

**NOTICE 140 OF 2004****SOUTH AFRICAN LAW REFORM COMMISSION  
DISCUSSION PAPER ON ASSISTED DECISION-MAKING**

The South African Law Reform Commission has released for general information and comment a Discussion Paper dealing with assisted decision-making for adults with impaired decision-making capacity.

Making decisions is an important part of human life. Although we take it for granted that adults can make decisions about their personal welfare, financial affairs and medical treatment, some adults cannot make such decisions for themselves because of diminished capacity as a result of mental illness, intellectual disability, physical disability or an incapacity related to ageing in general. A legitimate expectation of the law is that it should establish a structure within which appropriate autonomy and self-determination is recognised and protected. Such a structure should provide appropriate substitute decision-making devices and the necessary protection from abuse, neglect and exploitation.

At present the law deals with decision-making incapacity by way of curatorships. The curatorship system has been criticised on the ground that it suffers from a number of serious and frustrating difficulties. An individual can also allow another to act on his or her behalf through a power of attorney. A power of attorney however terminates on the incapacity of the person who granted the power. The latter is a major cause for concern: Frequently care givers are under the impression that the power granted by a person in their care will be effective until that person dies, even in cases where the person had severely diminished mental capacity and is therefore incompetent in the eyes of the law.

Against the above background the Commission on a preliminary basis proposes that a change to the law is necessary. The detail of the Commission's proposals is reflected in the proposed draft legislation included in the Discussion Paper.

The Discussion Paper is obtainable free of charge from the Commission upon request (contact Mr Jacob Kabini). Written comments or suggestions should reach the Commission by **31 March 2004** at the following address:

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The full Discussion Paper as well as a Summary containing the proposed draft legislation is also available on the Internet at the following address:

<http://www.law.wits.ac.za/salc/salc.html>