

Will-Substitutes in New Zealand and Australia

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Australia and New Zealand have some similarities in their succession law, including high rates of testation. Yet will-substitutes are used widely in both countries. These include joint tenancies, trusts and life insurance. The joint tenancy is an extremely important will substitute as it operates by taking the property out of the estate. In New Zealand relationship property legislation allows claims on death as well as when the relationship ends, and there is extensive use of trusts to avoid family provision and wills. In Australia the most significant will substitute is the compulsory superannuation scheme. Other possible will substitutes in Australia include enduring powers of attorney and irrevocable powers of attorney. In some Australian jurisdictions it is also possible for Indigenous people to make applications to the public trustee to have an estate distributed according to customary law.

Contracts to pass property on death cannot defeat family provision legislation in either jurisdiction, reducing some of their attraction. However, both Australia and New Zealand have abolished death duties, so the impetus for will substitutes may not be the same as in other jurisdictions where the existence of death duties may be a powerful motivator.

Similarly the existence of power to dispense with wills formalities in both jurisdictions means that the danger of wills not being admitted due to formal defects is almost non-existent.