

2. Legal Capacity

This is a plain English summary of Australia's 2019 CRPD Factsheet 2

Issue

Some Australian laws and practices mean that people with disability

- Are not recognised as persons before the law
- Do not have a right to legal capacity

Examples are

- Guardianship laws
- Estate management laws
- Mental health laws

These laws affect people's rights in financial areas, voting, public life, court processes and being able to choose disability support.



The Australian government says this is OK because of our interpretive declaration to Article 12 of the CRPD.

Law Reform Report

The Australian Law Reform Commission held an enquiry into this area.

In 2014 their report made 55 recommendations.

The government has not replied to this report and the recommendations.

This report was good but only covered Federal laws in Australia not state and territory laws which cover financial management, guardianship and mental health.

In 2013 the CRPD Committee recommended Australia withdraw the interpretive declaration to article 12 and replace substitute decision making with supported decision making.

What we recommend

Change or remove law or policy, which deny or decreases recognition of any person with disability as a person before the law.

Stop any practices that deny or decreases recognition of any person with disability as a person before the law.

Implement the recommendations from the 2014 Report called 'Equality, Capacity and Disability in Commonwealth Laws'.