

**He Arotake i te Ture mō ngā Huarahi Whakatau a ngā Pakeke**

**Review of Adult Decision-making Capacity Law**

SECOND ISSUES PAPER SUBMISSION FORM

Te Aka Matua o te Ture | Law Commission is reviewing how the law should respond when an adult’s decision-making is affected. We are consulting on our Second Issues Paper. Submissions are due by 5pm on 21 June 2024.

This submission form contains information and consultation questions from our Second Issues Paper. You can answer one, some, or all of the questions.

The content in this submission form is grouped by topic and chapter. There are links to each chapter at the start of each section in the form.

## Please tell us about yourself

You do not have to give any information about yourself. However, the information we ask for below is useful to us when we consider submissions. It will also help us if we would like to contact you to ask questions about your submission.

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In which category are you making a submission to the Law Commission?

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If you selected ‘personal’ above, please give us some more information by choosing the best fit from the categories below (you can select more than one):

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Service provider  Government organisation

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If you have questions about the way we manage your submission, you can contact us at [huarahi.whakatau@lawcom.govt.nz](mailto:huarahi.whakatau@lawcom.govt.nz).

# PART 1: THE PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988 (PPPR ACT) AND OVERARCHING ISSUES

## Chapter 4 – Te Tiriti o Waitangi | Treaty of Waitangi

[*Read Chapter 4 here*](https://huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf#page=66) *before completing this section*

In this chapter, we consider te Tiriti o Waitangi | Treaty of Waitangi (the Treaty) and steps that could be taken within the context of this review to give effect to it. We:

1. Introduce the Treaty texts and articles.
2. Summarise important Treaty considerations.
3. Discuss how a new Act to replace the PPPR Act could better give effect to the Treaty.

We focus in particular on two ways in which a new Act might make provision for the exercise of tino rangatiratanga. They are:

1. Better enabling Māori to live according to tikanga (see further Chapter 5).
2. Better enabling Māori collective involvement in decision-making that concerns Māori with affected decision-making.

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| --- | --- | --- |
| Q1 | Do you agree with our description of the ways in which the Treaty is relevant to this review? Why or why not?  Yes, I agree  I agree in part  No, I don’t agree  No view   |  | | --- | | Click or tap here to enter text. | |

## Chapter 5 – Tikanga

[*Read Chapter 5 here*](https://huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf#page=76) *before completing this section*

In this chapter, we consider how a new Act should engage with tikanga. We discuss:

1. Why a new Act should recognise tikanga and enable Māori to live according to tikanga.
2. Our view that it will be better for a new Act not to specify individual tikanga values and principles.
3. Whether an exception should be made for mana, which is often associated with dignity and was a focus for submitters on our Preliminary Issues Paper.
4. Whether a new Act should include a general provision requiring tikanga to be considered where it is relevant.

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| --- | --- | --- |
| Q2 | Do you agree that a new Act should include a general provision relating to tikanga requiring (for example) people with relevant roles under the Act to take into account tikanga to the extent that it is relevant in the circumstances? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

# PART 2: KEY FEATURES OF A NEW ACT

## Chapter 6 – The purpose of a new Act

[*Read Chapter 6 here*](https://huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf#page=95) *before completing this section*

In this chapter, we:

1. Discuss the need to review the current purpose of the PPPR Act and clarify its focus.
2. Propose that the purpose of a new Act must be closely informed by human rights, including concepts of rights, will and preferences and dignity. Safeguarding people from significant harm is also consistent with their rights and dignity.

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| Q3 | Do you agree that the purposes of a new Act should include both upholding people’s human rights and safeguarding them from significant harm? Why or why not?  Yes, I agree  I agree in part  No, I don’t agree  No view   |  | | --- | | Click or tap here to enter text. | |

## Chapter 7 – Decision-making capacity

[*Read Chapter 7 here*](https://huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf#page=102) *before completing this section*

In this chapter, we:

1. Provide an overview of decision-making capacity. We explain what we mean by decision-making capacity and summarise how the PPPR Act uses the concept.
2. Explain why we consider that a new Act should continue to use decision-making capacity.
3. Discuss improvements that we think should be made to how decision-making capacity is defined and how it is assessed.

### The need for reform

#### Key issues

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| --- | --- | --- |
| Q4 | Are there any other issues with decision-making capacity assessments that we should consider?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

#### Reforming the test for decision-making capacity

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| --- | --- | --- |
| Q5 | Do you agree that the presumption of decision-making capacity should be maintained? Why or why not?  Yes, I agree  I agree in part  No, I don’t agree  No view   |  | | --- | | Click or tap here to enter text. | |
| Q6 | Do you agree that a new Act should provide a single test for decision-making capacity?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. |   Do you agree with the four factors we have identified?  Yes, I agree  I agree in part  No, I don’t agree  No view   |  | | --- | | Click or tap here to enter text. | |
| Q7 | What considerations should be insufficient, by themselves, to lead to a finding that a person does not have decision-making capacity? Should a new Act specify these factors?   |  | | --- | | Click or tap here to enter text. | |
| Q8 | How can the circumstances of a capacity assessment be improved?   |  | | --- | | Click or tap here to enter text. | |

#### Who can carry out a decision-making capacity assessment

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| --- | --- | --- |
| Q9 | Who should be able to carry out a decision-making capacity assessment?   |  | | --- | | Click or tap here to enter text. | |

## Chapter 8 – Decision-making support

[*Read Chapter 8*](https://huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf#page=128) *here before completing this section*

In this chapter, we focus on decision-making support. 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. It is a very broad term that can cover both informal and formal support arrangements of varying types and intensity. For people with affected decision-making, support can be a particularly important part of making decisions.

### How might a new Act incorporate decision-making support?

#### A formal supporter arrangement

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| --- | --- | --- |
| Q10 | Do you think a new Act should include a formal supporter arrangement? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |
| Q11 | What do you think should be the key features of a formal supporter arrangement?   |  | | --- | | Click or tap here to enter text. | |

#### A co-decision-making arrangement

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| --- | --- | --- |
| Q12 | Do you agree that a new Act should not provide for co-decision-making arrangements? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

# Chapters 9–12: Court-ordered arrangements

Chapters 9–12 focus on court-ordered arrangements. These are decision-making arrangements that are ordered by the court under which another person or the court makes a decision or decisions for the person with affected decision-making.

Broadly speaking, there are two types of court-ordered arrangements: court-ordered decisions and court-appointed representatives.

* Court-ordered decisions are where the court makes a decision through an order for a person with affected decision-making — for example, that the person live in a rest home or receive medical treatment.
* Court-ordered representatives are people appointed by the court to make decisions for a person with affected decision-making.

## Chapter 9 – Court-ordered arrangements

[*Read Chapter 9*](https://huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf#page=148) *here before completing this section*

In this chapter, we:

1. Provide an overview of court-ordered arrangements under the PPPR Act.
2. Summarise the different views on whether court-ordered arrangements should be included in a new Act.
3. Explain why we think properly designed court-ordered arrangements are consistent with Aotearoa New Zealand’s human rights obligations.
4. Seek feedback on our view that court-ordered arrangements should be included in a new Act.

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| --- | --- | --- |
| Q13 | Do you agree that court-ordered arrangements should be included in a new Act? Why or why not?  Yes, I agree  I agree in part  No, I don’t agree  No view   |  | | --- | | Click or tap here to enter text. | |
| Q14 | In what circumstances might a court-ordered arrangement be needed?   |  | | --- | | Click or tap here to enter text. | |

## Chapter 10 – Court-appointed representatives: key features

[*Read Chapter 10*](https://huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf#page=162) *here before completing this section*

Chapters 10 and 11 focus on court-appointed representatives. These are decision-making arrangements where the court appoints a person (a ‘court-ordered representative' or ‘representative’) to make a decision or decisions for another person. Key issues we discuss in Chapter 10 are:

1. The nature of the representative’s decision-making role.
2. When a representative should make decisions.
3. The test for appointing a representative.
4. The scope of a court-appointed representative arrangement.
5. How to ensure that court-appointed representative arrangements are in place no longer than they need to be and are subject to regular review.

### Reforming the decision-making role

#### The decision-making framework

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| --- | --- | --- |
| Q15 | Do you agree that a person’s will and preferences should be considered together as part of an in-the-round assessment?  Yes, I agree  I agree in part  No, I don’t agree  No view   |  | | --- | | Click or tap here to enter text. | |
| Q16 | How do you think a person’s rights should be taken into account?   |  | | --- | | Click or tap here to enter text. | |
| Q17 | When might it not be appropriate or sufficient for a representative to make a decision based only on a person’s will and preferences?   |  | | --- | | Click or tap here to enter text. | |
| Q18 | How should a representative make decisions when it is not appropriate or sufficient to make a decision based only on a person’s will and preferences? What factors should the representative consider?   |  | | --- | | Click or tap here to enter text. | |

#### Decision-making process

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| --- | --- | --- |
| Q19 | How should the representative role provide for decision-making support?   |  | | --- | | Click or tap here to enter text. | |
| Q20 | Who should the representative consult with and how?   |  | | --- | | Click or tap here to enter text. | |
| Q21 | Are there any other steps a representative should be required to take when making a decision?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

### When should the representative make decisions?

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| --- | --- | --- |
| Q22 | Do you agree that the representative should not be able to make a decision unless they consider the represented person does not have decision-making capacity?  Yes, I agree  I agree in part  No, I don’t agree  No view   |  | | --- | | Click or tap here to enter text. | |

### The test for appointing a representative

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| --- | --- | --- |
| Q23 | Do you agree the test for a representative should be the same for both welfare and property decisions? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |
| Q24 | Do you agree the court should be satisfied that the person does not have decision-making capacity for the decision or decisions at issue before appointing a representative? Why or why not?  Yes, I agree  I agree in part  No, I don’t agree  No view   |  | | --- | | Click or tap here to enter text. | |
| Q25 | Do you agree that the court should be satisfied that the person’s circumstances give rise to a need for a representative to be appointed? If so, what factors are relevant to this assessment?  Yes, I agree  I agree in part  No, I don’t agree  No view   |  | | --- | | Click or tap here to enter text. | |
| Q26 | Do you agree the court should be satisfied that less intrusive or restrictive measures are either not available or not suitable before appointing a representative? Why or why not?  Yes, I agree  I agree in part  No, I don’t agree  No view   |  | | --- | | Click or tap here to enter text. | |

### Scope of the arrangement

#### Ensuring the scope of the arrangement is workable and justified

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| Q27 | Do you agree that the scope of a representative’s decision-making role should be expressly connected to the reason for their appointment? Why or why not?  Yes, I agree  I agree in part  No, I don’t agree  No view   |  | | --- | | Click or tap here to enter text. | |

#### Should any types of decision require express court approval or be excluded?

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| Q28 | In addition to the current prohibitions, are there any other personal decisions that a representative should be prohibited from making? Should any of the current prohibitions be removed?   |  | | --- | | Click or tap here to enter text. | |
| Q29 | Are there any personal decisions that should be expressly authorised by the court? If so, what are they?   |  | | --- | | Click or tap here to enter text. | |
| Q30 | Is any reform required to the property decisions that must be expressly authorised by the court? If so, what?   |  | | --- | | Click or tap here to enter text. | |

### Ensuring that arrangements are in place no longer than necessary and subject to review

#### Reviews of arrangements

|  |  |  |
| --- | --- | --- |
| Q31 | How frequently should periodic reviews be held?   |  | | --- | | Click or tap here to enter text. | |
| Q32 | What should the court consider when carrying out a periodic review?   |  | | --- | | Click or tap here to enter text. | |

#### Rights of appeal

|  |  |  |
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| Q33 | Is there anything else you would like to tell us about the duration of arrangements, reviews of arrangements or rights of appeal?   |  | | --- | | Click or tap here to enter text. | |

## Chapter 11 – Court-appointed representatives: other aspects

[*Read Chapter 11 here*](https://huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf#page=196) *before completing this section*

In this chapter, we consider some other matters relating to court-appointed representatives. We discuss:

* + - 1. When a person might have more than one representative and how multiple representatives should act together.
      2. The test for determining the suitability of a representative.
      3. Other requirements about who can act as a representative such as whether anyone should be prohibited from acting as a representative, the minimum age requirement to be a representative, and when corporations can act as a representative.
      4. The powers a representative may need to exercise their decision-making role.
      5. The duties a representative should owe to the represented person.
      6. The record-keeping and reporting requirements of a representative.
      7. Issues relating to the availability of a representative such as what should happen if a person needs a representative and there is no one available, and what should happen if the representative can no longer act during the arrangement.
      8. Reimbursement and remuneration of a representative.

### More than one court-appointed representative

|  |  |  |
| --- | --- | --- |
| Q34 | Do you think that welfare and property representatives should be separate roles? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |
| Q35 | Do you think a court should be able to appoint more than one representative?  Yes  No  No view  If so, should this be for different decisions and/or the same decisions?   |  | | --- | | Click or tap here to enter text. | |
| Q36 | If there are two or more representatives, how should they work together? Do you think a new Act should contain statutory obligations for multiple representatives or allow the court to decide what the obligations are?   |  | | --- | | Click or tap here to enter text. | |

### The test for assessing suitability

|  |  |  |
| --- | --- | --- |
| Q37 | What should the court consider when determining whether a representative is suitable?   |  | | --- | | Click or tap here to enter text. | |
| Q38 | Should any factors be determinative? If so, what are they?   |  | | --- | | Click or tap here to enter text. | |

### Other requirements about who can act as a representative

#### Prohibitions on who can act as a representative

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| --- | --- | --- |
| Q39 | Should there be any prohibitions on who can act as a representative? If so, who should be prohibited from acting as a representative?   |  | | --- | | Click or tap here to enter text. | |
| Q40 | Should there be other matters that do not result in prohibitions on acting but must be drawn to the court’s attention (and that mean a representative may not continue acting until the court has considered it)?   |  | | --- | | Click or tap here to enter text. | |

#### Age of the representative

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| --- | --- | --- |
| Q41 | Do you agree the age limit for representatives should be lowered to 18? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |
| Q42 | Should the court ever be able to appoint a person younger than 18 as a representative? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

### Powers of a representative

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| --- | --- | --- |
| Q43 | Are there any issues with the current powers of welfare guardians or property managers that a new Act should address?   |  | | --- | | Click or tap here to enter text. | |

### Duties of the representative

#### Reforming the duties of the representative

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| Q44 | What duties should a representative have? For example, should the representative be required to:   1. Act honestly, diligently and in good faith. 2. Exercise reasonable skill and care. 3. Manage and appropriately respond to any conflicts of interest.  |  | | --- | | Click or tap here to enter text. | |
| Q45 | Do you think these duties should be set out in statute?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

### Record keeping and reporting requirements

#### Reforming reporting requirements

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| --- | --- | --- |
| Q46 | When should financial reports be required?   |  | | --- | | Click or tap here to enter text. | |
| Q47 | Are there any non-financial decisions that should be subject to record-keeping and reporting requirements? If so, what?   |  | | --- | | Click or tap here to enter text. | |
| Q48 | In decisions where the representative has a conflict of interest, should they be subject to record-keeping and reporting requirements on how the conflict was managed?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

### What should happen if the representative acts improperly?

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| --- | --- | --- |
| Q49 | What options should be available if a representative does not act properly or no longer meets suitability requirements?   |  | | --- | | Click or tap here to enter text. | |
| Q50 | When should it be possible to bring a civil claim against a representative?   |  | | --- | | Click or tap here to enter text. | |

### What happens if a representative is not available or can no longer act?

#### Who acts as a representative when one is not available?

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| --- | --- | --- |
| Q51 | When courts appoint a representative for care and welfare decisions, should volunteer or independent representatives be appointed only as a last resort?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

#### What happens if a representative stops acting during the course of the appointment?

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| --- | --- | --- |
| Q52 | What should happen if a representative stops acting?   |  | | --- | | Click or tap here to enter text. | |

### Reimbursement and remuneration

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| --- | --- | --- |
| Q53 | Should representatives acting in relation to welfare matters be entitled to remuneration from the represented person?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |
| Q54 | Is there anything else you would like to tell us about court-appointed representatives?   |  | | --- | | Click or tap here to enter text. | |

## Chapter 12 – Court-ordered decisions

[*Read Chapter 12 here*](https://huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf#page=229) *before completing this section*

Under the PPPR Act, the court can make orders that are tailored to particular, often one-off, decisions. The PPPR Act calls these personal orders but we use the term court-ordered decisions.

In this chapter, we consider some options for reform of court-ordered decisions. We discuss:

1. The interaction between court-appointed representatives and court-ordered decisions.
2. Whether court-ordered decisions should include financial decisions.

### The interaction between court-appointed representatives and court-ordered decisions

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| --- | --- | --- |
| Q55 | Are there any circumstances where you think a court order would be more appropriate than a court-appointed representative?   |  | | --- | | Click or tap here to enter text. | |
| Q56 | Should the law provide that either (a) a court-ordered decision or (b) a court-appointed representative is generally preferred?  Yes  No  No view  If so, which type do you think should be preferred?   |  | | --- | | Click or tap here to enter text. | |

### What types of decisions should the court be able to make?

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| --- | --- | --- |
| Q57 | Should the court be able to make decisions about both personal and property matters? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |
| Q58 | Are there any other issues with court-ordered decisions we should know about?   |  | | --- | | Click or tap here to enter text. | |

# Chapters 13–14: Enduring powers of attorney

Chapters 13 and 14 discuss enduring powers of attorney (EPOAs). 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. In our view, they should be retained in a new Act.

## Chapter 13 – Enduring powers of attorney

[*Read Chapter 13 here*](https://huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf#page=234) *before completing this section*

In Chapter 13, we discuss:

1. Making an EPOA.
2. How to tailor the scope of an EPOA.
3. When an attorney can make decisions for the donor under an EPOA.
4. The decision-making role of the attorney.
5. Safeguards once an EPOA is in place.

### Making an EPOA

#### Reform to process for creating an EPOA

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| Q59 | How could EPOA forms be updated to improve their usability?   |  | | --- | | Click or tap here to enter text. | |
| Q60 | Do you agree EPOAs should continue to be witnessed? If so, who should be able to act as a witness?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |
| Q61 | Other than witnessing requirements, what safeguards should accompany the creation of EPOAs? For example:   1. Should someone be required to explain the nature of the EPOA to the donor? 2. Should someone be required to certify that they believe the donor understands the EPOA? 3. Should someone be required to certify that they believe the donor is not acting under pressure? 4. Should someone be required to certify that they believe the donor has decision-making capacity?  |  | | --- | | Click or tap here to enter text. | |
| Q62 | Should EPOAs be able to be created remotely by audio-visual link or using other technology?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |
| Q63 | How can the process for making EPOAs be more accessible and culturally responsive?   |  | | --- | | Click or tap here to enter text. | |

### Tailoring the scope of an EPOA

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| Q64 | Are there any issues with tailoring the scope of an EPOA?   |  | | --- | | Click or tap here to enter text. | |

### When may attorneys make decisions under an EPOA?

#### Reforming when an attorney can make decisions under an EPOA

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| --- | --- | --- |
| Q65 | Do you agree that loss of decision-making capacity is a sufficient trigger for an EPOA to come into effect so that the attorney may exercise decision-making powers under an EPOA? Should donors be entitled to specify a different trigger?   |  | | --- | | Click or tap here to enter text. | |
| Q66 | Once an EPOA comes into effect, should an attorney be able to act on any matter or should the attorney’s powers be activated on a case-by-case basis? Why?   |  | | --- | | Click or tap here to enter text. | |
| Q67 | When should a professional be required to determine whether the person does not have decision-making capacity?   |  | | --- | | Click or tap here to enter text. | |

### Making decisions as an attorney

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| --- | --- | --- |
| Q68 | Do you agree that the decision-making framework for attorneys should be the same as that for court-appointed representatives? Why or why not?  Yes, I agree  I agree in part  No, I don’t agree  No view   |  | | --- | | Click or tap here to enter text. | |
| Q69 | Should the donor be able to specify the attorney’s consultation obligations? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |
| Q70 | How could a person’s wishes best be captured when creating an EPOA?   |  | | --- | | Click or tap here to enter text. | |

### Safeguards once an EPOA is in place

#### Appointment of a monitor or similar person

|  |  |  |
| --- | --- | --- |
| Q71 | Should donors be able to appoint a monitor? Why or why not?  Yes  No  No view  If so, what powers should the monitor have?   |  | | --- | | Click or tap here to enter text. | |

#### Record-keeping and reporting

|  |  |  |
| --- | --- | --- |
| Q72 | Should financial attorneys be subject to a reporting requirement for financial records? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |
| Q73 | Should attorneys keep records of some types of personal decisions?  Yes  No  No view  If so, which matters should they be required to keep records for and what should be recorded?   |  | | --- | | Click or tap here to enter text. | |

### Is there anything else you want to tell us?

|  |  |  |
| --- | --- | --- |
| Q74 | Is there anything else you would like to tell us about enduring powers of attorney?   |  | | --- | | Click or tap here to enter text. | |

## Chapter 14 – An EPOA register and notification requirements

[*Read Chapter 14 here*](https://huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf#page=275) *before completing this section*

Under the PPPR Act, there is no process for registering EPOAs or notifying anyone that an EPOA has been created or that the attorney has begun making decisions for the donor. In Chapter 14, we consider:

1. The issues that the introduction of a register or notification requirements might resolve.
2. Whether a new Act should introduce a registration system or notification requirements.

### An EPOA register

|  |  |  |
| --- | --- | --- |
| Q75 | Do you think there should be a register of EPOAs? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |
| Q76 | How do you think a register should operate? In particular:   1. Should registration be mandatory or voluntary? 2. What information should be included in the register? 3. Who should be able to access information on the register? 4. Should other instruments such as advance directives be included in a register? If so, which instruments should be included? Who should be able to access them?  |  | | --- | | Click or tap here to enter text. | |

### Notification requirements

|  |  |  |
| --- | --- | --- |
| Q77 | Do you think a new Act should include notification requirements for EPOAs? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |
| Q78 | What should the features of a notification requirement be? In particular:   1. What events should trigger notice? 2. Should notice be voluntary or mandatory? 3. Who should give notice? 4. Who should receive notice?  |  | | --- | | Click or tap here to enter text. | |
| Q79 | Is there anything else you would like to tell us about a register or notification?   |  | | --- | | Click or tap here to enter text. | |

## Chapter 15 – Documenting wishes about the future

[*Read Chapter 15 here*](https://huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf#page=293) *before completing this section*

In this chapter, we discuss how advance directives and other statements of a person’s wishes about the future interact with decision-making by court-appointed representatives and attorneys acting under an EPOA. We consider:

1. The law on advance directives, some of the issues we have heard and why we will not be generally considering reform of advance directives in this PPPR Act-focused review. We are only focusing on decision-making arrangements.
2. Whether new legislation could clarify how advance directives are considered in decision-making arrangements.
3. Whether, in addition to advance directives, a new Act could provide for people to say what is important to them in the form of a non-binding statement of wishes.

### Advance directives and decision-making arrangements

#### How representatives and attorneys should consider advance directives

|  |  |  |
| --- | --- | --- |
| Q80 | Do you think both court-appointed representatives and attorneys should be able to act on an advance directive? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

#### Should representatives and attorneys have different statutory requirements?

|  |  |  |
| --- | --- | --- |
| Q81 | Do you agree that statutory requirements for representatives and attorneys should be the same? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

#### Giving effect to an advance directive

|  |  |  |
| --- | --- | --- |
| Q82 | Do you agree that there could be times when a representative or attorney should not follow an advance directive?  Yes  No  No view  If so, when do you think not following a directive would be appropriate?   |  | | --- | | Click or tap here to enter text. | |
| Q83 | Should a new Act give more guidance on when representatives and attorneys may choose not to follow or must follow an advance directive, such as by setting out examples?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |
| Q84 | Should we be considering any other issues about how advance directives are considered under a decision-making arrangement?   |  | | --- | | Click or tap here to enter text. | |

### Providing for a statement of wishes in a new Act

#### Whether statutory recognition is needed

|  |  |  |
| --- | --- | --- |
| Q85 | Would it be helpful if a new Act provided for people to make a statement of wishes, or referred to these kinds of statements? Why or why not?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

#### Making a statement of wishes

|  |  |  |
| --- | --- | --- |
| Q86 | What safeguards (if any) do you think are needed in making a statement of wishes? Why?   |  | | --- | | Click or tap here to enter text. | |

#### Giving effect to a statement of wishes

|  |  |  |
| --- | --- | --- |
| Q87 | Should a statement of wishes always be followed? If not, in what situations might it be acceptable or appropriate not to do so?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

# PART 3: SYSTEMIC IMPROVEMENTS

## Chapter 16 – Practical improvements and oversight

[*Read Chapter 16 here*](https://huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf#page=317) *before completing this section*

In this chapter, we explore practical ways to ensure the decision-making arrangements in a new Act work effectively. We discuss:

1. What information, guidance and training might be needed.
2. Ways to increase the availability of people to act as attorneys and representatives.
3. Ways to improve oversight of decision-making arrangements, including through complaints and investigation processes and the option of establishing an oversight body.
4. Ways to include tikanga-focused and Treaty-consistent oversight.

### Information, guidance and training

#### Information about decision-making arrangements

|  |  |  |
| --- | --- | --- |
| Q88 | Do you think the availability and accessibility of information about decision-making arrangements should be improved? If so, how?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

#### Information and guidance about how to act as a representative or an attorney

|  |  |  |
| --- | --- | --- |
| Q89 | Do you think the information and guidance available for people acting as representatives or attorneys should be improved? If so, how?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

#### Guidance and training for professionals assessing decision-making capacity

|  |  |  |
| --- | --- | --- |
| Q90 | Do you think the training and guidance for professionals who conduct decision-making capacity assessments should be improved? If so, how?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |

#### Introducing a code of practice

|  |  |  |
| --- | --- | --- |
| Q91 | Do you think a new Act should have an accompanying code of practice?  Yes  No  No view  If so, how do you think the code of practice should be developed and operate?   |  | | --- | | Click or tap here to enter text. | |

### Availability of people to act as representatives and attorneys

#### Options for increasing the availability of people who can act

|  |  |  |
| --- | --- | --- |
| Q92 | How do you think the law should increase the availability of people who can act as representatives and attorneys?   |  | | --- | | Click or tap here to enter text. | |

### Complaints and investigations

#### Introducing a complaints function under the new Act

|  |  |  |
| --- | --- | --- |
| Q93 | What do you think about a complaints function? For example:   1. Should there be a way of making complaints about a representative or an attorney? 2. Who should be responsible for the complaints function? 3. How should a complaints function operate? For example, who should be able to make complaints? What actions should people be able to complain about? What powers should the responsible agency have?  |  | | --- | | Click or tap here to enter text. | |

### Establishing an oversight body

#### Is a new body needed?

|  |  |  |
| --- | --- | --- |
| Q94 | Do you think there should be a specific oversight body for adult decision-making arrangements?  Yes  No  No view  If so, what oversight functions would be most useful?   |  | | --- | | Click or tap here to enter text. | |

### Tikanga-focused and Treaty-consistent oversight

|  |  |  |
| --- | --- | --- |
| Q95 | Do you have views on the options we have identified for providing tikanga and Treaty-focused guidance and oversight? Are there other options we should consider?   |  | | --- | | Click or tap here to enter text. | |

## Chapter 17 – Improving court processes

[*Read Chapter 17 here*](https://huarahi-whakatau.lawcom.govt.nz/wp-content/uploads/2024/04/NZLC-SIP52.pdf#page=343) *before completing this section*

Court proceedings will be a necessary part of any new Act. In this chapter, we discuss how to improve court proceedings so that they are accessible to the people who use them. We consider:

1. Ways to increase the participation of the person with affected decision-making in court processes.
2. Ways to support people who are making an application to court.
3. Ways to make court processes more socially and culturally responsive.
4. Whether a new specialist court or tribunal should be established to deal with applications under a new Act.
5. Whether a new Act should expressly provide for other dispute resolution options, such as mediation.

### Participation in court processes by the person with affected decision-making

#### Representation in court processes

|  |  |  |
| --- | --- | --- |
| Q96 | How could the representation of people with affected decision-making in court processes be improved?   |  | | --- | | Click or tap here to enter text. | |

#### Ensuring the person with affected decision-making is generally present at the hearing

|  |  |  |
| --- | --- | --- |
| Q97 | What would make it easier for the person with affected decision-making to be present at the hearing?   |  | | --- | | Click or tap here to enter text. | |

#### Ensuring the person’s views are sought and communicated to the court

|  |  |  |
| --- | --- | --- |
| Q98 | What might better ensure that the views of the person with affected decision-making are sought and communicated to the court?   |  | | --- | | Click or tap here to enter text. | |

#### Ensuring the person has appropriate support to participate in the court process

|  |  |  |
| --- | --- | --- |
| Q99 | What might better support a person with affected decision-making to participate in the court process?   |  | | --- | | Click or tap here to enter text. | |

### Support for people making an application to the court

|  |  |  |
| --- | --- | --- |
| Q100 | How could people be better supported to make an application to court?   |  | | --- | | Click or tap here to enter text. | |

### Socially and culturally responsive court processes

#### Options for ensuring court processes are socially and culturally responsive

|  |  |  |
| --- | --- | --- |
| Q101 | What changes do you think would make court processes more socially and culturally responsive?   |  | | --- | | Click or tap here to enter text. | |

### Establishing a specialist court or tribunal

#### Changing Family Court processes to achieve benefits of a specialist forum

|  |  |  |
| --- | --- | --- |
| Q102 | Do you agree that improvements should be sought through changes to current court processes or do you favour the establishment of a specialist court or tribunal? Why?   |  | | --- | | Click or tap here to enter text. | |

### Other dispute resolution options

#### Design of other dispute resolution options

|  |  |  |
| --- | --- | --- |
| Q103 | Do you think a new Act should provide for other dispute resolution options? If so, what are they?  Yes  No  No view   |  | | --- | | Click or tap here to enter text. | |
| Q104 | In what situations do you think other dispute resolution options may not be appropriate?   |  | | --- | | Click or tap here to enter text. | |
| Q105 | What would make other dispute resolution options work well?   |  | | --- | | Click or tap here to enter text. | |