

He Arotake i te Ture mō ngā Huarahi Whakatau a ngā Pakeke | Review of Adult Decision-Making Capacity Law

OVERVIEW OF ISSUES PAPER

1. Te Aka Matua o te Ture | Law Commission is undertaking a review of the Protection of Personal and Property Rights Act 1988 (PPPR Act).
2. This overview provides a brief, high-level introduction to the key matters addressed in each chapter of this Issues Paper to assist readers to understand the focus of that chapter and how it relates to the other chapters. It does not summarise each chapter or identify all significant matters addressed in it, and it does not repeat any of the questions that we ask throughout the Issues Paper. This overview is also included in the Issues Paper at pages 9–24.

CHAPTER 1: INTRODUCTION

3. The PPPR Act is the primary piece of legislation relating to adult decision-making capacity in Aotearoa New Zealand.

4. There are many reasons to review the PPPR Act. Particularly important is article 12 of the UN Convention on the Rights of Persons with Disabilities (Disability Convention), which reflects a significant change in understandings of disability and has spurred calls for reform of adult decision-making capacity laws in numerous jurisdictions, including New Zealand. Other reasons to review the PPPR Act are noted below.

Part 1: The PPPR Act and overarching issues

CHAPTER 2: THE CASE FOR A NEW ACT

5. The PPPR Act provides for decision-making arrangements that can be used when a person is assessed to not have decision-making capacity for a decision or decisions. These decision-making arrangements include personal orders, welfare guardians, property managers and enduring powers of attorney (EPOAs). How decisions are made for people under these arrangements is heavily guided by an assessment of their best interests.
6. In our view, the PPPR Act requires significant reform. Some of the reasons for this are summarised in the following paragraphs. We think that the extent of the required reforms

means that it would be preferable for the PPPR Act to be repealed and replaced with a new Act.

7. The PPPR Act is not founded on modern understandings of disability and does not adequately reflect the requirements of the Disability Convention. Significant change would be required for it to do so — in particular, to ensure proper respect for a person's rights, will and preferences. Making these changes to the PPPR Act would require grafting new policy onto existing frameworks, which can create complexity and would risk undermining the overall coherence of the legislative scheme.
8. Reform is also required for a range of other reasons. The PPPR Act does not refer to te Tiriti o Waitangi | Treaty of Waitangi (the Treaty) or reflect Treaty considerations. It pre-dates official guidance to consider tikanga in law reform. It does not meet modern drafting standards. We also think that replacing the PPPR Act with a new Act would tangibly signal the extent of legal change and so underscore the changes in attitude and practice that we think are needed.
9. For all these reasons, we consider that an entirely new Act is to be preferred.

CHAPTER 3: HUMAN RIGHTS

10. Many human rights are relevant to this review. However, we focus on the aspects of human rights that are of particular relevance.

11. Article 12 of the Disability Convention is fundamental to this review. It concerns disabled people's right to equal recognition before the law. Like most human rights instruments, it is grounded in the concepts of dignity, autonomy and equality.
12. Article 12 insists on the right of disabled people to enjoy legal capacity on an equal basis with others. Legal capacity is necessary to exercise other rights. The denial of legal capacity to disabled people has led to their rights being denied.
13. There are three key requirements of article 12 that are particularly important to this review. First, disabled people must be provided with support and reasonable accommodations in exercising their legal capacity. Both support and reasonable accommodations reflect the 'social model' of disability, which focuses on identifying the physical and societal barriers that prevent people with impairments from being fully included in society. They also reflect a 'substantive' approach to equality, which recognises that sometimes people need to be treated differently to ensure they access equal opportunities to participate in society on an equal basis. Requirements of support and reasonable accommodations recognise that people have different decision-making abilities and that some people will need support or accommodations to make decisions.

14. Second, legislation relating to legal capacity must respect the rights, will and preferences of the person with affected decision-making. What the phrase “respect the rights, will and preferences” requires is the subject of significant debate. In our view, the requirement to respect a person’s rights, will and preferences is fundamental to the design of a new Act. We discuss how it might be operationalised throughout the Issues Paper.
15. Third, any restrictions on legal capacity must not result in unjustified discrimination. Article 12 might be seen as a specific illustration of the general proposition that any limits on a person’s right to freedom from discrimination must be demonstrably justified.

CHAPTER 4: TE TIRITI O WAITANGI | TREATY OF WAITANGI

16. The Treaty is an integral part of the constitutional framework of New Zealand. The importance of properly taking into account the Treaty in policy-making and legislative design is recognised in the guidance issued to public officials. However, the PPPR Act does not refer to the Treaty or reflect Treaty considerations.
17. We are considering ways to give effect to the Treaty in a new Act. There are differences between the reo Māori text and English text of the Treaty. We agree with Te Rōpū Whakamana i te Tiriti o Waitangi | Waitangi Tribunal that

precedence, or at least considerable weight, should be given to the Māori text when there is a difference between it and the English text. We have accordingly considered how a new Act might make provision for the exercise of tino rangatiratanga, the central concept of article 2 of the reo Māori text, in the context of adult decision-making arrangements.

18. We have focused on two closely-related considerations:
 - (a) Better enabling Māori to live according to tikanga.
 - (b) Better enabling Māori collective involvement in decision-making that concerns Māori with affected decision-making.
19. We consider a range of ways in which these considerations might be pursued throughout the Issues Paper. Importantly, as we discuss in Chapter 5, we think that a new Act should avoid unnecessary specification of what tikanga might involve in any particular circumstance. It follows, we think, that a new Act should not seek to specify the nature of the collective involvement that tikanga may require.
20. Article 3 of the Treaty (which addresses protection and equality) has been understood as a broad guarantee of equity, obliging the government both to care for Māori and to ensure outcomes for them equivalent to those enjoyed by non-Māori. Māori are currently disproportionately affected by experiences of impairment that may affect decision-

making. Māori are also underrepresented in accessing many health and disability services, including decision-making arrangements under the PPPR Act. We think that enabling Māori to choose to live according to tikanga and better providing for the involvement of Māori collectives in decision-making could assist to address these disparities.

CHAPTER 5: TIKANGA

21. Tikanga is the set of values, principles and norms from which a person or community can determine the correct action in te ao Māori. Within te ao Māori, tikanga is a source of rights, obligations and authority that governs relationships. Tikanga may involve both tikanga Māori (values and principles that are broadly shared and accepted generally by Māori) and localised tikanga that are shaped by the unique knowledge, experiences and circumstances of individual Māori groups (such as iwi, hapū, marae or whānau).
22. Tikanga is significant to those engaging in state law review and reform in New Zealand. Guidance to public officials requires those engaging in review and reform of the law to consider tikanga. The PPPR Act pre-dates that guidance. It does not refer to tikanga.
23. More generally, the PPPR Act has a focus on the individual. It does not generally represent Māori perspectives, which may differ from those of non-Māori by being more holistic

and less individualised. Submitters on our Preliminary Issues Paper agreed that a new Act should better provide for tikanga and Māori perspectives. Submitters generally agreed with the tikanga values and principles we identified as important in our Preliminary Issues Paper, although some suggested other concepts or other ways of explaining the values and principles.

24. We have considered the best way for a new Act to recognise and engage with tikanga. Singling out and briefly summarising specific principles or values in a new Act risks distorting tikanga and neglects the extent to which tikanga may vary according to different localised expressions. We therefore think that a new Act should not specify which tikanga values and principles may be applicable. Rather, to enable Māori who wish to live according to tikanga, we consider it preferable for a new Act to enable tikanga to function on its own terms without seeking to statutorily specify what that might mean. We discuss how a new Act might enable this throughout the Issues Paper.
25. A number of submitters suggested that the mana of the person with affected decision-making could be an important guiding value for a new Act. These suggestions are consistent with the association of mana with individual dignity in other contexts. However, we have concluded that this is not desirable. Mana is a complex concept with both individual and collective aspects, closely interwoven with

other tikanga and not necessarily the tikanga most aligned with concepts of individual dignity.

26. In our view, enabling Māori who wish to live in accordance with tikanga to do so might be better achieved by a general provision concerning tikanga, rather than provisions that identify specific tikanga values and principles. A new Act could, for example, require each person with a role under that Act (including courts, decision-makers and decision-making supporters) to take into account tikanga to the extent that it is relevant in the circumstances.

Part 2: Key features of a new Act

CHAPTER 6: THE PURPOSES OF A NEW ACT

27. The long title of the PPPR Act explains that it is “[a]n Act for the protection and promotion of the personal and property rights of persons who are not fully able to manage their own affairs”. Sections 8 and 28 of the PPPR Act state two primary objectives that the court must follow when exercising its jurisdiction under the Act. These are to make the least restrictive intervention possible in the life of the person and to enable or encourage the person to exercise and develop their capacity to the greatest extent possible. However, there is no clear purpose provision in the PPPR Act.

28. In the absence of a clear purpose provision, the purpose of the PPPR Act has been considered by the courts. Most cases have agreed that the purpose of the PPPR Act is protective. This has resulted in courts reading in welfare and best interests as a secondary objective of the PPPR Act. Te Kōti Matua | High Court has said that the PPPR Act is “all about the welfare and best interests” of the people who are subject to it.
29. In our view, the PPPR Act is not sufficiently clear about the policy objectives it seeks to achieve. We think the purposes of law in this area would benefit from reconsideration. A new Act should clearly articulate its purposes so that the ideas or values underpinning it are clear. We consider that protection from significant harm should be a purpose of the law. However, we also consider this should not be the sole purpose. We think that the purpose should also include the protection of human rights to recognise and give effect to the significant policy shift represented by the Disability Convention.

CHAPTER 7: DECISION-MAKING CAPACITY

30. Decision-making capacity is a complex and contested concept. It has been understood differently at different times and places. Different terms such as ‘capacity’, ‘competence’, ‘legal capacity’ and ‘mental capacity’ are used interchangeably and are also used to mean different

things. The concept is particularly significant to the disabled community.

31. Decision-making capacity is the concept used by the law in New Zealand to identify situations in which a person's decision-making is considered to be so affected that they are not able (or the law should consider them to not be able) to make certain decisions.
32. The legal test for decision-making capacity and the legal consequences of not having decision-making capacity are questions of policy. Currently, the law uses a 'functional' approach to assessing decision-making capacity. Broadly, this asks whether the person understands the general nature and likely consequences of what they are doing and whether they can communicate the decision they have made. How the law responds when a person is assessed not to have decision-making capacity depends on the context.
33. Decision-making capacity is fundamental to the operation of the PPPR Act. For all court-ordered arrangements, an absence of decision-making capacity is necessary, but the absence of decision-making capacity alone is not sufficient reason for making an order. An absence of decision-making capacity is enough to activate an attorney's decision-making role under an EPOA.

34. While there are many criticisms of decision-making capacity, we think that decision-making capacity should continue to be used in a new Act. We think that a new Act will still need a concept to identify when a person's decision-making is so affected that a representative arrangement might be needed. In our view, decision-making capacity is the preferable concept. We are unaware of any alternative concepts that could be used. In addition, using a different concept in a new Act would raise profound questions about the integrity and coherence of the law that are beyond the scope of this project, given how many other areas of the law use the concept. There are also benefits to using a concept people are familiar with.
35. We do not consider that using decision-making capacity in the law necessarily results in unjustified discrimination. Whether it does or not depends on two broad issues:
- (a) The legal standards and processes that apply to assessments of whether a person has decision-making capacity.
 - (b) The precise legal consequences that flow from an assessment that a person lacks decision-making capacity.
36. We consider various options for improving assessments of decision-making capacity, including use of a single test for decision-making capacity, the incorporation of support and initiatives to make assessments more culturally responsive.

37. Later chapters consider the consequences that might flow from an assessment that a person lacks decision-making capacity.

CHAPTER 8: DECISION-MAKING SUPPORT

38. The term ‘decision-making support’ refers to any support or accommodations a person may need to make a decision or express their views about a decision. The types of decision-making support that people need for decisions will vary as people’s decision-making abilities naturally differ. Sometimes, people have a trusted person to support them to make decisions, often called a ‘decision-making supporter’. Decision-making supporters support the person with affected decision-making to make the decision for themselves.
39. The importance of decision-making support is recognised in the Disability Convention. It requires countries to take appropriate measures to provide disabled people with access to the support they may require in exercising their legal capacity.
40. The law in New Zealand recognises decision-making support in a range of ways. In several contexts, people have the right to a support person. For example, in the health context, the law provides people with the right to have a support person ‘present’. However, there is no consistent approach to recognition of supporters or

decision-making support. There is no express recognition of support or supporters in the PPPR Act, although there is some limited recognition that welfare guardians and property managers might provide decision-making support in practice.

41. There are several issues with decision-making support under the PPPR Act, including limited and inconsistent use of decision-making support by representatives and attorneys, gaps in the availability of decision-making support and challenges with third-party recognition of decision-making supporters. Sometimes, third parties are reluctant to provide supporters with information.
42. There are several ways a new Act might incorporate decision-making support, including in assessments of decision-making capacity (Chapter 7), when the court considers whether to appoint a representative to make decisions for someone (Chapter 10), and when court-appointed representatives and attorneys appointed under EPOAs are making decisions. In Chapter 8, we consider whether a new Act might also provide for a formal decision-making supporter arrangement and/or a co-decision-making arrangement.

CHAPTER 9: COURT-ORDERED ARRANGEMENTS

43. Court-ordered arrangements are decision-making arrangements that are ordered by the court under which

another person or the court makes one or more decisions for the person with affected decision-making. There are two types of court-ordered arrangements: court-ordered decisions and court-appointed representatives. The PPPR Act contains provisions for both types of court-ordered arrangements.

44. A court-ordered decision is a decision made by the court for a person with affected decision-making, for example, that the person live in an aged care facility or receive medical treatment. Court-appointed representatives are people appointed by the court to make decisions for a person whose decision-making is affected. Under the PPPR Act, a welfare guardian may be appointed to make decisions about another person's personal care and welfare. A property manager may be appointed to make decisions about another person's property.
45. Whether the law should provide for court-ordered arrangements and what they might involve are controversial topics. There is disagreement about whether court-ordered arrangements are permitted under article 12 of the Disability Convention. In our view, such arrangements are permitted if properly designed. In particular, their focus must be on the rights, will and preferences of the person with affected decision-making, rather than on their best interests.
46. We consider that court-ordered arrangements should be included in a new Act. In our view, there are some

circumstances where a person with affected decision-making may need another person to make decisions for them. We have identified four possible circumstances:

- (a) When there is a need to make a decision but the person needs a representative to interpret their will and preferences.
- (b) When there is a need to make a decision but what can be understood of the person's will and preferences does not provide a sufficient basis on which to decide.
- (c) When there is a need to make a decision and there will be legal uncertainty if the decision is made by a person without decision-making capacity (because the law relevant to that particular decision requires it to be made by a person with decision-making capacity).
- (d) To prevent significant harm to the person.

CHAPTER 10: COURT-APPOINTED REPRESENTATIVES: KEY FEATURES

- 47. There are several features of court-appointed representative arrangements that we are considering. Two particularly important features are how a representative makes decisions and the test for appointing a representative.
- 48. We think that the way a representative makes decisions needs to change. Under the PPPR Act, the decision-making

role of representatives (welfare guardians and property managers) is focused on the best interests of the person with affected decision-making. However, the Disability Convention requires the focus to be on the person's rights, will and preferences. To realise this, there are several matters that need to be considered. These include how a representative should identify a person's will and preferences. They also include when it may not be sufficient to reach a decision based solely on a person's will and preferences (for example, when it might result in significant harm to the person) and, in such cases, how decisions should be made. An important related consideration is the decision-making process that a representative should follow, including how their role can reflect the significance of decision-making support and what their consultation obligations should be.

49. In our view, the test for appointing a representative should also be reformed. Broadly, we think it should contain three elements:
- (a) First, the court should be satisfied that the person with affected decision-making does not have decision-making capacity for the decision or decisions at issue.
 - (b) Second, the court should be satisfied that the circumstances of the person with affected decision-making give rise to a need for the appointment of a representative. There is a range of factors that might be

relevant to assessing the need for a representative, such as the person's will and preferences, the views of family and whānau and the risks of harm if a representative is not appointed.

(c) Third, the court should be satisfied that less intrusive measures (such as support arrangements) are either not available or not suitable.

50. Other matters we are considering include when a representative should make decisions, the scope of a representative arrangement, whether any types of decisions should require express court approval or be excluded from representative arrangements, and how to ensure representative arrangements are in place no longer than they need to be and are subject to regular review.

CHAPTER 11: COURT-APPOINTED REPRESENTATIVES: OTHER ASPECTS

51. We also address a number of other matters relating to court-appointed representatives. Two key matters are the test for assessing the suitability of a person to act as a representative and the duties of a representative.

52. We have not heard that the suitability requirements in the PPPR Act and relevant case law are inappropriate. We therefore suggest that the court should consider the following factors when assessing a representative's suitability: the ability of the representative to carry out the

role, the will and preferences of the represented person, any conflicts of interest, and social and cultural considerations. We do not consider that these factors should be exhaustive. The court should continue to be able to consider any other matter it considers relevant.

53. Under the PPPR Act, the exact scope and nature of the duties of welfare guardians and property managers is unclear. We think that representatives should owe duties to the represented person to ensure that they carry out their decision-making roles appropriately. There is a significant power imbalance between the representative and the represented person. It is important the law recognises this imbalance by way of appropriate duties to help ensure that representatives act properly. We are interested in hearing views on what duties a representative should owe to the represented person and whether these duties should be set out in a new Act.
54. Other matters we are considering include when a person might have more than one representative and how multiple representatives should work together, other requirements about who can act as a representative, the powers of a representative, record-keeping and reporting requirements of representatives, what should happen if a representative acts improperly, what should happen if a representative is unable or unwilling to continue acting, and reimbursement and remuneration of representatives.

CHAPTER 12: COURT-ORDERED DECISIONS

55. Under the PPPR Act, the court can make orders that are tailored to particular, often one-off, decisions. There is no statutory preference in the PPPR Act for court-appointed representatives or court-ordered decisions. Different approaches exist overseas. We are interested in views on whether a new Act should contain a statutory preference for court-ordered decisions or for representative arrangements (and if so which it should prefer), or whether there should be no statutory preference on the basis that it will depend on the circumstances.
56. Under the PPPR Act, court-ordered decisions relate to a person's personal care and welfare. However, the court has used this power to make decisions about property. We are interested in views on whether it would be useful for a new Act to expressly allow the court to make one-off financial decisions.

CHAPTER 13: ENDURING POWERS OF ATTORNEY

57. An EPOA is an arrangement under which one person (the donor) gives another person (the attorney) the power to make decisions for them, usually at some point in the future when the donor no longer has decision-making capacity. EPOAs are provided for under the PPPR Act. Submitters told us that EPOAs are useful. In our view, they should be retained in a new Act.

58. The law relating to EPOAs has two key objectives — usability and safeguarding. How best to balance these objectives is a difficult issue. If EPOAs are too easy to create and use, there is a risk they will be misused. However, if the safeguards are too stringent, people will be less likely to create and use EPOAs.
59. Despite previous reviews of the PPPR Act provisions relating to EPOAs, we heard that the balance between usability and safeguarding remains an issue. Submitters told us that the process to create an EPOA is difficult and expensive, the forms are too long and the role of the witness is complicated.
60. We are considering ways to make the process for creating EPOAs easier. We are interested in how to improve the EPOA forms, whether any changes should be made to the current witnessing and certification requirements, and whether a donor should be able to create an EPOA remotely. We think the signatures of the donor and the attorney should continue to be witnessed. The process of witnessing has a protective function. However, we are interested in whether the signatures of the donor and attorney should continue to require different witnesses and who should be able to act as a witness.
61. We are also interested in whether any of the three additional safeguards that are currently included as part of the witnessing requirements to create an EPOA could be

carried out in another way or are not required. These relate to ensuring that the donor understands the nature of the EPOA, the EPOA is not made under duress or undue influence and the donor has decision-making capacity to make the EPOA.

62. We are considering when an attorney can make decisions for the donor. In our view, an attorney should continue to be empowered to make decisions for which the donor lacks decision-making capacity. We are interested in hearing views on whether, once the EPOA comes into effect, the attorney should be able to act on any matter within the scope of the EPOA or whether those powers should be activated on a case-by-case basis. We are also considering when a professional should need to determine whether a person has decision-making capacity.
63. We also address how to tailor the scope of an EPOA, the decision-making role of the attorney and safeguards once an EPOA is in place.

CHAPTER 14: AN EPOA REGISTER AND NOTIFICATION REQUIREMENTS

64. Under the PPPR Act, there is no process for registering EPOAs or for notifying anyone that an EPOA has been created or that the attorney has begun making decisions for the donor. Submitters told us we should consider the introduction of a register.

65. The introduction of a register or notification requirements might help resolve several issues that people currently face. These include it being difficult to know whether there is an EPOA in place, the limited oversight of attorneys acting under an EPOA and a lack of information about the uptake and use of EPOAs.
66. Although a register may help to address these issues, there are potential downsides. An EPOA register will have resource implications and a registration scheme likely needs to be mandatory in order for it to fully realise the potential advantages. However, the costs and complexity associated with a mandatory scheme, along with privacy concerns, may discourage people from creating EPOAs.
67. If a registration system were to be included in a new Act, several design questions would need to be considered. These include matters such as who should be responsible for maintaining a register, costs for registration and what information should be contained on a register.
68. Notification requirements may also help address some of the issues discussed above by making more people aware of the existence of an EPOA. However, they would also increase the level of complexity of the EPOA scheme, especially if they are mandatory, and so might make EPOAs less attractive as an advance planning tool.

69. If a notification requirement were to be included in a new Act, several design questions would need to be considered. These include when notification is required, whether notification should be voluntary or mandatory and who should be responsible for giving notice.

CHAPTER 15: DOCUMENTING WISHES ABOUT THE FUTURE

70. An advance directive is an instruction given by a person to medical treatment decision-makers about future medical decisions. It is one way people can communicate their choices about medical procedures or treatment that may be needed in the future at a time when they are not able to give informed consent.

71. The PPPR Act sets out how advance directives are to be considered by attorneys acting under EPOAs. There is no equivalent provision for welfare guardians. The current law is unclear about how an advance directive will be considered by representatives and attorneys. We are considering how representatives and attorneys should consider advance directives in their decision-making, including who may act on an advance directive, whether representatives and attorneys require different safeguards, the weight to be given to an advance directive by representatives and attorneys, and whether a new Act

might set out circumstances in which it may be appropriate not to follow a valid advance directive.

72. We are not considering reform to advance directives themselves, such as when an advance directive might be binding on health professionals. These issues extend beyond the scope of the PPPR Act.
73. In addition to advance directives, we are interested in whether a new Act could provide for people to say what is important to them more generally in the form of a non-binding statement of wishes that need not only be about medical care. This is a document in which a person could record their values, lifestyle preferences, preferences for how decisions are made and other matters particularly important to them. While statements of wishes do not need to be specifically addressed in legislation, we consider that recognising statements of wishes in a new Act may increase confidence that people's views will be considered in future decisions. We consider how a statement of wishes might interact with decision-making arrangements under a new Act.

Part 3: Systemic improvements

CHAPTER 16: PRACTICAL IMPROVEMENTS AND OVERSIGHT

74. We are considering practical ways to ensure the decision-making arrangements in a new Act work effectively. Two key matters are what information, guidance and training might be needed and how a new Act should provide for oversight of decision-making arrangements, including through complaints and investigation processes and the option of establishing an oversight body. We also consider how to increase the availability of people to act as attorneys and representatives.
75. Although a lot of information exists about the PPPR Act, we heard that some people are still unaware of the decision-making arrangements it provides for or struggle to find information when they need it. We are interested in ways to improve the availability and accessibility of information about decision-making arrangements under a new Act. We are also considering ways to improve the information and guidance that is available to representatives and attorneys and ways to increase the guidance and training for professionals conducting decision-making capacity assessments.
76. Currently, te Kōti Whānau | Family Court is the main forum for people who have complaints or disputes about decision-

making arrangements. There are also other domestic or international bodies that may be involved in complaints. We have heard that the Family Court can be an inaccessible forum and that people lack options to raise concerns outside of court. Many other jurisdictions have a single body that carries out complaint and investigation functions for decision-making arrangements. We are interested in hearing views on whether a similar body should be established in New Zealand.

77. Multiple bodies perform different oversight and guidance functions in the PPPR Act context. We are considering whether a new body should be established to consolidate oversight and guidance functions, including in relation to tikanga. Some functions that an oversight body might undertake include complaints and investigation, acting as a representative or attorney for people who do not have someone available to act in those roles, providing guidance on implementing decision-making arrangements, providing access to other forms of dispute resolution, and ensuring proper recognition of tikanga and proper regard for the Treaty in the operation of a new Act.

CHAPTER 17: IMPROVING COURT PROCESSES

78. Court processes will remain necessary under a new Act. These processes need to be accessible to people who might use them. We have heard that court processes are

difficult to access and not always socially and culturally responsive. We are considering ways to improve court processes under a new Act.

79. We are thinking about ways to increase the participation of the person with affected decision-making in court processes. This could include ways to ensure the person has appropriate representation, is present at the hearing in appropriate cases, can provide their views to the court and has appropriate support to participate in the court process.
 80. We also consider how Family Court processes might be changed to achieve the perceived benefits of a specialist court or tribunal, such as having simpler forms and requirements for making an application and a less adversarial approach.
 81. In addition, we are considering ways to support people making an application to the court, ways to ensure court processes are socially and culturally responsive and whether other dispute resolution options should be provided for in a new Act.
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