



Director of Forensic Disability POLICY

Title: Safety Practices at the Forensic Disability Service

1. Policy Statement

Safety is an essential element 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 safety practices at the FDS when making decisions that may affect clients and other persons attending the FDS.

2. Purpose

The policy highlights to all staff at the FDS that they have safety obligations to clients and they must meet these obligations by:

- ensuring they (all staff) are knowledgeable and aware of safety requirements;
- safeguarding clients in accordance with the detention, care, support and protection requirements of the *Forensic Disability Act 2011* (the Act); and
- ensuring a safe service is provided to clients while providing the safest possible work environment for staff, visitors and clients.

3. Scope

This policy applies to all persons accessing the FDS, including all staff, visitors and clients detained in the FDS.

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 Protection and safety

The FDS is required to meet the challenges of providing rehabilitative and habilitative evidence-based programs and services to the client population detained in the FDS, while at the same time ensuring the protection and safety of the clients and all other persons attending the FDS.

In order to ensure the protection and safety of all persons attending the FDS it is incumbent on the Administrator to attend to the daily operations of the FDS in a manner that not only ensures the protection of forensic disability clients but also maintains the security and good order of the FDS.

5.2 Health and safety risk management process

When considering safety, the Administrator should address the following five basic steps of any health and safety risk management process namely:

1. Identify any foreseeable issues or 'harmful thing' (refer to paragraph 6.1) that may affect the safety of a client detained in the FDS environment;
2. Assess the level of risk of harm that the issue or 'harmful thing' may cause to the physical and/or psychological health and safety of clients, staff or visitors;
3. Decide what needs to be done to solve the problem by developing measures to eliminate the risk of harm, or if this is not reasonably practicable, to minimise the risk of harm to an acceptable level;
4. Implement measures ensuring communication to all staff and the provision of instruction, training and supervision as appropriate; and
5. Monitor and review the effectiveness of the implemented measures.

5.3 Least restrictive

In accordance with section 8 of the Act, the exercise of a power or a function under the Act relating to a forensic disability client must be exercised or performed so that the client's liberty and rights are only adversely affected if it is the least restrictive way to protect the client's health and safety or to protect others (this is referred to as the '*least restrictive principle*').

Whilst ensuring the protection and safety of clients detained in the FDS, it is important that FDS staff take an approach that applies the *least restrictive principle* when reasonably limiting a client's liberty and/or rights on the basis of safety.

Furthermore, under both the Act and the *Human Rights Act 2019*, all FDS staff have an obligation to ensure they give proper consideration to civil and political rights (human rights) when making a decision that affects the safety of a client detained in the FDS (refer to *Director of Forensic Disability Policy – Human Rights*).

5.4 Unidentified safety concern

If a staff member identifies a previously unidentified safety issue or object of concern that has the potential to affect client safety, they should bring the matter to the attention of the Administrator and act in accordance with the Administrator's direction.

6. Safety and Searching Forensic Disability Clients and Houses

6.1 Authority to search

Under chapter 7, part 1 of the Act a search may be authorised under specific circumstances for FDS clients and their belongings, and to seize certain material that is potentially harmful.

Who can authorise a search under the Act

- Only a Senior Practitioner or Authorised Practitioner can authorise a search under the Act.

When can an authorised search occur?

- A Senior Practitioner or Authorised Practitioner can only authorise a search of the client and/or the client's possessions if they **reasonably believe** a client has possession of a **harmful thing**.

Reasonable belief

Reasonable belief falls at the higher end of the legal threshold, requiring more than a suspicion. The belief must be reasonable for a person to hold at the time of making a decision to search, be based on fact and be at a higher threshold than a mere suspicion.

Definition:

'Harmful thing' – means anything that may be used to:

- threaten the security of the FDS; or
- threaten a person's health or safety; or
- if used by a forensic disability client detained in the FDS, is likely to adversely affect the client's care and support.

6.2 Removing and inspecting all or part of the client's clothing

If the Senior Practitioner or Authorised Practitioner believes that there is a need to remove and inspect all or part of the client's clothing (with the exception of outer garments or footwear) then they **must** seek the Administrator's approval prior to this occurring. The Administrator can only give approval if they are reasonably satisfied that it is necessary in the circumstances.

6.3 What the client must be told prior to the search

Before carrying out the search, the Senior Practitioner or Authorised Practitioner **must** tell the client:

- the reasons for the search; and
- how it is to be carried out.

6.4 Consent and presence of a Forensic Disability Client

The search of a client's room or personal property may be carried out without the client's consent, however the client must be asked if they wish to be present for the search. A search may only proceed without the client if they have declined the opportunity to be present, or are unable to be safely present for the search.

If the client wishes to be present when their room is searched, the client should be asked to stand in an appropriate place that not only allows the facilitation of the search but also ensures the client may observe the search process if they wish.

6.5 Respect for the dignity of clients

Some clients may feel nervous or anxious when experiencing a search of their room or person. While staff must perform professional, thorough searches they must also conduct themselves in a manner that recognises the dignity of clients and their right to be treated with courtesy and respect.

Section 30 of the *Human Rights Act 2019* requires all public entities (this includes the FDS) to treat persons in detention with humanity and dignity. A primary purpose of the '*right to humane treatment when deprived of liberty*' is to recognise the particular vulnerability of persons in detention and to ensure that they are treated with consideration of their rights and dignity as human beings.

In practical terms, before conducting any search, staff should be aware of the general and specific vulnerabilities of the clients detained at the FDS. Where the need arises to conduct a search, staff should take into consideration a client's vulnerabilities and proceed in a manner that upholds the client's rights and dignity as a human being. For example, gender or religious issues may require a search to be conducted by a staff member of the same gender.

6.6 Guiding principles for handling client personal property

When handling a client's personal property, the following principles must be applied:

- personal property must be dealt with in a manner that respects and values the individual (e.g. identity, gender, sexuality, culture, age and religious beliefs);
- the safety of the client and others will be protected by the identification and removal of harmful things as defined by the Act;
- risk in regard to a client's personal property must be managed in ways that are respectful to the client and are the least restrictive alternative;
- an item identified as a "harmful thing" must be removed in a respectful manner;
- seized personal property must be provided to the client's legal guardian or stored in a safe manner with the expectation that the property will be ultimately returned to the client upon their exit from the FDS; and

- in some instances, due to the nature of the item seized, it may not be appropriate to store the item. In such circumstances the Administrator must exercise reasonable discretion and decide how best to deal with the seized item.

6.7 Record of Search

In accordance with section 80 of the Act the Senior Practitioner or Authorised Practitioner who carries out a search or seizes anything found during a search must make a written record (e.g. search report form) of the following details:

- the reasons for the search;
- the practitioner's name;
- how the search was carried out;
- the results of the search; and
- anything seized.

The search report form should effectively capture the above legislative requirements, information as to why any items removed during a search were deemed 'harmful' and communication with the client about the search process (i.e. how the search was to be carried out, offers for the client to remain during the search etc).

A search report form should contain information about how the practitioner undertaking the search ensured the client's privacy was protected, dignity was protected, that the search caused as little inconvenience as practicable and/or whether assistance was required to conduct the search. Where a 'pat search' of a client is required, the practitioner conducting the 'pat search' must be of the same sex as the client and the search report form should clearly record that the practitioner was the same sex as the client.

7. Safety and Security of the Forensic Disability Service

The FDS is a business unit of the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (the department). As such departmental policy pertaining to safety and wellbeing applies to the FDS (refer to *Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships – Corporate Services Policy – Work Health, Safety and Wellbeing* (date of operation 3 December 2021).

The principles of the department's Policy are:

- Take a proactive approach to employee health, safety, and wellbeing;
- Actively engage employees and managers in early intervention, prevention, promotion, and protection;
- Contribute to a workplace culture where diversity and individual needs are recognised and supported;
- Ensure that work design considers the whole person: physical, biomechanical, cognitive, and psychological, when considering the demands of the role;
- Build organisational capability by providing education, awareness, and resources for employees in the management of health, safety, and wellbeing;

- Provide strong leadership through role modelling and having clear accountabilities for all employees; and
- Identify and assess risks within the work environment ensuring that all workplaces are safe, healthy, and supportive.

The Administrator should ensure that all FDS staff are aware of the department's "*Work Health, Safety and Wellbeing*" policy and that the department's policy not only maintains the security and good order of the FDS but also extends to ensuring the safety, human rights and protection of clients detained in the FDS.

8. Proviso

The Director of Forensic Disability acknowledges that any reference to Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships policy may be amended or overridden by future departmental policy and procedure.

The legislative functions and powers of the Director of Forensic Disability do not extend to issuing policies and procedures in relation to work health, safety and wellbeing at the FDS – a business unit of the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships.

Date of approval: 09 January 2023

Date of operation: 01 February 2023

Date to be reviewed: 01 February 2026

Designation: Director of Forensic Disability

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