



Director of Forensic Disability POLICY

Title: Transfer of Responsibility and Exit from the Forensic Disability Service

1. Policy Statement

The Forensic Disability Service (FDS) is a transition service. It should never be thought of as an “end in itself” or as a “holding facility”. A primary focus of the FDS is to promote the client’s development, habilitation and rehabilitation and enhance their opportunities for quality of life so that, when appropriate, the responsibility for a client’s forensic order may safely transfer from the FDS to an authorised mental health service (AMHS) enabling the client to return to living in the community.

When a client has benefitted from the services and programs offered at the FDS, and the client is no longer considered an unacceptable risk, suitable community supports should be put in place and the responsibility for the client’s forensic order transferred to an AMHS in order to meet the FDS goal of returning the client to their community. However, if the client has not benefitted from the services and programs offered at the FDS and is assessed as unlikely to in the future, then the client’s forensic order may be transferred, as an inpatient, to the responsibility of an AMHS.

In either case, FDS staff must prepare a Transfer Plan to facilitate the transfer of responsibility for the client’s forensic order and exit from the FDS.

2. Purpose

This policy sets out the relevant provisions of the *Forensic Disability Act 2011* (the Act), and the Director of Forensic Disability Policy in relation to the transfer of responsibility and exit of forensic disability clients from the FDS.

The purpose of this policy is:

- to ensure the FDS functions as an effective and purposeful service in the transfer and exit of clients;
- to provide information about the functions of the Director of Forensic Disability and Chief Psychiatrist in the process of transfer;
- to note the potential role of the Mental Health Review Tribunal (MHRT) in the process of transfer; and
- to provide information about the role of the five year review.

3. Scope

This policy applies to the transfer of responsibility and exit of forensic disability clients detained in the FDS under a Forensic Order (Disability).

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

5.1 Transfer of responsibility

5.1.1 Manner of transfer

The responsibility for a client may be transferred from the FDS via one of two ways:

- via agreement between the Director of Forensic Disability and the Chief Psychiatrist transferring responsibility for the client to an AMHS (section 353 Mental Health Act (MHA));
or
- by order of the Mental Health Review Tribunal (MHRT) (section 456 MHA).

In both transfer scenarios, the decision maker/s (the Director of Forensic Disability, the Chief Psychiatrist or the MHRT) must be satisfied, having regard to transfer considerations, that it is appropriate for responsibility for the client to be transferred to the AMHS.

5.1.2 Practical outcome of transfer of responsibility

The transfer of responsibility and exit of a client from the FDS provides a practical mechanism for the safe, supported and supervised return of the client to their community. In the absence of an agreement with the Chief Psychiatrist to transfer responsibility for a client from the FDS to the AMHS, it will be difficult to return the client to the community.

With the approval of the Chief Psychiatrist (or an order from the MHRT), a client can more readily and safely transfer back to their community with ongoing responsibility, support and supervision provided by Queensland Health via an AMHS. However, the Director of Forensic Disability, the Chief Psychiatrist and/or the MHRT are unlikely to consent to a transfer of responsibility for the client unless there is a detailed Transfer Plan in place.

5.1.3 Transfer Plan

A Transfer Plan is a document created by the FDS staff that demonstrates why it is appropriate to transfer responsibility for the client from the FDS to an AMHS.

In the majority of cases the intention and goal of the transfer of responsibility will be to safely return the client to their community. In order to obtain the consent of the decision maker/s (the Director of Forensic Disability, the Chief Psychiatrist and/or MHRT) the Transfer Plan should contain information that not only demonstrates the client's progress whilst at the FDS but also sets out the proposed future management of the client upon return to the community.

The Transfer Plan is the means by which FDS staff may demonstrate to the decision maker/s that it is appropriate for the client to transfer back to the community. In most instances the Transfer Plan should demonstrate to the decision maker/s that any transfer will be done in a supported, supervised and safe manner (for content of the Transfer Plan please refer to the *Director of Forensic Disability Procedure – Transfer of Responsibility and Exit from the Forensic Disability Service*).

In the absence of a detailed Transfer Plan it is unlikely that the Director of Forensic Disability, the Chief Psychiatrist and/or the MHRT will consent to the transfer of responsibility from the FDS to the AMHS.

Please note, where it is not intended for the client to return to the community after transfer of responsibility and exit from the FDS, the Transfer Plan should not include reference to community needs and supports (refer also to the *Director of Forensic Disability Procedure – Transfer of Responsibility and Exit from the Forensic Disability Service*).

5.2 Five Year Review and Transfer

The Administrator of the FDS must ensure the Director of Forensic Disability conducts a review of a forensic disability client who has been a client of the FDS for a continuous five year period.

In accordance with section 141(2) of the Act, the Administrator must ensure the Director of Forensic Disability:

- reviews the benefit to the client from the care and support provided by the FDS; and
- considers whether the benefit is likely to continue if the client continues to be a client.

The Director of Forensic Disability must give a report on the client's five year review to the Administrator, who will provide the report to the MHRT at the client's next tribunal hearing.

In relation to the five year review, "benefit" is defined under s141(6) of the Act as:

"benefit means a benefit by way of individual development, and opportunities for quality of life and participation and inclusion in the community".

If, as a result of the review, the Director of Forensic Disability concludes that a client is not likely to continue to benefit from the care and support provided by the FDS, then the Director may request, if the Director of Forensic Disability has the support of the Chief Psychiatrist, the transfer of responsibility for the client to an AMHS. Where the Chief Psychiatrist does not agree to the transfer of responsibility, the Director of Forensic Disability may make an application to the MHRT seeking that the MHRT order a transfer of responsibility from the FDS to an AMHS.



It is also open to the Director of Forensic Disability to decide that the client, the subject of the five year review, may continue to benefit from the service and should remain under the care and support of the FDS or that a longer period of assessment is required before the Director of Forensic Disability is able to reach a definitive determination.

Date of approval: 09 January 2023

Date of operation: 01 February 2023

Date to be reviewed: 01 February 2026

Designation: Director of Forensic Disability

Help Contact: directorforensicdisability@dldsatsip.qld.gov.au

Jenny Lynas
Director of Forensic Disability