

HE AROTAKE I TE TURE MŌ NGĀ HUARAHI WHAKATAU A NGĀ PAKEKE REVIEW OF ADULT DECISION-MAKING CAPACITY LAW

Key Topic 2: Decision-making support

In this Key Topic, we ask questions about some ways that the law might address issues with decision-making support.

Our full analysis on this topic is covered in Chapter 8 of our Second Issues Paper. If you would like to answer the more detailed questions in our Second Issues Paper, you can find information about how to do this on [our website](#).

How to make a submission

You can tell us what you think by sending us a submission. Submissions close at **5pm on Friday 21 June 2024**.

You can send us a submission on the Key Topics by:

- Emailing us at: huarahi.whakatau@lawcom.govt.nz.
- Writing to us at: Review of Adult Decision-making Capacity Law, Law Commission, PO Box 2590, Wellington 6140.

Your submission can respond to the questions in the Key Topics, or you can tell us your thoughts generally. You are welcome to make an individual submission, or to work with others and send us a group submission.

If you would like to make a submission, but these options are not accessible to you, please get in touch with us in one of the following ways:

- Email us at: huarahi.whakatau@lawcom.govt.nz.
- Call us at: 0800 832 526.
- If you are Deaf, hard of hearing, deafblind, speech impaired or find it hard to talk, you can use [the New Zealand Relay Service](#).

Some people may find it emotional or distressing to make a submission. If you want to make a submission, you may want to arrange to have a support person ready to help. If you are upset or distressed you can also call or text 1737. This is a free helpline service that is available 24 hours a day. You'll get to talk or text with a trained counsellor. The service is provided by Whakarongorau Aotearoa | New Zealand Telehealth Services.

Further information about privacy and how we will use the information you share with us is set out in Key Topics: Information sheet, as well as on [our website](#).

What is decision-making support?

We all make some decisions with the support of other people. Sometimes we seek advice from family, friends or experts. Sometimes we need someone to explain information to us, or to talk things over with us.

For people with affected decision-making, having decision-making support can be a particularly important and necessary part of making decisions. A person's decision-making can be affected by many things, such as dementia, acquired brain injuries, learning disabilities or experiences of mental distress.

There are many ways to provide decision-making support. Some examples are:

- Help from a trusted person or supporter. This person might do things like help identify the decision that needs to be made, explain information about the decision, or help talk through the pros and cons.
- Providing information in accessible formats, like New Zealand Sign Language or Easy Read.
- Access to communication assistance, like talking mats or a speech-generating device.
- Having a safe environment to make decisions in, like giving people more time to make a decision, or providing a quiet place to think.

What stops people getting decision-making support?

We have heard that sometimes people with affected decision-making do not get the decision-making support that they need.

Some of the issues we have heard are:

- Third parties, such as banks or doctors, do not always recognise a person's supporter. They might not recognise that the person is able to make their own decision with the help of a supporter. Or they might be unwilling to provide information to supporters due to privacy or confidentiality concerns.
- Other types of support, such as accessible information, are not always available.
- Sometimes a person would like to have a supporter, but there is no one available or suitable to provide that support.
- Supporters might lack the skills or resources to provide good support, or might take advantage of the person.

We want to know more about the barriers that prevent good decision-making support.

Consultation question: What barriers prevent people from getting good decision-making support?

How could a new Act make decision-making support work better?

One of the main laws in this area is the Protection of Personal and Property Rights Act 1988 (the PPPR Act). The PPPR Act sets out a range of legal arrangements that can be put in place if an adult's decision-making is affected.

We think the PPPR Act needs to be replaced with a new Act, that has a bigger focus on what the person with affected decision-making wants.

We are thinking about ways a new Act could respond to some of the barriers preventing people from getting good decision-making support. We discuss some options below.

Strengthening support in existing legal arrangements

We think some of the different legal arrangements under the PPPR Act could be more focused on providing support. For example, in Key Topic 1, we look at the role of court-appointed representatives. We think the role of court-appointed representatives should be more focused on supporting the represented person to make their own decisions.

For more detail on the role of support in existing legal arrangements, you can go to the following chapters in the Second Issues Paper:

- Chapter 7: discusses support during assessments of decision-making capacity.
- Chapter 10: discusses support in court-appointed representative arrangements.
- Chapter 13: discusses support in enduring power of attorney (EPOA) arrangements.
- Chapter 17: discusses support to participate in court processes.

Formal supporter arrangements

Some countries overseas have introduced new legal arrangements, where a person with affected decision-making can appoint a formal decision-making supporter. We are thinking about whether this should be introduced in Aotearoa New Zealand.

In a formal supporter arrangement, the supporter would help the supported person to make decisions. The law could place obligations on the supporter, such as requiring them to act properly and in good faith towards the supported person. This would likely require the person and the supporter to enter into some form of legal agreement.

A formal supporter arrangement might improve access to support because formal supporters would have legal status. This might encourage third parties, like banks or healthcare services, to recognise and work with formal supporters.

However, we think having formal support arrangements in law might make it more difficult to provide decision-making support in some circumstances:

- Third parties might only want to deal with formal supporters, because the legal arrangement makes things more certain. This might make it more difficult for informal support to be provided by friends, family and other supporters in the person's life.
- It could force people to enter into legal arrangements, which might cost money, even if they don't want or need to.
- Putting legal obligations on supporters might discourage people from wanting to act as supporters.

Consultation question: What do you think of the options we have identified for improving decision-making support?

Is there anything else you would like to tell us?

Consultation question: Is there anything else you would like to tell us about how decision-making support could be improved?