



Director of Forensic Disability POLICY

Title: Client Participation and Representation

1. Policy Statement

The proper and efficient administration of the *Forensic Disability Act 2011* (the Act) will be supported by ensuring forensic disability clients are supported in decision making regarding arrangements for their involuntary detention, care and protection under the Act.

Forensic disability clients should be supported in their choice and engagement of an allied person to represent their views, wishes and interests relating to their assessment, detention, care and protection under the Act.

2. Purpose

This policy outlines the relevant provisions of the Act, and the Director of Forensic Disability Policy, regarding forensic disability client participation and representation.

Forensic disability clients are:

- to be provided with information and support to enable their participation in decision making, particularly in relation to their detention, care and protection under the Act; and
- to be supported to enable them to identify and access an allied person to represent their views, wishes and interests in relation to their assessment, detention, care and protection under the Act.

3. Scope

This policy applies to the Forensic Disability Service (FDS). Any person 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

The Act provides for client involvement in decisions affecting their life, particularly decisions related to their involuntary detention, care and support and protection under the Act. The Act provides for access to independent assistance (allied person or guardian) to represent a client's point of view.

5.1 Client Participation

Forensic disability clients should, to the greatest extent practicable, be encouraged to participate in decision making and be informed and supported to exercise their rights under the Act.

The views of the client should be considered when decisions are being made about their detention, care, support and protection.

Forensic disability clients should be supported to:

- identify and access the ongoing assistance of an allied person who can represent their interests and views in relation to their assessment, detention, care and protection under the Act;
- contribute to the development of an Individual Development Plan that is responsive to their needs and goals, promotes opportunities for participation and inclusion in community life, maintains supportive relationships and supports the client's reintegration into the community; and
- participate in decision-making where possible, including those decisions (when appropriate) regarding support and reintegration into the community.

5.1.1 Targeted client engagement

Clients of the FDS should have an opportunity to meet with each other and FDS management to discuss any concerns and express views and ideas they may have regarding their detention, care, support and protection. Targeted client engagement may occur individually or collectively (e.g. within a client reference group for example), or a combination thereof.

The Administrator should ensure that client meetings or opportunities for targeted engagement occur on a regular basis so that clients may raise any individual or collective concerns about their detention, care, support and protection. The purpose of any meeting or individual engagement should be explained to clients, and they should be encouraged to attend and participate. Furthermore, in preparation for meetings, clients should be supported to consider any issues they may like to raise and to plan for how they will do this.

Minutes of any meetings, issues raised and/or specific feedback provided by clients should be documented including any agreed actions for follow up. Outcomes of any issues should be communicated to clients in a timely manner.

5.2 Statement of Rights

Under section 29 of the Act, the Director of Forensic Disability must prepare a written statement of rights that contains information about:

- the rights of the forensic disability clients and their allied persons under the Act;
- the rights of clients to make complaints about the service provided at the FDS and how complaints are made; and
- anything else the Director of Forensic Disability considers appropriate.

Information the Director of Forensic Disability considers appropriate to be contained in the statement of rights may include:

- the aims of the FDS and the support and programs provided;
- the responsibilities of the client while they are at the FDS;
- the purpose of the Individual Development Plan and how the client can contribute to shaping their plan; and
- the Mental Health Review Tribunal (MHRT) process and how the client can be involved and express their views, wishes and concerns.

5.2.1 Statement of Rights to be given to the client and allied person

Forensic disability clients and their allied person must be provided with a copy of the statement of rights by the Administrator (section 30 of the Act). The Administrator must ensure the statement of rights is explained verbally and/or in the language or format that is easiest for the client to understand and appropriate to their age, culture and disability.

The Administrator must ensure a copy of the statement of rights is displayed in prominent places in the FDS (section 31 of the Act) so it is easily visible to clients and their allied persons. In addition, the Administrator must ensure staff of the FDS understand and have the skills to act on the information contained in the statement of rights.

5.3 Notice of hearing or an application to transfer

A forensic disability client must be notified of any listed hearings or communications from the MHRT or any interested parties (such as the Director of Forensic Disability, Chief Psychiatrist) about their forensic order. This notice is to be provided in writing and be explained verbally and/or using the language or format that is easiest for the person to understand and is appropriate to their age, culture and disability. Notice must also be given to the client's allied person and/or guardian.

The client must be provided a copy of the clinical report prepared by the Senior Practitioner for the client's MHRT hearing. The Senior Practitioner must ensure that the client is supported to complete a self-report form to assist in expressing their views to the MHRT (refer to *Director of Forensic Disability - Support to the Mental Health Review Tribunal Policy*).

5.4 Representation - allied person

A forensic disability client can choose, or have appointed by the Administrator, an allied person to help them represent their views, wishes and interests in regard to their assessment, detention, care and support and protection under the Act (chapter 3 of the Act).

An allied person can be chosen or appointed from the following (section 25(1) of the Act):

- a) a personal guardian;
- b) a personal attorney;
- c) an adult relative or adult close friend of the client;
- d) an adult carer of the client; or
- e) another adult.

A forensic disability service employee or former forensic disability employee should not be chosen or appointed as a forensic disability client's allied person.

The Administrator must ensure the details of the client's allied person are kept up to date on the Forensic Disability Act Information System (FDAIS).

Definitions (section 25(3) of the Act):

- a **close friend** – means a person with whom the client has a close relationship
- a **personal attorney** – means an attorney for a personal matter under the *Powers of Attorney Act 1998*
- a **personal guardian** – means a guardian for a personal matter under the *Guardianship and Administration Act 2000*

5.4.1 Choosing an allied person

A forensic disability client should be supported to choose an allied person who is willing, readily available, capable and culturally appropriate from one of the persons listed in 5.4 of this policy.

5.4.2 Inability of client to choose an allied person

Where it is determined a forensic disability client does not have the capacity to choose an allied person, the Administrator must choose a person to be the client's allied person (section 26 of the Act).

If the client, by an advance health directive, has directed a stated person be his or her allied person under this Act, then the stated person is the client's allied person.

The person chosen by the Administrator must be:

- the first person listed in the order of persons mentioned in section 25 of the Act (refer to 5.4 above) who is willing, readily available, capable and culturally appropriate to be the allied person; or
- if no one in the list is willing, readily available, capable and culturally appropriate to be the allied person - the Public Guardian under the *Public Guardian Act 2014*.

The person chosen by the Administrator to be the client's allied person **cannot** be a forensic disability service employee.

5.4.3 Information provided to an allied person

A forensic disability client's allied person must be provided with a range of information pertaining to the client's care and support. Information must include, but not be limited to:

- notice of the applicable forensic order;
- statement of rights;
- the client's individual development plan
- notice of a hearing for an application to transfer; and
- notice of transfer of a person from a forensic disability service to an authorised mental health service (AMHS) under the Act (Section 13) or the *Mental Health Act 2016* (Ch 11, Part 5). This includes in the event a client absconds from the FDS and is temporarily transferred to an AMHS or where the responsibility for the client is transferred from the FDS to an AMHS.

5.4.4 Representation at Mental Health Review Tribunal hearing

A client who is the subject of a MHRT hearing may be represented at the hearing by a nominated support person, a lawyer or another person. Accordingly, the client may choose to appoint his or her allied person to represent him or her at a MHRT hearing. If, at a MHRT hearing, the client is not represented, the MHRT's presiding member may appoint a person to represent the client's views, wishes and interests.

5.4.5 When choice of allied person ends

The forensic disability client is not required to have an allied person under the Act and can choose not to have an allied person.

The choice of an allied person will end where (section 27 of the Act):

- the client chooses another person to be the allied person; or
- the client tells the Administrator they no longer wish to have an allied person and the Administrator is satisfied the forensic disability client has the capacity to make that decision; or
- the Administrator is no longer satisfied the allied person chosen under section 26 of the Act is willing, readily available, capable and culturally appropriate to undertake the role.

5.4.6 Confidentiality of information – allied persons

Under section 121 of the Act, an allied person who is, or has been, in receipt of information about a forensic disability client must not disclose, or give access to, any documentation to anyone else, unless:

- it is required or permitted by law; or
- the forensic disability client to whom the information relates agrees to the disclosure or giving of access.



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Designation: Director of Forensic Disability

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