

Abstract

In this thesis I review New Zealand's present inheritance laws which are characterised by:

- *20 disparate statutes stretching back 100 years;*
- *a lack of clear and consistent policies;*
- *a failure to adapt to fundamental changes in life expectancy, re-partnering and family groupings that have taken place over the last 40 years;*
- *inconsistent judicial decision-making;*
- *dual jurisdiction of the Family Court and High Court;*
- *mechanisms to avoid the consequences of the current legislation.*

Calls for urgent and fundamental reform have been met by piecemeal ad hoc changes. In contrast, reform in Australia has been systematic and carefully analysed.

After considering the two common inheritance regimes around the world (the fixed rule scheme and the court-based discretionary system), I reach two fundamental conclusions:

- *adoption of an inheritance code;*
- *recognition of the principle of testamentary freedom.*

In addition I recommend a number of changes to New Zealand's inheritance laws, and in particular:

- *acceptance of the primacy of the position of a surviving spouse or partner;*
- *replacement of the current family protection and testamentary promises claims with support and contribution claims;*
- *restriction of estate claims to spouses, partners and minor children;*
- *recognition of the rights of "accepted children" (stepchildren and whangai);*
- *clarification of the ability to compromise and contract out of claims;*
- *empowering one court to administer all inheritance laws;*
- *anti-avoidance measures;*
- *equating the rights of spouses, civil union partners and long term de facto partners on separation.*

I conclude this thesis with a skeleton of the proposed inheritance code including drafts of some of the key provisions.

Word length

The text of this paper (excluding abstract, table of contents, footnotes and bibliography) comprises 49,345 words.

Subjects and Topics

Inheritance law