



Queensland

# Forensic Disability Regulation 2011

## Explanatory Notes for SL 2011 No. 122

made under the

*Forensic Disability Act 2011*

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## General outline

### Short title

*Forensic Disability Regulation 2011.*

### Authorising law

Section 159 of the *Forensic Disability Act 2011* (the Act) provides that the Governor in Council may make regulations under the Act and that a regulation may be made about the records to be kept and returns to be made by persons and the inspection of records.

Under section 95 of the Act, a regulation may declare a place to be the forensic disability service.

### Policy objectives and the reasons for them

The Act responds to two 2006 reports: *Promoting balance in the forensic mental health system - Final Report - Review of the Queensland Mental Health Act 2000* by Mr Brendan Butler AM SC; and *Challenging Behaviour and Disability - A Targeted Response* by Honourable Mr WJ Carter QC that highlighted the inappropriateness of detaining people on forensic orders with a sole diagnosis of intellectual or cognitive disability in authorised mental health services.

Under the *Mental Health Act 2000*, a reference is made to the Mental Health Court where a person is charged with an indictable offence and may be unfit for trial or of unsound mind at the time of the offence. The Mental Health Court may make a forensic order for the person to be detained in an Authorised Mental Health Service, if it considers the person is not fit for trial or was of unsound mind at the time of the offence, and it considers the order appropriate after considering the seriousness of the offence, the protection of the community and the person's treatment or care needs.

The primary focus of the *Mental Health Act 2000* to date is to provide for the involuntary assessment, treatment, and care of people with a mental illness. However, in the absence of an alternative scheme, the scope of the forensic provisions extends to people with an intellectual or cognitive disability, who may not have a mental illness.

The recommendations in both reports recognise that the care needs of people with an intellectual disability are different to those of people with a mental illness, and a mental health service is not the most appropriate environment for providing this specialised care.

The Act provides the legislative framework for the specialist involuntary detention, ongoing care and support, and protection of people on a Mental Health Court forensic order who have an intellectual or cognitive disability, and who do not require involuntary treatment for a mental illness, in the forensic disability service—a facility for up to 10 people that has been constructed at Wacol.

The purpose of the Act is to provide for the involuntary detention, care, support and protection, of forensic disability clients, while at the same time—

- safeguarding their rights and freedoms;
- balancing their rights and freedoms with the rights and freedoms of other people;
- promoting their individual development and enhancing their opportunities for quality of life; and
- maximising their opportunities for reintegration into the community.

### **Achievement of policy objectives**

The regulation supports the purpose and operation of Act by prescribing the location of the forensic disability service, and the details to be recorded

in client records and the register for the use of regulated behaviour controls (i.e. information about the use of behaviour control medication, restraint and seclusion as provided for under the Act).

#### Details for the register of regulated behaviour controls

Under section 74 of the Act, the administrator must keep a register of the use of regulated behaviour controls, and include details prescribed under a regulation.

The register provides a key component of the transparency and accountability regime in the Act around the use of behaviour controls in the forensic disability service. The register may be searched by the Director of Forensic Disability, the Adult Guardian and the Public Advocate as part of their statutory functions, and community visitors, as the Act makes the service a visitable site under the *Guardianship and Administration Act 2000*.

The register of the use of regulated behaviour controls must, for every use of a regulated control on a forensic disability client, include for example, the following details: the client's name and date of birth; the type of regulated behaviour control; and the name and position of the person who prescribed or authorised the regulated behaviour control.

Additionally, the details and outcomes of particular incidents which occur as a result of the adult's behaviour or reaction to the regulated behaviour control must be recorded in the register, for example, any medical treatment given to the client or others and any attendance by an entity external to the department, such as a police officer or ambulance officer or registered health practitioner not employed by the department.

As fixed dose medication sometimes needs to be administered up to three times a day, the register does not need to be updated each time this type of medication is administered, as this would be too administratively burdensome. Rather, for 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 one month until the use of the regulated behaviour control ends, including a confirmation that the medication was administered as specified in the psychiatrist's prescription and the name and position of any person who administered the medication.

### Description of the forensic disability service

The Government has constructed a facility at Wacol to operate as the forensic disability service for up to 10 persons.

Under section 95 of the Act, a regulation may declare a place to be the forensic disability service. The explanatory notes to the *Forensic Disability Act 2011* clarify that only one place may be declared the forensic disability service. This is to protect the integrity of the service model enshrined in the legislation by ensuring the service only operates at the specialist Wacol facility.

The Forensic Disability Service is located in the North West corner of the 27 hectare block of land at Wacol (lot 399 on SP 152839, County of Stanley, Parish of Oxley). The service is surrounded by a 4.5m perimeter secure fence. As the service is not located at a registered address (as it located within an existing registered lot), a survey map has been included in the Regulation to prescribe its location. The location of the service on the map has been prescribed using the coordinate system Geocentric Datum of Australia (equivalent to Global Positioning System) markings on the boundary points of the security fence surrounding the facility.

### Record keeping requirements

The general regulation-making power under section 159 of the Act includes that a regulation may prescribe the type of records to be kept and returns to be made by persons and the inspection of records in the regulation.

The administrator must, for each forensic disability client, keep a record containing for example, the client's name and date of birth and the date the client became a forensic disability client.

The record must also contain details of any decision or order made by the Mental Health Court or the Mental Health Review Tribunal about the client, including for example, the entity that made the decision or order and the decision or order made. This would include an order made by the Court or Tribunal for limited community treatment in relation to a forensic disability client. The register also requires details of any authorisation of limited community treatment for a client made by a senior practitioner.

If the information contained in a record ceases to be up to date, the administrator must update the record as soon as practicable after the administrator becomes aware that a change is required.

The client's file kept at the forensic disability service for a client is not a record for the purpose of record for the purposed of the regulation.

### **Consistency with policy objectives of authorising law**

The *Forensic Disability Regulation 2011* is consistent with the objects of the *Forensic Disability Act 2011*, as indicated in the 'Policy Objectives and the reasons for them' section.

### **Benefits and costs of implementation**

The benefits of implementation of the Act and Regulation will primarily be to provide a more appropriate secure care option for people on forensic orders with an intellectual or cognitive disability. The care model in the facility focuses on promoting a client's individual development, enhancing their opportunities for quality of life and maximising their opportunities for reintegration into the community.

Recurrent funding of \$5.4 million was allocated in the 2007–08 State Budget to the Department of Communities to establish and operate the forensic disability service. All additional costs associated with the new facility will be met from within the Department of Communities' existing budget allocation. A review of the efficiency and effectiveness of the forensic disability service will be conducted in two years.

### **Consistency with fundamental legislative principles**

The Act is generally consistent with fundamental legislative principles set out in the *Legislative Standards Act 1992*. Departures from fundamental legislative principles occur in the context balancing the need to safeguard the rights of individuals detained in the forensic disability service and the need to provide for the safety of forensic disability clients, staff in the service and the community.

The explanatory notes to the Act, provide details and justification where a particular provision may be considered to be inconsistent with fundamental legislative principles.

#### Does the regulation have sufficient regard to the institution of Parliament?

The regulation has sufficient regard to the institution of parliament as it within the power, that under the Act, allows the regulation to be made, and

is consistent with the policy objectives of the Act. The matters prescribed in the regulation are matters usually prescribed in regulation, that is, matters of an administrative nature.

## **Consultation**

Extensive consultation with key disability, health and justice stakeholders across government and non-government sectors took place in two stages through the development of the *Forensic Disability Act 2011*. The first stage involved consultation of an information paper and exposure draft Bill and the second stage involved briefings with targeted stakeholders on an amended Bill. The Department of Communities received written submissions from both stages.

On 2 March 2011, Queensland Treasury (including the Queensland Office of Regulatory Efficiency) agreed with the assessment of the Department of Communities that the proposed regulation is excluded from the RAS System on the basis that it is machinery of nature.

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## ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Communities.

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