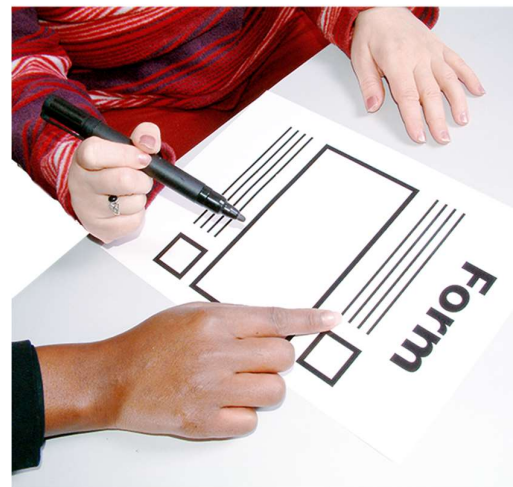


**He arotake i te ture mō ngā  
huarahi whakataua a ngā pakeke**  
**Review of adult decision-making  
capacity law**



**Key topic 3: Enduring Powers of Attorney**

**Published: April 2024**

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# What is this review?



Te Aka Matua o te Ture – Law Commission is an organisation that:



- does **reviews** of the law
- uses what it finds out in the reviews to tell the Government how to make the law better.



A **review** is when we:

- look carefully at a part of the law
- talk to people who know a lot of things to do with that part of the law
- ask people what they think
- write a report about what we have found out.





In this Easy Read document when we say **we / our** this means the **Law Commission**.



Some people find it hard to make decisions about their own lives.



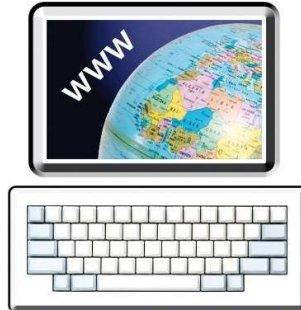
In this document we will call people who find it hard to make decisions about their own lives **people with affected decision making**.



In this review we are looking at what the law should do when people have affected decision making.



As part of this review the Law Commission has written a document called the **Second Issues Paper**.



## The **Second Issues Paper**:

- explains problems with the law we have now
- asks people to tell us how the law could be made better.

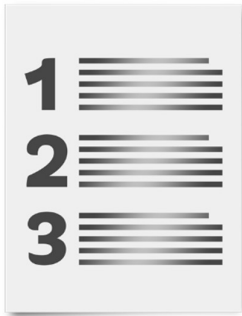
You can find the Second Issues Paper on our website at:

**[huarahi-whakatau.lawcom.govt.nz](http://huarahi-whakatau.lawcom.govt.nz)**

The Second Issues Paper is not in Easy Read.



We have also written 4 documents called **key topic documents**.



These **key topic documents**:

- talk about some of the most important things in the Second Issues Paper
- ask some questions so you can tell us what you think.

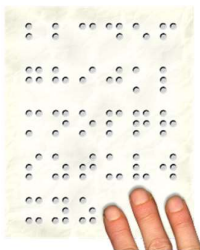


This is the third of the key topic documents.



The key topic documents are in:

- Easy Read
- other alternate formats.





You can find the other key topic documents on our website at:

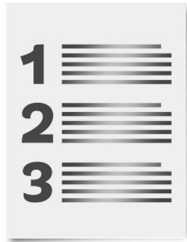
**[huarahi-whakatau.lawcom.govt.nz](http://huarahi-whakatau.lawcom.govt.nz)**





There is an Easy Read document with more information about:

- the review
- the key topics
- what we will do with your information if you tell us what you think.



The document is called:

### **Key topics information sheet**

You can find it on our website at:

**[huarahi-whakatau.lawcom.govt.nz/](http://huarahi-whakatau.lawcom.govt.nz/)**

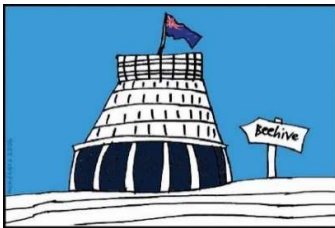


You should read the **Key topics information sheet** first.

# How to tell us what you think



We want to hear what you think.



We will use what you tell us in our report to the Government about what the law should be.



Telling us what you think is called **making a submission.**



We have some questions that we would like you to think about when you make your submission.



You can find these questions in:

- this document
- the other key topics documents.



When you make your submission you can answer:

- all the questions
- just the questions you want to.



You can make a submission:

- on your own
- as part of a group.



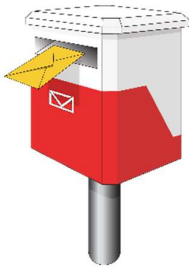
You need to get your submission to us by:

**5 pm Friday 21 June 2024.**



You can make a submission by emailing us at:

**huarahi.whakatau@lawcom.govt.nz**



You can also **post** your submission to:

**Review of Adult Decision Making Capacity Law**

**Law Commission**

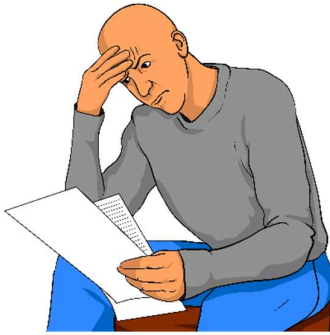
**PO Box 2590**

**Wellington 6140**



If you cannot make a submission in these ways please get in touch with us.

## If you need support



Some people might find it makes them sad to:

- think about the things in the review
- make a submission.



You can ask someone to support you to make a submission.



If you are upset you can also contact:

**1737: Need to Talk**



At 1737: Need to Talk you can talk to a counsellor by:

- calling: **1737**
- texting: **1737**

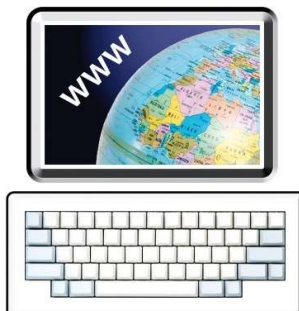


1737: Need to Talk is open all day / night.



If the 1737 number does not work from your phone you can call this number:

**0800 1737 1737**



You can find out more about 1737: Need to Talk on this **website**:

**[www.1737.org.nz](http://www.1737.org.nz)**

# What is an Enduring Power of Attorney?



An Enduring Power of Attorney is when a person chooses someone to make decisions for them if they have affected decision making in the **future**.

The **future** is a time that has not happened yet.



The person who chooses someone to make decisions for them is called the **donor**.



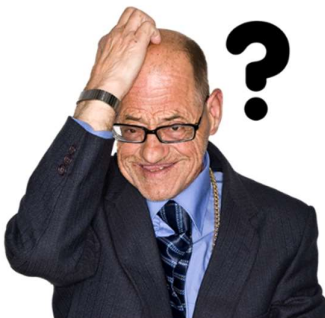
The person who makes decisions for them is called the **attorney**.

Enduring Powers of Attorney are also called **EPOAs**.



Affected decision making can be caused by many things such as:

- brain injuries
- **dementia**
- learning disabilities
- experiences of mental distress
- other conditions or disabilities that affect how people make decisions.



**Dementia** is a health condition where people can find it hard to:

- remember things
- understand things.



There are 2 kinds of EPOAs:



- **personal care and welfare EPOA**
- **property EPOA.**



**A personal care and welfare EPOA** is for decisions about things like:

- some medical treatment
- where the donor lives.



**A property EPOA** is for decisions about things like:

- money
- a house owned by the donor.



People usually make both kinds of EPOA.



The person they choose to be their attorney is usually a:

- family member
- close friend.



# Why do we need EPOAs?



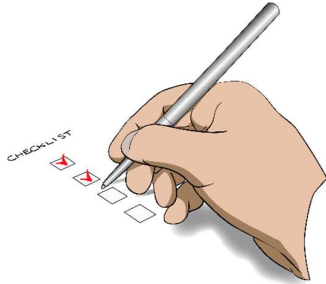
The law about EPOAs is meant to do 2 things:

1. allow people to have other people make decisions for them without going to court
2. protect people by making sure:
  - the donor understands what their decision to have an EPOA means
  - the attorney is using their powers in the right way.

These 2 things need to be **balanced**.



**Balanced** means having an even mix of both things – not too much of 1 or the other.



We want to know how to find the best balance so we have both:

- good ways of doing things that keep people safe
- EPOAs that:
  - are not too complicated / hard to do
  - do not cost a lot of money.



EPOAs are important because they mean people can make their own choices about:

- what they want to happen in the future
- how they want important decisions to be made.



# Setting up an EPOA



Making an EPOA involves:

- filling out forms
- signing them in front of a witness who is usually a lawyer.



A witness is someone who can confirm you signed the form.



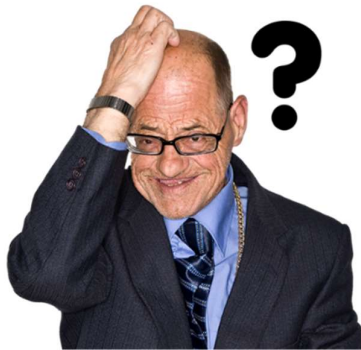
The witness must agree that:

- they think the donor understands the EPOA
- they do not think anyone is pushing the donor to sign the EPOA.





The witness must also agree they have no reason to think the donor is **mentally incapable**.



**Mentally incapable** means someone the law says cannot make their own decisions because of how their brain works.

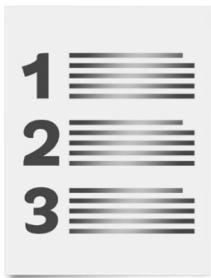
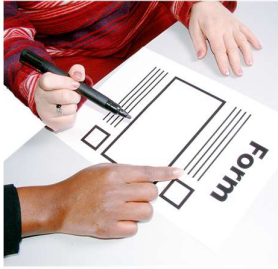
Someone may be mentally incapable because of something like dementia.



Many people find setting up an EPOA:

- complicated / hard to do
- costs a lot of money.





Some of the reasons for this are:

- the forms are:
  - long
  - hard to understand
- paying for a lawyer to be the witness costs a lot of money.

Another reason for this is the witness has to agree to a lot of different things.

It is not clear if it needs to be a lawyer who agrees to all of them.

Some ways we could change things are:

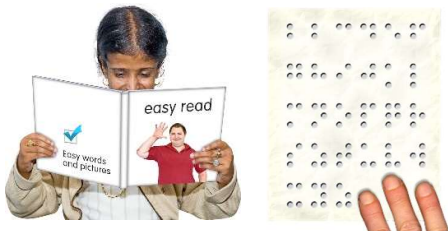


- changing some of the things that the witness needs to agree to
- letting other kinds of people witness an EPOA not just lawyers



- changing the forms so they are:

- in plain language
- easier to use



- in accessible formats like Easy Read or Braille.



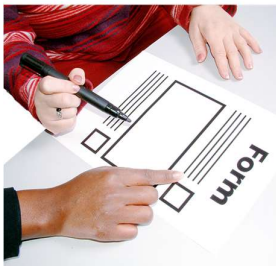
- allowing **remote witnessing**.





**Remote witnessing** means the witness:

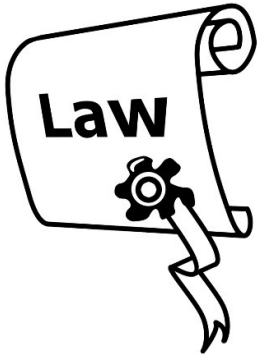
- can do their job on the internet
- does not need to be in the same room as the donor.



### Question 3.1

How could the law make it easier to set up an EPOA while still making sure people are protected?

## Protections when an EPOA is set up



The law has some ways of protecting donors once they have set up an EPOA.

Here are some of the ways the law protects donors.



The attorney is usually only allowed to make decisions when the donor can no longer make their own decisions.



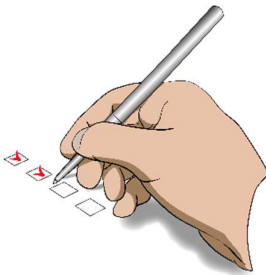
The EPOA can say that some people can ask for information from the attorney about what the attorney is doing.



Property attorneys must keep **records** of money.

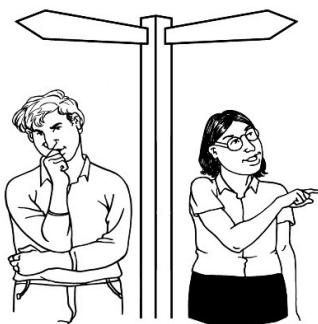


**Records** are things that are written down.



The court can also:

- check the decisions attorneys make
- tell attorneys they have to give the court information
- stop people being attorneys if they are not doing things right.



These protections may not do enough to check what attorneys are doing.



People do not always understand when an attorney can start making decisions for the donor.



The rules about the records attorneys have to keep may not be the best for making sure they are doing the right thing.



Some people think they have to do too much to keep records.

It is not clear how often records are:

- kept
- checked.



There is no-one checking how well the attorney is doing unless this is put in the EPOA.



The only way to say attorneys should do things differently is through the court.



This can:

- cost a lot of money
- be slow
- be stressful.

Not enough checking how things are going makes it easier for attorneys to do things wrong.

If attorneys have too many rules then people may not want to be attorneys.

### Question 3.2:

What protections should there be once an EPOA is set up?

## Changing what attorneys do



The law we have now says that when attorneys make decisions they:

- should support the donor to be part of decisions as much as they can
- must act in the **best interests** of the donor.



**Best interests** means what is good for a person.



Attorneys are also supposed to talk to the donor to see what they think.

Attorneys should also talk to the family of the donor.

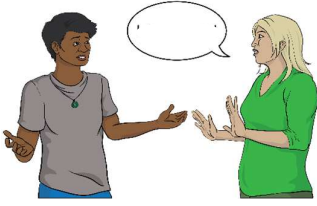


We think the law should change so what the attorney does is much more about what the donor wants.

This is sometimes called making a **decision based on will and preferences.**



We want to know how an attorney should work out what the donor wants.

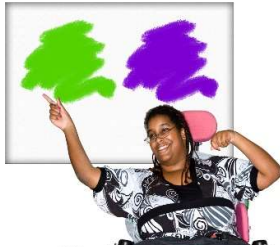


For example we think the attorney should think about what the donor says about something.



The attorney might also think about things like:

- what the donor has said in the past
- what things the donor likes
- what is important to the donor.



### Question 3.3:

What should an attorney consider when working out what a donor wants?





Sometimes it might not work to make a decision based just on what the donor wants.



This might be because:

- the donor cannot say what they want
- what they want might lead to them being harmed badly.



In these cases the attorney might think about things like:

- **human rights**
- the **wellbeing** of the donor.





**Human rights** are rights to make sure everyone:

- is treated fairly
- has what they need to live a good life.

**Wellbeing** is having a good life in lots of different ways like:

- feeling safe
- being able to learn
- making friends.



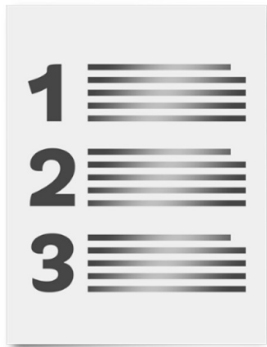
**Question 3.4:**

When might it not work to make a decision based only on what the donor wants?



### Question 3.5:

How should attorneys make decisions when it does not work to make a decision based only on what the donor wants ?



It is important for the attorney to have a clear way of doing things when making decisions for a donor.

This could mean:



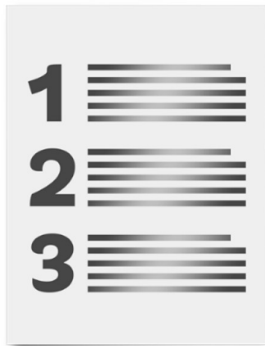
- thinking about what support the donor might need to be part of the decision
- talking to the donor / other important people to them.



It could also mean seeing if the donor said things earlier about:



- how they want decisions to be made
- who they want to be talked to.



**Question 3.6:**

What steps should an attorney take when making a decision for a donor?

## Anything else you want to tell us

You can also tell us anything else you want to say about these topics.



### **Question 3.7:**

What else do you want to tell us about Enduring Powers of Attorney?

## How to get in touch with us



You can get in touch with us by:

- email at:

**[huarahi.whakatau@lawcom.govt.nz](mailto:huarahi.whakatau@lawcom.govt.nz)**

- phone on:       **0800 832 526**



If you find it hard to use the phone  
the **New Zealand Relay** service is for  
people who are:

- Deaf / hard of hearing
- deafblind
- speech impaired / find it hard to talk.



You can find out more about the New  
Zealand Relay service at:

**[www.nzrelay.co.nz](http://www.nzrelay.co.nz)**



This information was written by Te Aka Matua o te Ture - Law Commission.

**Make it Easy**  
Kia Māmā Mai



It has been translated into Easy Read by the Make it Easy Kia Māmā Mai service of People First New Zealand Ngā Tāngata Tuatahi.

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Ngā Tāngata Tuatahi



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