



Michael &
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Relationship Property Division in New Zealand: Public Attitudes and Values

A General Population Survey
October 2018



Research Summary

Introduction

The Property (Relationships) Act 1976 (PRA) establishes the rules for how the property of two partners is divided when they separate or when one of them dies. The underpinning principle is that 'relationship property', as defined by the Act, should be divided equally between the two partners when their relationship ends. Over the past four decades there have been dramatic demographic and social changes in New Zealand, including the ways in which relationships and families form and function,¹ yet the PRA has not been comprehensively reviewed since its inception. However, the Law Commission is currently undertaking a project examining the PRA to see if it still meets the needs and expectations of diverse families in contemporary society.

To help inform the Law Commission's work, a University of Otago research team conducted a study generously funded by the Michael and Suzanne Borrin Foundation, to determine whether the PRA still reflects what New Zealanders think is fair when couples separate.² This Research Summary outlines the findings from the nationwide telephone survey undertaken to ascertain public attitudes and values to relationship property division in New Zealand.³

1 The increasing diversity in relationship and family formation, structure and functioning in New Zealand is discussed in: Law Commission. (2017). *Relationships and families in contemporary New Zealand: He hononga tangata, he hononga whānau i Aotearoa o nāianeī* (Study paper 22). Wellington: Law Commission.

2 The research did not address attitudes and values relating to relationship property division on death.

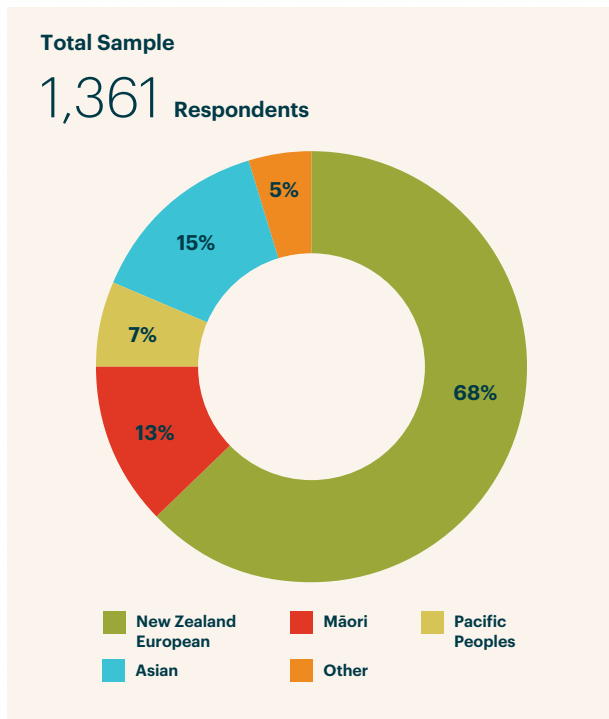
3 Fuller details regarding the methodology and findings are available in the Technical Research Report: Binnie, I., Taylor, N.J., Gollop, M., Henaghan, M., Simmonds, S., & Robertson, J. (2018). *Relationship property division in New Zealand: Public attitudes and values. A general population survey*. Technical Research Report. Wellington, New Zealand: Michael and Suzanne Borrin Foundation.

Research Summary

What the research involved

Colmar Brunton, a leading market and social research company, was commissioned to administer a nationwide telephone survey designed by the research team to members of the New Zealand public, aged 18 years and over. Between January and March 2018 telephone interviews were undertaken with a representative sample of 1011 people, plus booster interviews with 150 Māori, 100 Pacific and 100 Asian people.

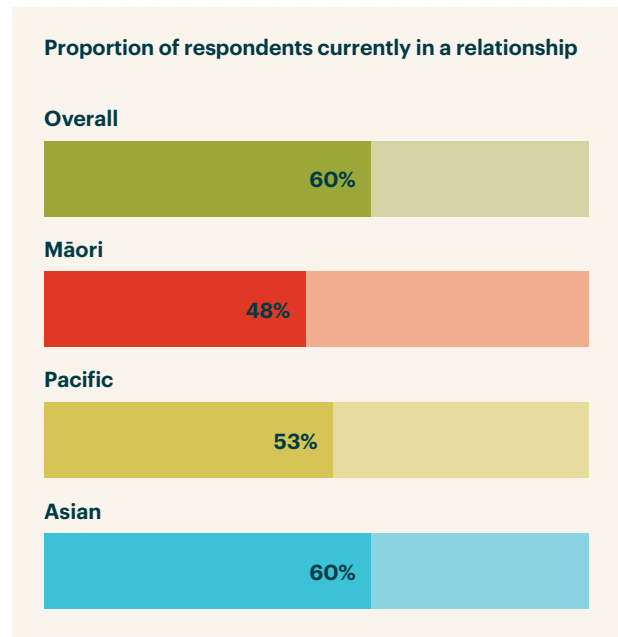
The total sample of 1,361 respondents identified as New Zealand European (68%), Māori (13%), Pacific Peoples (7%), Asian (15%) and Other (5%).⁴



Why does this research matter?

Any adult who has lived together with a partner can be subject to the PRA when they separate and have 'relationship property' to divide. In the research, most people (60%) were currently living with a partner. This proportion was lower for Māori respondents (48%) and Pacific respondents (53%), but was the same for Asian respondents (60%).

Overall, just under a third of respondents (30%) had been through a relationship breakup in the past. One in five people (20%) had experienced a breakup where there was relationship property to divide (and that separation was from a partner they had lived with for at least three years). The equivalent proportion was not significantly different for Māori respondents (16%), but was significantly lower for Pacific (10%) and Asian (4%) respondents.



⁴ Respondents were able to select multiple ethnicities, hence percentages do not add to 100%.

The law of equal sharing was defined to the telephone survey respondents as follows: *The law says that the family home, household items (such as furniture or the car), money, debt or property the couple get during the relationship are considered to be relationship property and should be shared equally if the couple separate. This is sometimes known as a 50/50 split or the equal sharing law.*

What do people know? Awareness of the equal sharing law

There was high awareness of the equal sharing law – 79% of people were aware of it.

Over two thirds (68%) knew that the equal sharing law applies to both married and unmarried couples.

However, just less than half (48%) were aware of a key feature of the law: that it applies to couples who have lived together for three years or longer.

Those for whom the PRA is most applicable had relatively high awareness of the law – 87% of those who lived with a partner were aware of the equal sharing law.

Awareness of the equal sharing law was lower for Māori (70%), Pacific (55%) and Asian (58%) respondents; and was lower among younger people, those who were not born in New Zealand, and those who rented.

What do people think? Support for the equal sharing law

There was a high level of support for the equal sharing law – 74% agreed with it.

However, these views were not strongly held – only 32% strongly agreed with it and only 6% strongly disagreed with it. Those who had experienced a relationship breakup where there had been relationship property to divide were more likely to strongly agree (37%) or strongly disagree (10%) with the law.

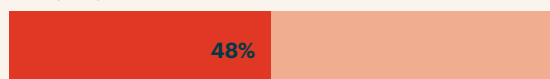
Māori respondents (68%) were slightly less likely to agree with the equal sharing law.

Awareness of the equal sharing law

Aware of the equal sharing law



Aware that the law applies to couples living together for 3 years



Aware that the law applies to married and unmarried couples



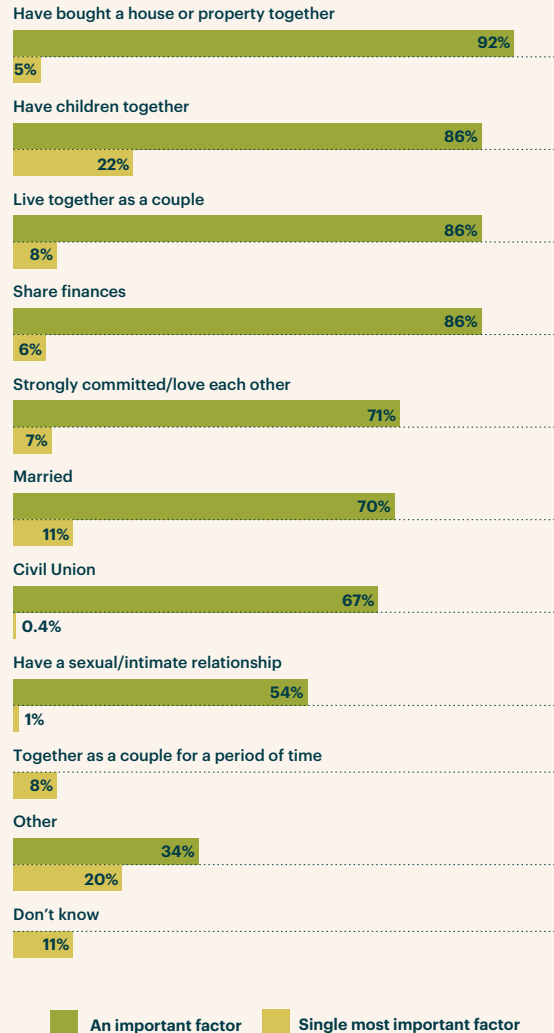
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What factors do people think are important when deciding if the law of equal sharing should apply to a couple?

Around 9 in 10 people said that buying a house together, having children together, living together as a couple, and sharing finances were important factors to consider when deciding whether to apply the equal sharing law. On average, respondents thought that six of the eight factors described to them were important when deciding to apply the equal sharing law to a couple.

There was no consensus on the single most important factor, although the most common response was whether a couple had children together. However, only 22% believed this was the most important factor, reflecting divergent viewpoints on this issue.

Factors to consider when deciding whether to apply the equal sharing law to a couple who separate



How long do people think couples should live together before the equal sharing law should apply?

There was no consensus on the length of time that couples should live together before the law applied to them:

- A third thought it should apply to couples who had lived together for less than three years.
- A third thought it should apply to couples who had lived together for three years.
- A third thought it should apply to couples who had lived together for longer than three years.

Although views were split on the length of time, 60% supported the current legal definition (after prompting) that couples should live together for three years before the law applies. This suggests that, although there was no clear consensus about how long couples should live together, many did not hold strong opinions and appeared happy to accept the current law.

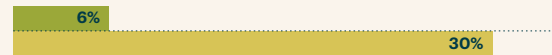
The importance of marriage polarised people: Views on the importance of marriage in relation to the equal sharing law were polarised, with around 3 in 10 (30%) thinking the law should apply to a couple as soon as they get married. However, around 3 in 10 believed that marriage should not even be a factor when applying the law to a couple.

Overall, 70% of all respondents thought marriage was an important factor, but Māori (78%), Pacific (83%) and Asian (80%) respondents were slightly more likely to think that marriage should be one of several deciding factors. However, views on whether marriage should be the most important factor did not vary by ethnicity.

Children make a difference: Around half of the respondents thought the law should apply sooner to a couple who had children – those with dependent children in the household were more likely to say this.

Length of time before the equal sharing law should apply

As soon as they become a couple/As soon as they get married



After a year



After two years



After three years



After five years



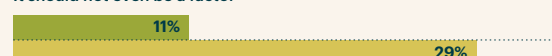
After ten years



Other/just depends/varies



It should not even be a factor



Don't know



Legend: All couples who live together (dark green), Married couples (yellow-green)

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Yes, but – Scenarios testing views about application of the equal sharing law

While the results reported above suggest there is support for the current law – equal sharing of relationship property after three years together – it was important to test if viewpoints about particular aspects of the law changed when different situations were presented. Respondents were asked to consider three scenarios involving different separating couples.

While three-quarters agreed with the equal sharing law, most thought it was acceptable to depart from equal sharing in particular circumstances. Overall, 88% of those who agreed with the equal sharing law in principle responded to the scenarios in a way that suggested they did not always support equal sharing in practice. This finding was not significantly different for Māori respondents (89%), but the figures for Pacific (94%) and Asian (96%) respondents were significantly higher.

Scenario 1 – one partner paid the deposit on the house

72% thought an individual should get a deposit back where a couple had lived together for four years and both partners had contributed towards mortgage payments and living expenses. Nearly a quarter (24%) thought this should not happen, and the rest said ‘it depends’ or ‘don’t know’.

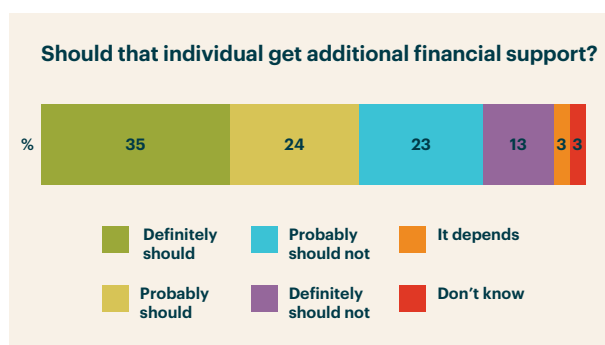
Only 26% thought that an individual should get a deposit back after four years of living together if the other partner paid for most of the mortgage payments and living expenses. Over half (58%) thought this should not happen, and the rest said ‘it depends’ or ‘don’t know’.

Scenario 2 – one partner brought a mortgage-free home into the relationship

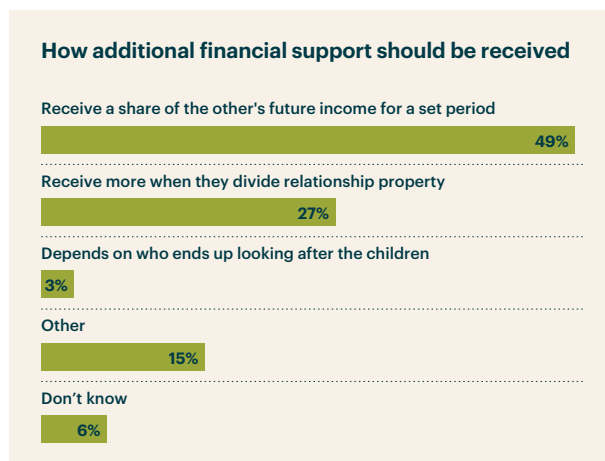
40% thought that when an individual brought a mortgage-free home into the relationship it should be shared equally with the other partner upon separation after a six-year relationship where the other partner paid for most of the living expenses. Over half (54%) thought this should not happen and the rest said ‘it depends’ or ‘don’t know’.

Scenario 3 – one partner gave up their career to care for the children

59% thought an individual who gave up their career to look after children during the relationship should receive additional financial support from the other partner after they separated. Around a third (35%) thought this should not happen, and the rest said ‘it depends’ or ‘don’t know’.



Respondents who thought that the non-breadwinner should receive additional financial support from the breadwinner were asked about the best way to provide support.



Does gender matter? There were differences in how people responded to the scenarios based upon the gender of each character described within them. This difference was largest in the scenario where a partner put their career on hold to look after children – almost 7 in 10 thought that a woman who did this should receive additional financial support from the other partner after they separated. However, just over half thought that a man in the same situation should receive additional financial support.

Opting out – Making (pre-nuptial) agreements about relationship property division

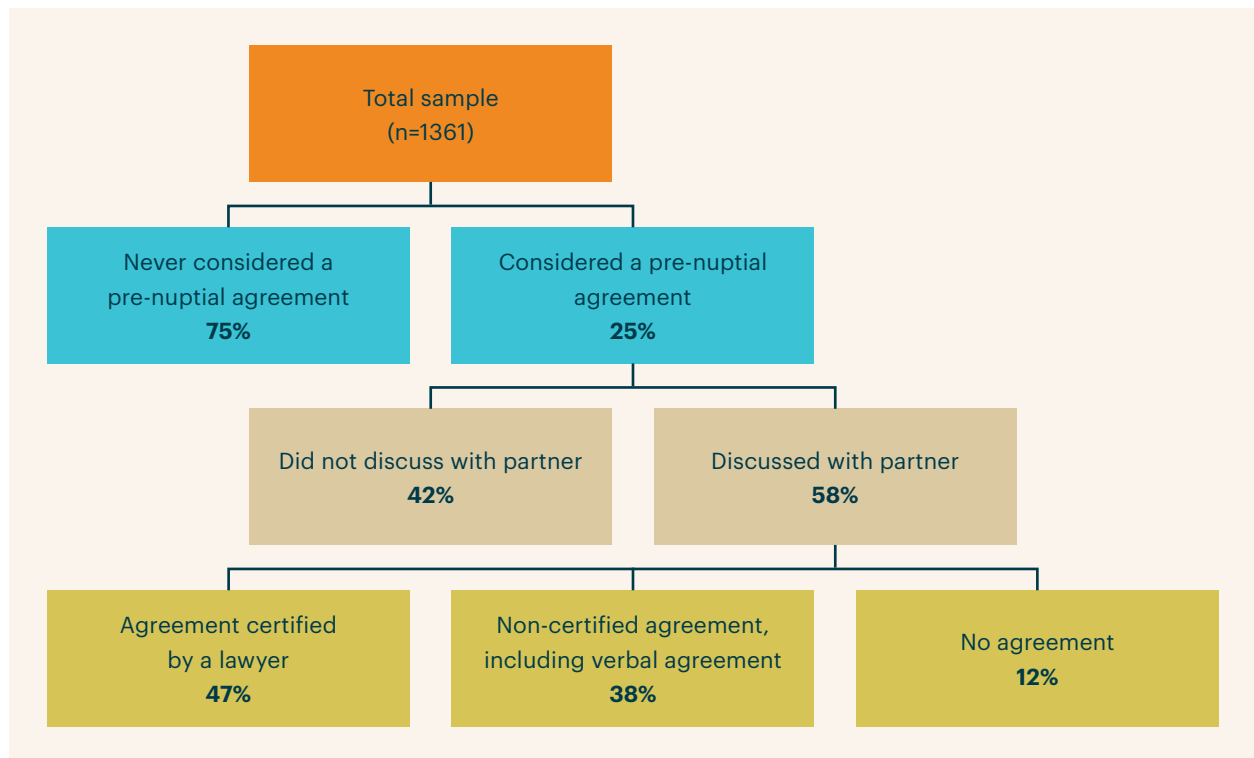
A quarter (25%) of respondents had considered a pre-nuptial agreement at some point in their life, but only 7% of the total sample said they had made an agreement that was certified by a lawyer (and hence would be enforceable).⁵

Just under half of those who had considered a pre-nuptial agreement never discussed it with a partner – often they did not feel their relationship was serious enough, or they did not believe they had sufficient relationship property. Many also worried about the negative impact such a discussion might have upon the quality of their relationship.

Among those who did discuss a pre-nuptial agreement with their partner:

- just under half (47%) said they had certified the agreement with a lawyer.
- 38% said they had only made an informal/verbal agreement without involving a lawyer (meaning their agreement would not be enforceable through the law).
- 12% said they did not reach agreement with their partner.

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).



⁵ This finding includes pre-nuptial agreements made with either current or previous partners.

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Summing up – What do these research findings mean?

There is high public awareness and general support for equal sharing of relationship property following separation. This indicates that New Zealanders are generally satisfied with the fundamental premise of the PRA and that, after 42 years, equal sharing is firmly embedded in the Kiwi mindset.

However, it is clear that New Zealanders acknowledge the need to depart from equal sharing in some cases to ensure a fair result. Eighty-eight percent of respondents who supported equal sharing thought that it was appropriate to depart from equal sharing in certain situations. This suggests some aspects of the PRA's 'one size fits all' model may no longer be appropriate in contemporary society where relationship and family forms are becoming increasingly diverse.

The first situation is where one partner brings property to the relationship. The majority of respondents thought that pre-relationship property, in the form of the family home or money used as a deposit on the family home, should not be shared in the same way as property acquired during the relationship. This suggests there is a need to reconsider *what* property is shared under the PRA.

The second situation is where one partner finds their post-separation earning potential is impaired because they stopped working to care for children during the relationship. The majority of respondents thought that partner should receive additional financial support from the other partner. This confirms public support for provisions that redress economic disparities following separation, which already feature in the PRA, but are difficult to access in practice

Another key finding is the diversity of views on *when* the PRA should apply. While 60% of respondents agreed that the PRA should apply to all couples who live together for three or more years, there were strong views about the significance of other factors, such as having children together and getting married. Many respondents thought that the PRA should apply sooner when these factors applied. These results highlight the different ways in which people think about commitment, and suggest that a more nuanced approach to establishing eligibility under the PRA (which generally prioritises the length of the relationship over other factors) might be appropriate.

That just 7% of all respondents had contracted out of the PRA is a strong indication of the need to get the default rules of the PRA right: it is not enough to rely on a couple's freedom to make their own arrangements. The fact that a similar number of people are making their own informal agreements also raises concerns about whether couples appreciate that, for their agreement to be binding under the PRA, each partner requires independent legal advice.

Finally, the need for better education about the PRA and what it means for people entering relationships is evident. While awareness of the equal sharing law was high, less than half of respondents knew that it applied to all couples who had lived together for three years or longer. More education is needed about the property consequences of forming intimate relationships, particularly among certain sections of the public, including Māori, Pacific and Asian communities, younger New Zealanders and people born outside New Zealand.

These research findings provide evidence, for the first time, of public values and attitudes about the fair division of property on separation. This reveals that some areas of the current law do not align with people's expectations of fairness in contemporary New Zealand, and indicates directions for reform on that basis.

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