



Director of Forensic Disability POLICY

Title: Human Rights

1. Policy Statement

Acknowledging that all people have a right to the same basic human rights is an important factor in the protection, care and support of forensic disability clients (clients) detained in the Forensic Disability Service (FDS).

This policy outlines the Director of Forensic Disability policy with regard to recognising and taking into consideration human rights when making decisions that affect clients detained at the FDS.

2. Purpose

The purpose of this policy is to highlight to all staff at the FDS that they have an obligation to ensure that they take civil and political rights (human rights) into account in their day-to-day decision making as it relates to the care, support and protection of clients detained in the FDS.

3. Scope

This policy applies to the FDS and all FDS staff. The Administrator, Senior Practitioners, Authorised Practitioners and other persons performing a function or exercising a power under the *Forensic Disability Act 2011* (the Act) must comply with this policy.

4. Authorising Legislation

Section 91 of the Act.

5. Policy

5.1 Human rights, legislation and the FDS

Since commencement, the Act has contained a number of important safeguards relating to the rights, care and protection of clients detained in the FDS.

In order to safeguard the rights, care and protection of clients detained in the FDS, the administration of powers under the Act must be administered (by FDS staff) in accordance with the “general principles” set out in section 7 of the Act. These “general principles” relate to:

- forensic disability clients having the same human rights as others;
- promoting habilitation and rehabilitation;
- meeting individual needs and goals;

- maintaining supportive relationships and community participation;
- supporting, encouraging and including client's in making decisions;
- supporting and informing clients about the exercise of their rights; and
- the right to confidentiality.

All staff at the FDS must be familiar with the “general principles” as set out in section 7 of the Act.

Additionally the “Statement of Rights”, specific to clients detained in the FDS, must be provided and explained to each client (refer to *Director of Forensic Disability - Client Statement of Rights and Responsibilities*).

The *Human Rights Act 2019*, which places the human rights of individuals at the forefront of Queensland public sector service delivery, reinforces the abovementioned “general principles” by requiring all FDS staff to take into consideration, when making a decision, that clients have the same human rights as all other persons.

5.2 Compatible with human rights

In accordance with the *Human Rights Act 2019*, all FDS staff have an obligation to ensure they give proper consideration to human rights when making a decision that affects a client and that the decision is **compatible with human rights**.

“Compatible with human rights” is a key term in the *Human Rights Act 2019*. It is used throughout the *Human Rights Act 2019* to set the standard for the obligations that are placed on a decision maker when making a decision.

An act or decision is **compatible with human rights** if it:

- (a) does not limit a human right; or
- (b) limits a human right only to the extent that is **reasonable** and **demonstrably justifiable** in a free and democratic society based on human dignity, equality and freedom.

5.3 Decisions, management of risk and human rights

Most actions or decisions by FDS staff will have an impact on a client's human rights. In some cases these actions or decisions may protect or uphold human rights and in others they may limit human rights. For example, the management of risk may require a decision that limits a human right.

Where a decision limits a human right it does not automatically mean that the decision is incompatible with human rights. For example, the decision may be authorised by law, and as such demonstrably justifiable in our free and democratic society. However, where a decision is made that limits a client's human rights, this may only occur after careful consideration and where the decision maker is satisfied that the decision is justifiable and the least restrictive course of action.

Before making any decision that affects a client, FDS staff must ask themselves the following questions:

1. What human rights are affected?
2. Will human rights be limited?

3. Does the law let me limit human rights?
4. Can I show there is a good reason for limiting human rights, is it fair, and is it the least restrictive?

5.4 Documenting a decision that limits human rights

FDS staff should clearly **document** how they gave proper consideration to human rights before deciding to limit a client's human rights, or taking action which limits human rights.

6. Complaints

Complaints in relation to the support and care of clients at the FDS, including human rights, may be received by any staff member at the FDS and/or the Director of Forensic Disability. The Administrator of the FDS must ensure that there is an effective complaints process in place to deal with any human rights concerns or complaints that may arise. Furthermore, where a human rights complaint is received at the FDS, the Administrator must notify the Director as soon as practicable after receipt of the complaint (refer to *Director of Forensic Disability Policy The Management of Complaints about Care, Support and Protection of Forensic Disability Clients*).

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