**ISSUE: Equality before the law and supported decision-making**

(See Article 12 on page 10 of DPO Australia Submission to the CRPD)

**Background**

A number of Australian laws, policies and practices deny or diminish recognition of people with disability as persons before the law, or deny or diminish the right of a person with disability to exercise legal capacity.

This takes place in laws such as guardianship, estate management and mental health laws and affects areas such as financial services, voting, public office, board participation, access to justice, will making and deposition, providing evidence in court proceedings, and the opportunity for people with disability to choose what disability supports they need, who will provide them and when.[[1]](#endnote-1)

The Australian Law Reform Commission (ALRC) conducted an inquiry into barriers to equal recognition before the law and legal capacity for people with disability, and provided its final report from this inquiry in November 2014.[[2]](#endnote-2) The ALRC made 55 recommendations for reform aimed at providing people with disability equal recognition before the law, in particular, in relation to the right to make decisions that affect their lives and to have those decisions respected. A key recommendation was for the recognition of National Decision-Making Principles and Guidelines to guide reform of Commonwealth, State and Territory laws and legal frameworks.[[3]](#endnote-3) Australia has not responded to the recommendations from the ALRC report.

While welcome, the ALRC inquiry was limited to Commonwealth legislation. It did not directly address the State and Territory financial management, guardianship and mental health laws but only had regard to how Commonwealth laws and legal frameworks interact with State and Territory laws in the areas under review.[[4]](#endnote-4) Substantive compliance with article 12 will be difficult to assess without a thorough analysis of financial management, guardianship and mental health laws at the State and Territory levels.

Australia’s interpretative declaration in relation to CRPD article 12 states that Australia understands this article to allow for ‘fully supported or substituted decision making arrangements’.[[5]](#endnote-5) This interpretative declaration limits reform and provides for the ongoing practice of substitute decision-making. This is despite the concluding observations from the Committee on the Rights of Persons with Disabilities to withdraw the interpretative declaration and to replace substitute decision-making with supported decision-making.[[6]](#endnote-6)

**Proposed Questions**

**Please elaborate on measures taken to ensure that all persons with disability enjoy the recognition of legal capacity on an equal basis with others in all aspects of life. Give particular attention to measures that ensure that persons with disability can exercise their legal capacity to: maintain their physical and mental integrity; fully participate as citizens; control their own financial affairs; make a legally binding will; vote; and, independently make advance care directives.**

Please update the Committee on progress toward implementing recommendations from the Australian Law Reform Commission (ALRC) 2014 review into barriers to equal recognition before the law.

Please update the Committee on measures taken to establish a nationally consistent *‘Supported Decision-Making Framework’* that promotes, prioritises and supports people with disability to exercise their legal capacity.

**Endnotes**

1. See e.g. Civil Society CRPD Parallel Report Group, *Disability Rights Now: Civil Society Report to the United Nations Committee on the Rights of Persons with Disabilities* (2012), People with Disability Australia <http://www.pwd.org.au/documents/project/undrc/CRPD-CivilSocietyReport2012.doc>; Disability Rights Now Factsheets prepared by the Australian Civil Society CRPD Parallel Report Delegation for the 10th Session of the Committee on the Rights of Persons with Disabilities, <http://www.pwd.org.au/issues/2013-delegation-to-geneva-switzerland-2.html> [↑](#endnote-ref-1)
2. Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, ALRC Report 124 (2014, <https://www.alrc.gov.au/news-media/equality-capacity-and-disability-alrc-report> [↑](#endnote-ref-2)
3. Ibid, p.11 [↑](#endnote-ref-3)
4. Ibid, p. 5, <http://www.alrc.gov.au/inquiries/disability/terms-reference> [↑](#endnote-ref-4)
5. Convention on the Rights of Persons with Disabilities: Declarations and Reservations (Australia), opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008). [↑](#endnote-ref-5)
6. United Nations Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Australi*a, 10th Session (4 October 2013) [8]-[9] & [24]–[25]. [↑](#endnote-ref-6)