



# Director of Forensic Disability POLICY

**Title:** Clients for whom the offence leading to the Forensic Order is a Prescribed Offence

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## 1. Policy Statement

The *Forensic Disability Act 2011* (the Act) requires the Director of Forensic Disability to issue a policy about the detention, care and support and protection of forensic disability clients for whom the offence leading to the making of the applicable forensic order is a “prescribed offence” within the meaning of the *Mental Health Act 2016* (MHA).

## 2. Purpose

This policy outlines the relevant provisions of the Act and the MHA regarding the detention, care and support and protection of forensic disability clients who are subject to a Forensic Order (Disability) made in relation to a “prescribed offence” as defined in the MHA.

## 3. Scope

This policy applies to the Forensic Disability Service (FDS). The Administrator, Senior Practitioner, Authorised Practitioner, or other persons 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(2)(c) of the Act.

## 5. Policy

### Definition

A “prescribed offence” is defined in the MHA as an offence against any of the following provisions of the Criminal Code –

- section 302 (Definition of murder) and section 305 (Punishment of murder);
- section 303 (Definition of manslaughter) and 310 (Punishment of manslaughter);
- section 306 (Attempt to murder);
- section 317 (Acts intended to cause grievous bodily harm and other malicious acts);

- section 320 (Grievous bodily harm);
- section 349 (Rape);
- section 350 (Attempt to commit rape);
- section 351 (Assault with intent to commit rape).

### 5.1 Legislative purpose of “prescribed offence”

Section 91(2)(c) of the Act legislatively imports the term “prescribed offence” as defined under the MHA into the *Forensic Disability Act 2011*.

Under the MHA “prescribed offences” are considered the most serious violent offences.

In order to reflect the serious nature of a “prescribed offence” and the need to protect the community from “prescribed offences”, the MHA legislatively requires a higher level of oversight from the Mental Health Court and the Mental Health Review Tribunal (MHRT) when reviewing and making decisions in relation to persons who have allegedly committed a “prescribed offence”. For example, under s454 of the MHA, the MHRT must not revoke the forensic order for a person charged with a prescribed offence unless the person has first been assessed by an independent examining practitioner and a written report has been provided to the MHRT.

### 5.2 Monitoring and Risk Management

In keeping with the legislative intent regarding “prescribed offences”, FDS staff supporting clients charged with having committed a prescribed offence **must take into consideration the serious nature of the prescribed offence, the need for a high level of oversight and the need to protect the community**.

However, it is not the intention of this policy to restrict decisions regarding a client’s opportunities, or their access to the community, but rather to ensure that all decisions made by the Senior Practitioner and supporting FDS staff involve risk management processes that are cognisant of the serious nature of the “prescribed offence” allegedly committed by the client, and the need to protect not only the interests of the client, but also the victim and the community as a whole.

Moreover, clients for whom the offence leading to the Forensic Order is a “prescribed offence” must be under the direct care and management of the Senior Practitioner and have a current risk management plan in place. The current risk management plan should form part of the Individual Development Plan (IDP) and therefore be readily accessible by all FDS staff (refer to *Director of Forensic Disability Policy – Individual Development Plans*).

### 5.3 Notification of significant events

In relation to clients for whom the offence leading to the Forensic Order is a “prescribed offence”, the Administrator must ensure the Director of Forensic Disability is notified if any of the following occurs:

- the client reoffends;
- the client is non-compliant with the IDP, including specific therapy or programs being delivered;
- the client requires admission to an authorised mental health service (AMHS);

- the client is engaging in substance use;
- the client is absent without permission;
- any violent incidents occur; or
- use of any regulated behaviour control under Chapter 6 of the Act.

#### **5.4 Director of Forensic Disability review**

In circumstances where the Director of Forensic Disability receives information about a significant event, or other information indicating a client's risk may be increasing, the Director of Forensic Disability may ask for further information to ensure they are satisfied that the client's risk is being adequately mitigated and/or their rehabilitative needs are being addressed. Alternatively, the Director of Forensic Disability may formally appoint an Authorised Officer(s) to investigate a matter.

#### **5.5 Photographs**

A photograph of clients for whom the offence leading to the Forensic Order is a "prescribed offence" must be kept electronically on the Forensic Disability Act Information System (FDAIS). This photograph must be updated annually and/or if significant changes to client's appearance are noted.

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**Date of operation:** 01 February 2023

**Date to be reviewed:** 01 February 2026

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**Designation:** Director of Forensic Disability

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