



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



Consultation Paper

**Authorisation of Restrictive Practices in
disability services in Western Australia**

Plain Language version

July 2021

For information only

This document has been written to help everyone understand the Authorisation of Restrictive Practices in disability services in Western Australia. It explains what we would like your feedback on and how you can provide feedback. This will then help us to develop a new process to be used in the formation of new laws around restrictive practices in Western Australia.

In this document you will find:

- Restrictive practices and what they are
- The Authorisation of Restrictive Practices process
- The information we consider in the authorisation of restrictive practices process
- Details on how you can provide feedback on your experiences, thoughts, and ideas

This is a Plain Language version of some of the content of the Consultation Paper on the authorisation of restrictive practices in disability services in Western Australia. For further detailed information please refer to that document or email arlegislationproject@communities.wa.gov.au.

Acknowledgement of Country

The Western Australian Government proudly acknowledges the Traditional Owners and recognises their continuing connection to their lands, families and communities. We pay our respects to Aboriginal and Torres Strait Islander cultures and to Elders past, present and emerging.

The first step in living alongside and working with the Aboriginal community is built upon establishing respectful relationships. Crucial to these respectful relationships is acknowledging the history of Aboriginal people and recognising the importance of connection to family, culture and country.

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Introduction

Restrictive practices

A restrictive practice is anything that takes away your rights or freedom of movement.

Types of restrictive practices are seclusion, chemical restraint like medication to control you, mechanical restraint, physical restraint or physical force and environmental restraint.

Authorisation of restrictive practices

Authorisation means the process for deciding whether the use of a restrictive practice should be allowed to be used for a person with a disability. The purpose of the process for authorisation of restrictive practices is to protect people with disability by assessing whether a restrictive practice can be used.

When a restrictive practice has been authorised, a service provider can use the restrictive practices as part of the support for a person with disability. Only regulated restrictive practices can be authorised.

Our aims

The Western Australian Government recognises that people with disability have the same human rights as everyone else, including the right to be listened to, respected, and kept safe.

A new law for the authorisation of restrictive practices will be developed that helps to reduce and eventually stop the use of restrictive practices in disability services in Western Australia.

What is currently in place in Western Australia?

Today, the process for the authorisation of restrictive practices is outlined in the [Authorisation of Restrictive Practices in Funded Disability Services Policy](#) (Policy). The Policy applies to the use of regulated restrictive practices in both National Disability Insurance Scheme services and disability services that are funded or delivered by the Department of Communities (Communities).

Why are we replacing the current Policy?

The current Policy was published as a temporary policy while new laws are developed.

Have your say

Your feedback will help us to better understand the preferences, experiences and needs of people with disability, families, carers, and service providers so we can develop recommendations for the Western Australian Government.

How do I give my feedback?

There are many ways you can give feedback, including:

- writing a letter or email
- filling in a feedback form
- filling in the online community survey
- applying to attend a workshop on your own or with your family member or carer
- attending one of our community drop-in events.

All forms, surveys and community activities can be found on the [consultation activities](#) webpage.

You can post your letter to Communities or send an email.

- Postal address: Department of Communities
Community Services (Inclusion)
Locked Bag 5000
Fremantle WA 6959
- Email address: arlegislationproject@communities.wa.gov.au.

If you have any questions or would like to provide feedback in a different way, please send an email to arlegislationproject@communities.wa.gov.au or call us on 0439 497 940.

When you provide your feedback, please give us as much information as you can. This could include examples that helps us understand what affect these new laws will have on you. Please also tell us information about yourself, such as your age, what region of Western Australia you are from, and whether you are a person with lived experience, such as a person with disability or a family member, carer or guardian of a person with disability.

How long do I have to give my feedback?

All feedback must be provided by **11.59pm Sunday, 22 August 2021**.

Will my feedback be confidential?

If you prefer your name to remain confidential, please tell us that when you give us your feedback. Any information provided to Communities can be requested under freedom of information requests. If information is released, personal information will be removed.

What are we consulting about?

Communities wants to know how you think restrictive practices should be authorised.

Communities wants to know your views on the authorisation of restrictive practices in disability services. Communities wants to know:

- Who should make authorisation decisions?
- What practices are to be authorised, prohibited or exempt?
- How authorisation decisions should be made, evidenced and documented?
- When authorisation should be required?
- What happens if the authorisation process is not followed, or something goes wrong?

1. Who should make authorisation decisions?

We would like your feedback on who should make authorisation decisions when developing a process for Western Australia. We would like you to consider:

- A. The role of the person with disability (and/or their family and other support networks) in authorisation decisions.
- B. The type of decision maker for authorisation decisions.
- C. Where the decision-maker should come from (level of decision-making).

A. Role of the person with disability

The model will need to confirm the role of the person with disability in decisions about the authorisation for specific restrictive practices.

Role of the person with disability	Description/conditions
i. Not involved	No requirement to consult with or obtain consent from the person with disability to authorise a restrictive practice.
ii. Consultation	A requirement to consult with the person with disability and consider their input and preferences before authorising a restrictive practice but no requirement to obtain consent.
iii. Consent	<p>A requirement to consult and obtain consent from the person with disability before authorising a restrictive practice.</p> <p>If the person is an adult and does not have the capacity to give valid consent, there are two options:</p> <ol style="list-style-type: none"> 1. Consent can be provided on behalf of an adult with disability by a legal guardian. 2. New legislation developed to authorise a person other than a guardian to provide consent on behalf of a person with disability (e.g. a spouse, family member or close friend).

B. Role of the decision-maker

The model will need to confirm who the decision maker is to provide authorisation for specific restrictive practices, which may be one or more of the below decision-makers.

Decision-maker	Description
i. The person with disability	This would be the person subject to restrictive practices.
ii. Delegated individual	This might be an independent government officer, or an employee of the service provider who has been approved to make authorisation decisions.
iii. Delegated panel	This might be a panel established by government or by the service provider and would include a person with knowledge of the person with disability.

C. Level of authority the decision-maker should have

The model will need to confirm at what level authorisation decisions are to be made.

Level of decision-making	Description
i. Centralised (Government)	The making of authorisation decisions by a government officer(s) that works for the Western Australian Government as the decision maker.
ii. Decentralised (local)	Authorisation decisions are delegated to local decision makers, which may include a service provider and/or community member.
iii. Hybrid (Government and local)	A two-tiered approach. Some authorisation decisions would be made by a government officer(s) that work for the Western Australian Government and some decisions would be delegated to local decision makers.

2. What practices should be authorised, prohibited or exempt?

The model will need to be clear about what can or cannot be authorised.

A. Restrictive practices that can be authorised

- Seclusion, chemical restraint, mechanical restraint, physical restraint, and environmental restraint will continue to be authorised under the new authorisation model and laws.

B. Restrictive practices that cannot be authorised and will always be prohibited

- High-risk physical restraints and punitive practices or psychosocial restraints will remain prohibited under the new authorisation model and laws.
- Western Australia will consider if there are other practices that should be prohibited, such as the seclusion of children.

C. Practices that are exempt from this authorisation process

- Some restraints used for treatment purposes, devices used for therapeutic, or safety purposes and court ordered practices are not required to be authorised.
- Western Australia will consider if there are other practices that should be exempt.

3. How should authorisation decisions be made?

The model will need to be clear about how authorisation decisions are made and demonstrated.

The criteria used to make authorisation decisions

Any proposed restrictive practices must meet the following criteria:

- used only as a last resort
- be the least restrictive response possible
- considered within the context of other alternatives
- reduce the risk of harm to the person with disability and/or others
- be in proportion to the potential negative consequences or risk of harm
- be used for the shortest time possible to ensure the safety of the person with disability and/or others
- the person's Behaviour Support Plan includes strategies to reduce and eliminate restrictive practices over time if safe and appropriate to do so.

Western Australia will consider if any additional criteria should be used.

The evidence needed to demonstrate that the authorisation process has been completed

Evidence demonstrating a completed Authorisation of Restrictive Practice could include:

- A completed Behaviour Support Plan
- A quality assurance outcome report of a Behaviour Support Plan including restrictive practices
- Formal communication from the authorising decision-maker.

4. When should authorisation be required?

Implementing Providers are required to ensure the use of restrictive practices is authorised. Western Australia is responsible to set the model for authorisation. The new model will need to be clear about when authorisation is required.

- The use of restrictive practices as specified in a Behaviour Support Plan during provision of day-to-day services will continue to need to be authorised under the new authorisation model and laws.

- Currently, the use of restrictive practices outside of a Behaviour Support Plan cannot be authorised and must be reported as an unauthorised restrictive practice. Western Australia may consider if this should be confirmed or if there are any circumstances where authorisation is appropriate even though the restrictive practices are not contained in a Behaviour Support Plan.

5. What safety and support arrangements should be in place if something goes wrong?

Processes to appeal authorisation decisions and/or raise concerns and complaints

The model will need to outline the type of appeals and tools to complain that are available to a person with disability and their family and other support networks.

- A clear and accessible pathway for a person with disability to appeal or request a review of authorisation decisions.
- Whether a complaints mechanism is needed.
- Appropriate penalties and supports to be included in the Western Australian model.

Requirements for reporting on the processes undertaken for authorisation and process outcomes

The model will need to include reporting requirements of the authorisation process.

- Are new requirements needed or are existing requirements enough?
- Where information is not available, new specific reporting and information sharing arrangements should be included in the new laws.

Any other safety and support arrangements

To ensure ongoing safety and care for people with disability and those around them, the new laws may need to outline other safety obligations or mechanisms.

How the authorisation model will be implemented and evaluated

Following the consultation process, Communities will consider all the feedback received and make a recommendation to the Western Australian Government who will decide on the preferred Western Australian authorisation model. Laws will be developed for consideration by State Parliament.

Further information

The Consultation Paper on the authorisation of restrictive practices in disability services in Western Australia is represented in the following formats:

- Consultation Paper on the Authorisation of Restrictive Practices in Disability Services in Western Australia (detailed document).
- Plain language version (this document).
- Text only version.
- Image and text information sheet.

Feedback can be provided in the following ways:

- Feedback Form.
- Survey for community, people with disability, their families, and carers.
- Survey for service providers, organisational representatives, local and state government representatives.
- Community Drop-in events.
- Lived experience workshops, including webinar option.
- Service provider workshops.

All forms, surveys and community activities can be found on the [consultation activities](#) webpage.

If you require additional help please contact arplegislationproject@communities.wa.gov.au.