Consultation Paper

Reforming WA disability legislation March 2023

**Plain English version**

**Preface**

This paper has been produced as a general guide for feedback to inform reforms to WA disability legislation.

This paper also meets the requirements of the Better Regulation Program as a Consultation Regulatory Impact Statement has been completed, and the purpose of this paper has been deemed as low impact.

All or part of this document may be copied, with due recognition of the source.

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

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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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# Message from the Director General

The Department of Communities (Communities) is committed to ensuring WA disability legislation comprises contemporary, achievable policy objectives, supported by statutory provisions.

This Consultation Paper provides the opportunity for the voices of people with lived experience, service providers and other key stakeholders to shape new WA disability legislation.

WA disability legislation is being reformed with the aim of addressing issues of importance, enabling the provision of disability services, and modernising WA legislation.

The consultation and engagement process focuses on identifying concerns, solutions and ideas from the WA community related to key themes including, the principles applicable to, and the safeguarding of, people with disability, access and inclusion, and the ongoing service provision for specific cohorts. Communities wants your feedback on how WA disability legislation can address and support these issues.

I encourage everyone with an interest in issues relevant to people with disability and disability services in WA to consider this Consultation Paper and provide a submission. This is an opportunity to have your say in the development of new disability legislation in WA.



**Mike Rowe**

**Director General**
**Department of Communities**

# 1. Introduction

The Western Australian Government is reforming WA disability legislation. The Department of Communities (Communities) aims to make sure that the new WA disability legislation is modern and meets the needs and expectations of people with disability and the community.

The Western Australian Government recognises that WA needs to have disability legislation that includes:

* principles that are relevant for people with disability
* safeguards to protect people with disability
* access and inclusion
* capability to provide disability service

This Consultation Paper asks Western Australians for their views on new WA disability legislation. It provides the opportunity for people with lived experience of disability, service providers and other key stakeholders to shape the new WA legislation.

We have written this Consultation Paper as a general guide on how to give feedback to inform the reforms to WA disability legislation. It explains what is in the current legislation, why WA needs new disability legislation and provides possible areas to consider for the new legislation.

This consultation is focused on specific issues that are relevant to people with disability and disability services in WA. The consultation follows on from the development of [A Western Australia for Everyone: State Disability Strategy 2020-2030](https://www.wa.gov.au/government/document-collections/state-disability-strategy-2020-2030) (the State Disability Strategy), [Australia’s Disability Strategy 2021–2031](https://www.disabilitygateway.gov.au/document/3106)(Australia’s Disability Strategy) and issues being considered by the [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](https://disability.royalcommission.gov.au/) (the Royal Commission). We need to ensure that WA’s new disability legislation supports the State Disability Strategy and Australia’s Disability Strategy and reflects the modern needs and experiences of people with disability.

## 1.1 Current WA disability legislation

The *Disability Services Act 1993 (*DS Act) is the main legislation in WA that relates to disability services. The DS Act:

* promotes the rights and acceptance of people with disability in WA
* established the Disability Services Commission (the Commission) as a statutory authority with a Board as its governing body, and a Chief Executive Officer to run day to day operations
* established the Ministerial Advisory Council on Disability to advise the Minister on issues affecting people with disability
* enables the State to provide grants and services that further the Principles and Objectives set out in the DS Act
* says that public authorities must develop and maintain Disability Access and Inclusion Plans
* says that the Health and Disability Complaints Office can handle complaints about disability services in WA.

## 1.2 Why are we reforming WA disability legislation?

WA’s disability service system was established in the early 1990s. The Disability Services Commission (now part of the Department of Communities), delivered and funded State disability supports and services. In July 2014, WA began running trial sites in selected areas for the Australia-wide National Disability Insurance Scheme (NDIS), and a State based National Disability Insurance Scheme (WA NDIS). State disability services also continued. The State disability services system and the WA NDIS operated under the DS Act. In December 2017, the WA and Australian governments announced that the State would transition to the NDIS. The move is due to be completed by 30 June 2023.

The DS Act is scheduled for review every five years. However, the review scheduled for 2013 was postponed while waiting for the outcome of the WA NDIS trials.

The review that was scheduled for 2018 was also postponed because the State Government was transitioning to the NDIS and had just developed the State Disability Strategy.

Following the release of the State Disability Strategy and first and second Action Plans, the transition to the NDIS, and the ongoing work of the Royal Commission, now is the appropriate time to reform the disability legislation in WA (the 2023 Reforms).

The WA legislation needs to be updated to make sure it is appropriate to meet the modern needs and expectations of the community.

# 2. How can you get involved?

Communities is seeking feedback on issues and matters that should be covered in WA’s disability legislation. We want to hear from people with disability, their families and carers, service providers, advocacy and peak bodies, and WA public authorities. We also want to hear from other people in the community with relevant thoughts, ideas and experiences.

We are interested in hearing your views around the 2023 Reform’s key themes:

* principles that apply to people with disability
* safeguarding of people with disability
* access and inclusion
* ongoing services for specific groups of people.

Your feedback will help Communities ensure that WA’s disability legislation is modern and appropriate to meet the needs and expectations of the community. By understanding your views, we can advise the WA Government on how to better support the interests of people with disability, and make sure the disability legislation reflects the world we live in.

## 2.1 Have your say!

### Giving your feedback

When you give your feedback on these key themes, please give us as much information as you can. This could include examples, case studies or other information that supports your feedback. This will help us to think about and understand how disability affects people’s lives, including the individual, social and financial impacts. You can also add other issues and make suggestions if you want to.

We will also ask you to give us with some information about yourself. You don’t have to provide this information, but we encourage you to. It will help us to gather and reflect the different views and broad needs of the community.

We are interested to know:

* your name
* your age
* where in WA you are from, and
* whether you are:
	+ a person with lived experience of disability - this includes people with disability, or a family member, carer or guardian of a person with disability
	+ a service provider, behaviour support practitioner, or sole provider
	+ a disability advocacy, peak, or representative group
	+ a State or local government representative
	+ another interested individual, representative or organisation.

### How do I give my feedback?

You can give your feedback on the 2023 Reforms to Communities by answering the questions in **Appendix B** of this paper.

You can make a submission in the following ways:

* Post your written submission or letter to

Department of Communities, Strategy & Partnerships (Office of Disability)
Locked Bag 5000
Fremantle WA 6959

* Email your written submission or letter to

disabilitylegislationteam@communities.wa.gov.au

* Provide online feedback through the 2023 [Reforms webpage](https://www.wa.gov.au/organisation/department-of-communities/have-your-say-reforming-western-australias-disability-legislation)
* Speak to someone on the phone between 9.00am to 4.00pm Monday to Friday by calling 0421 978 786.

If you have any questions, or if you want to make your submission in a different way, please email disabilitylegislationteam@communities.wa.gov.au.

### How long do I have to give my feedback?

All submissions and online feedback must be submitted by **10 June 2023.**

### Will my feedback be confidential?

We may make feedback available on Communities’ website or may quote feedback in Communities’ reports and publications. If you don’t want us to use your name, or wish to keep any other personal information private, please tell us when you make your submission.

Also, people may make freedom of information requests about feedback provided to Communities. If this happens, we will remove all identifying information from the feedback (such as your name, age and address) before we provide the requested information.

## 2.2 Next steps

The feedback on this paper will be used to prepare drafting instructions for the new WA disability legislation. There will be further consultation before the bill is introduced into Parliament.

# 3. What do I need to understand before I give feedback?

## 3.1 Australia’s Disability Strategy

Australia’s Disability Strategy is Australia’s national disability policy. It is a plan to improve the lives of people with disability in Australia, and promotes an inclusive Australian society that ensures people with disability can fulfill their potential, as equal members of the community.

Australia’s Disability Strategy:

* provides national leadership towards greater inclusion of people with disability
* guides public policy areas to be inclusive and responsive to people with disability
* requires and guides mainstream services and systems to improve outcomes for people with disability
* engages, informs and involves the whole community in achieving a more inclusive society.

## 3.2 State Disability Strategy

On 3 December 2020, the WA Government launched the State Disability Strategy. It is a 10-year whole-of-community vision to protect, uphold and advance the rights of people with disability living in WA. The State Disability Strategy is about building a more inclusive WA, which supports and empowers people with disability to take part meaningfully in all parts of society. The Strategy will also help make sure we have the resources to do this.

The State Disability Strategy is WA’s commitment to change that will ensure people with disability have the same level of opportunities and outcomes in all areas of life as the rest of the community. The State Disability Strategy has four pillars that represent the changes we are aiming for. These are:

1. Participate and contribute
2. Inclusive communities
3. Living well
4. Rights and equity.

A series of two year [Action Plan](https://www.wa.gov.au/sites/default/files/2021-04/state-disability-strategy-2020-2030-action-plan.pdf)s support the State Disability Strategy. These plans set out the specific actions the WA Government will take to meet the objectives of the State Disability Strategy.

## 3.3 Disability Access and Inclusion Plans

The current DS Act says that WA public authorities must develop Disability Access and Inclusion Plans (DAIPs) that benefit people with disability and make communities more inclusive.

These plans identify and address barriers to the inclusion of people with disability and drive positive changes in workplaces and communities.

Public authorities must plan and make improvements to access and inclusion across seven outcome areas:

1. Services and events
2. Buildings and facilities
3. Information
4. Quality of service
5. Complaints
6. Consultation processes
7. Employment.

## 3.4 Disability Inclusion Charter

The State Disability Strategy (see 3.2) includes a call to action on the inclusion of people with disability across all parts of the community. WA needs a cultural shift. We may develop a Disability Inclusion Charter, as a step towards achieving this shift and a greater understanding of the economic, business and social contribution of people with disability. The Disability Inclusion Charter may operate in conjunction with the future, modernised version of the Principles (see 4.1B) and Objectives (see 4.3B) in the DS Act.

**Appendix A** of this paper contains an explanation of abbreviations and common terms.

# 4. What issues need to be considered as part of the consultation?

The new WA disability legislation must include and support policy objectives that are contemporary and achievable, and address issues that are relevant for people with disability. This consultation aims to identify what these issues are. The consultation will consider the interests of people with disability, the role of service providers, and the roll-out of the NDIS in WA.

The next section contains information to help you think about, discuss and give feedback on the consultation’s key themes of:

* the principles that apply to people with disability
* safeguarding of people with disability
* access and inclusion
* ongoing services for specific groups of people.

**Appendix B** of this paper contains a full list of all the consultation questions.

## 4.1 Principles applicable to, and the safeguarding of, people with disability

We want to make sure the new legislation is built around the needs, interests and safeguarding of people with disability, and recognises the impact of disability on people’s everyday lives

### A. Definition of ‘disability’

The current definition of disability in the DS Act is as follows:

**Disability** means a disability:

1. which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory, or physical impairment or a combination of those impairments
2. which is permanent or likely to be permanent and which may or may not be of a chronic or episodic nature
3. which results in:
	1. a substantially reduced capacity of the person for communication, social interaction, learning or mobility
	2. a need for continuing support services.

**Question**

1. Do you think the current definition of ‘disability’ in the DS Act adequately covers all types of disability? Why? If not, how would you change or improve the definition?

### B. Principles

People with disability have the same human rights as everyone else; including the right to have a say, make decisions about their day-to-day life, and to be given the same opportunities as others to take part in and contribute to society. The right to dignity, equity and mutual respect are the foundations of a fair society.

The State Disability Strategy (see 3.2) recognises these rights. Everyone, including people with disability, should have equal access to health, housing and justice services, education and employment opportunities. A future WA Disability Inclusion Charter (see 3.4) would outline these principles for people with disability.

Currently, the DS Act reflects the [United Nations Convention on the Rights of Persons with Disabilities](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html) in Schedule 1 in the ‘Principles applicable to people with disability’.The Disability Services Commission (now part of Communities) and other groups or bodies referred to in the DS Act (such as the Ministerial Advisory Council on Disability) must uphold and promote these principles when they are doing their work. The current Principles in the DS Act are as follows:

1. People with disability are individuals who have the inherent right to respect for their human worth and dignity without discrimination and with equality of opportunity.
2. People with disability, whatever the origin, nature, type or degree of disability, have the same human rights as other members of society and should be enabled to exercise those human rights.
3. People with disability have the same rights as other members of society to realise their individual capacities for physical, social, emotional, intellectual, cultural and spiritual development.
4. People with disability have the same right as other members of society to access services that will support their choices, assist them to be as independent as possible and enable them to participate in all aspects of life.
5. People with disability have the same right as other members of society to participate in, direct and implement the decisions that affect their lives.
6. People with disability have the same right as other members of society to receive services in a manner that respects and protects their rights and opportunities and is the least restrictive option in the circumstances.
7. People with disability have the right to pursue any grievance concerning services.
8. People with disability have the right to access the type of services and supports that they believe are most appropriate to meet their needs.
9. People with disability who reside in country areas have a right, as far as is reasonable to expect, to have access to similar services provided to people with disability who reside in the metropolitan area.
10. People with disability have a right to an environment free from neglect, abuse, violence, intimidation, and exploitation.

Future legislation may include additional principles that apply specifically to people with disability who are children, Aboriginal or Torres Strait Islanders, or from culturally and linguistically diverse backgrounds.

**Questions**

1. Would you change the current Principles in the DS Act? This may include adding new Principles or removing current ones. Why?
2. Do you think we should continue to have Principles in the Act, or rework them into a Disability Inclusion Charter (see 3.4)? Why?

### C. Safeguarding

The State Disability Strategy (see 3.2) says that safeguards to protect people with disability will continue to be a priority for the WA Government. These safeguards include, but are not limited to:

* service provider registration and associated standards
* the requirement for the use of restrictive practices in disability services (state and NDIS funded) to be authorised under the WA *Authorisation of Restrictive Practices in Funded Disability Services Policy*
* screening checks for workers employed to support people with disability, including children
* State based complaints mechanisms (via the [Health and Disability Services Complaints Office](https://www.hadsco.wa.gov.au/)).

By comparison, the [NDIS Quality and Safeguards Commission](https://www.ndiscommission.gov.au/) has been established to improve the quality and safety of supports and services provided to NDIS participants. New WA disability legislation could include similar safeguards for people with disability who use State funded services.

**Questions**

1. What kinds of safeguards do you think would protect people with disability from violence, abuse, neglect and exploitation?
2. How can complaint mechanisms be made easier to use for people with disability receiving State services?

### D. Care and neglect

People with disability often require care and support from other people as part of everyday life. This means people with disability may be vulnerable to ill-treatment or neglect.

The DS Act currently contains the ‘offence of ill-treatment’ which provides a criminal penalty of $4,000 or imprisonment for 12 months for anyone who ill-treats or wilfully neglects a person with disability in their care.

The offence of ill-treatment may cover a wide range of conduct with different degrees of seriousness.  It may also include actions towards a person with disability, such as physical or psychological abuse, as well as failures to take action, such as failing to provide adequate food or obtain medical treatment.

Recognising these offences in the legislation is an additional safeguard and protection for people with disability.

**Question**

1. Is the offence of ill-treatment of people with disability important to you? Why?
2. Should State legislation continue to make provision for the ‘offence of ill-treatment’ of people with disability by a carer or service provider?

## 4.2 Access and Inclusion

### A. Inclusive Community

An inclusive community creates a sense of connection and belonging by being naturally welcoming to everyone. It starts with having buildings and spaces designed to be accessible and friendly for everyone and built to include services and products which are universally designed so that they work well for everyone in the community. However, physical or environmental inclusion is just the starting point. Inclusion is when all people can be involved and play an active role in their community. It is important to make our communities, businesses, places and spaces more accessible, inclusive and welcoming to all. It is important for us to raise the standards we set for ourselves and for other Disability Access and Inclusion Plans (see 3.3) are one of the ways to support public authorities to be inclusive. More recently, the State Disability Strategy (see 3.2) has confirmed this need for social inclusion.

### A.1. Disability Access and Inclusion Plans

Disability Access and Inclusion Plans guide public authorities to plan, implement and improve accessibility and inclusion in services and events, buildings and facilities, information, quality of service, complaints, consultation processes and employment. However, Disability Access and Inclusion Plans have existed for some time. We should now be able to consider the outcomes and aims to be normal business practices. The aim of the 2023 Reforms is for WA disability legislation to be contemporary, and to promote and safeguard inclusive communities. This means future Disability Access and Inclusion Plans may apply more broadly and focus more on social inclusion.

### A.2. State Disability Strategy

The State Disability Strategy promotes access and inclusion in different aspects of life and community participation. For example, the State Disability Strategy recognises that in Australia, the unemployment rate for people with disability is more than double the rate of people without disability. The State Disability Strategy calls for people with disability to have more opportunities for meaningful and inclusive employment and economic independence. Improving the economic participation of people with disability will benefit the WA economy as a whole.

**Question**

1. What do you think should be included in WA disability legislation to promote inclusion and social participation of people with disability?

### B. Making people with disability heard

It is important that the lived experience of people with disability, families, carers and other key stakeholders continues to be shared with the WA Government. The DS Act currently provides for the Ministerial Advisory Council on Disability. This is the body that directly represents these key groups to the State Government and reports directly to the Minister for Disability Services. The Ministerial Advisory Council on Disability has up to 14 members and includes people who either have a disability or relevant knowledge and experience of a disability or are a family member or carer of a person with a disability. Some members are also required to have recent and relevant experience of disability outside the metropolitan region.

**Questions**

1. Is the Ministerial Advisory Council on Disability an effective way of giving the Minister for Disability Services advice and feedback on issues affecting people with disability? If not, why not? How can this be improved?
2. How can WA disability legislation ensure the views of the community, particularly people with lived experience of disability, are shared with WA Government?

## 4.3 Ongoing service provision for specific groups of people

### A. Ongoing service provision

Statistics from September 2022 show that around 11.65% of people with disability in WA, (or 47,936 people), are NDIS participants. If people are deemed ineligible for the NDIS, [Partners in the Community](https://www.ndis.gov.au/understanding/what-ndis/whos-delivering-ndis/lac-partners-community) may connect them to relevant services and supports available to all people. Some people who are ineligible for NDIS may still need more specific supports and services due to their disability. For this reason, the WA Government has agreed to provide State funded supports to specific groups of people with disability who are not eligible for the NDIS. The ongoing aim will be for the State and NDIS to work together smoothly, so that people who are not eligible for the NDIS can access appropriate support based on their needs.

### B. Aims for services and programmes

The aims for WA disability services and programmes are called ‘Objectives’ in the DS Act.

The current Objectives in the DS Act are as follows:

1. Programmes and services are to focus on achieving positive outcomes for people with disability, such as increased independence, employment opportunities and inclusion and participation within the community.
2. Programmes and services are to contribute to ensuring that the conditions of the everyday life of people with disability are the same as norms and patterns which are valued in the general community.
3. Programmes and services are to be integrated with services generally available to members of the community.
4. Programmes and services are to be flexible and responsive to the individual choices and needs of people with disability, their families, carers and significant others.
5. Programmes and services are to be designed and administered so as to be sensitive and responsive to the individual and diverse needs of all people with disability taking into account their age, gender, religion, Aboriginality, cultural or linguistically diverse backgrounds or geographic location.
6. Programmes and services are to be designed and administered to promote awareness of the abilities and contributions of people with disability and foster respect for their rights and dignity.
7. Programmes and services are to be designed and administered so as to promote the participation of people with disability in the life of the local community through physical, social, economic, emotional, intellectual, cultural and spiritual inclusion in that community.
8. Programmes and services are to be designed and administered so as to ensure that no single organisation shall exercise control over all or most aspects of an individual’s life.
9. Service provider organisations, whether disability specific or generic, shall be accountable to those people with disability who use their services, their families and carers, their advocates, the State and the community generally for the provision of information from which the quality of their services can be judged.
10. Programmes and services are to be designed and administered so as to provide opportunities for people with disability to reach goals and enjoy lifestyles that support their choices and are valued by the community.
11. Programmes and services are to be designed and administered so as to ensure that people with disability have access to advocacy support, to enable them to make choices and participate in decisions about the services they receive or are seeking.
12. Programmes and services are to be designed and administered so as to ensure that avenues exist for people with disability to raise, and have resolved, any grievances about services.
13. Programmes and services are to be designed and implemented in an accessible manner.
14. Programmes and services are to be designed and administered so as to respect the rights of people with disability to privacy and confidentiality.
15. Programmes and services are to begin as early as possible so as to prevent the occurrence of, or minimise, disability so people with disability can be as independent as possible and participate in all aspects of life.
16. Programmes and services are to be designed and implemented to acknowledge, recognise, respect and respond to the role of families, carers and significant others in supporting people with disability and respond to the views and needs of families, carers and significant others and strengthen and build the capacity of families, carers and significant others in supporting people with disability.
17. Programmes and services are to provide people with disability and their families and carers with opportunities for participating continually in the planning and operation of services they receive and opportunities for people with disability, their families and their carers to be consulted about the development of major policy, programme or operational changes.

**Questions**

1. What roles should the WA Government and Communities continue to have in the disability sector? Why?
2. Would you change the current Objectives in the DS Act? This may include adding new Objectives or removing current ones? Why?

# Appendix A: Abbreviations and common terms

### Abbreviations

**Australia’s Disability Strategy** means Australia’s Disability Strategy 2021-2031

**Communities** means the Department of Communities

**DS Act** means the Disability Services Act 1993 (WA)

**NDIS** means the National Disability Insurance Scheme

**Royal Commission** means the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

**State Disability Strategy** means ‘A Western Australia for Everyone: State Disability Strategy 2020-2030’

**WA** means Western Australia

### Common terms

**National Disability Insurance Scheme (NDIS)**

The NDIS is Australia’s first national Scheme for people with disability. It provides funding directly to people with disability (who have permanent and significant disability) for supports and services

**Partners in the Community**

Partners in the Community (Partners) supports NDIS implementation at a local community level. These Partners are suitably experienced and qualified organisations in the community who have strong local knowledge and understanding of the needs of people with disability.

**United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)**

The UNCRPD follows decades of work by the United Nations to change attitudes and approaches to persons with disability. It promotes the rights and capabilities of people with disability, including making decisions for their lives based on their free and informed consent as well as being active members of society.

**WA disability legislation**

The legislation in Western Australia related to disability and State-funded disability services, currently comprising the *Disability Services Act 1993* and the *Disability Services Regulations 2004*.

# Appendix B: Compilation of questions

1. Do you think the current definition of ‘disability’ in the DS Act adequately covers all types of disability? Why? If not, how would you change or improve the definition?
2. Would you change the current Principles in the DS Act? This may include adding new Principles or removing current ones. Why?
3. Do you think we should continue to have Principles in the Act, or rework them into a Disability Inclusion Charter (see 3.4)? Why?
4. What kinds of safeguards do you think would protect people with disability from violence, abuse, neglect and exploitation?
5. How can complaint mechanisms be made easier to use for people with disability receiving State services?
6. Is the offence of ill-treatment of people with disability important to you? Why?
7. Should State legislation make provision for the ‘offence of ill-treatment’ of people with disability by a carer or service provider? Why?
8. What do you think should be included in WA disability legislation to promote inclusion and social participation of people with disability?
9. Is the Ministerial Advisory Council on Disability an effective way of giving the Minister for Disability Services advice and feedback on issues affecting people with disability? If not, why not? How can this be improved?
10. How can WA disability legislation ensure the views of the community, particularly those with lived experience of disability, are shared with WA Government?
11. What roles should the WA Government and Communities continue to have in the disability sector? Why?
12. Would you change the current Objectives in the DS Act? This may include adding new Objectives or removing current ones? Why?