



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

Consultation Paper

Reforming WA disability legislation

March 2023



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 ongoing service provision for specific cohorts. Communities wants your feedback on how WA disability legislation can address and support these areas.

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 recognises the importance of having legislation specific to people with disability, particularly regarding the principles applicable to, and the safeguarding of, people with disability, the promotion of access and inclusion, and the capability for the ongoing provision of disability services within the State.

This Consultation Paper seeks the views of Western Australians on new WA disability legislation. Stemming from [A Western Australia for Everyone: State Disability Strategy 2020-2030](#) (the State Disability Strategy), [Australia's Disability Strategy 2021-2031 \(Australia's Disability Strategy\)](#) and issues being considered by the [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) (the Royal Commission), consultation is only focused on specific issues relevant to people with disability and disability services in Western Australia (WA).

1.1 Current WA disability legislation

The *Disability Services Act 1993* (DS Act) is the primary legislation in WA pertaining to disability services. Among its key provisions, the DS Act:

- promotes the rights and acceptance of people with disability in WA
- establishes the Disability Services Commission (the Commission) as a statutory authority with a Board as its governing body and a Chief Executive Officer to administer day to day operations
- establishes the Ministerial Advisory Council on Disability to advise the Minister on issues affecting people with disability
- enables the provision of grants and services that further the Principles and Objectives set out in the DS Act
- requires public authorities to develop Disability Access and Inclusion Plans
- provides for the Health and Disability Complaints Office to receive, investigate and act on complaints about the provision of disability services in WA.

1.2 Why are we reforming WA disability legislation?

In the early 1990s, WA's disability service system was established. State funded supports and services were delivered and funded from the Commission (now operating within the Department of Communities (Communities)). From July 2014, in addition to these services, WA administered trial sites for a State based National Disability Insurance Scheme (WA NDIS) in selected areas. The State disability services system and the WA NDIS operated under the *DS Act*. Simultaneously with these two systems, the Australia-wide National Disability Insurance Scheme (NDIS) was being trialled in specified geographical areas. In December 2017, the WA and Australian governments announced that the State would transition to the NDIS, with the move due to be completed by 30 June 2023.

The review of the DS Act scheduled for 2013 was deferred due to the legislative implications of the comparative trials of the NDIS in WA and the WA NDIS. The review

scheduled for 2018 was deferred pending work being undertaken by the State Government as part of the transition to the NDIS and the development of the State Disability Strategy.

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

Consistent and contemporary reforms to WA legislation are required to ensure it is appropriate to meet the modern needs and expectations of the community. The daily experience of people with disability should be one of inclusion and positive community attitudes, and it is important that the legislation supports this position.

The 2023 Reforms will involve the development of new legislation appropriate to the current and future environment. This will include consideration of the validity of the DS Act's policy objectives and appropriateness of its provisions in the context of issues relevant to people with disability and disability services in WA.

2. How can you get involved?

Communities is seeking the input of people with disability and their families and carers, service providers, advocacy and peak bodies, and WA public authorities on issues and matters that should be reflected in WA's disability legislation. If you are a member of the community with relevant thoughts, ideas and experiences, Communities also wants to hear from you.

Communities is interested in your views in the context of the key contemporary themes relevant for people with disability in WA, as outlined in this Consultation Paper. These themes include principles applicable to, and the safeguarding of, people with disability, access and inclusion and the ongoing service provision for specific cohorts.

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

2.1 Have your say!

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, and the social and financial implications of living with disability. We invite you to raise additional issues and make suggestions.

We will also ask you to provide us with some information about yourself when giving feedback. This will not be compulsory, but we encourage you to do so to help us better

understand who is providing feedback to ensure the views and broad needs of the community are reflected.

We are interested to know:

- your name
- 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, behaviour support practitioner or sole provider
 - an 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 providing the details above and by responding to the questions in the Consultation Paper at **Appendix B**.

Submissions can be made 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](#)
- 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 would like to make a submission in a different way, please send an email to disabilitylegislationteam@communities.wa.gov.au.

How long do I have to give my feedback?

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

Will my feedback be confidential?

If you prefer your name, or any other personal information about you, to remain confidential, please tell us that when you complete your submission. The feedback we receive may be made publicly available on Communities' website or may be quoted in Communities' reports and publications.

Please be aware that feedback provided to Communities can 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 feedback on this paper will be used to prepare drafting instructions for the new WA disability legislation. There will be further consultation prior to the introduction of the bill into Parliament.

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

3.1 Australia's Disability Strategy

Australia's Disability Strategy is Australia's national disability policy framework. It sets out a plan for continuing 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. The purpose of Australia's Disability Strategy is to:

- provide national leadership towards greater inclusion of people with disability
- guide activity across all areas of public policy to be inclusive and responsive to people with disability
- drive mainstream services and systems to improve outcomes for people with disability
- engage, inform and involve the whole community in achieving a more inclusive society.

Australia's Disability Strategy is supported by Targeted Action Plans, and Communities continues to work to ensure alignment with the State Disability Strategy's Action Plans (see 3.2 State Disability Strategy).

3.2 State Disability Strategy

On 3 December 2020, the WA Government launched the State Disability Strategy, 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 sets the foundation for building a more inclusive WA, empowering people with disability to participate meaningfully in all parts of society and to have the resources to do so.

The State Disability Strategy is WA's commitment to promote transformative change, including equitable opportunities and outcomes in all areas of life. It includes four pillars for change: rights and equality, inclusive communities, participate and contribute and living well. The State Disability Strategy is supported by a series of two year Action Plans that outline specific actions that will be implemented to realise the objectives of the State Disability Strategy.

3.3 Disability Access and Inclusion Plans

As a requirement of the current DS Act, Disability Access and Inclusion Plans raise awareness of the responsibility for all agencies in WA to acknowledge and address barriers to the inclusion of people with disability and drive positive changes in their workplaces and communities. Public authorities are required to plan and implement

improvements to access and inclusion across seven outcome areas, regarding services and events, buildings and facilities, information, quality of service, complaints, consultation processes and employment. These plans aim to benefit people with disability and make communities more inclusive.

3.4 Disability Inclusion Charter

The State Disability Strategy (see 3.2) includes a call to action on inclusion of people with disability across all parts of the community. The need for a cultural shift is recognised. A Disability Inclusion Charter may be developed as a step towards achieving this shift and 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.

An explanation of abbreviations and common terms can be found at **Appendix A**.

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

Communities is leading the development of new WA disability legislation that will comprise and support contemporary, achievable policy objectives. To achieve this, the legislation must address issues relevant for people with disability, as identified through consideration of the interests of people with disability, the role of service providers and the roll-out of the NDIS in WA.

The following section is designed to prompt and guide discussion and feedback on the prevalent issues within the key themes of:

- principles applicable to, and the safeguarding of, people with disability
- access and inclusion
- the ongoing service provision for specific cohorts.

A consolidated list of consultation questions can be found at **Appendix B**.

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

The WA Government is committed to new legislation that is built around the needs, interests and safeguarding of people with disability. The new legislation must address each of these elements and recognise the impact of disability on the everyday lives of people.

A. Definition of 'disability'

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

Disability means a disability:

- a) which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory, or physical impairment or a combination of those impairments
- b) which is permanent or likely to be permanent and which may or may not be of a chronic or episodic nature
- c) which results in:
 - i) a substantially reduced capacity of the person for communication, social interaction, learning or mobility
 - ii) 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

Everyone should be free to have a say and make decisions in their day-to-day lives. The right to dignity, equity and mutual respect are the foundations of a fair society. As recognised by the State Disability Strategy (see 3.2), the right to health, housing and justice services, education and employment opportunities, should be equally available to everyone, including people with disability. Future WA disability legislation may provide for the development of a Disability Inclusion Charter (see 3.4), which would outline these principles for people with disability.

Currently, the DS Act reflects the [United Nations Convention on the Rights of Persons with Disabilities](#) in Schedule 1 in the 'Principles applicable to people with disability'. These principles must be furthered and promoted by the Disability Services Commission (now merged with Communities) and other groups or bodies referred to in the DS Act (such as the Ministerial Advisory Council on Disability) in the performance of their functions. 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 go further by, for example, prescribing specific principles applicable to people with disability who are children, Aboriginal or Torres Strait Islanders or from culturally and linguistically diverse backgrounds.

Questions

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

C. Safeguarding

The State Disability Strategy (see 3.2) recognises that safeguards to protect people with disability will remain 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 NDIS and defined state funded disability services 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](#)).

By comparison, for people accessing the NDIS, the [NDIS Quality and Safeguards Commission](#) has been established to improve the quality and safety of supports and services provided to NDIS participants. Future WA disability legislation may include similar safeguards for State-funded services.

Questions

4. What safeguarding mechanisms do you think would protect people with disability from violence, abuse, neglect and exploitation?

5. As one aspect of safeguarding, how can complaint mechanisms be made easier to use for those persons 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.

It is understood that the offence of ill-treatment covers a wide range of conduct with different degrees of seriousness. It is also understood that it includes both actions towards a person with disability, such as physical or psychological abuse and failures to take action, such as failing to provide adequate food or obtain medical treatment.

Having a provision in legislation recognising these offences is an additional safeguard and protection for people with disability.

Questions

6. Is the offence of ill-treatment of people with disability important to you? Why?
7. Should State legislation make provision for an offence of ill-treatment of people with disability by a carer or service provider? Please give reasons for your answer.

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 within their community. It is important to make our communities, businesses, places and spaces more accessible, inclusive and welcoming to all, and raise the standards we set for ourselves and for others.

People with disability must be empowered and enabled to have social inclusion, community participation and live a meaningful life the way they choose. All people should be valued for their abilities and uniqueness. Disability Access and Inclusion Plans (see 3.3) were always intended to assist public authorities to be inclusive. More recently, the State Disability Strategy (see 3.2) has recognised the need for social inclusion.

A.1. Disability Access and Inclusion Plans

Disability Access and Inclusion Plans guide public authorities to plan, implement and improve access to and inclusion in services and events, buildings and facilities, information, quality of service, complaints, consultation processes and employment.

However, as Disability Access and Inclusion Plans have existed for some time, the promoted outcomes and aims should now be considered normal business practices. The aim of the 2023 Reforms is for WA disability legislation to be contemporary and 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 for people without disability and improving the economic participation of people with disability will benefit the WA economy as a whole. The State Disability Strategy calls for people with disability to have opportunities for meaningful and inclusive employment and economic independence.

Question

8. 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 key stakeholders continues to be shared with WA Government. The DS Act currently provides for and establishes the Ministerial Advisory Council on Disability as the community representative body to the State Government. The Ministerial Advisory Council on Disability has up to fourteen members who either have a disability or relevant knowledge and lived 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

9. The DS Act currently provides for the Ministerial Advisory Council on Disability – is the Ministerial Advisory Council on Disability an effective tool for letting the Minister for Disability Services hear the voices of people with disability? How can this be improved?
10. How can WA disability legislation ensure the views of the community, particularly those with lived experience, are shared with WA Government?

4.3 Ongoing service provision for specific cohorts

A. Ongoing service provision

Statistics from September 2022 indicate around 11.65% of the people with disability in WA (or 47,936 people) are NDIS participants. Of the people deemed NDIS ineligible, [Partners in the Community](#) may connect them to relevant mainstream services and supports. However, some people with disability may still require or seek State-funded supports and

services. For this reason, the WA Government has agreed to provide State-funded supports to specific cohorts of people with disability ineligible for the NDIS due to eligibility criteria. The ongoing aim will be for the smooth interface between the State and the NDIS so that people not eligible for the NDIS access similar 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

11. What roles should the WA Government and Communities continue to have in the disability sector?
12. Would you change the current Objectives in the DS Act, including adding new Objectives or excluding current ones? Why?

Have your say and find out more information at the [2023 Reforms webpage](#)

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, including adding new Principles or excluding current ones? Why?
3. Do you think we should continue to have Principles or rework them into a Disability Inclusion Charter (see 3.4)? Why?
4. What safeguarding mechanisms do you think would protect people with disability from violence, abuse, neglect and exploitation?
5. As one aspect of safeguarding, how can complaint mechanisms be made easier to use for those persons 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 an offence of ill-treatment of people with disability by a carer or service provider? Please give reasons for your answer.
8. What do you think should be included in WA disability legislation to promote inclusion and social participation of people with disability?
9. The DS Act currently provides for the Ministerial Advisory Council on Disability – is the Ministerial Advisory Council on Disability an effective tool for letting the Minister for Disability Services hear the voices of people with disability? How can this be improved?
10. How can WA disability legislation ensure the views of the community, particularly those with lived experience, 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, including adding new Objectives or excluding current ones? Why?