

SUMMARY

The Australian Guardianship and National Disability Insurance Scheme : Focusing on Supported Decision-Making Practices in the States of Victoria and New South Wales

Emiko Kiguchi
[Tsurumi Junior College]
Masaru Nagawa
[University of Tsukuba]
Yukio Sakurai
[Yokohama National University]

The purposes of this paper are primarily to review policy and legislative frameworks, law reforms and practices regarding Australian guardianship, supported decision-making, and the national disability insurance system for persons with disabilities in the states of Victoria and New South Wales (NSW). This paper also examines how, and to what extent, the main features and values behind the policy and legislative frameworks are being implemented. Australia was influenced by English law for common law jurisdiction, however, guardianship and its relevant laws have developed uniquely since the 1980s in order to meet the Australian people's requirements. Australia is a federal country and thus guardianship and its relevant system are regulated by law in each state and territory. After the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) in 2008, Law Reform Commissions in the states of Victoria and NSW tabled law reform proposals of guardianship and administration system to the respective parliaments to incorporate supported decision-making into legislation. These proposals reflected the values of CRPD by taking the will and preferences of persons with disabilities into consideration. Supported decision-making would be largely applied to the individuals themselves and guardianship would be regarded as a last resort. The National Disability Insurance Scheme (NDIS) bill has passed the Federal parliament to newly establish a tax funded national insurance system to support persons with disabilities throughout Australia. With such new policy designs, supported decision making has been put into practice in the community. Some research work examined those practices in order to improve supported decision-making methods and make them more effective in welfare services. It is recognized through close observations of Australian policy and legislative frameworks and practices, and particularly so regarding supported decision-making, that the values of autonomy and self-determination are highly respected. There are risks associated with the progress of supported decision-making, so safeguard systems that can utilize substitute decision making are being developed. There are also ongoing discussions regarding personal dignity associated with risk and risk-enablement. It is therefore presumed that the Australian project of guardianship and national disability insurance system projects, including supported decision-making, will give some useful implications for Japan when attempting a balance between autonomy and protection.