s 17 deals with its value being preserved: at 521; and see, for example, *Nation v Nation* [2005] 3 NZLR 46 (CA) on the issues of proving an increase of value compared to sustaining value. Section 9A also deals with classifying property, whereas s 17 deals with compensation relating to already classified separate property: Law Commission 2019 Review, above n 10, at [9.12].

[185] *Rose v Rose (No 2)* HC Blenheim CIV-2005-406-155, 22 December 2005 at [39].

[186] *P v S* [2019] NZHC 2608, [2019] NZFLR 448 at [42]. I note, however, that keeping account of contributions in any meaningful way in the course of a relationship is not likely to be the norm.

[187] The Law Commission refers to the parties contributing to "the family joint venture": see Law Commission 2019 Review, above n 10, at [3], [13] and [2.43]–[3.48].

and decreases in separate property are shared on separation.[188] It might create unfairness, however, for a decrease in separate property's value to be shared to the detriment of the non-owning partner if the owning partner had total control over the asset, unless the current requirement of the non-owning partner having a direct role in the diminution applies.[189]

The Law Commission considered the situation where one partner uses their separate property to sustain the other partner's separate property will likely fall under s 17 but that this should be stated expressly in the provision.[190] Despite the value of awards under s 17 sometimes being small, the Commission preferred to keep judicial flexibility to determine what is just on the particular facts.[191] The Law Commission found no issues with the operation of s 17A, but considered that ss 16, 17, 17A, 18B, 18C and 20E — all compensatory powers allowing the Court to make adjustments — should be amended to provide more consistency.[192]

Sections 26, 26A and 27

Section 26 provides that the interests of any minor or dependent children of the relationship must be taken into account by the court and, if considered just, part or all of the relationship property may be settled for the benefit of the children. Section 26A provides that orders can be made postponing the division of property where immediate vesting would cause undue hardship for a partner who is the principal carer for any minor or dependent child of the relationship. Under s 27, orders can be made for occupation of any premises forming part of the relationship property by one partner for a period. Support payments for dependent children are covered by a different regime: see the Child Support Act 1991.[193]

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188 The Family Property Act CCSM 2017 c F25, s 4(2)–(3); and see Law Commission 2019 Review, above n 10, at [3.50]. This does not include gifts or inheritances intended for one partner's benefit, however. In Ontario, the partner with the lesser net family property on divorce or the marriage being declared a nullity receives half of the difference between the partners' property values, but this does not apply to common law marriage: see Family Law Act RSO 1990 c F3, s 5(1); and Government of Ontario "Dividing property when a marriage or common law relationship ends" (10 March 2026) <www.ontario.ca>.

189 See s 17A. I note that the fact that there is a deferred sharing regime under the Act means that the non-owning partner may have had little input into the management of relationship property and relationship debts more generally: see Law Commission 2019 Review, above n 10, at [3] and [2.40]–[2.42].

190 At [9.13]–[9.16].

191 At [9.17].

192 At [9.39] and [9.53]–[9.55].

193 For a description of the current system and some criticisms, see Susan Edmunds "'The system needs a shakeup': Call for child support changes" (6 October 2025) Radio New Zealand <www.rnz.co.nz>; and for a description from Inland Revenue, see Inland Revenue | Te Tari Taake "Child support overview" (1 April 2026) <www.ird.govt.nz>. Child support is a regime under which partners who do not live with their children or who share care of their children with the other partner make payments to the other partner to assist financially with raising the child. The rate of child support is assessed considering the age of the child, the income and

Some data

In 2024, the median age of women giving birth reached 31.5 years, up from 28.5 years in 1994.[194] There is a trend for women[195] to have fewer children. The proportion of those aged 50–54 with three or more children decreased from 37 per cent in 2013 to 31 per cent in 2023. There is an increase in the proportion of women who had never had children, the figure increasing from 15 per cent to 17 per cent from 2013 to 2023. For women aged 30–34, still in their childbearing years, the proportion not having had children increased from 36 per cent to 44 per cent over the same period. New Zealand's fertility rate[196] dropped from approximately 2.1 in the 1980s to 1.55 in 2025.[197]

Some 30 per cent of births in 2019 were to parents in a de facto relationship,[198] and that figure rose to around half in 2024.[199] The 2023 census recorded that de facto couples made up roughly 13.0 per cent of all couples in New Zealand.[200] A United Nations report showed that New Zealand (and Australia) had the lowest rates of marriage for women in their late forties based on 2010 data (14.1 per cent had not married) and, citing data from reports from 2017, that women on average did not marry until aged 30, the highest age (along with Australia) in the study.[201]

A 2005 study found that roughly 22.6 per cent of LGB[202] respondents had "some kind of parenting relationship",[203] and the 2023 New Zealand census recorded that more than 30,000

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living situations of the parents, the time each parent cares for the child, the costs of the child and any other child the parent looks after. There are criticisms that some are paying too much and some too little, and that the system does not adequately reflect the realities for the parents. Some can artificially lower the payments they make through the use of companies and trusts to shield their income.

194 The figures in this paragraph are from Stats NZ | Tatauranga Aotearoa "Women giving birth are older than ever recorded" (18 February 2025) <www.stats.govt.nz>. These figures do not consider how many of the women are in relationships as defined in the Act.

195 Stats NZ | Tatauranga Aotearoa phrases it as people whose sex at birth was female to align with the new standard for gender, sex, and variations of sex characteristics. For convenience, I use the term woman but that is not to be taken as suggesting that those who identify as female but were born male are not women.

196 Defined as "the average number of children a woman will have over her lifetime": Georgeia Lala, Paul Spoonley and Sir Peter Gluckman *People, place and prosperity: The case for a population strategy* (Koi Tū Centre for Informed Futures, April 2026) at 9.

197 At 9. This is also a common trend in "high-income countries" globally.

198 Stats NZ | Tatauranga Aotearoa "'First comes marriage then come babies' not so likely now" (5 December 2019) <www.stats.govt.nz>.

199 Stats NZ | Tatauranga Aotearoa "Marriage continues to fall out of favour" (28 August 2025) <www.stats.govt.nz>.

200 Stats NZ | Tatauranga Aotearoa "Aotearoa Data Explorer" <https://explore.data.stats.govt.nz>.

201 UN Women — United Nations Entity for Gender Equality and the Empowerment of Women *Progress of the World's Women 2019 – 2020: Families in a Changing World* (2019) at 52–53; and Catherine McGregor "New Zealand is leading the world in not getting married" (5 May 2026) The Spinoff <https://thespinoff.co.nz>.

202 This study only considered lesbian, gay and bisexual groups.

203 Mark Henrickson "Lavender Parents" (2005) 26 Social Policy Journal of New Zealand 68 at 71.

people identifying as LGBTIQ+ were "'individual' parents".[204] Approximately 1.10 per cent of couples with children in New Zealand are LGBTIQ+.[205]

This data indicates that, although there is an increasing number of childless couples, children may be part of households in all relationship types covered by the Act.

Comments

The s 26 power is rarely used and, if it is, the amounts ordered are generally small.[206] The requirements of ss 26A and 27 are stringent. Generally, children's interests have been sidelined under the Act, despite the purpose in s 1M(c) and the United Nations Convention on the Rights of the Child.[207]

The Law Commission has recommended changes in its proposed new Act that would more clearly put the interests of children to the fore by "elevating the 'best interests' of children to be a 'primary consideration'", but the efficacy of these changes might be impacted by the fact that the Act is still concentrated on the needs of the partners rather than children, and the fact that no new exception to the general rule of equal sharing is proposed.[208]

With regard to trusts, I note here s 182 of the Family Proceedings Act. This only applies to marriages and civil unions but has been used by the courts to protect the interests of women and children.[209] A full discussion of that section is beyond the scope of this paper. The Law Commission has recommended its repeal.[210] But another possibility would be to extend its operation to all relationships under the Act.

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204 Stats NZ | Tatauranga Aotearoa *LGBTIQ+ population of Aotearoa New Zealand: 2023* (June 2025) at 171.

205 At 171–172. This is calculated by considering the number of female–male, female–another gender, male–another gender, female–female, male–male and another gender–another gender couples. The gender composition of a couple does not directly show whether it is LGBTIQ+, but Stats NZ | Tatauranga Aotearoa notes that "there is some conceptual correlation between some of this variable's categories and LGBTIQ+ concepts that has led to some use of this data as a proxy for LGBTIQ+ population in the past": at 168.

206 Nicola Peart "Protecting Children's Interests in Relationship Property Proceedings" (2013) 13 Otago LR 27 at 27–28 and 50–52; and Nicola Peart (ed) *Brookers Family Law – Family Property* (online ed, Thomson Reuters) at [PR26.04].

207 As recognised by the Law Commission: see Law Commission 2019 Review, above n 10, at [12.8]–[12.9] and [12.13]–[12.24]; and see United Nations Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990).

208 Law Commission 2019 Review, above n 10, at [12.58]–[12.59]. Not only does the Act sideline children, but it also concentrates on partners and does not engage with wider family relationships, which are likely to be of particular significance for Pacific, Māori and Asian families.

209 See, for example, *Lassnig v Zhou* [2025] NZSC 116, [2025] 1 NZLR 439; and *Preston v Preston* [2021] NZSC 154, [2021] 1 NZLR 651.

210 Law Commission 2017 Review, above n 14, at [22.9].

Section 18A

Misconduct can be taken into account in determining the contribution of a spouse or partner to the relationship and in determining orders made under various other sections including those related to children, but only if that conduct was "gross and palpable" and had "significantly affected the extent or value of the relationship property".[211] Otherwise, misconduct may not be taken into account.[212]

I agree that fault (except as it has diminished the value of assets) should not generally be taken into account.[213] If human capital is included in the definition of property (and there are, as noted above, good arguments it should be) then the issue of family violence deserves consideration, given the long-term effect of violence on children and the abused partner.[214]

It is notable that the Supreme Court of Canada recently recognised a tort of "intimate partner violence" in *Ahluwalia v Ahluwalia* to respond to the significant harm caused to Ms Ahluwalia including physical violence, manipulation, deprivation "of an autonomous and equal voice in decision making in the marriage", and "limit[ation of] her freedom to live her own life within the intimate partnership — to make choice in relation to her career, her relationship with her family and friends, and the pursuit of her own happiness".[215]

Contracting out

Contracting out is the subject of another session in the Conference. I just note that the gender gap and power imbalances are likely to mean that contracting out in many cases will be to the detriment of women. The extrajudicial comments of the Hon Robert Fisher KC on the real

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211 Section 18A.

212 Section 18A(1).

213 This aligns with there being no need to show fault to obtain a dissolution: see Family Proceedings Act, pt 4.

214 See, for example, Ian Lambie *Every 4 minutes: A discussion paper on preventing family violence in New Zealand* (Office of the Prime Minister's Chief Science Advisor, 6 November 2018); and Dan Anderberg, Gloria Moroni and Alexander Vickery *Intimate partner violence and children's human capital* (Institution for Fiscal Studies and United Kingdom Research and Innovation Economic and Social Research Council, 3 November 2025). Gollop and others, above n 11, at 91–100 found that 60 per cent of survey participants had experienced family violence in their relationship or after separation, including physical abuse, psychological abuse, threats, intimidation and harassment, property damage and financial abuse. This made some victims accept unequal outcomes, lengthened the process and made other victims separate with nothing. It generally prevented the victim partner from having a fair say in the property-division process.

215 *Ahluwalia v Ahluwalia* 2026 SCC 16 at [6] per Wagner CJ, Martin, Kasirer, O'Bonsawin and Moreau JJ. Karakatsanis J "strongly agree[d] … on the necessity of recognizing a new tort of intimate partner violence": at [253]. For more information see the podcast with Shelly Hounsell and Vanessa Lam: Alison Crawford "A turning point for a tort of family violence" (podcast, 21 May 2026) Verdicts & Voices <https://verdictsandvoices.simplecast.com>.

difficulties with contracting out agreements are well worth a read.[216] He suggested that, as a result of these difficulties, a potential solution is to introduce an onus on the party wishing to enforce any agreement, with a high threshold to show both that the agreement reaches a just result, and that the application of the Act "would not have achieved the fundamental objects of the regime" or would have been otherwise unjust.[217] This suggestion is one that would seem to me much better to accord with the principles of the Act.

Conclusion

In the first section of the paper I concluded that the Act is for rich European men. In the second section I argued that children have been largely sidelined, that the exceptions to equal sharing have done little to ameliorate the inequalities and that some of the Law Commission proposals might make matters worse. Ultimately, the Act is an improvement on what has come before, but existing inequalities in society mean it does not necessarily achieve fairness and equality for all separating partners.

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[216] See Fisher, above n 104, at 18–21.
[217] At 21.