

26 June 2024

Geof Shirtcliffe
Kaikōmihana | Commissioner
Office of Ngā Huarahi Whakatau | Review of Adult Decision-Making Capacity Law
Te Aka Matua o te Ture | Law Commission Wellington Aotearoa New Zealand

By email: huarahi.whakatau@lawcom.govt.nz

Tēnā koe

Re: Adult Decision-making Law Review: Second Issues Paper

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) welcomes the opportunity to provide feedback on the Ngā Huarahi Whakatau | Review of Adult Decision-Making Capacity Law: Second Issues Paper (the Paper).

The RANZCP is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry, supports and enhances clinical practice, advocates for people experiencing mental health conditions, and advises governments on mental health care. Our Aotearoa New Zealand-based committees offer expertise and experience working with tāngata whai ora who are most likely to be impacted by changes to the adult decision-making law, including people living with dementia, traumatic brain injury, intellectual disability, substance-induced cognitive impairment, psychosis, and other mental health challenges.

Tu Te Akaaka Roa, the New Zealand National Committee of the RANZCP, acknowledges the complexities arising from the cross-jurisdictional implications of the legislation and commends the Law Commission for the thorough review and integration of diverse views and feedback. Based on advice from our expert members, we provide several recommendations to progress the issues raised in the Paper.

Decision-making capacity assessments

Decision-making competence is complex, dynamic, and can only be understood in relation to someone's ability to perform a specific task or decision. Capacity assessments therefore require a nuanced approach and thorough understanding of cognition. Given the significant implications, Tu Te Akaaka Roa recommends that capacity assessments are completed by medical practitioners or clinical psychologists with the relevant expertise, with supported of family or whānau.

Assessing decision-making capacity for tāngata whai ora living with addiction, a mental health condition, or a neurodevelopmental disorder, can be particularly complex. The status

of their condition and their capacity to make decisions for themselves or others may fluctuate over time or vary greatly depending on the type of decision or context. Some complex

situations may require consultation with psychiatrists or clinical psychologists, and, if a Māori Cultural Assessment (Te Aromatawai) is required, access to practitioners with knowledge and understanding of the Tikanga process is essential.

We recommend that additional thought is given to how this could be achieved more effectively, particularly in the context of significant workforce shortages and welcome the opportunity to be involved in finding solutions.

Decision-making support

Tu Te Akaaka Roa is generally supportive of formal support arrangements. However, we recommend the consideration of additional safeguards to ensure decision-making supporters are suitable and have sufficient understanding of the clinical options and outcomes for decision-making in a medical setting. In situations where tāngata whai ora do not have access to support from family or whānau, the social and cultural suitability of a decision-making supporter must be taken into consideration. We recommend that recognition and commitment to the principles of Te Tiriti o Waitangi and Tikanga Māori are embedded in the policy relating to such arrangements.

Resources, Guidance and Education

Acknowledging the many domains implicated in decision-making law, policy and practice, the resources required to implement the new law must be carefully considered. Tu Te Akaaka Roa strongly advocates for the development of clear guidance and provision of equitable workforce training and support, in addition to appropriate facilities and resources available for mental health and disability services. Without the provision of adequate resources, even the best policy will not provide the intended outcomes.

The medical and mental health and addiction workforce shortages in Aotearoa New Zealand are a significant concern. Māori remain underrepresented in the medical and specialist mental health workforce, with less than 5% of all doctors, 3% of psychiatrists and 8% of clinical psychologists identifying as Māori. Similarly, psychogeriatric services and mental health support services for tāngata whaikaha are extremely limited and there is currently no formal training available for medical professionals wishing to specialise in the mental health needs of whai ora living with an intellectual or neurodevelopmental disabilities.

In addition to the guidance/training described in the Paper, Tu Te Akaaka Roa recommends:

- expansion of cultural safety and competency training for health and disability practitioners,
- development of further culturally sensitive assessment tools,
- education and training on the mental health needs of people living with an intellectual or neurodevelopmental disability aimed at health professionals across all disciplines,
- clear and accessible guidance on policy and the legal implications for health and disability service providers and options for seeking further advice,
- feasible options for accessing expert advice and guidance from mental health professionals within the context of workforce shortages.

Training must be provided on an ongoing basis to ensure that professionals, including international migrants, have the required expertise and feel empowered to provide comprehensive, consistent, and in culturally safe decision-making capacity assessments and supported decision-making practices.

Monitoring and Oversight

Tu Te Akaaka Roa supports the establishment of an independent body to provide a targeted approach towards monitoring and stewardship processes, as well as practical support and guidance. We support a requirement for a minimum number of members to be Māori. However, to prevent a potential tauwi majority, we suggest a requirement of at least 50% of members to whakapapa Māori. Additionally, we recommend clinical expert representation and consideration of how lived experience is included in the kaupapa of the organisation, in line with the RANZCP's Position Statement 109: [Addressing the mental health needs of people with Intellectual disabilities](#).

Thank you for the opportunity to provide feedback on the Paper. Tu Te Akaaka Roa strongly advocates for a person-centred and focus on the mental health and wellbeing of tāngata whai ora and whānau during the development and implementation of a new Act, including adequate resourcing and training provided to the health and disability sector.

If you have any questions regarding this letter, or require additional information, please contact Tu Te Akaaka Roa, the New Zealand National Office via nzoffice@ranzcp.org.

Ngā manaakitanga



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