

**INCOMEPLTE ASSESSMENT:
FINAL ASSESSMENT TO BE HANDED IN BY 4 JULY 2020 THE LATEST –
APPROVED BY SUPERVISOR BILL ATKIN**

I Introduction[500]

In 2019 the Law Commission released its final report on the Property (Relationships) Act 1976, and introduced the Family Income Sharing Arrangement scheme (FISA). This would require the removal of s 15 of the Property (Relationships) Act 1976 (PRA) and ss 63, 64, and 82 (the maintenance provisions) of the Family Proceedings Act (FPA). FISA would require that for up to five years after separating, people in defector relationships, civil union partners, and spouses are required to share their combined family income equally. The less affluent party would need to satisfy one of four circumstances, which will be covered in this paper. FISA is still in its infant stage and requires further development, to ensure that it is fit for purpose. Nevertheless, this paper believes that FISA should be implemented.

This paper will discuss the reasons why Pasifika couples may not apply for FISA, despite further recommendations put forward to amend FISA. The main reason for such argument is based on cultural factors. For example, when Pasifika couples separate, it is customary for parties to turn to their families for support before turning to the State.¹ That is not to say that absolutely no Pasifika couple will use FISA or any other form of spousal maintenance.

This paper will begin by discussing the current law under the PRA and FPA. The issues with the current law will be canvassed, followed by an analysis of the proposal – FISA. Before this paper can discuss how FISAs will impact on Pasifika families, it is appropriate to discuss common Pasifika values, which will shape Pasifika attitudes towards FISA. Finally, this paper will provide recommendations.

II The Present Law[2000]

A Section 15

In New Zealand, relationship property division is governed by the PRA and FPA. The legislation covers spouses, civil union partners and de facto relationships. In 2001, s 15 of the PRA was introduced to address the economic disadvantage experienced by some

partners on separation due to the effects of the division of functions within the relationship.² Section 15 of the PRA allows a court to award compensation to a partner from the other partner's share of relationship property if three requirements are satisfied:

1. There is a significant disparity in the income and living standards of partners.
2. The disparity must be caused by the division of functions within the relationship.
3. Compensation must be just in the circumstances.

Once the three requirements are established, the court will then assess the amount of compensation. Unfortunately, the only guidance that the PRA provides on quantifying a s 15 award is that it should "compensate" the applicant. Therefore, courts have used different quantum methodologies, making it an unpredictable and uncertain remedy.³

Another issue with s 15 is the time and cost associated with making a s 15 claim, making the award unreachable for many New Zealanders. Section 15 also fails to provide immediate relief upon separation. This may occur months or even years after the separation. Finally, the court can only make s 15 compensatory awards from the other partner's share of relationship property. This is problematic when the pool of relationship property is small.⁴ Section 15 requires reform as it "cannot be accounted to have been successful in meeting its purpose"⁵, and "has not lived up to expectations".⁶

B Maintenance provisions in the Family Proceedings Act 1980

Another way in which the less affluent partner (in most cases, a female) may obtain financial relief from her former partner is through the maintenance provisions in the FPA. The maintenance provisions provide that, in some circumstances, the more affluent party is required to pay maintenance to the less affluent partner when it is "necessary" for her to meet her "reasonable needs".⁷ This includes situations where one partner cannot meet their reasonable needs because of ongoing childcare responsibilities. However, the applicant partner is required to assume responsibility for meeting their own financial needs within a reasonable time.⁸ Peart and McWilliams comment on the process for applying for interim maintenance:⁹

² Law Commission *Review of the Property (Relationships) Act 1976* (NZLC R143, 2019).

³ Emma Littlewood "Economic disparity at the end of a relationship — is FISA the answer?" (2019) 9 NZFLJ 165, at 165.

⁴ Law Commission, above n 1, at [10.15].

⁵ *Scott v Williams* [2017] NZSC 185, [2018] 1 NZLR 507 at [351].

⁶ At [377].

⁷ Family Procedure Act 1980, ss 63, 64 and 82.

⁸ Section 64A.

“Legal advisors need to be well prepared when meeting with their client to discuss maintenance. There is often uncertainty and delay in filing applications because the applicant has to complete a great deal of paperwork to justify the payments sought. [...]

Clients should also be advised about delays in getting the matter before a court and their ability to survive financially until an order is made.”

As this extract makes clear, like s 15 of the PRA, obtaining maintenance is not an easy and accessible process for a person of limited means. Furthermore, by focusing on the applicant’s “reasonable needs” rather than income, the maintenance provisions, like s 15, ignore the benefits and autonomy that come with earning income and are unfairly restrictive on the economically disadvantaged partner of the relationship.¹⁰

III The Proposal: Family Income Sharing Arrangements

A Introduction of FISA

Currently, the maintenance provisions and s 15 are often used interchangeably, yet they both fail to provide accessible and effective remedy for many New Zealanders.¹¹ Therefore, the Law Commission recommends repealing these provisions. In its place, the Law Commission has introduced the FISA scheme. The purpose of the scheme is to address the income inequality at the end of a relationship. Under FISA, both parties of the relationship would share their combined income equally for up to five years. The scheme would be available to the economically disadvantaged partner if any of the three categories applies:¹²

- (a) the couple’s relationship was for 10 years or longer;
- (b) there is a child of the relationship; or
- (c) during the course of the relationship:
 - i. Partner A’s (the economically disadvantaged partner) earning capacity reduced because of the relationship; or
 - ii. Partner B’s (the economically advantaged partner) career has been enhanced or sustained by the relationship

If the economically disadvantaged partner believes they are entitled to a FISA based on one or more of the above categories, and the application of the statutory formula leads to

⁹ NS Peart and others *Relationship Property & Adult Maintenance* (Brookers Limited, 2013) at 48.

¹⁰ Emma Littlewood *Economic disparity at the end of a relationship — is FISA the answer?* (2019) 9 NZFLJ 165, at 167.

¹¹ Law Commission *Dividing relationship property – Time for change? Te mātatoha rawa tokorau – Kua eke te wā?* (NZLC IP41, 2017) at [19.60].

¹² Law Commission, above n 1, at [10.62].

an amount in their favour, they are able to activate the FISA regime by giving written notice to the other partner. Entitlement to FISA would be assessed on the date Partner A provides notice to Partner B.¹³ Notice should be able to be given at any time after separation up until the parties have resolved all their relationship property matters. The Law Commission has recommended that events after separation should not have an impact on entitlement, though it may justify an adjustment to the amount payable under FISA or how it should be implemented.¹⁴

B Statutory formula for calculating FISA

The family income should be calculated by combining each partner's average annual income over the three years prior to separation. The Law Commission recommends a broad definition of "income", for the purpose of calculating the average income, and it should include all forms of taxable and non-taxable income. However, it should exclude child support payments, Working for Family Tax Credits, and any FISA payments in relation to an earlier relationship.¹⁵ After calculating the average family income, Partner B is required to pay the difference between Partner A's average income and half of the average family income. Finally, an annual discount is to be applied to the amount paid to Partner A. This is to acknowledge that, after separation, the partners' expectations to share economic advantages and disadvantages reduce over time as they transition out of the family joint venture.¹⁶

At first glance, it may seem arbitrary to use past income to pay for future expenses. The Law Commission had initially proposed calculating the family income on a forwards-looking basis by using each partner's actual income in the period following separation with six monthly adjustments to reflect any changes in income. The Law Commission recognised **that such an approach may disincentivise workforce participation, could result in financial hardship for Partner B as a result of unintended tax consequences and risks strategic behaviour. This would increase the risk of disputes between partners, making it difficult to apply and enforce the FISA regime.**¹⁷ Adopting a backwards-looking approach addresses this issue. It is also much more easier to obtain information required to calculate the family income, and the financial consequences of separation will become more predictable. The Law Commission also believes that a back-wards looking approach would avoid **the need for future adjustments to take into account changes in**

¹³ At [10.111].

¹⁴ At [10.76].

¹⁵ At [10.91].

¹⁶ At [10.103].

¹⁷ At [10.89].

income, which provides partners with greater certainty as to the amount payable under a FISA.¹⁸

C Administration and Enforcing a FISA

Noncompliance of FISA agreements can have serious financial implications on the economically disadvantaged partner and any dependants in their care. The Law Commission suggested that the Government should consider extending the role of the Inland Revenue Department (IRD) to administer and enforce the FISA regime.¹⁹ The IRD would need to be adequately resourced to cope with urgent applications.

The Law Commission suggested that partners should be given a reasonable period of time to make necessary arrangements, and eight weeks was suggested in the Law Commission's Preferred Approach Paper.²⁰ This would allow partners to seek advice on implementing a FISA and reach an agreement. If both parties are unable to reach an agreement within a reasonable period, the default implementation rules and statutory formula should apply, and from that point on, Partner B should be liable for any unpaid amounts.²¹

D Adjusting amount payable under a FISA

The statutory formula will not always reflect the extent to which the parties have been economically advantaged or disadvantaged due to the relationship or its end. Therefore, either partner is able to apply to a court for an adjustment order to alter the amount payable under a FISA or how it should be implemented. The court should have the ability to make an adjustment order if it is satisfied that failure to make an adjustment would cause serious injustice.²²

IV FISA and Pasifika Families[2500]

In order to discuss how FISA would apply to Pasifika couples, it is appropriate to highlight some of the values that are commonly held in the Pasifika community. It is important to note that the term 'Pasifika' is the term used by government agencies to

¹⁸ At [10.90].

¹⁹ At [10.131].

²⁰ At [10.79].

²¹ At [10.79].

²² At [10.115].

describe migrants from Pacific region and their descendants, who now call Aotearoa their new home. Pasifika peoples are not a homogenous nation.

A Pasifika Values

1 Collectiveness and Communitarianism

Collectiveness and Communitarianism reflect the way Pasifika view the world and do things that are commonly viewed as acceptable to the community. This includes consultation, teamwork, and co-operation, with everyone striving to work together to achieve common goals through an agreed approach.²³

2 Family

Family is also at the core of the community and way of life. Every person belongs to a kaiga, aiga, family, and every family belongs to a person. This brings belonging and identity. Ancestry and a sense of place involve a kinship with what and who has gone before. For Pasifika people, family includes the extended family. When issues are discussed and decisions are made, Pasifika people do so with their family and the community in a collective and holistic way.²⁴

3 Respect

Respect is a foundation stone of Pasifika culture and is taught from an early age. This is expected behaviour, including respect towards parents, elders, women, children and people in positions of authority. Respect includes acknowledging someone's status, keeping face and observing proper etiquette.²⁵

4 Reciprocity

Reciprocity recognises the value of relationships, and the obligation of care between individuals and groups working together for a shared purpose. One example of reciprocity is the act of sending remittances to provide financial support to extended

²³ Ministry for Pacific Peoples *Yavu: Foundations of Pacific Engagement* (June 2010) at 7.

²⁴ At 7.

²⁵ At 7.

families in the Pacific Islands.²⁶ Mutual support and interdependence are viewed as more effective than individualism.²⁷

B FISA's Impact on Pasifika Couples and Families

1 Accessibility

The mechanistic approach of the FISA regime is much more favourable over the current economic **disparity** method of addressing financial disadvantage. FISA provides less hurdles for the applicant to overcome and can support the economically disadvantaged partner much more quickly. FISA will be extremely beneficial for partners with low income. Many Pacific people work in the lowly paid industries.²⁸ Based on the 2018 census, Pasifika have the lowest median income at \$876 per week.²⁹ The average Pasifika income is \$40,300 per annum, compared with \$53,500 for non-Pasifika.³⁰ Currently, partners with low income currently do not have access to relief under the current economic disadvantage provisions because it is expensive to obtain. If administered by the IRD, the FISA scheme would happen without litigation. Furthermore, the Law Commission recommended setting an income threshold that the economically advantaged partner must meet in order for the economically disadvantaged partner to receive FISA payments. Further work is required to determine an appropriate threshold. Setting an income threshold ensures that the FISA scheme will only be imposed upon those who are able to make FISA payments and will not place liable parties in undue financial hardship.³¹

FISA agreements can be compared to the Tokelauan '*inati*' system. The *inati* system is a traditional community fishing and distribution system that is still being used today in Tokelau. The system ensures that all households in the village have fish, and that resources are distributed equitably amongst the community. Fisherman would bring in the catch of the day and the catch is shared equally amongst the villages. All members of households are counted, and the sharing of fish depends on the number of people in

²⁶ Treasury *The New Zealand Pacific Economy* (13 November 2018) at 10.

²⁷ Ministry for Pacific Peoples, above n 19, at 7.

²⁸ Treasury, above n 22, at 12-13.

²⁹ Statistics New Zealand "Labour market statistics (income): June 2018 quarter" (15 August 2018) <www.stats.govt.nz/information-releases/labour-market-statistics-income-june-2018-quarter>.

³⁰ Treasury, above n 22, at 13.

³¹ Law Commission, above n 1, at [10.95].

households and the size of each fish.³² The *inati* system, like FISA, allows for ongoing support for each other and helps to sustain them in times of need and hardship. Both FISA and *inati* ensures that parties get a fair distribution of income or resources. The ability to alter contributions and apply annual discounts to FISA ensures that the receiving party receives their fair share. However, where the two systems differ is the lifetime of a FISA, where it is a maximum of five years. It is hoped that by then, Partner A is financially stable to provide for their own “village”.

2 *Overcrowding*

Overcrowding homes has been an issue for Pasifika households. Around 4 in 10 Pasifika people live in crowded homes in New Zealand, and the rate is highest for people with Tuvaluan and Tongan ethnicity.³³ The average Pasifika household has four residents and an average of 2.2 individuals with an income. The average non-Pasifika household is made up of only 2.5 individuals, and only 1.6 income earners.³⁴ Overcrowding homes is due to the high fertility rate of the Pasifika population and multigenerational living. Migrants from the Pacific may ask extended families in New Zealand if they can live with them while they search for their own home.³⁵ In extended family households, daily tasks and responsibilities are often shared between individuals, such as keeping up the home or looking after children, and it is common to have flexibility of roles between family members. All are expected to contribute towards expenses, cultural obligations, church donations and sending remittances to family in the Pacific Islands.

In multigenerational households or households consisting of more than one family, one may ask whether it is feasible to permit the household to apply for a FISA against an earner and an ex-partner who has left. This of course, becomes an issue if a household has people moving in and out of the family home, as calculating respective incomes becomes difficult. As expected, FISAs does not take into account multigenerational living. FISAs are based on sharing economic advantages and disadvantages. A couple is seen as a family joint venture to which either partner contributes equally but in different ways. Partners contribute to the family joint venture, with the expectation that they will continue to share in the fruits of that joint venture – the product of their combined

³² Aliti Vunisea “Communal fishing in Tokelau: The *inati*” (September 2004) SPC Women in Fisheries Information Bulletin <<https://coastfish.spc.int/en/publications/bulletins/women-in-fisheries>> at 19.

³³ Statistics New Zealand “Almost 1 in 9 people live in a crowded house” (22 April 2020) <www.stats.govt.nz/news/crowded-housing-highest-among-pacific-peoples>.

³⁴ Treasury, above n 22, at 17.

³⁵ Pasifika Futures *Pasifika People in New Zealand: How are we doing?* (May 2017) at 6 and 42.

contributions – into the future.³⁶ The issue here is twofold: first, the concept of sharing economic advantages and disadvantages is based on family, more specifically, the nuclear family. Both partners have a vest interest in the family joint venture. In Pasifika families, the concept of ‘aiga, or family, includes the extended family. Secondly, households with more than one family do not support each other with the expectation that they will receive a vested interest in the family home for example. Although making changes to FISA to consider multigenerational living/multiple families under one household is difficult, it is helpful to highlight these issues as families will come across this if one does apply for FISA. When one leaves a household post separation and multiple families had relied on that person’s income, it may be a case of family members seeking benefit support from the State if they are unable to work.

FISA liability is calculated from the past incomes of individuals. Future incomes are not shared, instead past income is used to calculate future liabilities. No account is taken of expenses or of the income of other household members. Failing to consider households holistically based on their actual incomes earned may be a poor fit when households average four people with 2.2 income earners.³⁷ As previously mentioned, remittance obligations and other cultural obligations may also add costs.

3 Customary Practice – turning to family rather than the State.

In situations where couples separate, it is customary for each party to turn to their own families – nuclear and extended – for the care and support they need.³⁸ Families, rather than the State, are seen as the first line of defence in times of trouble. The State is seen as a viable option only when matters cannot be resolved within the family or the community. In the Family Court Review, the Ministry of Justice observed that Pasifika people represent two per cent of applicants and respondents in child support and PRA cases, compared to New Zealand European who make up 85 per cent.³⁹ In Samoa, Partner A would rely on the Maintenance and Affiliation Act 1967 (MAA) for maintenance payments. In practice, the maintenance provisions in MAA do not appear to have been

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³⁷ The Treasury *New Zealand Pacific Economy* (2018) at 17

³⁸ Moeata Keil and Vivienne Elizabeth “Gendered and cultural moral rationalities: Pacific mothers’ pursuit of child support money” (2017) 31 *Women’s Studies Journal* 34 at 41.

³⁹ Ministry of Justice *Reviewing the Family Court: A public consultation paper* (20 September 2011) at 83.

used. This is due to the fact that the customary system in Samoa involves communal living and sharing on a voluntary basis, rather than by virtue of a court order.⁴⁰

In the context of child support, mothers who pursue formal child support may run the risk of being criticised and shamed for acting in ways perceived as ‘too Western’ by turning to the state to enforce a parental and familial connection that is not voluntarily upheld.⁴¹ Families gain and maintain a sense of solidarity and pride by fulfilling family obligations. Therefore, the partner who is taking care of the child (in most cases, the mother) and her family may avoid pursuing any form of support from the father party or his family in an effort to maintain a sense of family pride.⁴² Child support is seen as a family obligation by Pasifika women, but a study shows that Pasifika women reject the idea of child support as an enforceable entitlement.⁴³ Therefore, it is difficult to imagine many Pasifika applicants pursuing financial support under a FISA, where the income is obtained to support themselves.

4 *Child of the Relationship*

Under FISA, the definition of ‘child of the relationship’ is limited to the biological and adopted children of the relationship. Fostered children, children from a previous relationship and whāngai are excluded from the FISA regime. The Law Commission has therefore adopted a definition that is much narrower of “child of the relationship” that is used elsewhere in the PRA, which would include any child who was a member of the partners’ family at the time of separation.⁴⁴ In the final report, the Law Commission stated that:⁴⁵

“When partners have a child together (or make a permanent commitment in respect of the future care of a child through the adoption process), it is reasonable to infer that they expect to share the economic advantages and disadvantages arising from satisfying the responsibilities associated with having and raising the child and make contributions to the relationship on that basis. While the same expectations may arise in relation to other children, such as a child from a previous relationship or a whāngai or fostered child, this cannot be presumed to the same extent and does not necessarily endure beyond the partners' separation.”

⁴⁰ Lalotoa Multialo and Jennifer Corrin "Reform of Maintenance and Divorce Laws in Samoa: Appropriate for the Aiga" in Bill Atkin (ed) *International Survey of Family Law 2012 Edition* (Jordans, Bristol. 2012) 283 at 290.

⁴¹ Moeata Keil and Vivienne Elizabeth, above n 32, at 42.

⁴² At 42.

⁴³ At 40.

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⁴⁵ Final report, [10.67]

At first glance, this would be problematic for Pasifika families where it is common for relatives to raise a child.⁴⁶ In Samoan society, for example, there is a form of adoption which appears to be similar to *whāngai* (Māori customary adoption practice), that is, the child is placed within the extended family and kinship links are maintained and strengthened (hereinafter, referred to as ‘cultural adoption’). **Social workers have indicated that Pasifika peoples do not regularly resort to legal adoption as a means of ensuring the right to care for a child. When Pasifika peoples do use the Adoption Act, they appear to do so to secure the legal benefits and consequences that flow from the status of adoption.**⁴⁷ Foster care and adoption are more of a continuum in some Pacific cultures, like Tonga, where the biological parents are never “replaced”. In these cases, guardianship is a more appropriate term rather than adoption.⁴⁸

Efforts to extend the definition of ‘child of the relationship’, however, may prove futile in the context of Pasifika families. Suppose Partner A and Partner B have been taking full time care of a child for two years through cultural adoption (for example, *whāngai*). The biological parent (BP) of the nephew and Partner B are siblings. BP stays in regular contact with the child, but Partner A and B have agreed to take care of the child while BP leaves town or the country to study. If Partner A and B then separate and Partner A applies for FISA under Category B, it may create further tension not only between the two partners, but also the BP and the extended family. This may deter some Pasifika people, in particular, Samoans as they are extremely sensitive to being shamed.⁴⁹ Some people act a particular way to ensure that their reputation is not ‘tarnished’. For example, Partner A may not apply for FISA for fear of being perceived as greedy and only agreeing to take care of the child in order to gain financial support. Furthermore, it will be difficult for category B to apply if the child is in and out of the care of Partner A and B. Partner A could be perceived as seeking payment for fulfilling his or her cultural obligations, which Pasifika people believe should be completed voluntarily. These issues, however, may be less prevalent with couples with children from previous relationships.

⁴⁶ <http://www.nzlii.org/nz/other/nzlc/pp/PP38/PP38-12.html>, at [334].

⁴⁷ <http://www.nzlii.org/nz/other/nzlc/pp/PP38/PP38-12.html> at [347]

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⁴⁹ Leilani Tuala-Warren *Ifoga* at 14.

5 Power imbalance and Domestic Violence

Another issue is regarding power imbalances and domestic violence in families. Due to colonisation, patriarchal culture is prevalent in the Pacific. The patriarchal cultural is one of the major factors resulting in the high number of domestic violence incidents involving Pasifika people.⁵⁰ Therefore, it may either prevent Partner A to pursue a FISA, force them to contract out of a FISA, or accept a FISA agreement that is not fair. The Law Commission has proposed that partners should be able to make their own agreement as to the implementation and amount of a FISA, and that these agreements should be subject to safeguards. The Law Commission also suggested that partners must have the agreement in writing and signed after receiving independent legal advice.⁵¹ However, seeking legal advice is costly. Even if legal advice is sought, it does not prevent Partner A from signing the agreement if there is a power imbalance. Another safeguard proposed is allowing the court to set aside FISA agreements wholly or in part if the agreement would cause serious injustice.⁵² However, the courts are based on the adversarial system and is not responsive to Māori, Pasifika, and other cultures so it is uncertain how many Pasifika applicants would challenge a FISA agreement.⁵³

V Recommendations[1500-2000]

Although it is likely that a low number of Pasifika people would consider using FISA, this section will discuss a number of recommendations that the Law Commission should consider.

A *Minimum income threshold*

As previously noted, the Law Commission recommended that one of the requirements for FISA is that Partner B is required to meet a minimum income threshold. However, the Report has not been elaborated by the Law Commission. New Zealand has abandoned the income floor standard that each person must be able to “participate in and belong to the community”.⁵⁴ A range of policy models exist across tax, benefit, and child support policies for setting floor levels for residual income. Based on the existing models, there are concerns that the minimum income threshold chosen will be too low and still cause

⁵⁰ Gemma Malungahu and Vili Nosa *Family Violence Initiatives and Pacific Men* (Pasifika Proud, 2016) at 47.

⁵¹ Property (Relationships) Act, s 21F.

⁵² Section 21J.

⁵³ Ministry of Justice, above n 34, at 16.

⁵⁴

hardship, in particular because of the highly mechanistic and income-only policy approach used.

One suggestion could be to establish different thresholds to take into account the lower median income of Pasifika earners compared to non-Pasifika, as opposed to applying a single threshold across the board for all applicants. However, New Zealand is a diverse and multicultural country so applying different thresholds for different ethnic groups may prove challenging. The Law Commission could also consider the living wage as a starting point then increase or lower the threshold depending on certain factors (for example, number of dependent children, whether both partners worked part time, or whether the family home is owned by the former couple). Nevertheless, a significant amount of research is required to ensure that the threshold does not capture the most vulnerable couples (leading to financial hardship on both sides), or is set too high (thus decreasing the number of eligible applicants and leaving many out of pocket).

The Law Commissions has proposed that FISA should apply to all forms of taxable and non-taxable income, with the exception of child support payments, Working for Families Tax Credits, and FISA payments.⁵⁵ Benefits such as job seekers benefit should also be included as it is consistent with the idea of sharing economic advantages and disadvantages. If the Law Commission proposed calculating income based on a forward-looking approach, it would create issues as it could put Partner B (if he or she relies on the job seeker benefit) in a financially unstable position.⁵⁶

B Expanding the definition of 'Child of the Relationship'

This paper proposes that the Law Commission should reconsider expanding the definition of 'child of the relationship', to include children from previous relationship, fostered children, and cultural adopted such as whāngai. Despite the issues raised earlier in this paper, the issues may only be limited to Pasifika families – a small portion of New Zealand's population.

[add more reasons]

⁵⁵ At [10.91].

⁵⁶ Currently, a single person aged 25 or over could receive up to \$250.74 net weekly benefit. See <https://www.workandincome.govt.nz/map/deskfile/main-benefits-cut-out-points/jobseeker-support-cut-out-points-current.html>

C Clarifying the FISA process

Although FISA is in its infant stage, there is a lot of work required in clarifying the process. For example, while the Law Commission notes that Partner A is required to give Partner B notice about FISA, there is no explanation as to what is required in the notice. The Law Commission did not explain what form the notice would take, whether that notice is also required by the IRD, or how the IRD would be notified about a FISA. As Emma Littlewood suggests, one possibility is that the written notice could be a standard form in which applicants must state:⁵⁷

1. the applicant's name, address, date of birth, and IRD number;
2. Partner B's name, date of birth, address, employer details and IRD number (if available—so that the IRD is aware of who is liable to pay FISA)
3. Which of the four categories is relied on (for example, the relationship had lasted 10 years or more); and
4. The dates of commencement and end of the relationship, so the IRD is aware of how long the entitlement will last.

The applicant should not be required to provide evidence of the relationship or how he or she is eligible for FISA to the IRD. As Littlewood points out, it is the role of the Court to determine the validity of such evidence (if challenged) and not the IRD, who holds an administrative role.⁵⁸

D Procedural Safeguards

As mentioned earlier, the court system is not culturally responsive to Māori, Pasifika, and other cultures. Furthermore, seeking legal advice may not be sought due to various barriers such as costs associated. The Law Commission should consider other procedural safeguards to support and protect Pasifika applicants (and other applicants who face similar issues), or consider ways to minimise the barriers applicants may face. This may include making legal aid more accessible to applicants,

E Building in cultural factors into the formula

How can the

- Being cultural appropriate:

⁵⁷ Emma Littlewood, pg 170

⁵⁸ Littlewood, At 170

- How can the system take account of culturally appropriate payments such as tithing or paying money to families in the Pacific?
- Section 105(2)(iii) of the Child Support Act allows for a departure on the basis of a duty (which may be a moral duty but not a social duty) to support another person. This is not often successfully used but provides a basis for arguing that cultural obligations could be built into the system. This may however have to be by way of an adjustment. The LC envisages these being granted by a court in situations of serious injustice, which is a high standard.
 - Could a special rule be added about cultural matters?
 - Could adjustments be by way of administrative review, which is the first port of call for people seeking a departure under the CSA, rather than the Family Court?

F Reconsidering the eight-week period

The Law Commission suggested a wait of eight weeks after Partner A gives Partner B notice before starting a FISA. The purpose for the delay is so that parties are able to seek legal advice and contract out of FISA if they wish to do so. After the eight weeks, the first payment is due and should include any amount owing for the period starting from when Partner A gave notice. If no agreement is reached within a reasonable period, then the Law Commission recommends that the statutory formula and default implementation rules should take effect. Partner B would, from then on, be liable for interest on any unpaid amounts.⁵⁹ The issue with this recommendation is that applicants would be required to find their own way of supporting themselves for eight weeks before receiving financial support that they are entitled to. As Emma Littlewood points out, one of the main benefits of FISA is that receiving financial payments would be easier than the maintenance provisions under the FPA and would not require litigation. This would certainly be undermined if the applicant is required to wait two months to obtain financial support they are entitled to.⁶⁰

Ideally, the applicant would start receiving FISA payments within two to four weeks after giving notice to Partner B. This would reduce the negative financial impact on the applicant as they would only need to find cover for two to four weeks compared to the recommended eight weeks. It could be possible to look at sole parent support. When a sole parent applies for sole parent support, they must also apply for child support. The

⁵⁹ At [10.79]

⁶⁰ Emma Littlewood, pg 169

money is then given to the state to offset the benefit. Could a something similar occur with FISAs, whereby after two weeks to four weeks notice, the applicant would receive a financial support from the State and Partner B is required to pay the State to offset the benefit? This would only apply to the default statutory formula and implementation rules. This would, however, require more time and resources from the State but could potentially be one way to minimise the time period before FISA payments begin. Nevertheless, more research is required to determine the appropriate period for FISA payments can begin. While the applicant is entitled to financial support under FISA, it is also important that Partner has enough time to seek legal advice and challenge FISA entitlement (if sought) before being required to start making payments.

VI Final Comments[500]

FISA addresses many of the concerns and issues caused by s 15 of the PRA and the maintenance provisions under the FPA. FISA reduces the number of hurdles that applicants face under the current law. While FISA provides financial support to Partner A much more quicker than the current law, further work needs to be done to ensure that it is fit for purpose.

However, it is unlikely that Pasifika would seek FISA due to the issues previously mentioned.