

Yokohama Declaration

Adopted by the First World Congress on Adult Guardianship Law,
Yokohama, Japan, October 4th, 2010,
revised and amended by the Fourth World Congress on Adult Guardianship Law,
Erkner/Berlin, Germany, September 16th, 2016.

- Draft -

Japanese Part

After expressing their full accord with the spirit of this revised declaration, the Japanese participants at the World Congress on Adult Guardianship Law 2016 urged the Japanese government to revise and improve the current law concerning the legal support and protection of adults at the earliest opportunity, and confirmed the following items to be included in the Yokohama Declaration with the full support of overseas participants:

1. Fundamental Principles

- (1) We should abolish the deprivation of capacity in all areas of decision making (the former adjudication of incompetence).
- (2) We should only allow limiting capacity as the least restrictive system within the essential scope of the legal support and protection of adults.

2. Evaluation of the Concept of the Convention on the Rights of Persons with Disabilities

- (1) We should respect the importance of the concept of supported decision making.
- (2) We should develop support methods using supported decision making according to the format of disabilities such as dementia, intellectual impairment and mental disorder.
- (3) We should prevent the abuse of authority by and regulate undue influence of supported decision makers.
- (4) We should secure effective ways of dealing with safety, legal support and protection of adults.
- (5) We should confirm that under the Convention on the Rights of Person with Disabilities the least restrictive statutory representative system can be tolerated.

3. Revision of the current Japanese Law and improvement in the operation of the law

- (1) The current Japanese system is based on the three types of protection, namely guardianship, curatorship, and advisership. Guardianship, in particular, considerably limits the capacity of the adult. Considering the effect of Article 12

of the Convention on the Rights of Persons with Disabilities, it is necessary to review the appropriateness of the current three types. At the same time it is also necessary to review the procedural protections of the adult in the procedures for legal support and protection of adults.

- (2) Legislative measures must be taken to create a system to facilitate more active municipal petitioning, by heads of municipalities around the country, for issues such as legal support and protection for adults.
- (3) Public subsidies should be provided to those who have difficulty paying the costs of the system for legal support and protection.
- (4) Given that the commencement of adult guardianship has an aspect of restricting the rights of adults, an assessment and interview with adults should not be omitted and the current situation—in which the rate of execution of assessments and interviews with adults remains at a low level—should be improved.
- (5) Although the current Japanese Law specifies that a legal representative (guardian, curator, or advisor) of an adult must be assigned with power of representation for the adult’s property only, the legal representative’s power of representation should not be limited to property management alone and this point should be revised. The legal representative should be able to consent to medical treatment for the adult as well.
- (6) Disqualifications remaining in the current system should be abolished.
- (7) Although the continuing power of attorney system is the most appropriate system in terms of “respect of the right to self-determination,” it has not been widely used. Legislative measures should be taken to promote the use of the continuing power of attorney system and at the same time to prevent abuses.

4. Creation of a public support system

Irrespective of the scale of the user’s assets or the existence of the petitioner, the system of the legal support and protection for adults should be available for everyone, and for this reason it is essential that the government publicly support the entire system. Since a public support system results in the “socialization of the legal support and protections for adult(s)”, the creation of a public support system by the government is recommended. The main premise of smooth implementation of a public support system should be further expansion and enhancement of functions of the judiciary, especially functions of the family courts in the operation of the system for the legal support and protection of adults. The establishment of such a public support system is to expand the network among the adults’ families, the general public and the specialists in each field and to contribute to securing appropriate legal representative of adults and enhancing the advocacy functions of the system for the legal support and protection of adults.

The World Congresses on Adult Guardianship Law 2010 and 2016
WCAG2010 and WCAG 2016 Organizing Committees
All Japanese Participants at WCAG2010 and WCAG 2016