

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

### Key Topic 4: Practical improvements and court processes

In this Key Topic, we ask questions about what changes could be made to systems and processes, including court processes, to address practical issues and help things work better when an adult's decision-making is affected.

The issues we discuss in this Key Topic apply across all the different types of situations and arrangements we discuss in the other Key Topics:

- Key Topic 1: Court-appointed representatives
- Key Topic 2: Decision-making support
- Key Topic 3: Enduring powers of attorney

Our full analysis on this topic is covered in Chapters 16 and 17 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](mailto: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](mailto: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](#).

## **Practical improvements**

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

We have heard lots of practical issues that can arise when an adult's decision-making is affected and some form of legal arrangement might be needed. Here we focus on:

- Access to information and guidance.
- Making complaints.
- Other ways to improve oversight and make the system work better.

## **Information and guidance**

Good information and guidance can help adults who have affected decision-making, and the people and professionals supporting them. Examples include:

- Information for adults with affected decision-making about their rights.
- Information about the different types of decision-making arrangements.
- Guidance for people acting in decision-making roles about how to carry out their role and how to provide good decision-making support.
- Guidance about going through legal processes.

We have heard that information and guidance in this area needs to be improved:

- Some people do not know that decision-making arrangements, like court-appointed representatives and enduring powers of attorney, exist.
- Some people think there is not enough information about how to create a decision-making arrangement, and find the process confusing.

- The information and guidance that is available can be difficult to understand and is not always accessible.
- Professionals working with adults with affected decision-making, like lawyers and doctors, do not always feel confident in providing good decision-making support or navigating legal processes.

**Consultation question: What information and guidance would be helpful?**

## **Making complaints or raising concerns**

Sometimes when a person has affected decision-making, arrangements don't go to plan. We have heard that there isn't always a straightforward way for people to raise concerns if something is wrong.

One example is where someone has been appointed a court-ordered representative, or as an attorney under an enduring power of attorney, and another person is concerned they aren't performing their role well or are causing harm to the adult they are representing. Another example is where there are disagreements between friends or family members about the best way to support or represent the person.

Currently, the main way to address this type of concern is by going to court. This can be expensive and stressful, and it can take a long time for the case to be resolved.

People have told us about the following issues:

- It isn't always clear what options there are to intervene.
- Concerns or complaints that are not serious enough to go to court are not always addressed.
- People who can't afford or don't know how to go to court can struggle to get their concerns heard.

Some other ways to resolve complaints could be:

- Having an agency or organisation that investigates and resolves concerns and complaints.
- Providing processes for resolving complaints outside of court, like mediation, or a tikanga-consistent process.
- Making court processes more accessible and easier for people to navigate (we discuss this further below).

**Consultation question: What options should there be for people to make complaints or raise concerns if things aren't going well?**

## **Other ways to improve the system**

We are considering other ways to improve the way the system works. Some ideas are:

- Providing free or low-cost services for establishing arrangements like enduring powers of attorney.
- Providing access to a panel of supporters, representatives and lawyers with relevant expertise, for people who don't have friends, family other supporters to act in these roles.

We are also considering who should be responsible for improving the way the system works. In some countries, there is a single public body that is responsible for functions like providing information, responding to complaints and having general oversight of decision-making arrangements. Often they are called the Office of the Public Advocate or Public Guardian.

Having a single oversight body in Aotearoa New Zealand might ensure a more coordinated approach to system oversight. It might also be easier for people to identify where to go to do things like find information or make a complaint.

However, establishing new public bodies is expensive and can take time. It might be more efficient to focus on improving existing systems and expertise.

**Consultation question: How do you think we can improve the way the system works?**

## **Making court processes easier and more accessible**

People can find court processes relating to decision-making arrangements difficult to navigate. Some of the issues we have heard are:

- Going to court can be expensive and time-consuming.
- The process of giving evidence and having a judge make a ruling can be stressful and damage relationships.
- Court proceedings are not always accessible or inclusive for everyone.
- Adults with affected decision-making are sometimes not given enough support to understand and participate in court hearings, or even be present.

Some ideas for making court processes easier and more accessible are:

- Simplifying forms and information to make them easier to use.
- Providing better support for people with affected decision-making to participate in court hearings. This could be through more flexibility in where hearings are held, or improving access to lawyers who are skilled in this area.

- Making court processes more socially and culturally responsive, by providing navigators or ensuring cultural considerations are included in hearings.
- Having a specialist court or tribunal to deal specifically with this type of case.

**Consultation question: What would help make court processes around decision-making arrangements easier to participate in?**

**Is there anything else you would like to tell us?**

**Consultation question: Is there anything you else you would like to tell us about how systems and court processes could be improved?**