

Forensic Disability Regulation 2022

Explanatory notes for SL 2022 No. 102

made under the

Forensic Disability Act 2011

General Outline

Short title

Forensic Disability Regulation 2022

Authorising law

Section 159 of the *Forensic Disability Act 2011* (the FD Act) provides that the Governor in Council may make regulations under the FD 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 FD Act, a regulation may declare a place to be the forensic disability service.

Policy objectives and the reasons for them

The forensic disability service system supports people with an intellectual or cognitive disability who have been found not responsible for criminal offences as a result of their disability, and who are subsequently placed on a forensic order (disability). The forensic disability service system is regulated under the *Mental Health Act 2016*.

The forensic disability service— a specialist medium-security residential rehabilitation facility for up to 10 forensic disability clients with complex needs, located within the Wacol precinct— forms one component of the broader forensic disability service system. The forensic disability service is regulated by the FD Act and the *Forensic Disability Regulation 2011* (the existing Regulation), and administered by the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (the department).

The FD Act provides the legislative framework for specialist involuntary detention, care and support of people on forensic orders (disability) in the forensic disability service. The main objective of the FD Act is to provide for the involuntary detention, care and 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 a quality life; and

- maximising their opportunities for reintegration into the community.

The existing Regulation supports the purpose and operation of the FD Act by prescribing various matters. The existing Regulation was due to expire on 1 September 2021, but was exempted from expiry until 31 August 2022 by the *Statutory Instruments (Exemptions from Expiry) Amendment Regulation 2021*.

The *Forensic Disability Regulation 2022* (the new Regulation) has been prepared to replace the existing Regulation and maintain an effective legislative framework on the existing Regulation's automatic expiry. The new Regulation supports the purpose and operation of the FD Act by:

- prescribing the details which must be recorded in a register for the use of regulated behaviour controls;
- declaring the geographical location of the forensic disability service; and
- prescribing the records that must be kept about clients.

Achievement of policy objectives

The new Regulation is largely consistent with the existing Regulation, with a minor change to reduce administrative burden and reflect advancements in electronic record keeping. As the matters prescribed in the Regulation are designed to support the operation of the FD Act, the existing Regulation must be replaced to ensure the legislative scheme can continue in effect.

Details for the register of regulated behaviour controls

Under section 74 of the FD Act, the administrator of the forensic disability service must keep a register for the use of regulated behaviour controls and include details prescribed in the Regulation. The new Regulation will maintain the information required of the behaviour control register as required by the existing Regulation.

Description of the forensic disability service

Under section 95 of the FD Act, a regulation may declare a place to be the forensic disability service. Consistent with the existing Regulation, the new Regulation outlines that the forensic disability service is the geographical location, depicted by a map, in Schedule 1.

Record keeping requirements

The general regulation-making power under section 159 of the FD Act includes that a regulation may prescribe the type of records to be kept; directions on how records can be inspected; and how the records are returned to persons of which they are relevant.

The new Regulation prescribes these matters in similar terms to the existing Regulation, with one change to remove the obligation for the forensic disability service to maintain two duplicative client files for the purposes of the FD Act. As a result of the transition from paper records to the recording and storage of information in electronic form since the development of the existing Regulation, it is no longer necessary for the purposes of the FD Act to maintain duplicative paper-based client files, as the electronic management system can meet all relevant record-keeping requirements. The new Regulation therefore reflects this shift from paper-based practices.

Consistency with policy objectives of authorising law

The new Regulation is consistent with the policy objectives of the *Forensic Disability Act 2011*.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

The new Regulation supports the objectives of the FD Act, which include benefits such as safeguarding the rights and freedoms of forensic disability clients and maximising their opportunities for reintegration into the community.

The new Regulation does not impose significant costs on the persons or organisations to which they apply.

Consistency with fundamental legislative principles

The new Regulation is consistent with fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*.

Consultation

A sunset review of the existing Regulation was undertaken in accordance with the *Queensland Government Guide to Better Regulation*. The Office of Best Practice Regulation was consulted on the sunset review and advised that the Regulation remained necessary and effective in supporting the FD Act, and that the new Regulation would not add to the burden of regulation or result in significant adverse impacts.

Consultation on the new Regulation was undertaken with Queensland Government agencies and statutory entities only, as the existing Regulation is being remade without substantive change.

Notes on provisions

1. Short Title

Section 1 states that the new Regulation may be cited as the *Forensic Disability Regulation 2022*.

2. Commencement

Section 2 states that the new Regulation commences on 1 September 2022 to ensure that the FD Act continues to be supported on the automatic expiry of the existing Regulation.

3. Register of use of regulated behaviour controls—Act, s 74

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

Section 3 prescribes the information that must be included in the register.

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 client's name and date of birth; the type of regulated behaviour control used; a description of the behaviour that resulted in the use of the regulated behaviour control; the reason for the use 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, 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 administratively burdensome. Rather, for fixed dose medication, the new Regulation requires that 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. Updates must include 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.

4. Forensic Disability Service—Act, s 95

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

Section 4 prescribes the location of the forensic disability service with a survey map in schedule 1, as the forensic disability services is not located at a registered address, but within an existing registered lot.

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.

5. Records about forensic disability clients—Act, s 159

The general regulation-making power under section 159 of the FD 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.

Section 5 prescribes that 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 cease 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.

Section 5(4) of the existing Regulation—which specifies that a client's file kept at the forensic disability service for a client is not a record for the purposes of section 5—has been omitted in order to reduce unnecessary administrative burden and record duplication. Having regard to paper-based record keeping practices in place at the time the existing Regulation was drafted, a second duplicative client file was required to be kept and maintained to ensure appropriate record were available for the different purposes for which they were required under the FD Act. Since the subsequent introduction of electronic record keeping practices, a centralised and efficient information system is maintained by the forensic disability service. The information required to be kept under section 5 is stored and maintained on the information system, and is available for all relevant purposes for which it is required under the FD Act. There is consequently no longer a need for a separate and duplicative client file to be maintained for the purposes of section 5.