

FROM “BEST INTERESTS” TO “WILL AND PREFERENCES”: REFORMING NEW ZEALAND’S ADULT DECISION-MAKING CAPACITY LAW

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Abstract

This paper analyses the New Zealand Law Commission’s proposals to repeal the Protection of Personal and Property Rights Act 1988 and establish a new legal framework for adult decision-making. The reforms align domestic law with the Convention on the Rights of Persons with Disabilities (CRPD) by replacing the capacity-based “best interests” model with a rights-based, will-and-preferences paradigm that prioritizes supported decision-making and respects individual autonomy. The paper situates the proposals within a comparative framework, drawing on Ireland’s Assisted Decision-Making (Capacity) Act 2015 and Victoria’s Guardianship and Administration Act 2019, and identifies critical implementation challenges, including public education, independent oversight mechanisms, culturally responsive court processes, and the incorporation of tikanga Māori. The analysis concludes that the proposed reforms represent a fundamental shift in the legal and social understanding of autonomy, with broader implications for Asian countries currently re-examining adult guardianship and decision-making systems under the influence of the CRPD, and it highlights the potential for integrating culturally specific practices into rights-based frameworks.

Keywords: supported decision-making, legal capacity, human rights law, New Zealand Law Commission, tikanga Māori

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The New Zealand Law Commission (“NZLC”) is currently undertaking a comprehensive review of the 1988 Protection of Personal and Property Rights Act (“PPPR Act”).¹ This review is not confined to incremental amendments or technical adjustments; it constitutes a fundamental reconsideration of the statutory framework governing decision-making for adults who are considered to lack capacity. The PPPR Act has been in force for more than three decades, yet its conceptual underpinnings are increasingly regarded as misaligned with contemporary social values, international human rights standards, and, most notably, the obligations arising under Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (“CRPD”).²

This reform trajectory in New Zealand mirrors developments in several other jurisdictions. Ireland, for instance, enacted the Assisted Decision-Making (Capacity) Act 2015,³ which dismantled its long-

1 New Zealand Legislation. (1988). *Protection of Personal and Property Rights Act 1988*. <https://www.legislation.govt.nz/act/public/1988/0004/latest/DLM126528.html>; Atkin, B., & Skellern, A.-M. (2013). Adults with incapacity: The Protection of Personal and Property Rights Act. In J. Dawson & K. Gledhill (Eds.), *New Zealand’s Mental Health Act in practice*, pp. 337–352. <https://ssrn.com/abstract=2589377>

2 United Nations. (2006). *Convention on the Rights of Persons with Disabilities (CRPD)*. United Nations Treaty Collection. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&clang=_en

3 Irish Statute Book. (2025). *Assisted Decision-Making (Capacity) Act 2015*. <https://www.irish->

standing guardianship system and introduced a tiered framework of supports designed to promote autonomy and participation. In Australia, the State of Victoria enacted its Guardianship and Administration Act 2019 (Vic)⁴ to explicitly mandate that guardians and administrators act in accordance with the will and preferences of the individual concerned (section 9). These reforms created new categories of “Decision-Making Assistance Agreement” (Ireland) or “supportive guardians” and “supportive administrators” (Victoria), reflecting a decisive move toward models of supported decision-making. Taken together, such legislative innovations reflect a paradigm shift: a move away from paternalistic guardianship regimes toward frameworks that recognize and strengthen the agency of persons with disabilities.

The driving force behind these reforms is a broader societal and legal reorientation toward human rights. The principle of respecting individual dignity and individual autonomy has gained wide acceptance, and with it, the recognition that people with disabilities must enjoy equal rights to make decisions about their own lives (Article 12, CRPD). In this context, systems premised on unilateral “protection” have been increasingly criticized for perpetuating dependency and disempowerment. By contrast, approaches that emphasize “support” aim to maximize decision-making capacity while safeguarding individual rights.

Against this background, the NZLC has published its Review of the Adult Decision-Making Capacity Law: Issues Paper (Second Edition, April 2024) (“NZLC 2024 Issues Paper”),⁵ which sets out the challenges of the current regime and the possible contours of reform. Drawing on this document, and situating the New Zealand debate within broader international developments, this paper examines three core issues: why the PPPR Act requires reform, what substantive legislative changes are being proposed, and what legal, institutional, and normative challenges remain for the future of adult decision-making law.

The overarching research question guiding this inquiry is: “How can the proposed New Zealand adult decision-making framework establish a genuinely rights-based ‘will and preferences’ paradigm while effectively addressing implementation challenges relating to institutional design, cultural pluralism, and capacity assessment?” In pursuing this question, the paper aims to clarify the drivers for repeal, evaluate the scope of the

statutebook.ie/eli/2015/act/64/enacted/en/html; Kelly, B. D. (2017). The Assisted Decision-Making (Capacity) Act 2015: What it is and why it matters. *Irish Journal of Medical Science*, 186(2), 351–356. <https://doi.org/10.1007/s11845-016-1443-5>

4 Victorian Legislation. (2025). *Guardianship and Administration Act 2019 (Vic)*.

5 New Zealand Law Commission. (2024). *Review of adult decision-making capacity law*. <https://huraihi-whakatau.lawcom.govt.nz/>

NZLC's proposed reforms, and assess which institutional model best supports implementation under New Zealand's bicultural constitutional setting. More broadly, the analysis seeks to contribute to comparative scholarship by offering insights with potential legislative relevance for Asian jurisdictions currently reconsidering their own guardianship and decision-making frameworks.

This paper employs a comparative doctrinal analysis, drawing on primary legal materials, policy documents, and comparative statutes to examine the proposed reforms in New Zealand. Primary sources include the 1988 Protection of Personal and Property Rights Act (PPPR Act), the New Zealand Law Commission's Review of the Adult Decision-Making Capacity Law: Issues Paper (Second Edition, April 2024) (2024 NZLC Issues Paper), the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its General Comment No. 1 (2014),⁶ Ireland's 2015 Assisted Decision-Making (Capacity) Act, and Victoria's 2019 Guardianship and Administration Act.

Ireland and Victoria were selected as comparators because of their shared common law heritage with New Zealand and their distinct responses to CRPD Article 12: Ireland through a comprehensive systemic transformation and Victoria through incremental rights-based recalibration. Together, they provide instructive contrasts for assessing institutional design choices.

A key limitation of this analysis is that the NZLC 2024 Issues Paper remains a consultative document, presenting proposals and options rather than binding legislative text. The scope, content, and institutional structure of the eventual statute will depend on the outcome of further consultation and parliamentary deliberation.

1. Background to the proposed reforms

Several interrelated factors explain why a fundamental reform of the PPPR Act has become necessary.

The *first* and most pressing concern is the Act's incompatibility with contemporary human rights norms. The statutory framework is predicated on a deficit-based approach: once an individual is found to "lack capacity", decision-making authority is shifted to others, who are directed to act in that individual's "best interests." While this model was consistent with the welfare-oriented ethos of the late 1980s, it has increasingly come under criticism for embodying a protectionist paradigm that subordinates autonomy to paternalistic judgments. By contrast, Article 12 of the United

⁶ United Nations Committee on the Rights of Persons with Disabilities. (2014). *General comment No. 1 (2014) on Article 12: Equal recognition before the law*.

Nations CRPD affirms the equal right of persons with disabilities to exercise legal capacity on an equal basis with others, and General Comment No. 1 of the Committee on the Rights of Persons with Disabilities (2014) makes explicit that “best interests” determinations are inconsistent with the obligation to respect a person’s will and preferences.⁷ Reforming the PPPR Act is therefore an urgent task to align New Zealand’s domestic law with its international obligations and to realize a rights-based model of supported decision-making.⁸

Second, reform is necessary in order to take account of New Zealand’s distinctive historical and cultural context. The Treaty of Waitangi represents a significant component of New Zealand’s constitutional framework.⁹ The significance of according consideration to the Treaty in policy formulation and legal design is recognized in guidance to public officials. However, the PPPR Act makes no reference to the Treaty of Waitangi and does not reflect due regard for it. This is because the PPPR Act was enacted before systematic consideration of the Treaty of Waitangi in law reform processes. As a result, it does not reflect Māori legal traditions or adequately incorporate the principles of the Treaty of Waitangi. This omission is increasingly recognized as a significant limitation, given the importance of *tikanga*, which is the customary law and values of the Māori people, in shaping a more inclusive, culturally responsive legal order. A reformed statute offers an opportunity not only to modernize drafting standards but also to embed the principles of partnership, participation, and protection that flow from the Treaty of Waitangi, thereby making the law more reflective of New Zealand’s bicultural constitutional foundation (NZLC 2024 Issues Paper, Chapter 4).

Third, the PPPR Act has been criticized for its lack of coherence and systemic clarity. The legislation is complex, fragmented, and difficult to navigate in practice (NZLC 2024 Issues Paper, Chapter 3). Attempting to integrate new policies into the existing framework would risk compounding these problems, producing a patchwork statute that obscures rather than clarifies rights and obligations. For this reason, the NZLC has suggested that a wholesale repeal and replacement of the Act is preferable to piecemeal amendment (2024 Issues Paper, Chapter 2). A new legislative framework, grounded in clearly articulated principles and values, would not only enhance accessibility and usability but also provide a more coherent doctrinal foundation for adult decision-making law in New Zealand.

7 Donnelly, M., Harding, R., & Taşcıoğlu, E. (Eds.). (2022). *Supporting legal capacity in socio-legal context*. Hart.

8 New Zealand signed the CRPD in May 2007, and ratified it in September 2008.

9 New Zealand Legislation. (2025). *Treaty of Waitangi Act 1975*; Ministry for Culture and Heritage. (n.d.). *Treaty of Waitangi*. NZHistory. <https://nzhistory.govt.nz/politics/treaty-of-waitangi>

2. Main content of the proposed reforms

2.1. Proposed reforms

The proposed reforms recommend repealing the PPPR Act and replacing it with a new statute whose explicit purpose is the protection and promotion of human rights. This represents a paradigm shift away from the traditional protection-oriented model of guardianship toward a rights-based framework grounded in autonomy, dignity, and participation. The central elements of the reform proposals can be outlined as follows.

2.1.1. Retention and reform of the concept of capacity

The new legislation will retain the concept of decision-making capacity, recognizing it as a crucial legal threshold for identifying situations in which a representative framework may be indispensable. However, significant changes are envisaged to both the methodology and consequences of capacity assessments (NZLC 2024 Issues Paper, Chapter 7). Rather than relying on a narrow functional test, the novel approach would incorporate culturally responsive practices, including *tikanga* Māori (values and principles widely shared and generally accepted among Māori), and take account of individual circumstances to avoid unjust discrimination (NZLC 2024 Issues Paper, Chapter 9). Importantly, it would distinguish between temporary and permanent impairments and emphasize respect for residual decision-making ability. While this reform acknowledges criticisms of capacity-based regimes in the CRPD discourse, it reflects a pragmatic attempt to reconcile the need for legal thresholds with the imperative to maximize respect for autonomy.

2.1.2. Formalization of supported decision-making

In direct response to Article 12 of the CRPD, the reforms propose the formal introduction of supported decision-making as a distinct legal arrangement (NZLC 2024 Issues Paper, Chapter 8). Under the new law, individuals would be entitled to receive tailored assistance to make their own decisions, with options extending to co-decision-making models in which decisions are made jointly by the individual and their chosen supporter (NZLC 2024 Issues Paper, Chapter 8). This represents a significant departure from the current framework, which lacks explicit recognition of support and thereby creates inconsistencies in practice. By legislating supported decision-making, the reforms seek to establish a continuum of support that enhances autonomy while introducing safeguards to prevent undue influence or overreach.

2.1.3. Reform of the representative system

The role of court-appointed representatives, such as welfare guardians and property managers, will be fundamentally reconfigured. The current obligation to act in a person's "best interests" will be replaced with a duty

to give primacy to the individual's rights, will, and preferences (NZLC 2024 Issues Paper, Chapter 10). Representatives will be subject to clearer statutory guidelines for identifying and respecting a person's wishes, and their appointment will be limited to circumstances where less restrictive measures are demonstrably unavailable (NZLC 2024 Issues Paper, Chapter 10). This shift mirrors international human rights standards and reflects the move away from substitute decision-making as the default mechanism.

2.1.4. Enduring powers of attorney

Enduring powers of attorney ("EPAs") will be preserved as an important instrument for anticipating future incapacity but will be simplified to enhance accessibility (NZLC 2024 Issues Paper, Chapter 13). Current procedures are regarded as overly burdensome and costly. Proposals include revising the forms, easing witnessing requirements, and enabling remote execution (NZLC 2024 Issues Paper, Chapter 13). At the same time, oversight mechanisms will be strengthened to mitigate the risk of misuse. Options under consideration include the establishment of a public registration system to record the creation and activation of EPAs (NZLC 2024 Issues Paper, Chapter 14). The reforms thus aim to strike a balance between usability and accountability.

2.1.5. Recognition of wishes statements

Finally, the reforms contemplate the introduction of "wishes statements," through which individuals may record their values, lifestyle preferences, and priorities beyond medical treatment decisions (NZLC 2024 Issues Paper, Chapter 15). While not legally binding, such statements would be afforded statutory recognition and would be required to be considered by representatives and professionals (NZLC 2024 Issues Paper, Chapter 15). This innovation reflects a broader commitment to respecting personhood and dignity in decision-making processes and provides a mechanism for capturing preferences on matters such as healthcare, residence, financial arrangements, personal relationships, and leisure activities.

2.2. Significance of New Zealand law reform

Taken as a whole, these proposed reforms signify more than a technical adjustment; they represent a profound reorientation of New Zealand's legal framework governing adult decision-making. In particular, the reforms aim to harmonize domestic law with evolving international human rights standards, including those articulated in the United Nations CRPD. At the same time, they seek to acknowledge and accommodate cultural pluralism, thereby giving greater recognition to the diverse values, traditions, and community-based forms of support that shape decision-making practices in a multicultural society. Furthermore, the reforms reflect contemporary theoretical and practical understandings of autonomy, which emphasize

not only individual independence but also relational and supported forms of decision-making. By integrating these perspectives, the proposed legislative changes move decisively toward a more inclusive and rights-respecting model of adult decision-making.

As a common law jurisdiction that inherited English law, New Zealand shares many structural similarities with Australia but diverges substantially from civil law systems such as those of Japan. Nevertheless, Japan's Guidelines for Guardianship Affairs Based on Decision-Making Support¹⁰ demonstrate the considerable influence of the Mental Capacity Act 2005 of England and Wales.¹¹ Accordingly, Chapters 7 (Mental Capacity) and 8 (Decision-Making Support) of New Zealand's NZLC 2024 Issues Paper are directly relevant to the Guidelines in Japan and provide a sound basis for comparative analysis, particularly in examining how common law jurisdictions conceptualize and review adult decision-making capacity in ways distinct from civil law traditions.

Historically, interventions concerning elderly persons and individuals with disabilities were primarily justified under the "best interests" principle, typically exercised through family consent or professional judgment. In recent years, however, legal and policy discourse in many jurisdictions has shifted toward a person-centered approach that prioritizes respect for the individual's will and preferences. Johnson and Boland underscore this development in their analysis of England's 2014 Care Act,¹² which "emphasis[es] the overall well-being and choice of the patient rather than merely focusing on their safety."¹³ This shift illustrates a broader normative reorientation away from paternalistic models of protection toward frameworks that affirm agency and self-determination.

This reorientation is closely tied to developments in international human rights law, most notably Article 12 of the United Nations CRPD. Article 12 affirms the right of all persons to recognition before the law, to legal capacity, and to access supported decision-making. The UN Committee on the Rights of Persons with Disabilities, in its General Comment No. 1, further clarified that substitute decision-making regimes should be replaced with models grounded in the will and preferences of the individual. This human rights discourse has exerted a profound influence on the development of supported decision-making across jurisdictions, where rights-based approaches are increasingly embedded into legislative and policy frameworks.

10 Ministry of Health, Labour and Welfare of Japan. (2020). *Guidelines related to supported decision-making* [in Japanese]. https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/0000202622_00026.htm

11 The 2005 Mental Capacity Act.

12 The 2014 Legislation gov.uk. Care Act.

13 Johnson, K., & Boland, B. (2019). Adult safeguarding under the Care Act 2014. *BJPsych Bulletin*, 43(1), 38–42. <https://doi.org/10.1192/bjb.2018.71>, p. 38.

The theoretical foundations of contemporary decision-making capacity law thus rest on several interrelated principles. First, respect for autonomy requires that diminished mental capacity should not result in the automatic deprivation of legal capacity. Second, legal systems must provide mechanisms, such as supported decision-making arrangements, shared decision-making models, and EPAs, that enable individuals to exercise their rights while receiving appropriate assistance. This paradigm shift is reflected in the structural transition from traditional guardianship models toward broader frameworks of decision-making capacity law. Such frameworks extend beyond formal legal representation to incorporate community-based support structures and risk intervention mechanisms for persons with impaired decision-making capacity.

Importantly, civil law jurisdictions have also embraced this transformation. For example, in Austria and Switzerland, guardianship has been reconceptualized as adult protection, with reforms codified in the civil codes that reflect both terminological and substantive change.¹⁴ Austria's Adult Protection Law (*Erwachsenenschutzrecht*)¹⁵ is explicitly designed as a safeguard against elder abuse, thereby aligning with rights-based approaches increasingly evident in common law jurisdictions.¹⁶ Despite historical divergences between common law and civil law traditions, a shared trajectory of reform can now be observed in the field of decision-making capacity law, consistent with the principles of the CRPD. In this context, the 2022 renaming of the World Congress from "Adult Guardianship" to "Adult Capacity", with participation from common law and civil law jurisdictions, is emblematic of this convergence, reflecting philosophical as well as institutional shifts that transcend jurisdictional boundaries.¹⁷

Against this international backdrop, New Zealand's current law reform process represents a particularly significant contribution. Its review of decision-making capacity law not only strengthens protections for its domestic population but also offers a model that may influence global debates and shape comparative legal development in capacity law and supported decision-making.

2.3. Challenges of New Zealand law reform

While the proposals of the NZLC mark a significant step toward compliance with the CRPD and the modernization of decision-making

14 Adult Protection Law in the Swiss civil code articles 360 to 456; Schwengzer, I., & Keller, T. (2013). A new law for the protection of adults. *International Survey of Family Law*, p. 375.

15 Adult Protection Law in the Austrian Civil Code.

16 Ganner, M. (2020). The new Austrian adult protection law of 2018. *Julgar*, 41, 175–198. <https://julgar.pt/wp-content/uploads/2020/05/JULGAR41-08-MG.pdf>; Hinteregger, M., & Lagger-Zach, N. (2025). Adult protection law in Austria: Developments and challenges. *Austrian Journal of Law and Society*, 12(1), 45–62.

17 International Guardianship Network (IGN). (2025). *IGN History: World Congresses on adult guardianship*. <https://www.international-guardianship.com/history.htm>

capacity law, their successful implementation will depend on overcoming a range of practical, institutional, and cultural challenges. These challenges highlight the complexity of translating normative principles, such as autonomy, dignity, and respect for will and preferences, into workable legal frameworks that can function effectively in practice.

The first challenge concerns the dissemination of information and the provision of training, particularly in relation to capacity assessments. For the new legal framework to operate effectively, the mere enactment of legislation is insufficient; individuals affected by the reforms, their families, and professionals in healthcare, social services, and law must understand not only the substance but also the underlying spirit of the law (NZLC 2024 Issues Paper, Chapters 6 and 16). Experience under the existing PPPR Act demonstrates that inadequate information-sharing undermines both the accessibility of legal remedies and the confidence of those subjects to decision-making arrangements.¹⁸ Addressing this challenge will require systematic initiatives to develop and deliver guidance, training, and educational resources that are clear, culturally responsive, and accessible to diverse communities.¹⁹

A second and closely related challenge is the design of effective oversight and complaint mechanisms (NZLC 2024 Issues Paper, Chapter 17). At present, disputes under the PPPR Act are channeled through the Family Court. While the court plays a significant role in safeguarding rights, there are longstanding concerns about accessibility, costs, delays, and the intimidating nature of judicial proceedings. In response, the NZLC has raised the possibility of creating a single, specialized oversight body to investigate complaints, provide monitoring, and ensure compliance with the law.²⁰ Comparative experience lends support to this idea: Ireland's establishment of the Decision Support Service ("DSS")²¹ and Victoria's use of the Victorian Civil and Administrative Tribunal ("VCAT")²² and Office of the Public Advocate ("OPA")²³ demonstrate the value of institutions that can provide independent oversight, reduce reliance on adversarial court

18 Hickling, N. (2024). *Current challenges in decision-making capacity assessments: A multidisciplinary perspective* (Doctoral dissertation, University of Auckland); Mooney, N., McCann, C. M., Tippet, L., & Cheung, G. (2024). Decision-making capacity assessments in New Zealand and Australia: A systematised review. *Psychiatry, Psychology and Law*, 31(5), 816-841.

19 New Zealand Law Society Te Kāhui Ture o Aotearoa. (2024, July 1). *Review of Adult Decision-Making Capacity Law | He Arotake i te Ture mō ngā Huarahi Whakatau a ngā Pakeke – Second Issues Paper 52*. <https://www.lawsociety.org.nz/>; Gordon, S., Gardiner, T., Gledhill, K., Tamatea, A., & Newton-Howes, G. (2022). From substitute to supported decision making: Practitioner, community and service-user perspectives on privileging will and preferences in mental health care. *International journal of environmental research and public health*, 19(10), 6002.

20 *Ibid.*

21 Decision Support Service (DSS). <https://decisionsupportservice.ie/>

22 Victorian Civil and Administrative Tribunal (VCAT). <https://www.vcat.vic.gov.au/>

23 Office of the Public Advocate (OPA), Victoria. <https://www.publicadvocate.vic.gov.au/>

processes, and strengthen public trust. However, institutional design will be critical in New Zealand, where questions of independence, resourcing, and accountability remain to be resolved.

Even if an oversight body is introduced, courts will continue to play a leading role in certain decision-making arrangements. Consequently, a third challenge lies in reforming court procedures to ensure greater accessibility and cultural appropriateness. The NZLC has emphasized the need to facilitate the direct participation of individuals concerned, for instance, by guaranteeing representation, simplifying application procedures, and reducing adversarial elements in hearings (NZLC 2024 Issues Paper, Chapter 6). Such reforms raise tough questions about how to balance efficiency and informality with procedural safeguards, particularly in cases involving vulnerable adults. Ensuring that court processes empower, rather than marginalize, the voices of those directly affected will be essential to fulfilling the CRPD's emphasis on equal recognition before the law.

A fourth challenge relates to the political process itself. The NZLC's final report, scheduled for submission within 2025, will be followed by parliamentary deliberation on a draft bill. This stage will be decisive, as the key elements of the proposals, including the precise scope of supported decision-making and the authority of any oversight body, will be subject to negotiation and potential compromise. International experience suggests that while the rhetoric of rights and autonomy is broadly endorsed, the details of implementation often become politically contested, with debates over costs, institutional authority, and the balance between autonomy and protection. The parliamentary phase will therefore represent a crucial moment in determining, through democratic procedure, whether the reform ultimately advances a rights-based paradigm or retreats into a more cautious, capacity-based framework.

Finally, and perhaps most fundamentally, the new law must engage meaningfully with the place of Māori within New Zealand's legal and constitutional order. The NZLC has acknowledged that *tikanga* Māori must inform both the substance and the procedures of decision-making law (NZLC 2024 Issues Paper, Chapter 3). This challenge is not simply technical but reflects the broader question of how the Treaty of Waitangi can be given contemporary expression in a multicultural society. *Tikanga* emphasizes relationality, collective responsibility, and the interdependence of individuals within their *whānau*, *hapū*, and *iwi* (as foundational social units in Māori culture). Reconciling these values with the individualistic orientation of international human rights instruments such as the CRPD will be a demanding but necessary task.²⁴ If the reforms succeed in

24 Lenagh-Glue, J., Tamatea, A., O'Brien, A., Glue, P., Potiki, J., Newton-Howes, G., Lee, C.,

integrating *tikanga* into the legislative framework, they may contribute not only to the legitimacy of the new law but also to the ongoing project of constitutional reconciliation in New Zealand.

Taken together, these challenges demonstrate that the reform process is as much about institution-building and cultural negotiation as it is about legal drafting. The success of the proposals will depend on whether New Zealand can combine the lessons of international practice with its own legal traditions and social commitments to create a system that genuinely enhances autonomy, protects rights, and reflects the values of a pluralistic society.

3. Comparison with Ireland and the Australian State of Victoria

The NZLC's proposals, in alignment with the CRPD, reflect a broader international shift toward supported decision-making as the central paradigm in adult capacity law in common law jurisdictions. This trajectory is also evident in recent legal reforms in Ireland and the Australian State of Victoria, both of which serve as valuable comparators due to their similar common law traditions and explicit engagement with the requirements of Article 12 of the CRPD.

3.1. Law reform in Ireland

The 2015 Assisted Decision-Making (Capacity) Act introduced a fundamental restructuring of Ireland's legal framework by establishing a continuum of support arrangements. The Act adopts a rights-based approach, replacing the traditional "best interests" standard with one grounded in the individual's will and preferences. At the center of this reform is the DSS (Section 94), a statutory body mandated to register and supervise decision supporters, handle complaints, and provide training.²⁵ The Act provides a tiered support system calibrated to varying levels of capacity, comprising five mechanisms: (i) decision-making assistance agreement, (ii) co-decision-making agreement, (iii) decision-making representative order, (iv) EPAs, and (v) advance healthcare directive. This structure reflects the broader philosophy of contemporary support and safeguarding, which, as Duffy, Browne, and Connolly observe, aims to enable individuals to engage in daily activities safely while preserving their autonomy.²⁶

The Act came into full effect on 26 April 2023 following a series of amendments. As of 31 August 2025, overall, 5,649 support arrangements

& Gordon, S. (2025). How will you hear my voice? The development of Indigenous-centred supported decision-making for mental health service users in Aotearoa New Zealand. *International Journal of Mental Health and Capacity Law*, 30, 31–45.

25 Negishi, K. (2025). Keynote report 2: Trends in adult guardianship legislation in other countries (Anglo-American law): Ireland. In *Summary of the 22nd Academic Conference of the Japanese Adult Guardianship Law Association*, pp. 12–13 [In Japanese].

26 Duffy, A., Browne, F., & Connolly, M. (2025). Safeguarding adults: A concept analysis. *Journal of Advanced Nursing*, 81(1), 181–197. <https://doi.org/10.1111/jan.16306>

had been registered with the DSS.²⁷ Among these, EPAs constituted the largest share with 3,722 cases (66 per cent), followed by Decision-Making Representative Orders with 1,628 cases (29 per cent). In contrast, Decision-Making Assistance Agreements and Co-Decision-Making Agreements remained relatively uncommon, with 160 (3 per cent) and 139 (2 per cent) registrations, respectively. These figures indicate that the two newer mechanisms are less widely utilized, underscoring the importance of public awareness and information initiatives to encourage their uptake.

Crucially, the Irish model places oversight not in the judiciary but in the DSS, an independent specialist body. This institutional choice reduces the reliance on court proceedings and enhances accessibility for users. Comparatively, New Zealand's current proposals to legislate both supported decision-making and co-decision-making arrangements bear a close resemblance to the Irish framework. Nevertheless, the retention of a representative model in New Zealand reflects a more cautious trajectory, in contrast to Ireland's complete abolition of the guardianship regime.

3.2. Law reform in the State of Victoria, Australia

The State of Victoria's reforms likewise reflect the influence of the CRPD, developed through consensus not only within state government and parliament but also with input from academia and the broader community. The 2019 Guardianship and Administration Act (Vic) mandates that guardians and administrators give primary regard to the "will and preferences" of the person concerned, thereby replacing the traditional "best interests" standard with a rights-based framework. The Act further embeds the principle of "least restrictive intervention," stipulating that guardianship or administration should be imposed only where supported decision-making measures prove insufficient. This orientation parallels the New Zealand proposals, which require representatives to prioritize rights, will, and preferences, although the precise criteria for limiting representation remain under development.

The Act came into full operation in March 2020. Under its framework, the VCAT conducts hearings upon petition to determine the appointment of guardians or administrators. Two public bodies, the OPA and State Trustees Limited ("STL"), play central roles in the day-to-day operation of the guardianship and administration system under VCAT orders, thereby ensuring a relatively well-structured support framework. Nonetheless, the uptake of "supportive guardian" and "supportive administrator" appointments have been limited, and supported decision-making practices

27 Decision Support Service (DSS). (2025). Decision Support Arrangement Statistics. <https://www.decisionsupportservice.ie/decision-support-arrangement-statistics>; De Bhailis, C. (2025, July 15). *Developments in Irish legal capacity law* [Online conference video presentation]. Supported Decision-Making National Community of Practice.

remain uncommon in practice.²⁸ This limited utilization highlights the continuing need for public information campaigns and broader cultural change to normalize supported decision-making.

3.3. Summary of comparative analysis

Taken together, these examples reveal both convergence and divergence in international reform trajectories. Convergence is evident in the widespread adoption of rights-based principles, the prioritization of supported decision-making, and the recalibration of representative roles to better respect individual autonomy. Divergence, however, emerges in institutional design: Ireland relies on a specialized oversight body (the DSS), Victoria entrusts decision-making to a tribunal (VCAT) supported by statutory agencies (OPA and STL), while New Zealand has yet to determine whether oversight will remain judicially anchored or shift toward a dedicated administrative body. These differences underscore that although CRPD compliance provides a common normative foundation, domestic legal traditions, institutional capacities, and cultural contexts decisively shape the concrete form that reforms take.

This comparative analysis suggests that New Zealand stands at a pivotal juncture. By drawing on Ireland's comprehensive systemic transformation and Victoria's incremental rights-based recalibration, New Zealand has the opportunity to develop a hybrid framework that synthesizes the strengths of both approaches. Such a model would preserve the authority and cultural responsiveness of the Family Court in complex or contested matters, while introducing an independent administrative body to register support arrangements, monitor compliance, and provide low-cost triage. This dual structure could achieve a balance between accessibility and judicial oversight, ensuring that rights-based principles are operationalized in ways that are both procedurally robust and attuned to bicultural commitments under the Treaty of Waitangi. In this sense, a hybrid framework offers not merely a compromise between models but a distinctive institutional pathway, capable of reconciling autonomy, accountability, and cultural pluralism within a coherent system. Table 1 below summarizes the key dimensions of comparison.

4. Conclusion

New Zealand's review of adult decision-making law signals a paradigmatic shift in how decision-making, capacity, and autonomy are conceptualized. The proposed repeal of the PPPR Act and its replacement

28 VCAT made 22/24 (2019–20), 18/30 (2020–21), 28/37 (2021–22), 33/45 (2022–23), and 9/40 (2023–24) appointments for supportive guardian/administrator under the Act. All supportive guardians have been family members; none the Public Advocate. Data from VCAT, 3 Nov 2022, 23 Feb 2023, and 30 Apr 2025 to respond the author's questionnaire.

with a rights-based framework, grounded in the primacy of will and preferences, is essential both to align domestic law with the CRPD and to give effect to New Zealand's bicultural constitutional foundation.

Wholesale repeal of the PPPR Act is justified by three core factors. First, the "best interests" model entrenched in the Act is fundamentally incompatible with CRPD Article 12, which recognizes equal legal capacity. Second, the Act omits recognition of the Treaty of Waitangi and *tikanga* Māori, both indispensable in a bicultural constitutional order. Third, the Act's structural fragmentation renders piecemeal amendment unworkable, necessitating a comprehensive replacement.

The Law Commission's proposals respond directly to these deficiencies. They reconceptualize capacity as a dynamic and culturally responsive threshold; establish supported and co-decision-making as primary arrangements; replace the "best interests" test with a statutory duty to respect rights, will, and preferences; and provide legal recognition for wishes statements alongside simplified, better-regulated Enduring Powers of Attorney.

A judicial-administrative hybrid model emerges as the most effective institutional framework for New Zealand. While Ireland's Decision Support Service illustrates strong administrative oversight, New Zealand's distinct need to integrate *tikanga*-informed processes—particularly in Family Court proceedings involving whānau and collective decision-making—requires a central judicial role. A hybrid model, comparable to Victoria's VCAT/OPA/STL but explicitly incorporating Treaty-based and *tikanga* principles, best reconciles a rights-based paradigm with the bicultural context.

New Zealand's model carries significant lessons for Asian jurisdictions reforming adult guardianship under the CRPD. Japan, for instance, currently influenced by England and Wales' 2005 Mental Capacity Act in its Guardianship Guidelines, may adapt New Zealand's continuum of support, spanning supported, co-decision, and representative arrangements, combined with specialized judicial or tribunal oversight. The explicit integration of cultural values, such as *tikanga* Māori, further provides a potential blueprint for Asian jurisdictions seeking to balance universal human rights standards with enduring traditions of familial and community-based responsibility.

To ensure effective implementation of the proposed reforms, a coordinated strategy is required. Key recommendations include:

- Training and education: Develop sustained training across legal, health, and social service sectors, supplemented by public education campaigns to normalize supported decision-making and clarify the "will and preferences" standard.

- Oversight model: Establish an independent administrative body, adapted from Ireland's DSS, to register support arrangements, investigate complaints, and provide training, in partnership with a reformed Family Court to create an accessible, low-cost triage system.

- Culturally safe procedures: Embed *tikanga* Māori principles of relationality, *whānau* involvement, and collective decision-making in both administrative and judicial processes.

- Staged implementation: Introduce reforms gradually, allowing for institutional capacity-building, information technology infrastructure development, and comprehensive professional training.

Ultimately, New Zealand's reforms demonstrate how a will-and-preferences paradigm can be grounded in bicultural constitutional principles. This approach not only fulfills CRPD obligations but also offers a normative framework for jurisdictions seeking to reconcile universal human rights standards with culturally embedded models of autonomy. ●

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Table 1: Comparison between New Zealand, Ireland, and Victoria

Item	Issues Paper 2024, New Zealand	Assisted Decision-Making (Capacity) Act 2015, Ireland	Guardianship and Administration Act 2019 (Vic), Australia
Guiding Principle	Protect human rights; respect rights, will, and preferences	Abolishes guardianship; supported decision-making as core principle	“Least restrictive intervention;” prioritization of supported decision-making
Support System	Formal supported decision-making and co-decision-making	Decision-Making Assistance Agreement; Co-Decision-Making Agreement; Decision-Making Representative Order; EPAs; and Advance Healthcare Directive	Supported decision-making prioritized; guardianship only as last resort
Role of Representative	Shift from “best interests” to “rights, will, and preferences”	Representatives must respect will and preferences	Guardians/administrators must respect will and preferences
Oversight Body	Considering a single oversight body to supplement courts	The DSS (specialized independent authority)	VCAT, OPA, and STL (state bodies)
Institutional Model	Currently court-centric, moving towards hybrid or specialized body	Specialized Independent Administrative Body (DSS)	Judicial/Administrative Tribunal Hybrid (VCAT/OPA/STL)
Costs and Access	Current system criticized for costs and delays	Designed to reduce reliance on adversarial court processes	Tribunal structure intended to enhance accessibility over traditional courts

Author Contribution

The author contributed to the study conception and design. The author read and approved the final manuscript.

Declarations

Conflict of Interest: The author declare no competing interests.

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