

MEDIA RELEASE

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Geof Shirtcliffe
Kaikōmihana | Commissioner
Law Commission

Law Commission Starts Consultation in Review of Adult Decision-Making Capacity Law

Te Aka Matua o te Ture | Law Commission has today published a Preliminary issues Paper, as part of its review into how the law should respond when an adult's decision-making is affected.

Kaikōmihana | Commissioner, Geof Shirtcliffe, explains:

“There are many things that can affect a person's decision-making. These can include a traumatic brain injury, dementia, learning disabilities and experiences of mental distress. People's decision-making can be affected for one decision, for a series of decision or for decisions more generally.

If a person's decision-making is affected, the current law may treat some or all their decisions differently to the way it otherwise would. It does this using the concept of 'decision-making capacity'. If a person is assessed not to have decision-making capacity for a decision, the decision might not have legal effect. Another person may be appointed to make the decision for them.

But this is not the only approach the law could take. In recent decades, there have been widespread calls for law reform. There has been increased recognition of the human rights of people with disabilities and a shift towards supporting people to make their own decisions. There has also been increased recognition that the law in this area does not adequately take into account te Tiriti o Waitangi, or te ao Māori and the multi-cultural nature of Aotearoa New Zealand. In addition, our population is changing. Aotearoa New Zealand is an increasingly aging and culturally diverse population.

The Government has asked us to review how the law should respond when an adult's decision-making is affected. We published our Terms of Reference in October 2021. The release of the Preliminary Issues Paper marks the beginning of the Commission's first round of public consultation. Submissions are due by 5pm 3 March 2023.



The focus of this round of consultation is on people's experiences with current law and practice. We also want to know what people think about the big issues and principles that should inform our review.

We will publish a more detailed issues paper, and have a second round of public consultation, in 2023. We intend to provide our final report to the Minister of Justice by 30 June 2024."

ENDS

Contact information:

More information about the review is available on our project website at <https://huarahi-whakatau.lawcom.govt.nz/>.

A short video introducing the review and explaining to people how they can have their say is available on our project website and on [YouTube](#).

For further information and comment, contact:

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Background: the Law Commission's role

Te Aka Matua o te Ture | Law Commission is an independent state agency that provides law reform advice to the Government.

Our independence makes us different from many other state sector agencies. The Government does not direct how we carry out our work or the recommendations we make.

We approach each law reform task with an open mind, undertake engagement and consultation, and consider the broader policy context.

We then make recommendations to Government to improve the law. These recommendations are published in a report to the Minister of Justice.

The Minister must present our report to Parliament. The Government decides whether and how it will change the law.

