

# Introduction to the PPPR Act 1988



**Auckland** Disability Law

## United Nations Convention on the Rights of Persons with Disabilities

Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) says:

- ▶ People have the right to make decisions affecting their life
- ▶ People are entitled to appropriate support when making decisions
- ▶ In NZ, the relevant law is the Protection of Personal and Property Rights Act (1988)

## The Protection of Personal and Property Rights Act 1998

Provides for the protection and promotion of the personal and property rights of people not fully able to manage their own affairs.

- **Presumption of competence** - it has to be proven that the person lacks capacity, rather than the other way round.
- Make the **least restrictive** intervention possible in the life of the person.
- To enable or encourage that person to exercise and develop such capacity as he or she has to the **greatest extent** possible.
- Actions are to be in best interests of person subject to order

## Capacity

*The ability to understand the nature, and foresee the consequences, of decisions in respect to matters; and*

*The ability to communicate decisions in respect of those matters*

The court requires evidence of non-capacity from a medical practitioner before making orders under the Act.

This is a clinical assessment that fits into the legal test required by the PPPR Act.

## Protection of Personal and Property Rights Act 1988

- ▶ Enduring Power of Attorney
  - ▶ Personal Orders (includes property administration)
  - ▶ Property Managers
  - ▶ Welfare Guardians
- ▶ Regardless of which option is invoked, the duty to encourage and maximise the capacity of the person remains

## Powers of Attorney

### **Donor – Person giving authority**

- ▶ Must have Capacity
- ▶ 18+ years old

### **Attorney – Person receiving authority**

- ▶ Over 20 years old
- ▶ Be of sound mind
- ▶ Have agreed to be the Attorney

## Enduring Power of Attorney

2 types of enduring POA:

- **Enduring power of attorney for personal care and welfare.** Only comes into effect when donor loses mental capacity. Only 1 person can be appointed.
- **Enduring power of attorney for property.** Can come into effect before or after donor loses mental capacity. More than 1 person can be appointed, depending on wording of EPOA.
- Same person can be appointed to be both types of attorney

## Personal Orders

Specific types of orders can be made and these are set out in the Act:

- Personal care after parents' death
- Living arrangements
- Medical advice or treatment
- Educational, rehabilitative, therapeutic or other services
- Prohibition on leaving New Zealand
- 'Next of friend' or guardian ad litem = subject of litigation
- Property administration
- Welfare guardian

## Welfare Guardians

- ▶ The right and responsibility to make decisions about the personal care and welfare of another person
- ▶ Appointed by the Family Court as a type of Personal Order
- ▶ Only one person can be appointed (unless exceptional circumstances)
- ▶ Renewed every three years (unless exceptional circumstances)
- ▶ This is an appointment of “last resort” – if there is a short term problem the Court will prefer to make other personal orders to deal with the problem rather than appointing a welfare guardian.
- ▶ Because the welfare guardian totally takes over decision making this is seen as the **most restrictive order** possible.

## Limitations on Actions – Care and Welfare

- ▶ No power to:
  - ▶ Make decisions about the person relating to entering or dissolution of marriage or civil union
  - ▶ Make decisions about the adoption of any children of the person
  - ▶ Refuse consent to life saving treatment (includes making DNR requests)
  - ▶ Consent to ECT or brain surgery for behaviour modification
  - ▶ Consent to experimental treatment except for life-saving purposes
  - ▶ Request assisted dying for the person
- ▶ Applies even if person has an Advance Directive

## Administration of Property

The Family Court can make two kinds of orders about property under the Act:

- A **personal order** dealing with property, for small amounts of the property (Property Administrator), or
- A **full** property order (Property Manager).

The type of order depends on the amount of property or income that the person has or receives.

## Personal order dealing with property

An order to administer any property or income or benefit.

Cannot be made for:

- Any item of property exceeding \$5000 in value
- Any income or benefit in excess of \$20,000.

Property to be administered so as to encourage the exercise and development of capacity.

Reporting requirements less onerous than Property Manager

## Appointment of Property Manager

- ▶ The right and responsibility to manage property on behalf of another person
- ▶ Appointed by the Family Court
- ▶ More than one person can be appointed. May be Trustee Corporation
- ▶ Able to charge for "reasonable costs"
- ▶ Renewed every three years (unless exceptional circumstances)
- ▶ Annual financial statements have to be filed in writing to the Family Court & limitation on capital sales & purchases (\$120,000)

## Who can apply for a PPR Order?

- ▶ The person themselves
- ▶ A relative of the person
- ▶ Anyone to whom the person has given a Power of Attorney
- ▶ A medical practitioner or social worker
- ▶ A representative from any non-profit group that provides services and facilities for people who have lost their mental capacity
- ▶ The principal manager of a hospital, rest home or residential facility where the person is staying,
- ▶ Any property manager appointed for the person under the Act
- ▶ Any other person who gets the court's permission to apply

## PPPR: Applying for an Order

- ▶ The process can be challenging. Using a lawyer is recommended.
- ▶ Legal Aid is available for those meeting the criteria
- ▶ Application forms can be obtained from the Family Court or online at: <http://www.justice.govt.nz/>
- ▶ Pre-hearing conference, for issues that may be resolved without a hearing.
- ▶ Full Family Court hearing
- ▶ Person lacking capacity will be at the hearing, represented by a court-appointed lawyer.
- ▶ Their lawyer will assist them to understand the orders sought, and make recommendations to the court.
- ▶ The court will consider evidence about the person's mental capacity, then make the appropriate orders.

## PPPR Orders – Review of orders

- ▶ Section 86-87 PPPR Act – review of orders
- ▶ Section 89 – review of decisions of WG or PM
- ▶ Section 103 – review of decisions by Attorney
- ▶ Who can apply to the court for review?
  - ▶ The person
  - ▶ The Welfare Guardian or Property Manager
  - ▶ Any other person with leave of the court



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