

Independent advice on law reform

Ngā Huarahi Whakatau | Review of Adult Decision- Making Capacity Law

Geof Shirtcliffe, Kaikōmihana | Commissioner

Overview

- Te Aka Matua o te Ture | Law Commission
- Ngā Huarahi Whakataurua | Review of Adult Decision-Making Capacity Law
- Second Issues Paper



Te Aka Matua o te Ture | Law Commission

- Independent Crown Entity - Law Commission Act 1985
- Core mission: to keep laws under review, and make recommendations for reform
- Extensive research and analysis
- Stakeholder engagement and expert groups
- Issues Paper(s) and public consultation
- Final Report
- Government decides how (and when) to change law



Ngā Huarahi Whakataua | Review of Adult Decision-Making Capacity Law

- Advisory groups:
 - Professional Expert Advisory Group
 - Lived Experience, Whānau & Carers Expert Advisory Group
 - Standing Māori Liaison Committee
- Preliminary Issues Paper (submissions closed March 2023)
- Second Issues Paper (forthcoming)
- Final Report



Issues Papers

- Preliminary Issues Paper
 - High-level questions
 - Summary (alternate formats and te reo Māori)
 - Project website, online submissions
 - Focus groups



Issues Papers (cont.)

- Second Issues Paper (April – June 2024)
 - Detailed analysis and options for reform
 - decision-making arrangements
 - related arrangements
 - system features
 - Key Topic summaries
 - alternate formats (large print, Braille, audio format, NZSL, EasyRead)
 - te reo Māori
 - Project website
 - Online submissions
 - Focus groups



Second Issues Paper

- Framing (and key themes)
 - Protection of Personal and Property Rights Act 1988
 - Human rights - particularly Article 12 UNCRPD
 - support
 - 'rights, will and preferences'
 - Te Tiriti o Waitangi & Tikanga
 - Purposes
- Decision-making capacity
 - What is it?
 - How should it be defined?
 - How should it be assessed?
 - What should be its role?



Second Issues Paper (cont.)

- Court-ordered arrangements
 - court-ordered decisions and court-ordered representatives
- When may court make an order?
 - absence of decision-making capacity? need? both? other?
- Decision-making
 - decision-making framework
 - will and preferences
 - rights
 - decision-making process
 - prior decisions and statements
 - consultation
- Safeguards
 - scope and duration of arrangement
 - duties of representatives
 - reporting and oversight



Second Issues Paper (cont.)

- Enduring Powers of Attorney
 - balancing useability and safeguarding
- How to create an EPOA?
- When can it come into effect?
 - absence of decision-making capacity?
- Decision-making
 - as for court-ordered representatives?
- Safeguards
 - decision-making capacity to create an EPOA?
 - witnessing
 - duties of attorney
 - reporting and oversight



Second Issues Paper (cont.)

- Decision-making support
 - In assessments of decision-making capacity
 - In decision-making arrangements
 - relevance to court order
 - relevance to decision-making
 - In formal decision-making support arrangements
 - appointment and removal
 - safeguards
 - duties of supporter
 - oversight



Second Issues Paper (cont.)

- Related arrangements
 - Documenting wishes about the future
 - advance directives and decision-making arrangements
 - statements of wishes
 - Register of EPOAs (and other documents?)
 - Notification of EPOAs
- System features
 - Practical improvements and oversight
 - Information, training and guidance
 - Complaints and investigations, oversight body
 - Court processes
 - participation and responsiveness
 - other dispute resolution options



Second Issues Paper – Next Steps

- Publication in April, submissions close in June
- Issues Paper and Key Topic Summaries available at:
huarahi-whakatau.lawcom.govt.nz / capacity.lawcom.govt.nz
- Register on website for updates
- Contact: huarahi.whakatau@lawcom.govt.nz

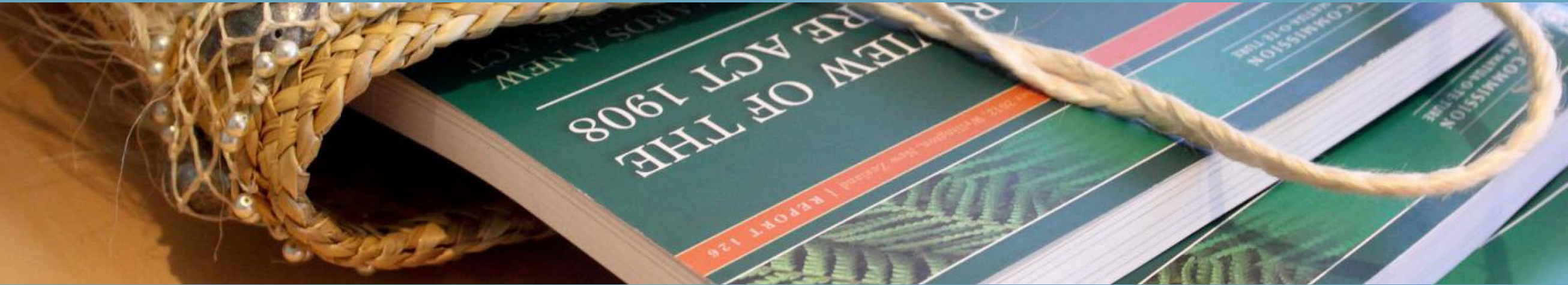


WE WANT TO HEAR FROM YOU!



Q&A





The Law Commission is an Independent Crown Entity. We keep Aotearoa New Zealand's law under review, and make recommendations for the reform and development of the law.

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