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

Consultation Paper

Authorisation of restrictive practices in disability services in Western Australia

July 2021

For information only

Preface

This paper has been produced as a general guide for feedback on the preferred approach to authorise restrictive practices in disability services in Western Australia. This paper also meets the requirements of the Better Regulation Program as a Consultation Regulatory Impact Statement.

This publication is free and can be made available in alternative formats on request from the Department of Communities using the following contact details:

- Email: arplegislationproject@communities.wa.gov.au
- Street Address: 5 Newman Court, Fremantle, WA 6160
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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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Glossary of abbreviations

ARP: Authorisation of restrictive practices

BSP: Behaviour Support Plan

CALD: Culturally and Linguistically Diverse

Communities: The Department of Communities

Current Policy: Authorisation of Restrictive Practices in Funded Disability Services Policy

Disability Royal Commission: Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

National Framework: National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector

National Principles: Principles for Nationally Consistent Authorisation of Restrictive Practices

NDIS: National Disability Insurance Scheme

NDIS Commission: NDIS Quality and Safeguards Commission

NDIS Framework: NDIS Quality and Safeguarding Framework

NDIS Practitioner: NDIS Behaviour Support Practitioner

NDIS RP Rules: NDIS (Restrictive Practices and Behaviour Support) Rules 2018

RP: Restrictive Practices

WA: Western Australia

Message from the Director General

The Department of Communities (Communities) is committed to upholding the rights of people with disability and improving the safeguarding environment for both people with disability and service providers in Western Australia (WA).

This Consultation Paper provides the opportunity for the voices of people with lived experience, service providers and other key stakeholders to shape how WA regulates the authorisation of restrictive practices in WA disability services.

Restrictive practices are sometimes used in services for people with disability to keep them or others safe. The use of restrictive practices can limit a person's rights or freedoms. The choice to use restrictive practices needs to carefully balance the issues of human rights and personal safety.

The development of an authorisation model and legislation aims to significantly improve the lives of people with disability by supporting work towards the reduction and elimination of restrictive practices. It is also a means for building best practice into the way the disability sector delivers behaviour support services to Western Australians.

Communities would like your feedback and ideas on the five key elements and options of the authorisation model. The key elements and options have been developed through consideration of the rights of people with disability, the impact on service providers and commitments made by the WA Government.

I encourage everyone with an interest in improving the safeguarding environment for both people with disability and service providers to consider this paper and provide a submission. This is an opportunity to have your say and guide future decisions to support and protect the rights of people with disability in WA.

Mike Rowe
Director General
Department of Communities

1. Introduction

The WA Government recognises the rights of people with disability and is committed to working towards the reduction and ultimately elimination of the use of restrictive practices for people with disability in WA.

In accordance with the United Nations Convention on the Rights of Persons with Disabilities (2006) (UNCRPD), people with disability have the same rights as all people to equality, freedom, respect, choice and control, and to access support to make decisions and/or communicate their needs and choices. It is understood that restrictive practices can put a person's human rights at risk.

The Department of Communities (Communities) recognises the need to strengthen safeguards for people with disability, as well as their families and carers, and service providers and their employees. This includes providing clear processes for how authorisation is given for the use of restrictive practices that considers the rights and safety of people with disability and their support networks.

This paper seeks the views of Western Australian's on the preferred model for authorising the use of restrictive practices in the disability sector. It is recognised that restrictive practices are used in a number of service sectors, however this consultation is only focused on authorisation of restrictive practices in the disability sector.

Restrictive practice means any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability. The choice to use a restrictive practice is a complex decision that has to balance the needs of providing safety and protection with the impacts of restricting a person with disability's rights and freedom.

The regulated restrictive practices are chemical restraint, mechanical restraint, physical restraint, environmental restraint and/or seclusion. When the term "restrictive practice" is used throughout this paper, it includes the five forms of regulated restrictive practice. These and other terms are explained further in Section 3 and Appendix A.

1.1 Current arrangements in the WA disability sector

Since 2016, WA has worked with the Commonwealth and other States and Territories to implement the National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework (the NDIS Framework). The NDIS Framework provides a nationally consistent approach to quality and safeguarding to support choice and control for NDIS participants by empowering people with disability and driving improvements in service quality.

The NDIS Quality and Safeguards Commission (NDIS Commission) has been established to implement the NDIS Framework and commenced in WA on 1 December 2020.

Under the NDIS Framework, WA is responsible for establishing arrangements to authorise the use of restrictive practices. At present, these arrangements are provided in the Authorisation of Restrictive Practices in Funded Disability Services Policy (current Policy), which came into operation on 1 December 2020.

Western Australia expects to have fully transitioned to the NDIS by July 2023. The WA Government recognises that some Western Australians with a disability are not eligible for the NDIS and these people will continue to receive State-funded services.

To ensure Western Australians with a disability are afforded equal safeguards and respect for their rights, regardless of their eligibility for the NDIS, the current Policy applies to the use of regulated restrictive practices in both NDIS services and disability services funded or delivered by Communities.

1.2 Why are we replacing the current Policy?

The current Policy was published to operate in the interim while legislation is developed to align with the Principles for Nationally Consistent Authorisation of Restrictive Practices (National Principles) and address the legal issues relating to the use of restrictive practices in disability services. These issues need to be addressed through changes to the law. They include issues relating to consent and civil and criminal liability.

1.3 Objectives: WA's approach to new legislation

The use of restrictive practices can breach the human rights of people with disability. All Australian Governments recognise this serious issue and in 2014 committed to reducing and ultimately eliminating the use of restrictive practices in the disability services sector through agreement to the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector (National Framework).

The WA Government is committed to establishing authorisation legislation for the disability sector that:

- upholds the rights of people with disability
- is based on contemporary, evidence-based practice
- aims to reduce and eliminate restrictive practices over time
- applies to NDIS services and disability services funded or delivered by Communities
- aligns with the principles of the UNCRPD, including respect for inherent dignity, individual autonomy, and the freedom for people with disability to make their own choices
- aligns with the National Principles.

It is expected that regulating the use of restrictive practices through authorisation legislation will reduce and eliminate the use of restrictive practices over time.

It is recognised that the majority of disability services in WA will be delivered under the NDIS, and therefore the authorisation model and legislation will need to be designed to work with the established requirements and processes under the NDIS. Communities will also undertake dedicated work to consider how the authorisation model and legislation applies in disability services delivered or funded by Communities, with the intention of achieving consistent processes, requirements and safeguarding.

1.4 Options for the WA authorisation model and legislation

Table 1 summarises the elements, considerations, options and commitments for the WA authorisation model, which is explained in detail in Section 5 (5.1 Who, 5.2 What, 5.3 How, 5.4 When, 5.5 What if).

Table 1: Summary of elements, considerations, options and commitments

Elements	Considerations	Options and commitments
Who	The role of the person with disability (and/or their family and other support networks) in authorisation decisions	Consent
		Consultation
		Not involved
	The type of decision-maker for authorisation decisions	Person with disability (or substitute decision-maker)
		Delegated individual
		Delegated panel
	Where the decision-maker should come from (level of decision-making)	Centralised (Government)
		Decentralised (Local)
		Hybrid (Government and Local)
What	Restrictive practices that can be authorised	**Non-negotiable commitments:** • Seclusion • Physical Restraint • Chemical Restraint • Mechanical Restraint • Environmental Restraint
	Restrictive practices that cannot be authorised and could be prohibited	**Non-negotiable commitments:** • High-risk physical restraints • Psychosocial restraint/punitive practices
		Options: • Seclusion of children • Are there any other practices that should be prohibited?

Elements	Considerations	Options and commitments
What	Practices that are exempt from this authorisation process	Restraint for treatment purpose
		Therapeutic or safety devices
		Practice under a court order
		Are there any other practices that should be exempt?
How	The criteria used to make authorisation decisions	**Non-negotiable commitments:** • Used as a last resort • Least restrictive option • Other strategies considered • Reduces risk of harm to the person and/or others • Proportionate to potential risk of harm • Used for the shortest possible time • Documented in a BSP
		Lack of capacity for making decisions about restrictive practices
		Are there other criteria that should be required?
	The evidence needed to demonstrate that the authorisation process has been completed	BSP
		Quality assurance assessment
		Formal written correspondence
		Are there any other suggestions?
When	The circumstances when authorisation is required	**Non-negotiable commitments:** For restrictive practices included in a BSP and used in day-to-day service delivery
		For restrictive practices used but not included in a BSP
	The settings or locations when authorisation is required	**Non-negotiable commitment:** • Disability services **Options:** Are there other settings or locations where authorisation should be required?

Elements	Considerations	Options and commitments
What if safeguards	Processes to appeal authorisation decisions and/or raise concerns and complaints	Appeal or review mechanism
		Complaints mechanism
		Enforcement action or penalties
	Requirements for reporting on the processes undertaken for authorisation and process outcomes	**Non-negotiable commitment:** • Requirements for NDIS services **Options:** • Requirements for State-funded services Other ARP specific reporting
	Any other safeguarding and support arrangements	Existing NDIS or State-funded procedures and reporting for unauthorised practices
		Any other arrangement/s?

2. How can you get involved?

Communities wants to know your thoughts, experiences and ideas on the authorisation of restrictive practices in disability services to inform the WA model and legislation for the authorisation of restrictive practices.

Through the consultation process, Communities will gather evidence and feedback from various stakeholders to form a greater understanding about the use of restrictive practices in WA. Communities is interested in your views on the use of restrictive practices, including how they should be authorised.

Your feedback will help Communities to better understand the preferences, experiences and needs of people and organisations that will be affected by the new authorisation model and legislation. This information will help Communities to consider the options and develop recommendations for consideration by the WA Government. Legislation will be developed in accordance with the decision made by the WA Government.

Appendix B provides an overview of the consultation context.

2.1 Have your say!

How do I give my feedback?

There are many ways you can provide feedback to Communities, including:

- writing a formal written submission, letter or email
- filling in an online feedback form
- filling in the online community survey or provider 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 ARP consultation webpage.

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

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

If you have any questions or would like to make a submission in a different way, please send an email to arplegislationproject@communities.wa.gov.au or call 0439 497 940 and leave a message.

Giving your feedback

When you provide your feedback, please give us as much information as you can. This could include examples, case studies or other information that supports your feedback and helps us consider and understand the individual, social and financial implications. We invite you to raise additional issues and make suggestions.

Please also tell us some information about yourself when giving feedback. This will help us consider what is required for the authorisation model to be suitable for all Western Australians regardless of age, culture and location.

We are interested to know your age, what region of WA you are from and whether you are:

- a person with lived experience, including a person with disability or a family member, carer or guardian of a person with disability
- a service provider or behaviour support practitioner
- an advocacy or representative group
- a state or local government representative
- another interested individual, representative or organisation.

How long do I have to give my feedback?

All submissions, letters, emails and surveys must be submitted by **11:59pm Sunday, 22 August 2021.**

Will my feedback be confidential?

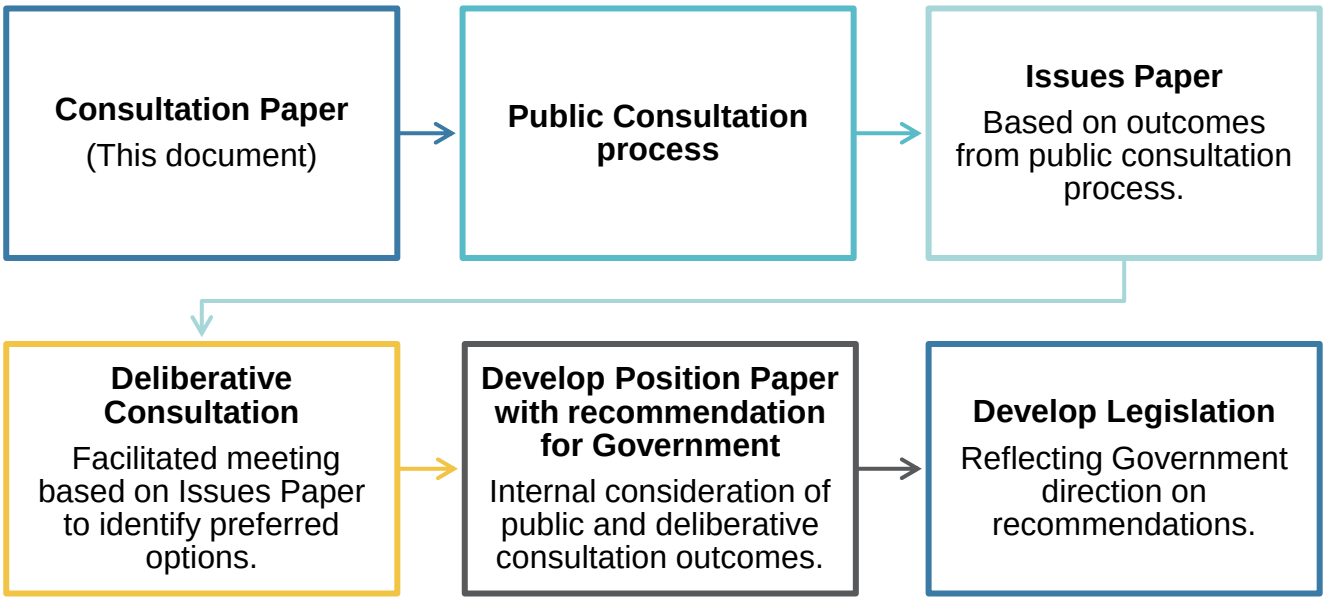
If you prefer your name to remain confidential, please tell us that when you complete your submission. The feedback we receive through submissions, letters, emails, phone calls and the surveys may be made publicly available online (via www.WA.gov.au) or may be quoted in Communities' reports and publications.

Please be aware that feedback provided to Communities may be subject to freedom of information requests, which we must comply with by law. Information that is released will have identifying information, including names, removed.

2.2 Next steps

The process to develop legislation for the authorisation of restrictive practices in WA disability services is outlined in Figure 1.

Figure 1: Process to develop authorisation model and legislation



Following the public consultation process, the next key stages are:

- **Develop an issues paper** based on the feedback from this public consultation process.
- **Undertake deliberative consultation** with a deliberative panel with selected government, community and sector representatives, which will be independently facilitated to identify preferred options. If you would like to be considered as a member of this panel, please complete the Expression of Interest survey on the Deliberative Panel webpage.
- **Develop Position Paper with recommendation for Government,** informed by consultation and deliberative panel outcomes as well as requirements of government.
- **Develop legislation** reflecting the Government direction on the recommendations.

3. What words do I need to understand to give feedback?

3.1 Restrictive practices

A restrictive practice is any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability. Under the NDIS, there are five practices that are called regulated restrictive practices: seclusion, chemical restraint, mechanical restraint, physical restraint and/or environmental restraint (see Figure 2).

As noted above, restrictive practices impact on the human rights of the person they are used with. The choice to use a restrictive practice, is therefore a complex decision that has to balance the needs of providing safety and protection with the impacts of restricting a person with disability's rights and freedom.

Restrictive practices should only be used for the primary purpose of protecting the person or others from harm. This risk of harm may be due to the person with disability engaging in behaviours of concern. A behaviour of concern is a reflection of a person experiencing distress or dysregulation due to an unmet need.

Figure 2: Regulated restrictive practices

Seclusion

Sole confinement of a person with disability in a room or a physical space at any time where voluntary exit is prevented.

Chemical Restraint

Use of medication or chemical substance for the primary purpose of influencing a person's behaviour.

Mechanical Restraint

The use of a device to prevent, restrict or subdue a person's movement for the primary purpose of influencing a person's behaviour.

Physical Restraint

The use or action of physical force to prevent, restrict or subdue movement of a person's body for the primary purpose of influencing their behaviour.

Environmental Restraint

Restrictions to a person's free access to all parts of their environment, including items or activities.

Mechanical Restraint image source: Medifab

3.2 Positive Behaviour Support

Positive Behaviour Support is about understanding a person with disability's needs and identifying strategies to respond to those needs and behaviours of concern. The primary goal of behaviour support is to improve the person's quality of life and the secondary goal is to reduce behaviours of concern.

Positive Behaviour Support principles must underlie any use of behaviour support strategies under NDIS and State-funded disability services.

3.3 Behaviour Support Plan (BSP)

A BSP is a document that must be developed by an NDIS Behaviour Support Practitioner in consultation with the person with disability, their family, carers, and other support people. It is a means of capturing important information that is gathered in the process of assessment and information collection as part of a positive behaviour support approach. The purpose of a BSP is to document the needs of the person, who may be engaging in behaviours of concern that could potentially harm the person or others and identify evidence-informed strategies to improve the person's quality of life. As a last resort, this may mean including restrictive practices in the BSP.

A proposal to use any restrictive practice as part of a person with disability's supports and services must be included in a BSP before it can be authorised. The use of restrictive practices must be justified and meet the requirements outlined in the NDIS (Restrictive Practices and Behaviour Support) Rules 2018 (NDIS RP Rules), which is designed to ensure that the person's human rights have been appropriately considered on balance with safety concerns that may have given cause for the proposal. The NDIS Commission provides guidance on BSP requirements for NDIS services and Communities reflects these requirements for State-funded services.

3.4 NDIS Behaviour Support Practitioner (NDIS Practitioner)

To be accredited as an NDIS Practitioner, a person must be assessed against the NDIS Commission's Positive Behaviour Support Capability Framework to determine their suitability to be registered with the NDIS Commission. This Framework states that practitioners are expected to comply with their state's laws or policies including meeting any legal obligations within state and territory requirements to obtain consent for service provision and the use of restrictive practices and consultation with the person with disability, their family, carers, guardian or other relevant person. The NDIS Practitioner must comply with the NDIS Code of Conduct and NDIS Practice Standards.

Communities, in partnership with sector stakeholders, has developed and is delivering training to build the capability of NDIS Practitioners and support the development of quality BSPs. The NDIS Commission provides guidance on NDIS Practitioner requirements for NDIS services and Communities reflects these requirements for State-funded services.

3.5 Implementing Providers

Service providers that use restrictive practices when providing services and supports to a person with disability are referred to as Implementing Providers. This includes services provided by organisations that are registered with the NDIS Commission and services that are funded by the WA Government. Implementing Providers have a range of responsibilities, including:

- facilitating the development of a BSP
- ensuring the authorisation process is completed for any restrictive practices that are included in a BSP
- keeping records about the use of restrictive practices
- reporting on the use of restrictive practices.

3.6 Consultation

Consultation with people with disability and their support networks is central to a person-centred approach to behaviour support. The person with disability's involvement and input is a way to safeguard their rights and is valuable to all stages of the behaviour support journey. This includes the identification of behaviour support needs, development of a BSP, authorisation of restrictive practice and implementation of a BSP. The potential journey of a person with disability is outlined in Section 4.1 – Figure 3.

3.7 Consent

Even though restrictive practices should only be used for safety reasons to protect a person with disability or others from harm, the use of restrictive practices without the consent of the person with disability subject to those practices may breach their rights. There are risks to those implementing restrictive practices in the absence of the consent of the person with disability, or someone with legal authority to provide consent on their behalf (also referred to as a substitute decision-maker).

For consent to be valid, the person giving consent must have the capacity to understand the information provided to them when making a decision, and that consent must be voluntary, informed, specific and current (see Appendix A). Consent is not static, and it can be withheld or withdrawn at any time.

Where a person with disability is deemed to not have capacity to give consent in relation to restrictive practices, consent may only be provided by a substitute decision-maker. Currently in WA, the only mechanism to appoint a substitute decision-maker for a person over the age of 18 years to consent to restrictive practices on the person's behalf is primarily through a legally appointed guardian. In other States and Territories, there are other options for substitute decision-makers to make decisions in the best interests of the person with disability, on their behalf about the use of restrictive practices.

Consent may or may not form part of the authorisation process. The role of the person with disability in the authorisation process is discussed in more detail in Section 5.1.

3.8 Capacity

The law presumes every adult has the capacity to make their own decisions unless there is evidence that they cannot do so. Where an adult has an incapacity to make decisions, it may affect only certain decisions, or it may affect all decisions about their life. Some adults with disability may have a decision-making disability which means they cannot make their own decisions about the use of restrictive practices by a service provider.

The authorisation model may or may not consider the capacity of the person with disability to make decisions about the use of restrictive practices by their service provider/s.

For example, the authorisation model may include, as part of the criteria for approval, a requirement that the person with disability lacks capacity to make decisions about restrictive practices. This would mean the authorisation processes would only apply where this could be demonstrated.

Alternatively, the authorisation model may not make this part of the criteria and instead apply generally to people with disability where restrictive practices are proposed to be used, irrespective of their capacity. Where this approach is taken, consent may still be part of the authorisation process and if so, questions of capacity will arise in that context.

3.9 Authorisation of restrictive practices

The NDIS Commission is responsible for regulating and oversighting the use of regulated practices and the State Government is responsible for establishing and implementing the process for authorising restrictive practices that can be used.

Authorisation means the process for endorsing the use of a proposed restrictive practice under clearly defined circumstances in a disability service for a person with a disability. The decision to authorise the use of a restrictive practice needs careful clinical and ethical consideration, taking into account a person's human rights and the right to self-determination. The purpose of the authorisation process is to safeguard people with disability by assessing whether a restrictive practice can be used.

When a restrictive practice has been included in a BSP and the State has an authorisation process, the Implementing Provider is required to ensure that the use of the restrictive practice is authorised. Only regulated restrictive practices in a BSP can be authorised. Implementing Providers are responsible for ensuring the authorisation process is completed for all restrictive practices in a BSP and recording and reporting on their use.

Currently, there are different authorisation models in each Australian State and Territory. A brief overview of each model is set out at Appendix C – Table 8.

4. What are WA's commitments for the authorisation of restrictive practices?

Communities is leading the development of an authorisation process for WA that upholds human rights and is based on contemporary, evidence-based practice.

This consultation will inform a WA restrictive practices authorisation model, which will lead to draft legislation that governs how authorisation will operate.

The authorisation process will be person centred and consistent with existing government commitments, targeted outcomes, and key process principles.

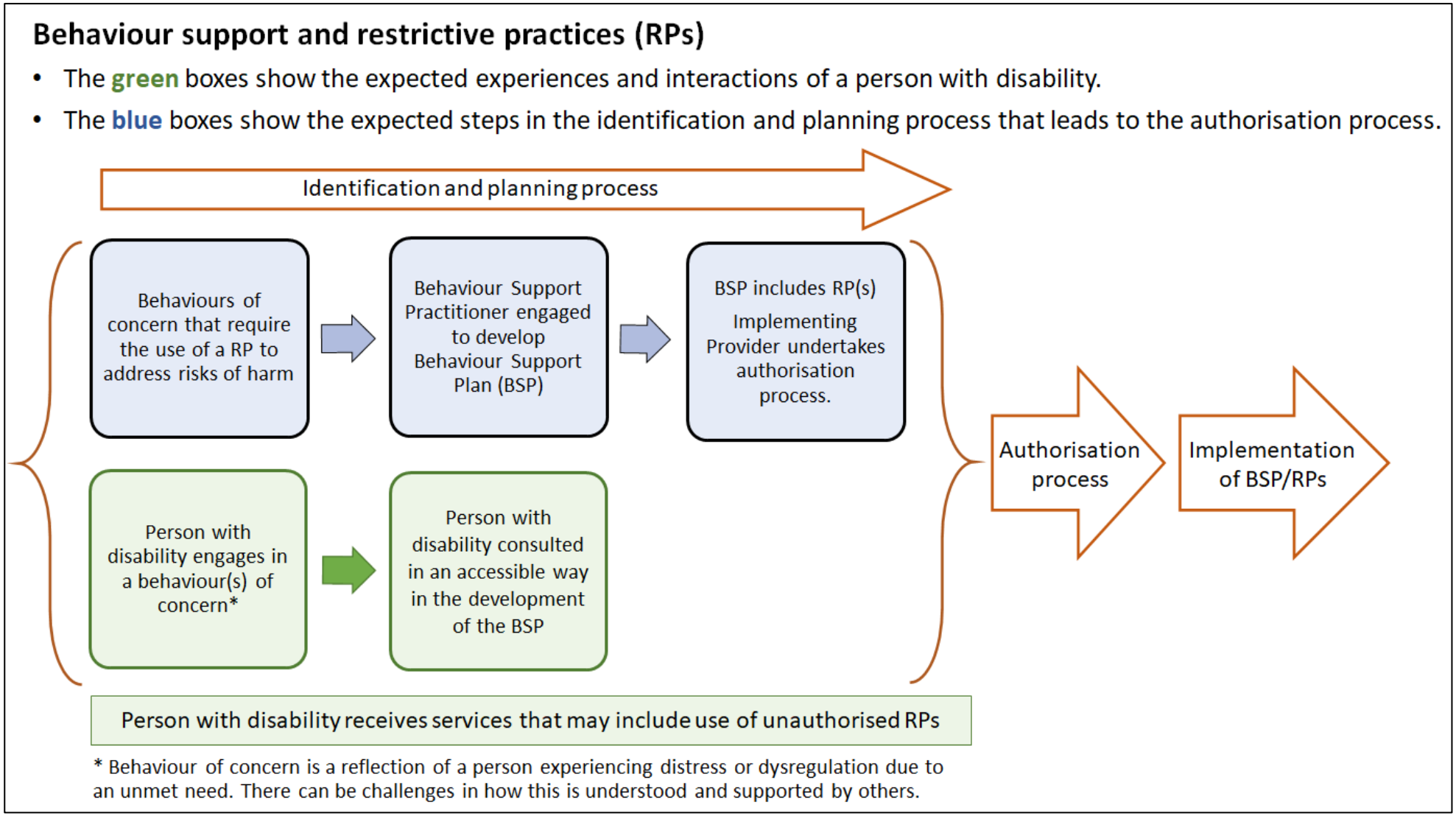
4.1 A person centred approach

Western Australia is committed to an authorisation process that is built around the people most affected. People with disability will be closely involved in this work through contributing to the consultation process.

In recognition that people with disability are those who experience the use of restrictive practices, Figure 3 (Page 13) outlines the three stages of the behaviour support journey that a person with disability may experience.

Communities recognises that arrangements for State-funded services may vary slightly from arrangements under the NDIS but will include the same three stages.

Figure 3: Potential restrictive practices journey map



4.2 Existing government commitments

Western Australia's authorisation model will be aligned with:

- the principles of the UNCRPD
- the National Principles
- the specific requirements outlined in the NDIS RP Rules
- the requirements, practices and processes of the NDIS Commission under the National Disability Insurance Scheme Act 2013 and Rules, including:
  - Only regulated restrictive practices can be authorised (as discussed in Section 3.1)
  - Meeting BSP pre-authorisation requirements
  - BSP reviewed every 12 months or when there is a change of circumstances.

4.3 Targeted outcomes

Western Australia's authorisation process will result in:

1. The rights of people with disability being upheld, with respect for their inherent dignity, individual autonomy and the freedom to make their own choices.
2. The use of restrictive practices being reduced and ultimately eliminated.
3. People with disability being supported to communicate their preferences and participate in decision-making relating to the use of restrictive practices.

4.4 Process principles

Western Australia's authorisation process will align with the following principles:

1. **Respect**
   - Responding to and upholding people's fundamental human rights and the UNCRPD.
   - Inclusion of all voices, including people with disability, to support informed decision-making about restrictive practices.
2. **Personal safety**
   - For people with disability, their families, carers, support workers and the wider community.
3. **Equity**
   - Process that is responsive to different circumstances, contexts, locations and cultural needs.
   - Balances power in decision-making.
4. **Accountability**
   - Transparency of process, including clear decision-making criteria and outcomes reporting.
   - Monitoring and reporting requirements that supports continuous improvement and reduction of restrictive practices.
   - Clear appeals process.
5. **Effectiveness**
   - Enables timely and robust decision-making.

5. What are the elements and options of an authorisation model?

Communities wants your feedback on the below five questions to help us design WA's model for the authorisation of restrictive practices to be established in legislation.

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

Section 1.4 – Table 1 outlines the five elements of the authorisation model, as well as key considerations, options and non-negotiable commitments. Some of the elements are marked as non-negotiable due to the existing government and NDIS commitments set out in Section 4.2. It is these options that we want your feedback on and you are encouraged to suggest other options. The ways you can provide feedback are outlined in Section 2.1 of this paper.

Western Australia will consider the options for each element in developing its model. Consideration will be informed by input and views provided through consultation and aim to deliver a model that: protects and empowers, is fair and equitable, and is practical and accountable. This includes balancing the needs of providing safety and protection with the impacts of restricting a person with disability's rights and freedom.

Western Australia recognises that the needs and capacity of people with disability will vary over time and from person to person. This includes:

- The cultural needs of Aboriginal people with disability and people with disability from culturally and linguistically diverse (CALD) backgrounds to ensure that the WA authorisation process is culturally sensitive and appropriate.
- The geographic needs across people with disability to ensure the WA authorisation process is practical across urban, regional remote and very remote locations.
- The capacity and capability needs across people with disability to ensure the WA authorisation process provides accessible participation pathways.

How each element considers the diversity of cultural, geographic and capacity needs will be a part of further considerations.

5.1 Who should make authorisation decisions?

The model will need to be clear about who should make authorisation decisions, which includes the three considerations in Table 2.

Table 2: Key considerations for 'Who' element

Considerations	Options
A. The role of the person with disability (and/or their family and other support networks) in authorisation decisions	Consent
	Consultation
	Not involved
B. The type of decision-maker for authorisation decisions	Person with disability (or substitute decision-maker)
	Delegated individual
	Delegated panel
C. Where the decision-maker should come from (level of decision-making)	Centralised (Government)
	Decentralised (Local)
	Hybrid (Government and Local)

These three considerations are interrelated and the role of the person with disability will directly influence the type of authorisation model that is developed.

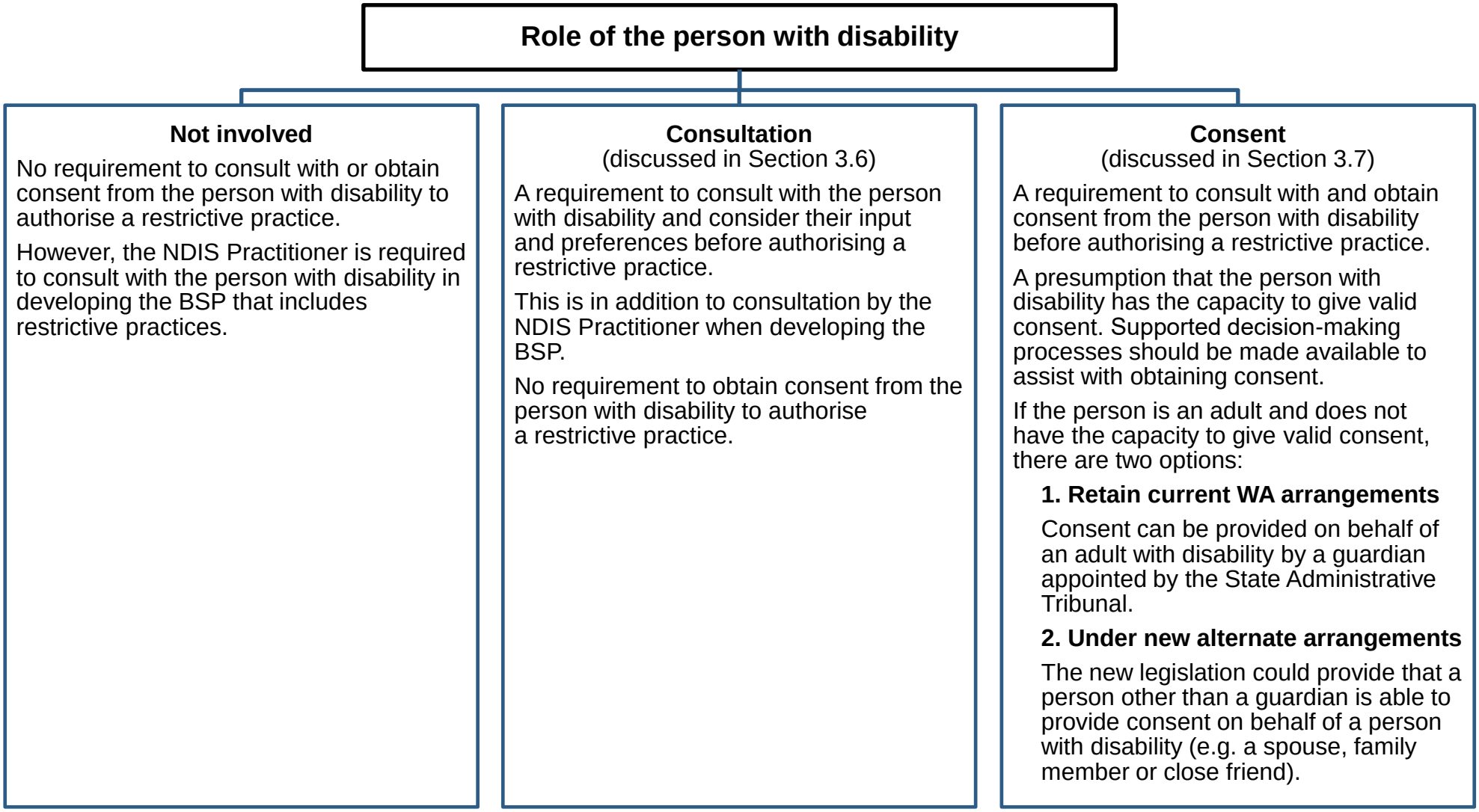
Appendix C – Table 9 explains where decisions are made in other States and Territories.

A. The role of the person with disability (and/or their family and other support networks) in authorisation decisions

The model will need to determine the level of input the person with disability has in the authorisation process. The level of input can be considered across a spectrum, including no input, consultation only or a requirement to obtain consent from the person with disability or a substitute decision-maker (such as a legal guardian).

A person with disability's role in the authorisation process will be related to their capacity to make their own decisions or need for a substitute decision-maker. The model may need to offer more than one option for the person with disability's role reflecting their different needs and capacity.

Figure 4: Role of the person with disability



B. The type of decision-maker for authorisation decisions

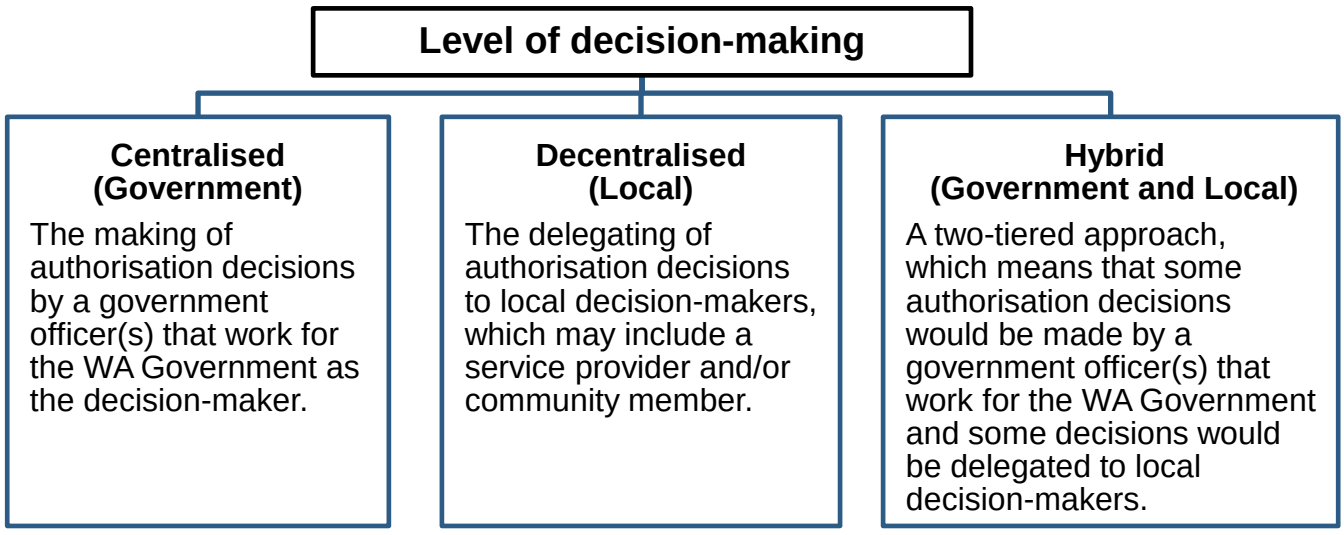
The model will need to confirm who the decision-maker is to provide authorisation for specific restrictive practices, which may be one or more of the below decision-makers.

Figure 5: Decision-maker options

C. Where the decision-maker should come from (level of decision-making)

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

Figure 6: Level of decision-making options



5.2 What practices should be authorised, prohibited or exempt?

The model will need to be clear about what can or cannot be authorised, which includes the three considerations in Table 3.

Table 3: Key considerations for 'What' element

Considerations	Options and commitments
A. Restrictive practices that can be authorised	**Non-negotiable commitments:** • Seclusion • Physical Restraint • Chemical Restraint • Mechanical Restraint • Environmental Restraint
B. Restrictive practices that cannot be authorised and will always be prohibited	**Non-negotiable commitments:** • High-risk physical restraints • Psychosocial restraint / punitive practices
	Seclusion of children
	Are there any other practices that should be prohibited?
C. Practices that are exempt from this authorisation process	Restraint for treatment purpose
	Therapeutic or safety devices
	Practice under a court order
	Are there any other practices that should be exempt?

A. Restrictive practices that can be authorised

In accordance with the current Policy and the NDIS RP Rules, only regulated restrictive practices can be authorised (seclusion, chemical restraint, mechanical restraint, physical restraint and environmental restraint). Western Australia uses the definitions defined in clause 6 of the NDIS RP Rules (as published in Section 3.1 and Appendix A of this paper). The new authorisation model and legislation will confirm that these practices can be authorised.

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

Under the current Policy, high-risk physical restraints and punitive practices or psychosocial restraints are prohibited and cannot be authorised. These restrictive practices will remain prohibited under the new authorisation model and legislation. More information about prohibited practices is available in Appendix A.

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

Under the current Policy, some practices are not considered restrictive practices in WA and therefore are not required to be authorised. This includes restraints used for treatment purposes, devices used for therapeutic or safety purpose and court ordered practices.

Western Australia will consider if there are other practices that should be exempt.

5.3 How should authorisation decisions be made?

The model will need to be clear about how authorisation decisions are made, which includes the two considerations in Table 4.

Table 4: Key considerations for 'How' element

Considerations	Options and commitments
A. The criteria used to make authorisation decisions	**Non-negotiable commitments:** • Used as a last resort • Least restrictive option • Other strategies considered • Reduces risk of harm to the person and/or others • Proportionate to potential risk of harm • Used for the shortest possible time • Documented in a BSP
	Lack of capacity for making decisions about restrictive practices
	Are there other criteria that should be required?
B. The evidence needed to demonstrate that the authorisation process has been completed	BSP
	Quality assurance assessment
	Formal written correspondence
	Are there any other suggestions?

A. The criteria used to make authorisation decisions

In accordance with the current Policy and NDIS RP Rules, a BSP must be developed for the person with a disability and any proposed restrictive practices documented in the BSP must meet the following criteria:

- used only as a last resort in response to risk of harm to person with disability and/or others, and after the Implementing Provider has explored and applied other evidence-based, person-centred and proactive strategies.
- be the least restrictive response possible in the circumstances to ensure the safety of the person and/or others.

- be considered within the context of other alternatives that have an evidence-base for being effective in addressing the presenting behaviour of concern.
- 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 BSP includes strategies to reduce and eliminate restrictive practices over time if safe and appropriate to do so.

The above criteria will continue to apply under the new authorisation model and legislation. However, Communities will also consider if there should be additional criteria that needs to be met before a restrictive practice is authorised.

For example, as indicated in Section 3.8, depending on the authorisation model the criteria may include a requirement that the person has a lack of capacity to make decisions about restrictive practices.

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

The model will need to define the evidence that demonstrates that authorisation has been provided under the WA authorisation model, such as:

- **Existing BSP** including restrictive practices – To be authorised, a restrictive practice needs to be included in a BSP developed by a NDIS Practitioner to NDIS specifications. In relation to NDIS services, the NDIS Practitioner and the BSP are subject to quality and safeguarding arrangements under the NDIS Commission. The NDIS Commission's BSP templates require NDIS Practitioners to specify whether authorisation has been received and the authorisation start and end date. Requirements for State-funded services will reflect NDIS requirements. The authorisation legislation could deem a finalised BSP as evidence of authorisation.
- **Quality assurance outcome report** – Under Stage two of the current Policy, a BSP including restrictive practices must undergo a quality assurance process. The authorisation legislation could deem that a quality assurance outcome report that outlines the decision-maker's final decision and assessment of each restrictive practice against decision criteria as evidence of authorisation.
- **Formal communication** from the authorising decision-maker – Reflecting the arrangements of a preferred WA authorisation model, a tailored communication (such as a letter) may need to be developed to confirm when authorisation is provided and any special conditions that apply to the authorisation. The authorisation legislation could deem this formal communication as evidence of authorisation.

5.4 When should authorisation be required?

The model will need to be clear about when authorisation is required, which includes the two considerations in Table 5.

Table 5: Key considerations for 'When' element

Considerations	Options and commitments
A. The circumstances when authorisation is required	**Non-negotiable commitments:** For restrictive practices included in a BSP and used in day-to-day service delivery
	For restrictive practices used but not included in a BSP
B. The settings or locations when authorisation is required	**Non-negotiable commitment:** Disability services
	Are there other settings or locations where authorisation should be required?

A. The circumstances when authorisation is required

When a State has an authorisation process, the Implementing Provider is required to ensure the use of restrictive practices is authorised. The use of unauthorised restrictive practices must be reported to either the NDIS Commission for NDIS funded providers or Communities for State-funded services.

The model will need to determine the circumstances when authorisation is required. The circumstances for consideration will include:

- **In accordance with a BSP** – Under the current Policy, the use of restrictive practices as specified in a BSP for day to day service delivery must be authorised. Western Australia's authorisation model will need to confirm these arrangements and consider any additions deemed necessary, such as a modified process for providing timely interim authorisation.
- **Outside of a BSP** (e.g. the restrictive practice is not documented in the BSP) – Under the current Policy, the use of restrictive practices outside of a BSP cannot be authorised and must be reported as unauthorised restrictive practices. WA may consider if this should be confirmed or whether there are any circumstances where authorisation is appropriate even though the restrictive practices are not contained in a BSP.

B. The settings or locations when authorisation is required

It is intended that WA's authorisation model will only apply to disability service settings. However, Communities will consider the potential impacts and/or intersect of the WA authorisation model and legislation with other settings.

Western Australia's authorisation model is not intended to apply to:

- Other service settings, such as education, health or out-of-home care.
- Private homes unless formal disability services are being provided. However, every person with a disability continues to receive the full protection of existing criminal and civil laws. This means that anyone who acts improperly towards someone in their care (for example by neglect, abuse, assault or exploitation) may be subject to criminal sanctions or civil lawsuits.
- Aged care settings, which are regulated by the Commonwealth Government, unless a person with disability is residing in aged care and being provided with disability services.

Western Australia's authorisation model will need to confirm these arrangements, or any variation that may be considered.

5.5 What safeguards should be in place if something goes wrong?

The model will need to be clear about what needs to be part of WA's authorisation process to keep people with disability and others safe, which includes the three considerations in Table 6.

Table 6: Key considerations for 'What if' element

Considerations	Options and commitments
A. Processes to appeal authorisation decisions and/or raise concerns and complaints	Appeal or review mechanism
	Complaints mechanism
	Enforcement action or penalties
B. Requirements for reporting on the processes undertaken for the authorisation of restrictive practices and process outcomes	**Non-negotiable commitment:** Requirements for NDIS services
	Requirements for State-funded services
	Other ARP specific reporting
C. Any other safeguarding and support arrangements	Existing NDIS or State-funded procedures and reporting for unauthorised practices
	Any other arrangements?

A. Processes to appeal or review authorisation decisions and/or raise concerns and complaints

The model will need to determine the type(s) of appeals, review and complaints mechanisms available to a person with disability and their family and other support networks, including enforcement action and penalties to enable effectiveness of these mechanisms. The model will need to include how these mechanisms are accessible to people with disability and any sector supports required to support implementation of the authorisation process.

- **Appeal or review mechanisms** – A clear and accessible pathway for a person with disability (and their family and other support networks) to appeal or request a review of authorisation decisions is expected to form part of the model consistent with the Process Principles. Western Australia's authorisation model will need to include consideration of whether this can be provided by an existing mechanism or if a new mechanism needs to be established specifically for WA's authorisation process.
- **Complaints mechanisms** – The performance of an NDIS Practitioner and service providers are subject to existing complaints mechanisms of the NDIS Commission for NDIS funded services and Communities for State-based services. Western Australia's authorisation model will need to include consideration of whether an additional complaints mechanism needs to be established specifically for WA's authorisation process.
- **Enforcement action and penalties** – To ensure any appeals or complaints mechanisms can act on performance or accountability issues in the authorisation process, WA's authorisation model will need to consider appropriate penalties and complementary capacity support needs to be included in the WA model.

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

The model will need to determine reporting requirements to support monitoring and evaluation of the authorisation process. Consideration also needs to be given to what reported information can and should be made publicly available under a WA model.

- **NDIS and State-funded reporting requirements** – Under the current Policy, service providers are required to report on the use of restrictive practices according to the funder's specifications. Western Australia's authorisation model will need to establish if existing or new requirements are needed to meet the requirements for the implementation, accountability and performance tracking of the WA model.
- **Other arrangements** – Where information is not being collected or is not currently accessible, new specific reporting and information sharing arrangements to meet the information and accountability requirements of the WA model should be included in legislation.

C. Any other safeguarding and support arrangements

To ensure ongoing safety and care for people with disability and those around them, the legislation may need to outline other safeguarding obligations or mechanisms required for the WA model to meet its objectives and be consistent with existing WA commitments. These may include supports for people with disability, families and service providers to understand and comply with WA's authorisation model. Arrangements would be subject to the specific model WA chooses to develop and implement.

6. 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 WA Government. The WA Government will then decide on the preferred WA authorisation model and legislation will be developed for consideration by State Parliament.

Communities will also develop an implementation plan and evaluation framework that will consider utilisation, efficiency of the process and effectiveness in contributing to the reduction and ultimate elimination of the use of restrictive practices.

Appendix A: Common terms

Table 7: Common terms

Key term	Description
Consent	The five core elements of valid consent are: • **Voluntary** – the person must make the decision themselves and must not be unduly influenced by anyone else (e.g. health professionals, family, friends). • **Informed** – the person must receive sufficient information about the proposed restrictive practice to enable them to make an informed decision. • **Specific** – it covers the restrictive practice to be used. • **Capacity** – the person can understand the information provided to them to make the decision. • **Current** – the consent must be reviewed regularly. More frequent reviews of consent may be necessary, especially if the person's circumstances change.
Disability services	Disability services means NDIS funded services and supports and disability services funded by or delivered by Communities.
National Disability Insurance Agency (NDIA)	The NDIA is an independent Commonwealth agency responsible for implementing the NDIS.
National Disability Insurance Scheme (NDIS)	The NDIS is Australia's first national scheme for people with disability. It provides funding directly to the person with disability who have permanent and significant disability for supports and services.
NDIS Quality and Safeguards Commission (NDIS Commission)	The NDIS Commission is an independent Commonwealth agency established under the NDIS Act to regulate and oversee the quality and safety of NDIS supports and services.
NDIS Quality and Safeguarding Framework (NDIS Framework)	The NDIS Framework provides a nationally consistent approach to quality and safeguarding to support choice and control in the NDIS, by empowering people with disability and driving improvements in service quality.

Key term	Description

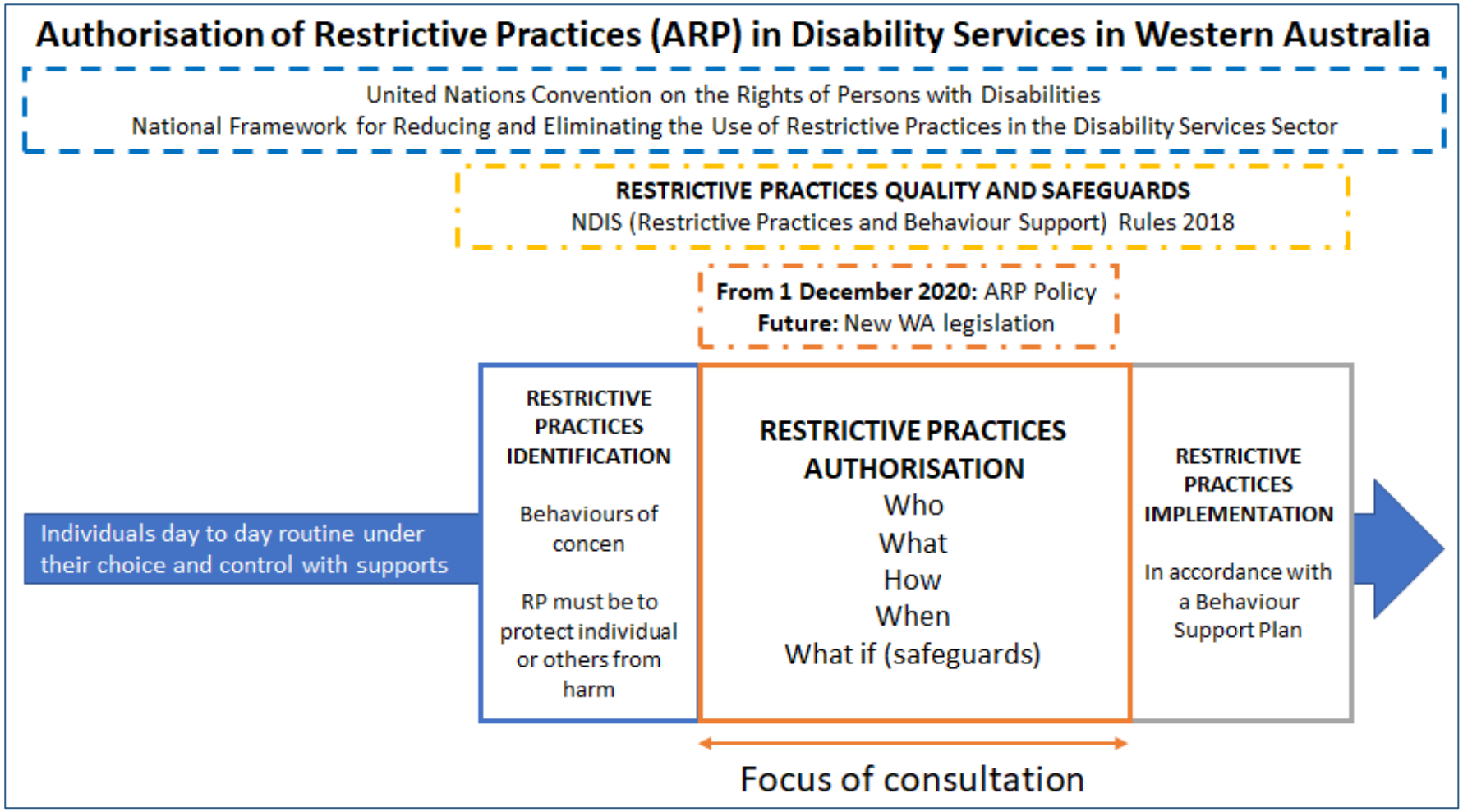
Prohibited practices	The following physical restraints are prohibited under the policy:
	• The use of prone or supine restraint
	• Pin downs
	• Basket holds
	• Takedown techniques
	• Any physical restraint that has the:
	  ○ purpose or effect of restraining or inhibiting a person's respiratory or digestive functioning
	  ○ effect of pushing the person's head forward onto their chest
	  ○ purpose or effect of compelling a person's compliance through the infliction of pain, hyperextension of joints, or by applying pressure to the chest or joints.
	The following punitive approaches are prohibited:
	• Aversive practices
	• Overcorrection
	• Denial of key needs
	• Practices related to degradation or vilification
	• Practices that limit or deny access to culture
	• Response cost punishment strategies.

Key term	Description
Regulated restrictive practice	• **Seclusion**, which is the sole confinement of a person with disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted. • **Chemical restraint**, which is the use of medication or chemical substance for the primary purpose of influencing a person's behaviour. It does not include the use of medication prescribed by a medical practitioner for the treatment of, or to enable treatment of, a diagnosed mental disorder, a physical illness or a physical condition. • **Mechanical restraint**, which is the use of a device to prevent, restrict or subdue a person's movement for the primary purpose of influencing a person's behaviour but does not include the use of devices for therapeutic or non-behavioural purposes. • **Physical restraint**, which is the use or action of physical force to prevent, restrict or subdue movement of a person's body, or part of their body, for the primary purpose of influencing their behaviour. Physical restraint does not include the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm/injury, consistent with what could reasonably be considered the exercise of care towards a person. • **Environmental restraint**, which restricts a person's free access to all parts of their environment, including items or activities.

Appendix B: Overview of consultation context

The three key stages of the behaviour support journey are illustrated in Figure 7: identification and planning, authorisation and implementation. The focus of this consultation process is developing a model and legislation for the authorisation stage.

Figure 7: Consultation context



Appendix C: Authorisation models in other States and Territories

Table 8: Overview of authorisation models in other States and Territories

Jurisdiction	Overview
Australian Capital Territory (ACT)	**Relevant legislation or policy:** *Senior Practitioner Act 2018*, PBS Plan Guidelines, PBS Panel Guidelines **Overseen by:** ACT Senior Practitioner, a public servant appointed by the Director General of the Community Services Directorate. **Scope:** Broader than people with disability. Regulates the use of restrictive practices by persons/entities who provide these services to another person: education, disability, and care and protection of children and any other service prescribed by regulation.
New South Wales (NSW)	**Relevant legislation or policy:** Restrictive Practices Authorisation (RPA) Policy and Procedural Guide, Persons with Disability (Restrictive Practices Regulation) Bill 2020 **Overseen by:** The NSW Government monitors and supports the sector through a Central Restrictive Practices Team within the Department of Communities and Justice Cluster (formerly Family and Community Services (FACS)), including provision of an online NSW RPA System (RPA System) to register, manage and monitor the authorisation of restrictive practices in NSW. RPA Panels are the primary mechanism in NSW for approving or declining authorisation. **Scope:** NDIS participants (adults and children).
Northern Territory (NT)	**Relevant legislation or policy:** *NDIS (Authorisations) Act 2019*, Restrictive Practices Authorisation Framework: Guideline for NDIS Service Providers **Overseen by:** The NT Senior Practitioner, a public sector employee appointed by the Minister for Health. It is a statutory position with a range of functions, including making authorisation decisions. **Scope:** NDIS participants (adults and children).

Jurisdiction	Overview
Queensland (QLD)	**Relevant legislation or policy:** *Disability Services Act 2006*, *Guardianship and Administration Act 2000* **Overseen by:** QLD Office of the Public Guardian (OPG), Department of Communities, Disability Services and Seniors (DCDSS), Queensland Civil and Administrative Tribunal (QCAT). **Scope:** Person over 18 years with an intellectual or cognitive disability and impaired capacity for making decisions about the use of restrictive practices, who is receiving services provided by Disability Services, or services prescribed by regulation and NDIS-funded.
South Australia (SA)	**Relevant legislation or policy:** *Guardianship and Administration Act 1993* **Overseen by:** South Australian Civil and Administrative Tribunal and Office of Public Advocate. SA is consulting on new legislation, which establishes a new role of Senior Authorising Officer and a risk-based authorisation process where: • low-level, less intrusive restrictive practices, such as environmental restraint (e.g. locked cupboards), may be authorised by an approved authorised officer within an NDIS provider; and • high-level, more intrusive restrictive practices, such as physical restraint and seclusion, can only be authorised by an authorised officer in the South Australian Department of Human Services.
Tasmania (TAS)	**Relevant legislation or policy:** *Disability Services Act 2011* **Overseen by:** TAS Senior Practitioner, a State Service officer appointed by the Secretary of Communities Tasmania. **Scope:** People with disability, as defined in the DSA (adults and children).
Victoria (VIC)	**Relevant legislation or policy:** *Disability Act 2006*, Authorisation process for the use of regulated restrictive practices: Guidelines for registered NDIS providers in Victoria **Overseen by:** VIC Senior Practitioner, appointed by the Secretary of the Department of Health and Human Services **Scope:** People with disability who receive a government funded or provided disability service.

Table 9: Who makes authorisation decisions in other States and Territories?

	Decision level			Decision-maker	
	Centralised	Decentralised	Hybrid	Panel / Tribunal	Delegated Individual
ACT		✓		Positive Behaviour Support (PBS) Panel convened by Implementing Provider and registered with the ACT Senior Practitioner (Interim arrangement: Central PBS Panel established by the ACT SP)	
NSW		✓		Restrictive Practices Authorisation Panel convened by Implementing Provider	
NT	✓				NT Senior Practitioner
QLD			✓	QLD Civil and Administrative Tribunal (Full approval)	- QLD Office of the Public Guardian (Short-Term approval for containment and seclusion) - QLD Department of Communities (Short-Term approval for chemical, mechanical and physical restraint and restricting access to objects) - Guardian for a Restrictive Practices Matter (Full approval)

	Decision level			Decision-maker	
	Centralised	**Decentralised**	**Hybrid**	**Panel / Tribunal**	**Delegated Individual**
SA			✓		- Approved Authorisation Officer from the Implementing Provider for less intrusive (e.g. environmental restraints) - Authorised Officer from SA Department of Human Services for more intrusive (e.g. physical restraint and seclusion)
TAS			✓	Following recommendation of TAS Senior Practitioner, TAS Guardianship and Administration Board (personal restrictions)	Following recommendation of TAS Senior Practitioner, CEO of TAS Department of Communities (environmental restrictions)
VIC			✓		- Authorised Program Officer approves inclusion of restrictive practices in BSP and lodges with VIC Senior Practitioner - The VIC Senior Practitioner approves the use of seclusion, mechanical and physical restraint and authorises all regulated restrictive practices.

Table 10: Which restrictive practices can be authorised in other States and Territories?

	Seclusion	Chemical Restraint	Mechanical Restraint	Physical Restraint	Environmental Restraint
ACT	✓	✓	✓	✓	✓
NSW	✓	✓	✓	✓	✓
NT	✓	✓	✓	✓	✓
QLD	✓	✓	✓	✓	✓
SA	✓	✓	✓	✓	✓
TAS	✓	✘	✓	✓	✓
VIC	✓	✓	✓	✓	✓