



# Director of Forensic Disability POLICY

**Title:** Regulated Behaviour Control

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## 1. Policy Statement

Any use of regulated behaviour control at the Forensic Disability Service (FDS) must occur in accordance with the provisions of the *Forensic Disability Act 2011* (the Act) and only be used as a last resort and where there is no less restrictive way to protect the health and safety of clients or to protect others.

Any application of regulated behaviour control must be guided by principles that the regulated behaviour control:

- be used in way that has regard to the human rights of the forensic disability client;
- maintains the safety, wellbeing and dignity of the client;
- aims to reduce or eliminate the need for its use; and
- ensures transparency and accountability in its use.

## 2. Purpose

This policy outlines the relevant provisions of the Act, and the Director of Forensic Disability Policy, in relation to the use of regulated behaviour control at the FDS.

This policy:

- provides an overview of the circumstances in which regulated behaviour control (seclusion, mechanical restraint, behaviour control medication) can be used at the FDS;
- outlines the safeguards that should be put in place to ensure an appropriate balance between protecting the human rights of FDS clients and protecting the rights of others;
- ensures decisions about treatment, care and practices relating to the use of regulated behaviour control align with the Act; and
- ensures regulated behaviour control is only used when deemed to be the least restrictive way to protect the health and safety of clients or others.

## 3. Scope

This policy applies to the use of regulated behaviour control at the FDS. The Administrator, Senior Practitioner, Authorised Practitioner, or other persons performing a function or exercising a power under the Act must comply with this policy.

This policy must be implemented in a way that is consistent with the purpose and principles of the Act.

#### **4. Authorising Legislation**

Section 91 of the Act.

#### **5. Policy**

##### ***Regulated behaviour control to be used only when it is the least restrictive option***

The use of regulated behaviour control at the FDS is strictly regulated under the Act (Chapter 6). It must only be used where it is considered necessary and it is the least restrictive way to protect the health and safety of clients, or to protect others, and must aim to eliminate or reduce the need for its use.

Each client's Individual Development Plan (IDP) must include strategies for avoiding, reducing and eliminating the further use of the behaviour control.

##### ***Offence to use regulated behaviour controls other than in accordance with the Act***

It is an offence to administer any regulated behaviour control with respect to a forensic disability client in the FDS other than in accordance with the requirements of the Act.

##### ***Human Rights and the use of regulated behaviour control***

Any decisions regarding the use of regulated behaviour control should be considered alongside, and must be compatible with, the *Human Rights Act 2019*.

In accordance with the *Human Rights Act 2019* it is unlawful for a public entity (this includes the FDS) to:

- a) to act or make a decision in a way that is not compatible with human rights; or
- b) in making a decision, to fail to give proper consideration to a human right relevant to the decision.<sup>1</sup>

An act or a decision is **compatible with human rights** if the act or decision –

- a) does not limit a human right; or
- b) limits a human right only to the extent that is reasonable and demonstrably justifiably in accordance with section 13 of the *Human Rights Act 2019*.<sup>2</sup>

By using regulated behaviour control the decision maker is limiting the affected client's human rights. In accordance with the *Human Rights Act 2019* the decision maker may only limit the affected client's human rights if it is justified in law and it is fair and reasonable to do so.<sup>3</sup>

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<sup>1</sup> Refer section 58 *Human Rights Act 2019*, including exceptions to when a decision maker is not required to consider human rights.

<sup>2</sup> Refer sections 8 *Human Rights Act 2019*.

<sup>3</sup> Refer section 13 *Human Rights Act 2019*.

Any application of the *Human Rights Act 2019* should be documented for transparency and accountability. All decisions made regarding client care, safety and support, particularly regarding the use of regulated behaviour control, must evidence proper consideration of the affected client's human rights.

### ***Notification requirements regarding regulated behaviour control***

In relation to all regulated behaviour control, other than fixed dose behaviour control medication, the Administrator must give the Director of Forensic Disability written notice as soon as practicable after its use.

In relation to fixed dose behaviour control medication, the Administrator must give the Director of Forensic Disability written notice as soon as practicable after it is prescribed by a psychiatrist.

### ***The use of reasonable force for behaviour control purposes***

A Senior Practitioner or Authorised Practitioner may use the minimum force necessary and reasonable in the circumstances to:

- administer behaviour control medication to a forensic disability client in accordance with the requirements outlined below;
- place a forensic disability client in restraint in accordance with requirements outlined below;
- place a forensic disability client in seclusion in compliance with the requirements outlined below.

### ***Meeting the client's reasonable needs while subject to a regulated behaviour control***

A Senior Practitioner or Authorised Practitioner must ensure a forensic disability client's reasonable needs are met while subject to regulated behaviour control. Reasonable needs include:

- sufficient clothing and bedding;
- sufficient food and drink;
- access to toilet facilities.

## **5.1 Behaviour control medication**

Section 44 of the Act defines '*behaviour control medication*' of a forensic disability client as: *the use of medication for the primary purpose of controlling the client's behaviour.*

Use of medication for a client's health care is not behaviour control medication.

### **5.1.1 Regulation of behaviour control medication**

It is an offence to administer behaviour control medication to a forensic disability client in the FDS other than in accordance with the requirements of sections 49 to 53 of the Act.

Any use of behaviour control medication **must** be prescribed by a psychiatrist.

### **5.1.2 Who can administer behaviour control medication?**

Behaviour control medication **must only** be administered by a Senior Practitioner who is a doctor or registered nurse, or a doctor or registered nurse acting under the direction of a Senior Practitioner

who is a doctor or registered nurse, and must be administered in accordance with the prescribing psychiatrist's directions (including directions about the dose, route and frequency of the medication and any restrictions on its use).

It is not necessary to obtain the consent of a forensic disability client for the administration of behaviour control medication (refer section 53 of the Act).

Details of behaviour control medication must be set out in the client's file and IDP in accordance with sections 50 and 51 of the Act and the *Director of Forensic Disability Procedure – Regulated Behaviour Control: Use of Behavioural Control Medication*.

### **5.1.3 Notification about the prescription of fixed dose behaviour control medication**

As soon as practicable after a psychiatrist prescribes fixed dose medication (medication that is administered at fixed intervals and at fixed times) the Administrator must give the Director of Forensic Disability written notice about the medication and provide any additional information the Director requires.

### **5.1.4 Notification about the use of other behaviour controls**

As soon as practicable after a behaviour control medication (other than fixed dose behaviour control medication) is administered to or used on a client, the Administrator must give the Director Forensic Disability written notice about the use of the behaviour control medication and provide any additional information the Director requires. The client's file must document each and every administration of a behaviour control medication.

### **5.1.5 Review of the client's behaviour control medication**

The Senior Practitioner is responsible for ensuring a psychiatrist regularly reviews (at least every three months) the use of medication for behaviour control.

Where the Director of Forensic Disability requests a review of the use of medication, including behaviour control medication, the Senior Practitioner must ensure a psychiatrist carries out an immediate review of the forensic disability client's medication.

### **5.1.6 Roles and responsibilities in relation to behaviour control medication**

#### ***Senior Practitioner***

The Senior Practitioner must ensure:

- the details of the medication as prescribed by a psychiatrist are included in the client's file and IDP;
- only a Senior Practitioner who is a doctor or registered nurse administers the medication or where the Senior Practitioner is a doctor or registered nurse they provide direction to a doctor or registered nurse to administer the medication;
- the medication is administered in accordance with the psychiatrist's directions, including directions about the dose, route and frequency of the medication and restrictions on its use;
- the client is observed in accordance with the psychiatrist's directions;
- the following details are recorded in the client's file:
  - the name of the medication that was administered;
  - the time it was administered and the person who administered the medication,

- in circumstances where the medication was administered as, and when needed, the circumstances in which it was administered; and
  - the intervals, of not more than three months, for regularly reviewing the client's medication.
- a psychiatrist regularly reviews a forensic disability client's need for, and appropriateness of, the behaviour control medication prescribed for the client;
  - the review by a psychiatrist is carried out at least every three months;
  - at the request of the Director of Forensic Disability, a psychiatrist carries out an immediate review of a forensic disability client's behaviour control medication, including the need for, and appropriateness of, the behaviour control medication prescribed for the client; and
  - the psychiatrist records the details of the review in the client's file.

### **Administrator**

The Administrator must ensure:

- the Director of Forensic Disability is given written notice, as soon as practicable, after a psychiatrist prescribes fixed dose behavioural control medication (medication that is administered at fixed intervals and at fixed times) for a forensic disability client;
- the Director of Forensic Disability is given written notice about behaviour control medication (other than fixed dose medication) as soon as practicable after the medication is administered to a forensic disability client by a registered medical practitioner or a registered nurse;
- the written notice about the medication includes the information required by the Director of Forensic Disability; and
- the use of behaviour control medication is recorded in the register of the use of regulated behaviour controls.

### **Director of Forensic Disability**

The Director:

- may order an immediate review of the client's medication, including the use of Behaviour Control Medication, if required.

## **5.2 Restraint**

Section 45 of the Act defines 'restraint' of a forensic disability client as: *the use of an approved mechanical appliance preventing the free movement of the client's body or a limb of the client.*

The use of a surgical or medical appliance for the proper treatment of physical disease or injury is not considered to be restraint for the purpose of the Act or this policy.

Physical restraint is not a regulated behaviour control for the purposes of the Act. Physical restraint should only be used at the FDS in accordance with the *Director of Forensic Disability Policy - Use of Reasonable Force*.

### **5.2.1 Regulation of restraint**

It is an offence to use restraint on a forensic disability client detained in the FDS other than in accordance with the requirements of sections 54 to 59 of the Act.

Any decision to use restraint on a forensic disability client needs to take into account the past trauma history of the client and risk of restraint on their physical and psychological wellbeing.

### **5.2.2 Authorisation for the use of restraint**

The Director of Forensic Disability must approve the mechanical appliances that may be used for a forensic disability client and prescribe these in a policy and procedure. All use of mechanical restraint must be approved by the Director of Forensic Disability.

The Director of Forensic Disability may authorise the use of restraint on a client only if the Director is satisfied it is the least restrictive way to prevent self-harm or physical harm to others. In authorising the restraint the Director of Forensic Disability must have regard to the client's IDP. The Director must authorise the restraint to be applied for only the minimum periods of time possible.

The Director of Forensic Disability will not consider urgent applications to use mechanical restraint. At least seven days will be required for the Director of Forensic Disability to consider approval of restraint.

### **5.2.3 Roles and responsibilities in relation to restraint**

#### ***Senior Practitioner and Authorised Practitioner***

The Senior Practitioner and Authorised Practitioner must:

- ensure a copy of the Director of Forensic Disability's order (issued under section 56 of the Act) is included in the client's file;
- use the restraint as authorised by the Director of Forensic Disability;
- ensure the client's reasonable needs are met while the restraint is being used;
- record the following details in the client's file:
  - the type of restraint used;
  - if the Director of Forensic Disability's order states any restrictions on the circumstances in which the restraint may be used, the circumstances in which the restraint was used;
  - the time the restraint was used;
  - the person who used the restraint;
  - the time the restraint was removed; and
  - the person who removed the restraint.
- immediately remove the restraint before the authorisation period ends if reasonably satisfied the client can be safely cared for without the restraint; and
- immediately remove the restraint if the Director of Forensic Disability orders the removal of the restraint.

#### ***Administrator***

The Administrator must:

- ensure the Director of Forensic Disability is given written notice, as soon as practicable, after the restraint is used on a forensic disability client;
- ensure the written notice about the restraint includes the information required by the Director of Forensic Disability; and

- ensure each use of restraint is recorded in the register of the use of regulated behaviour controls.

### ***Director of Forensic Disability***

The Director must:

- approve the mechanical appliances that may be used for the restraint of a forensic disability client;
- authorise the use of restraint on the forensic disability client only if satisfied it is the least restrictive way to protect the client's health and safety or to protect others;
- in authorising the restraint, have regard to the client's IDP and authorise the restraint to be applied for only the minimum period or periods possible;
- provide the authorisation by written order to a Senior Practitioner or Authorised Practitioner; and
- ensure that the written order details:
  - the type of restraint authorised to be used;
  - the reasons for the restraint;
  - any restrictions on the circumstances in which the restraint may be used;
  - the maximum period or periods for which the restraint may be used;
  - the intervals at which the client must be observed while restrained;
  - any special measures necessary to ensure the client's proper care while restrained; and
  - the time (not longer than 3 hours after the order is made) when the authorisation ends.

## **5.3 Seclusion**

Section 46 of the Act defines 'seclusion' of a forensic disability client as: the confinement of the client at any time of the day or night alone in a room or area from which the client's free exit is prevented.

### **5.3.1 Cultural significance and implications of 'confinement alone' must be considered**

Risk factors for suicide or self harm behaviour should be considered when determining whether to use seclusion including, suicide and self harm history, current ideation/intention, mental health state, cultural and background factors such as trauma history. Where there is elevated risk, seclusion should be avoided.

In circumstances where seclusion is the only available option to manage dangerous behaviour, the time spent in seclusion should be minimised and careful consideration of risk factors should inform decision making in relation to observation levels.

### **5.3.2 Regulation of seclusion**

It is an offence to keep a forensic disability client detained in the FDS in seclusion other than in accordance with the requirements of sections 60 to 67 of the Act.

### **5.3.3 Authorisation for seclusion**

A forensic disability client may be placed in seclusion in the FDS by:

- a Senior Practitioner, at any time; or
- an Authorised Practitioner, if authorised by a Senior Practitioner **or** in urgent circumstances.

A client can only be secluded where the relevant practitioner is reasonably satisfied that:

- the seclusion is necessary to protect the client or other persons from imminent physical harm; and
- there is no less restrictive way to protect the client's health and safety or to protect others.

The Senior Practitioner's authorisation must be given by written order (Seclusion Order) to an Authorised Practitioner. The Senior Practitioner must ensure a copy of the Seclusion Order is included in the client's file.

The authorisation provided by an order for the seclusion of a client cannot exceed a time longer than 3 hours after the time the order is made.

A Senior Practitioner or Authorised Practitioner must immediately release a forensic disability client from seclusion in the FDS if the Director of Forensic Disability orders that the client be released in accordance with section 66 of the Act.

#### **5.3.4 Urgent circumstances – seclusion by an Authorised Practitioner (section 64 of the Act)**

If an Authorised Practitioner places a client in seclusion under urgent circumstances, the Authorised Practitioner must:

- immediately contact the Senior Practitioner and tell them of the seclusion; and
- Complete the record "*Seclusion by an authorised practitioner in urgent circumstances*" and ensure this is available on the client's file.

The Senior Practitioner **must** ensure the client is examined as soon as practicable by a Senior Practitioner.

The examining Senior Practitioner must:

- record in the client's file the time of the examination; and
- order the client's release from seclusion or authorise the client's continued seclusion.

All seclusion must be compliant with the Act, this Policy and the *Director of Forensic Disability Procedure – Regulated Behaviour Control: Use of Seclusion*.

#### **5.3.5 Observation of the client while secluded**

A secluded client must be observed at least every 15 minutes, but may be observed more frequently, including continuous observation. The observation requirements of a client must be stated in the Senior Practitioner's written order. The Senior Practitioner should consider any assessed risk factors and other relevant factors when determining observation intervals (e.g. suicide and self harm history, current ideation/intention; mental health, current presentation, cultural and background factors, trauma informed care considerations).

Observations of a client while secluded must be continuous where a client is placed in urgent seclusion by an Authorised Practitioner, until the client is reviewed by a Senior Practitioner.

#### **5.3.6 Seclusion Orders**

The Administrator must ensure the Director of Forensic Disability is provided written notice (by way of notification of seclusion event and availability of seclusion order) as soon as practicable after the



client is placed in seclusion and ensure the information required by the Director of Forensic Disability is accessible.

The Director of Forensic Disability may, where reasonable and justified, exercise powers under section 66 of the Act to order the immediate release of the client from seclusion.

### **5.3.7 Roles and responsibilities**

#### ***Senior Practitioner***

The Senior Practitioner must:

- assess whether the seclusion of the client is necessary to protect FDS staff or others from physical harm and there is no less restrictive way to protect the client or others;
- authorise and place a client in seclusion;
- have regard to the client's IDP when placing a client in seclusion;
- provide a written order authorising the seclusion.
- ensure the written order states:
  - the reasons for the seclusion;
  - the time the order is made;
  - the time (not longer than three hours after the order is made) when the authorisation ends;
  - whether an Authorised Practitioner is authorised to release the client from, or return the client to, seclusion;
  - the special measures necessary to ensure the client's proper care while secluded;
  - whether it is necessary to continuously observe the client while secluded; and
  - the intervals (not longer than 15 minutes) at which the client must be observed while secluded, if the order states it is not necessary to continuously observe the client while secluded;
- ensure a copy of the written order is included and available on the Forensic Disability Act Information System (FDAIS));
- ensure the client's reasonable needs are met while in seclusion.
- ensure, if the client is placed in seclusion in urgent circumstances, the client is examined as soon as practicable by a Senior Practitioner, and the time of the examination is recorded in the client file, and order the client's release from seclusion or authorise the client's seclusion;
- ensure the following details are recorded in the client's file:
  - the time the client was placed in seclusion;
  - the name of the Senior Practitioner or Authorised Practitioner who placed the client in seclusion;
  - the time the client was released from seclusion; and
  - the reason for the release or confirmed seclusion.
- notify the Administrator of any use of seclusion as soon as practicable;
- immediately release a client from seclusion under the Director of Forensic Disability's order; and
- ensure that the client's IDP includes strategies to avoid, reduce and eliminate any further use of seclusion.

### ***Authorised Practitioner***

The Authorised Practitioner must:

- place a client in seclusion if authorised by a Senior Practitioner or under urgent circumstances;
- if placing a client in seclusion under urgent circumstances, assess whether the seclusion of the client is necessary to protect themselves or others from physical harm and there is no less restrictive way to protect the client or others;
- have regard to the client's IDP when placing a client in seclusion;
- immediately tell the Senior Practitioner if they have placed the client in seclusion in urgent circumstances and record the following in the client's file:
  - the reasons for seclusion;
  - the time the client was placed in seclusion;
  - the time the practitioner told the Senior Practitioner of the seclusion;
  - the Authorised Practitioner's name;
  - the name of the Senior Practitioner.
- ensure the client's reasonable needs are met while in seclusion;
- ensure any release or return to seclusion is documented;
- immediately release a client from seclusion under the Director of Forensic Disability's order; and
- undertake the requirements for observation of the client while in seclusion as described in this policy.

### ***Administrator***

The Administrator must:

- ensure the Director of Forensic Disability is given written notice, as soon as practicable, after the forensic disability client is placed in seclusion;
- upon request provide additional written information required by the Director of Forensic Disability; and
- ensure each use of seclusion is recorded in the register of the use of regulated behaviour controls.

## **5.4 Register of the use of regulated behaviour control**

The Administrator must keep a register of the use of regulated behaviour controls (as required under section 74 of the Act). This includes the use of behaviour control medication, mechanical restraint and seclusion.

The register **must** include the details as prescribed in section 3 of the *Forensic Disability Regulation 2022* (the Regulations) – refer to Appendix 1 (attached). The Administrator is to ensure the Director of Forensic Disability has access to information within the register.

In addition, the Administrator must ensure a monthly review of the register is undertaken to ensure all use of regulated behaviour control is being recorded in accordance with the Act and the Regulations.



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**Designation:** Director of Forensic Disability

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## APPENDIX 1

### **Forensic Disability Regulation 2022**

#### **Register of use of regulated behaviour controls—Act, s 74**

(1) *For the Act, section 74, the register of the use of regulated behaviour controls must, for every use of a regulated behaviour control on a forensic disability client, include the following information—*

- (a) the client's name and date of birth, if known;*
- (b) a description of the client's behaviour which resulted in the use of the regulated behaviour control, including the intensity of the behaviour;*
- (c) the type of regulated behaviour control used;*
- (d) the reason for the use of the regulated behaviour control;*
- (e) the details and outcome of the following incidents—*
  - (i) any medical treatment given to the client or others;*
  - (ii) any attendance by an entity external to the department;*

*Examples of an entity external to the department—*

- a police officer*
- an ambulance officer*
- a registered health practitioner who is not employed by the department*

- (iii) any notifiable incident;*
- (f) the name and position of the person who prescribed or authorised the use of the regulated behaviour control;*
- (g) the day and time when the use of the regulated behaviour control was prescribed or authorised;*
- (h) if the regulated behaviour control is not fixed dose medication—the name and position of the person who administered or used the regulated behaviour control;*
- (i) the day and time when the use began and ended;*
- (j) the effectiveness of the use in controlling the client's behaviour;*
- (k) if the type of regulated behaviour control used is a mechanical restraint—the type of mechanical restraint;*

*Example—*

*harness, gloves, sheet, splint, cuffs, bolster*

- (1) if the type of regulated behaviour control used is behaviour control medication—
- (i) the name of the medication; and
  - (ii) whether the medication is fixed dose medication; and
  - (iii) the dose, route and frequency of the medication; and
  - (iv) any restrictions on the use of the medication.
- (2) Also, if the type of regulated behaviour control used is behaviour control medication that is fixed dose medication, the register must be updated at the end of the first month from the beginning of the use of the regulated behaviour control and subsequently, at intervals of not more than 1 month until the use of the regulated behaviour control ends with the following information—
- (a) a confirmation that the medication was administered as specified in the psychiatrist's prescription;
  - (b) the name and position of any person who administered the medication.
- (3) For subsections (1) and (2), a use of a regulated behaviour control that is fixed dose medication begins on the first administration of the medication under the psychiatrist's prescription and ends on the last administration of the medication under the psychiatrist's prescription.
- (4) For subsection (1) (e), incidents means incidents that occurred as a result of—
- (a) the client's behaviour mentioned in subsection (1) (b); or
  - (b) the client's reaction to the use of the regulated behaviour control.
- (5) In this section—
- notifiable incident** means a notifiable incident under the [Work Health and Safety Act 2011](#), section 35.



## **Work Health and Safety Act 2011**

### **35 What is a notifiable incident**

*In this Act, **notifiable incident** means—*

- (a) the death of a person; or*
- (b) a serious injury or illness of a person; or*
- (c) a dangerous incident.*