

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

Key Topic 1: Court-appointed representatives

In this Key Topic, we ask questions about how the role of court-appointed representatives, like welfare guardians and property managers, could be improved.

Our full analysis on this topic is covered in Chapters 9, 10 and 11 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 are court-appointed representatives?

A person's decision-making can be affected by many things, such as dementia, acquired brain injuries, learning disabilities or experiences of mental distress.

Sometimes when an adult has affected decision-making, another person might be appointed by the court to make decisions for them. We call this type of arrangement a '**court-appointed representative**' (or just 'representative').

The Protection of Personal and Property Rights Act 1988 (the PPPR Act) sets out different types of representatives that can be appointed by the court. These include:

- A welfare guardian, who can make decisions about a person's personal care and welfare. This includes things like medical treatment or where the person lives.
- A property manager, who can make decisions about a person's property. This includes things like the person's money or a house they own.

The court decides who the representative will be and what they can make decisions about. Often representatives are family or friends of the person, but not always.

Keeping the role of court-appointed representatives

There has been a lot of debate about the role of court-appointed representatives.

Some people disagree with the idea of someone making decisions for someone else. They think that people should always be able to make their own decisions. Other people think that there are some situations where representatives will still be needed.

We think that there should continue to be court-appointed representatives in our law. We think there will sometimes be situations where a person needs someone else to make a decision for them.

For example, the person might have advanced dementia, or have suffered a severe stroke. They might have difficulties communicating what they want, so a representative would be needed to interpret what they want. Alternatively, the person might want to make a decision that conflicts with other things they want or would have harmful results. They may not fully understand the risks. A representative might be needed to make sure decisions reflect what the represented person really wants or is entitled to.

However, we think there should be changes to make the law clearer about when a representative can be appointed and what their role is.

Appointing a court-appointed representative

Being able to make decisions for another person is a significant power. We think that representatives should only be appointed if they are really needed. We want to know the types of situations where you think a representative might be needed.

We also want to know what factors you think a court should consider when deciding whether a representative needs to be appointed. For example, we think that one thing a court should look at is whether the person in question has decision-making capacity. But we think that courts should consider other things as well, like whether there would be a risk of harm if the court does not appoint a representative.

Consultation questions:

- **In what kinds of situations might a representative be needed?**
- **What factors should a court consider in deciding whether to appoint a representative?**

Reforming the role of court-appointed representatives

Please note that this section covers similar content and questions to the section “Reforming the role of attorneys” in Key Topic 3. This is because we think the decision-making role should be the same for both court-appointed representatives and attorneys.

The current law says that, when making decisions, representatives must act in the best interests of the represented person, while supporting them to exercise their own capacity as much as possible. Representatives are also supposed to consult the represented person and other important people in their life.

We think the law should be changed so that the decision-making role is more focused on what the represented person wants. Sometimes this is called making a decision based on a person’s ‘will and preferences’. We want to know how a representative should work out what the represented person’s will and preferences are.

For example, we think the representative should consider what the represented person says about a particular decision. It might also be relevant to think about what the person has said in the past, what things they like, and what is important to them.

Consultation question: What should a representative consider when working out a represented person’s will and preferences?

Sometimes it might not be possible or appropriate to make a decision based only on the represented person's will and preferences. This might be because their will and preferences in relation to a particular decision is unclear, for example if they are unable to communicate their views. It might be because the decision the represented person wants to make will lead to a serious risk of harm.

We are interested in when you think it would not be possible or appropriate to make a decision based only on a person's will and preferences. We want to know what should happen in these circumstances. Some ways a representative could make decisions in these circumstances might be:

- Consistently with the person's human rights.
- Consistently with the person's personal and social wellbeing.

Consultation questions:

- **When might it be impossible or inappropriate to make a decision based only on a person's will and preferences?**
- **How should representatives make decisions in these circumstances?**

It is also important for the representative to have a clear process to follow when making decisions for a represented person. This could involve talking to the represented person or other important people in their life, and considering what support the represented person might need to participate in the decision. The represented person might have made earlier statements about how they want particular decisions to be made, or who they want to be consulted.

Consultation question: What steps should a representative take when making a decision for a represented person?

Monitoring court-appointed representative arrangements

There needs to be good oversight of how representative arrangements are working. This is to make sure that the representative is performing their role well, and that the arrangement is still meeting the represented person's needs. Currently, the main form of oversight is through the court reviewing the arrangement every few years.

People also need to be able to raise concerns if representatives aren't acting as they should be. The main way this currently happens is by people going to court.

It's important to find a balance so that there is good oversight without the court intruding too much into people's everyday lives. Court reviews are important for checking that everything is working well, but they can be expensive, stressful and time-consuming.

We want to know how court oversight of representative arrangements could work better, and whether there are other ways of having good oversight of these arrangements.

Consultation question: How should representative arrangements be monitored to make sure they're working well?

Is there anything else you would like to tell us?

Consultation question: Is there anything else you would like to tell us about the role of court-appointed representatives?