Government of **Western Australia**
Department of **Communities**

# Human rights and the authorisation of restrictive practices

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## Background

Human rights are those rights and freedoms universally accepted as essential for the enjoyment of a life based on the principles of dignity, equality and mutual respect.

‘Human rights recognise the inherent value of each person, regardless of background, where we live, what we look like, what we think or what we believe’ (Australian Human Rights Commission).

In 2008, Australia ratified the United Nations Convention on The Rights of Persons with Disabilities which aims to promote and protect the rights and dignity of persons with disabilities. ‘The Convention follows decades of work by the United Nations to change attitudes and approaches to persons with disabilities’ (OHCHR, n.d.).

A Royal Commission into the Violence, Abuse, Neglect and Exploitation of People with Disabilities (Disability Royal Commission) took place from 2019 to 2023. It listened to the lived experiences of people with disability and made recommendations on how to improve laws, policies, structures and practices to ensure a more inclusive and just society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.

The Disability Royal Commission noted that people with disability are disproportionately subjected to restrictive practices that deny them their autonomy. In response, one of the Disability Royal Commission’s recommendations was that ‘people with disability should not be subjected to restrictive practices, except in accordance with procedures for authorisation, review and oversight established by law’.

The National Disability Insurance Scheme (NDIS) Act 2013 gives effect to the principles and obligations under the UN Convention. Under the NDIS, Australian States and Territories are responsible for authorising regulated restrictive practices.

In Western Australia (WA), the Authorisation of Restrictive Practice in Funded Disability Services Policy (Policy) sets out the requirements for authorisation of restrictive practices

for people receiving disability services funded through the NDIS or the WA State Government.

## What are restrictive practices and prohibited practices?

The Policy defines restrictive practices as 'any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability'. Using a restrictive practice means restricting the rights of a person with disability.

There are five types of regulated restrictive practices that require authorisation.

In the Policy, high risk physical restraints and punitive practices are prohibited and can never be authorised. These practices may lead to serious injury, trauma or death.

## Human rights principles

The human rights principles underpinning the Policy apply to people with disability who have the same rights as all people to:

- equality before the law and equal protection under the law
- live free from abuse, neglect and exploitation
- have respect for their culture, individual worth and dignity
- determine their own best interests and exercise choice and control
- access the support they need to make decisions and communicate their needs and choices
- live and work in a safe environment and have access to the community.

## A human rights approach to restrictive practices

The Policy aims to ensure that:

- Positive outcomes and quality of life improvements for people with disability are central in decision-making processes.
- People with disability are presumed to have capacity to make decisions, unless proven otherwise for a specific decision at a specific time.
- People with disability are entitled to dignity of risk and to make decisions for themselves even where this holds inherent risks.
- The role of families, carers and other significant persons with whom people with disability share their lives, are acknowledged and respected.

# Principles for use of a restrictive practice

The Policy requires that:

- People with disability have access to effective person-centred behaviour support, with restrictive practices only occurring as a last resort where they are proportionate and necessary to protect the rights or safety of the person and/or others.
- Implementing Providers and Behaviour Support Practitioners are required to take a human rights approach while delivering NDIS or State funded disability services to people with disability in WA.

All five principles for the use of a restrictive practice must be met for the regulated restrictive practice to be authorised under the Policy. The five principles are protective of people's human rights by aiming to ensure that:

- regulated restrictive practices are only used as a last resort, for the shortest period of time, to reduce the risk of harm to a person
- the impacts of the restrictive practice on the person's quality of life are minimised
- the focus of the authorisation process remains on the person's needs and human rights.

# References


- *What are human rights? | Australian Human Rights Commission*. https://humanrights.gov.au/resource-hub/by-resource-type/pages-missing-assets/what-are-human-rights
- OHCHR. (n.d.). *OHCHR | Background to the Convention*. https://www.ohchr.org/en/treaty-bodies/crpd/background-convention
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (2023). *Final Report - Volume 6, Enabling autonomy and access*. https://disability.royalcommission.gov.au/publications/final-report-volume-6-enabling-autonomy-and-access


# Contact information

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