



New Zealand House of Representatives
Te Whare Māngai o Aotearoa

Petitions Committee

Komiti Whiriwhiri Take Petihana

54th Parliament
May 2024

**Petition of Kiwilaw Probate and Estates Ltd:
Raise the threshold for requiring probate or
letters of administration**

Presented to the House of Representatives
by Greg O'Connor, Chairperson

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Petition of Kiwilaw Probate and Estates Ltd

Recommendation

The Petitions Committee has considered the petition of Kiwilaw Probate and Estates Ltd—Raise the threshold for requiring probate or letters of administration—and recommends to the Government that an adjustment be made as soon as possible to the threshold for grants of administration that matches inflation since 2009, and that a mechanism be established that would regularly adjust the threshold for inflation in future years.

Request to increase the threshold for requiring probate or letters of administration

The petition was presented to the House on 9 August 2023. It requests:

That the House of Representatives raise the financial threshold from \$15,000 to \$25,000 for requiring probate or letters of administration before estate funds can be released by a financial institution.

The Petitions Committee of the 53rd Parliament began considering the petition. It invited a submission from the petitioner. We resumed consideration in the 54th Parliament and received the written submission from the petitioner. We also invited and received a written submission from the Ministry of Justice.

Probate and letters of administration

Probate is a legal process undertaken after a person has died. It confirms a person's will and gives legal authority to the people who have been asked to assess and distribute a person's assets. When there is no will, or the executors named in a will are not able to carry out their responsibilities, the court may be asked to provide letters of administration to enable this work to be carried out.

New Zealand has a threshold of \$15,000 for probate and letters of administration. Funds below the threshold can be released by financial institutions without these formal court processes. This threshold is set in section 65 of the Administration (Prescribed Amounts) Regulations 2009.¹

The threshold was set at \$11,000 in 1998. In 2009, it was raised to \$15,000. The explanatory note in the Administration (Prescribed Amounts) Regulations 2009 explained that the updated amount reflected inflationary changes since 1998.² There has been no further change to the threshold since 2009.

The threshold applies to each financial entity that holds funds in a deceased person's estate, rather than to the total pool of property in the estate. This means that an estate with multiple bank accounts, each with a total less than \$15,000, may not need probate or letters of

¹ [Administration \(Prescribed Amounts\) Regulations 2009 \(SR 2009/70\) – New Zealand Legislation](#)

² [Administration \(Prescribed Amounts\) Regulations 2009 \(SR 2009/70\) Explanatory note – New Zealand Legislation](#)

administration, but they may be needed for an estate with a lower total value that has all funds in one account.

The Law Commission reported to Parliament in December 2021 on its review of succession laws.³ It heard from submitters that the administration process is complex and costly and that people wanted to see the thresholds increased. It recommended that the Government consider whether to increase the threshold for distributing estate money without a grant of administration. (This report refers to “grants of administration” unless another term is more appropriate.)

Comments from the petitioner

Kiwilaw Probate and Estates Ltd is a law firm based in Oxford, North Canterbury, which practices solely in the area of wills and estates. It describes itself as helping executors and bereaved families to obtain grants of administration (including probate and letters of administration) as self-represented clients.

The petitioner explained that grants of administration include:

- probate, where there is a valid will which appoints at least one executor who applies for the grant
- letters of administration on intestacy, where there is no valid will
- letters of administration with will annexed, where there is a valid will but no executor is appointed or, if appointed, the executor is not available to apply for probate.

Adjustment for inflation

The petitioner seeks to increase the threshold for grants of administration to \$25,000. Kiwilaw submitted that adjusting for inflation is a principle already recognised in the 2009 Regulations. It said the petition has no further policy implications beyond this principle.

The petitioner said that, using the Reserve Bank inflation calculator,⁴ \$15,000 in June 2009 would be the equivalent of \$20,941.81 in June 2023. Its recommendation for an increase in the threshold to \$25,000 is intended to prevent the need for a further adjustment in coming years.

Time delays

Kiwilaw told us it experiences many situations in which there is only one asset in the estate, such as KiwiSaver or a bank account. It also assists in cases where probate has been issued overseas but needs to be confirmed by New Zealand courts.

The petitioner said delays are common even with straightforward applications for grants of administration. Where there is no will, it is usually necessary to undertake a will enquiry and paternity search, which can take three to four weeks. Additional time is then needed to complete and sign paperwork, especially if documents need to be sent overseas.

³ Law Commission, Review of succession law, December 2021, [available on the website of the Law Commission](#).

⁴ Reserve Bank of New Zealand—Te Pūtea Matua, Inflation calculator, [available on the website of the Reserve Bank](#).

At the time of the petitioner's written submission in late 2023, it told us that High Court processing times were about 12 weeks, compared to 3–4 weeks before the COVID-19 pandemic. Kiwilaw submitted that raising the threshold would not only alleviate stress for bereaved families but would also reduce the burden on the High Court and Ministry of Justice.

Costs

Kiwilaw's research in 2019 identified that legal fees to apply for probate or letters of administration for straightforward applications were usually \$1,000–2,000 or more.⁵ It told us that Kiwilaw's own charges are lower than that, as it supports people to represent themselves in court processes. Public Trust charges start at \$1,069 to apply for probate.⁶ The petitioner said that legal or factual complications can add thousands of dollars in legal or translation fees. Kiwilaw notes that documentation required for the High Court is the same whether the estate is worth \$15,001 or \$15 million. There is an additional High Court filing fee of \$200.

The petitioner said that, in Kiwilaw's experience, Māori appear disproportionately disadvantaged. Reasons for this include higher rates of people dying intestate (without a will), informal variations in names, whāngai relationships, and managing arrangements across multiple generations. Kiwilaw submitted that increasing the threshold would relieve one easily removed burden for the smallest estates.

Comments from the Ministry of Justice

The ministry said the rules in the Act and the oversight of the High Court provide safeguards to help prevent dishonesty and fraud. High Court approval shows that a person has the right to take possession of property and administer an estate. It said it also protects executors from personal liability for payments or distributions made in good faith.

According to the ministry, the exemption acknowledges that applications for administering very small estates would involve costs that are out of proportion to the value of the property. It said the benefits of allowing some property to be distributed without probate need to be balanced against increased risks that a deceased person's intentions would not be implemented.

The ministry acknowledged that the 2009 change to the Regulations increased the threshold in response to inflationary changes since 1998. However, it said there is no mechanism in the Act or Regulations to index the threshold to inflation.

Delays in processing applications

The ministry told us that the legal profession has raised concerns about delays in processing applications for grants of administration. It said it is working to reduce the backlog.

⁵ Kiwilaw press release, [Bereaved families paying too much for basic paperwork](#), Scoop News, 31 January 2019.

⁶ Public Trust, Estate administration price lists, [available on the website of Public Trust](#).

Recommendations to increase the threshold

The ministry acknowledged the Law Commission's 2021 recommendation to consider increasing the threshold. It noted that the Law Commission did not make a recommendation about the level at which the threshold should be set. The ministry commented that the Law Commission had asked also whether a different threshold should be set for KiwiSaver accounts, as for many individuals this may be their only asset greater than \$15,000. The ministry told us that the New Zealand Law Society has also suggested increasing the threshold.

The ministry noted that the Government response to the Law Commission report on succession law accepted in principle that reform was needed. The response said that further work was needed to carefully work through the Law Commission's recommendations.⁷

The ministry said it will review the threshold in the Regulations "when priorities allow". It said this work would include identifying how much the threshold should increase by. It would also consider:

- the benefits and risks of an increase to the threshold
- whether different thresholds should apply to different assets
- whether the threshold should be linked to inflation.

Our response to the petition

We thank Kiwilaw for drawing this matter to our attention. We see merit in the petitioner's suggestion that the threshold for probate and letters of administration be increased in response to inflation. We note that this was the key reason mentioned in the 2009 Regulations for lifting the threshold at that time. We think there is as great a need to update this threshold in 2024 as there was in 2009.

We recognise that the Law Commission's full recommendations about succession laws are complex. Time is needed for them to be considered and for decisions to be made about implementation. However, we also acknowledge the petitioner's view that lifting the threshold could be more straightforward and could bring some immediate relief to bereaved families. We note that this would be of most benefit to the families with the smallest estates, where costs to apply for probate or letters of administration can consume a disproportionate portion of assets.

Rather than a proactive increase to a new threshold of \$25,000, as the petitioner requests, our preference is for adjustments that recognise inflation, both now and in the future.

We recommend to the Government that an adjustment be made as soon as possible to the threshold for grants of administration that matches inflation since 2009, and that a mechanism be established that would regularly adjust the threshold for inflation in future years.

We understand that there are two possible approaches to do this:

⁷ The Government response to the report of the Law Commission on its review of succession law is [available on the Parliament website](#).

One way would be to amend the regulation-making power in section 82A of the Administration Act 1969 requiring the prescribed amounts to be adjusted for inflation on a regular basis. We see an example of this in clause 21, Schedule 1 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, which requires that an amount be adjusted for inflation every three years.⁸

A second way could be to require the Minister of Justice to undertake a regular review of the prescribed amounts, and then to recommend whether or not, and by how much, to adjust. We see an example of this in Section 48 of the Financial Reporting Act 2013.⁹

We are happy for either of these approaches to be considered.

⁸ [Aquaculture Reform \(Repeals and Transitional Provisions\) Act 2004 No 109 \(as at 23 December 2023\), Public Act Schedule 1 Marine Farming Permit 364 \(Waikato Communal Area\) – New Zealand Legislation](#)

⁹ [Financial Reporting Act 2013 No 101 \(as at 27 October 2022\), Public Act 48 Minister must regularly review amounts to take into account inflation – New Zealand Legislation](#)

Appendix

Committee procedure

The petition was referred to the Petitions Committee of the 53rd Parliament on 9 August 2023. The committee invited a written submission from the petitioner.

On 6 December 2023 the petition was reinstated with the Petitions Committee of the 54th Parliament. We met between 12 December 2023 and 2 May 2024 to consider it. We received written submissions from the petitioner and the Ministry of Justice, and advice from the Parliamentary Library.

Committee members

Greg O'Connor (Chairperson)
Carl Bates
Kahurangi Carter
Greg Fleming

Related resources

The documents we received as evidence in relation to this petition [are available on the Parliament website](#).