



Mental Health (Secure Facilities) Use of Force Secure Mental Health Facility Direction 2021

Notifiable instrument NI2021–414

made under the

Mental Health (Secure Facilities) Act 2016, s 9 (Directions—secure mental health facilities) and s 60 (Managing Use of Force)

1 Name of instrument

This instrument is the *Mental Health (Secure Facilities) Use of Force Secure Mental Health Facility Direction 2021*.

2 Commencement

This instrument commences on the day after notification.

3 Direction

I make the attached Canberra Health Services Operational Procedure in relation to Use of Force at Dhulwa Mental Health Unit as a Secure Mental Health Facilities direction.

4 Revocation

I revoke the NI2016-623 *Mental Health (Secure Facilities) Use of Force Secure Mental Health Facility Direction 2016*.

Bernadette McDonald
Chief Executive Officer
Canberra Health Services
5 July 2021

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Canberra Health Services

Procedure

Dhulwa Mental Health Unit (Dhulwa) - Use of Force

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Purpose

The Dhulwa Mental Health Unit (Dhulwa) aims to support the treatment, care and recovery of consumers with moderate to severe mental illness. Consumers are generally people who are or are likely to become involved with the criminal justice system (forensic) and those consumers (civil) who cannot be treated in a less restrictive environment. Dhulwa's model of care is recovery focused and person-centred.

Use of force will only be used as a last resort and be proportionate to the given situation, after less restrictive options have been exhausted. The minimum amount of force will be used to ensure safety of staff and consumers in accordance with the *Mental Health (Secure Facilities) Act 2016*, use of force may only be utilised in conjunction with a search of a patient.

The purpose of this procedure is to guide staff on when use of force can be applied to search a consumer at Dhulwa, how to ensure they meet *Mental Health (Secure Facilities) Act 2016* requirements, their obligations in relation to reporting, documenting and reviewing any use of force applied to a consumer.

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Alerts

This Procedure should be read in conjunction with the *Mental Health (Secure Facilities) Act 2016*.

The *Mental Health (Secure Facilities) Act 2016* refers to the Director-General as having specific functions, powers and reporting requirements. Canberra Health Services (CHS) uses the title of Chief Executive Officer (CEO) instead of Director-General. In accordance with the *Public Sector Management Act 1994*, the position of CEO of CHS has the same functions and authority as a Director-General.

In this document, all references to the Director-General will be replaced with CEO, to reflect the language used by CHS as the person responsible.

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Scope

This procedure applies to all Authorised Health Practitioners, who are engaged to carry out duties at Dhulwa in accordance with the *Mental Health (Secure Facilities) Act 2016*.

Section 60 of the *Mental Health (Secure Facilities) Act 2016* requires the CEO to make a Secure Mental Health Facility (SMHF) Direction outlining the use of force within a secure mental health facility and the circumstances and by whom force may be used.

This Procedure has been notified as the CEO's SMHF Direction on the use of force under s60.

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This Procedure should be read in conjunction with the *Dhulwa Search Policy*, and the *Dhulwa Search Procedure*.

The *Mental Health (Secure Facilities) Act 2016* authorises the use of force for:

- Authorised Health Practitioners, who are AHPRA-registered health practitioner employed to work at Dhulwa, on direction from a Delegated Officer.
- The authorised health practitioner may use force that is necessary and reasonable to act under section 52 (search).

Exclusion: Use of force by Canberra Health Services Security Officers is out of the scope of this Procedure. For further information see the *CHS Use of Force by CHS Security Officers Policy and Procedures*.

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Section 1 – Authorisation of Use of Force

Use of force may only be authorised by a Dhulwa Authorised Health Practitioners (see Definition of Terms), on direction from a delegate of the CHS CEO, and who will be referred to in this Procedure as a **Delegated Officer** as per s52 *Mental Health (Secure Facilities) Act 2016*.

Delegated Officer who may authorise use of force are:

- Operational Director, Justice Health Services (JHS)
- Clinical Director, Forensic Mental Health Services (FMHS)
- Director of Nursing, MHJHADS
- Dhulwa Consultant Psychiatrist,
- Assistant Director of Nursing (ADON) or
- Canberra Health Services Executive on Call.

The use of force used by an authorised health practitioner must occur in accordance with s61 and 62.

The Delegated Officer may authorise use of force by an Authorised Health Practitioner to carry out a search of a patient or to prevent the loss, destruction or contamination of anything seized or that may be seized during a search.

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Section 2 – Use of Force

The safety of everyone involved is the primary concern when use of force is used. Under the *Mental Health (Secure Facilities) Act 2016*, Authorised Health Practitioners are authorised to use

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force when searching a patient. All staff engaging in the application of force must have completed Violence Prevention Management (VPM) Training.

When the use of force is necessary, all efforts should be made to minimise the potential of injury for those involved including the consumer(s) and staff member(s).

Use of Force may only be used in circumstances where the Authorised Health Practitioner believes on reasonable grounds that the purpose for which force may be used cannot be achieved in another way. Specifically, that the search may not be achieved in another way.

The person using force must believe on reasonable grounds, that the level of force used is necessary, proportionate and justifiable to the level of resistance encountered, i.e., too little force would be ineffective; too much force would be excessive.

Searches of a consumer may involve the necessary and reasonable use of force. Force may be an unavoidable part of the search process (especially for personal searches if the person is not compliant) but must still be proportionate, justifiable and in the least intrusive and invasive, and most dignified method.

Use of force may also be used as part of a search to prevent the loss, destruction or contamination of anything seized, or that may be seized, during the search (see *Dhulwa Search Procedure* for more information).

Use of force may only be used on a consumer of Dhulwa in conjunction with a search.

Use of force cannot be used on a visitor to Dhulwa.

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Section 3 – Care of a Consumer Post Use of Force

Any consumer on whom use of force has been used must be asked if they have sustained any injuries or if they require medical attention. The Delegated Officer must ensure that a Doctor examines a consumer following a use of force as soon as practicable (s 64 *Mental Health (Secure Facilities) Act 2016*).

The use of force can be a traumatic experience and staff should provide an empathetic debriefing to the consumer, their family, guardian, and nominated person as an integral part of post use of force practice.

Staff must record the debriefing in the consumer's Electronic Clinical Record (ECR), including the content of the conversation, and responses from the consumer and/or their representative. If debriefing does not occur, the attempts to debrief and/or the rationale not to debrief must be recorded in the consumer's ECR.

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For issues relating to Aboriginal and Torres Strait Islander consumers, the Aboriginal and Torres Strait Islander Liaison Officer should be involved to assist in communication with the consumer and/or their family to help resolve any issues.

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Section 4 – Care of Staff Post Use of Force

The ADON, CNC, NIC will notify the relevant Clinical Director of any injury to staff and ensure that a Riskman is completed. See the CHS *Occupational Violence Procedure*.

A debrief post use of force will be led by the ADON or Clinical Nurse Consultant (CNC) or NIC (after hours) at the conclusion of the incident. The aim of the debrief is to assess the immediate management and welfare needs of staff involved.

Within one week of the incident, the CNC will coordinate an extended debrief for all staff involved in the incident.

Any staff member who has been the victim of an assault has the right to report the assault to ACT Policing and must be provided with the necessary support and advocacy to do so.

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Section 5 – Documentation Requirements for Use of Force

5.1 Use of Force Register

Under s65 of the *Mental Health (Secure Facilities) Act 2016*, a register must be kept of any incident involving use of force, and must include:

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- The name of the consumer involved in the incident
- The name of each person involved during the incident
- The date force was used on the consumer
- The rationale for the use of force
- The force used
- The injury caused (if any)
- If someone died as a result of the use of force, the date and circumstances of the death
- Anything else the CEO considers relevant.

The register must be available for inspection for any Commissioner exercising functions under the *Human Rights Commission Act 2005*.

5.2 Use of Force Record

Under s64 of the *Mental Health (Secure Facilities) Act 2016*, a record must be kept of any incident involving the use of force when searching a patient.

The record must:

- Details of the incident, including:
 - the circumstances,
 - the decision to use force and,
 - the force used.

The record must be available for inspection, on request, by a Commissioner exercising functions under the *Human Rights Commission Act 2005*.

5.2.1 Public Advocate and Official Visitor

A copy of the Use of Force Record must be provided to the Public Advocate and Official Visitor.

5.2.2 Incident Report

A clinical incident report must also be completed in Riskman as the incident involved a consumer. The CNC, or NIC (after hours), is responsible for ensuring the use of force is reported in Riskman.

5.3 Review of Use of forces episodes

All episodes of use of force in Dhulwa are to be reviewed in the Dhulwa Clinical Safety meeting (including outcomes and learnings from reviewed Riskman reports).

A report will be tabled at the Mental Health, Justice Health, Alcohol and Other Drug Services (MHJHADS) Divisional Work Health and Safety Committee meeting every three months.

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Evaluation

Measure

All use of force at Dhulwa is authorised by a Delegated Officer.
All use of force at Dhulwa is undertaken in accordance with this procedure.

Outcome

The Use of Force register and record is completed for each use of force episodes.
All use of force at Dhulwa are reviewed by the Dhulwa Clinical Safety Meeting.

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Related Policies, Procedures, Guidelines and Legislation

Policies

- Dhulwa Searching Policy
- Use of Force by CHS Security Officers Policy

Procedures

- Dhulwa Search Procedure
- Use of Force by CHS Security Officers Procedure

Legislation

- *Mental Health (Secure Facilities) Act 2016*
- *Human Rights Act 2004*
- *Human Rights Commission Act 2005*
- *Australian Charter of Healthcare Rights*

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Definition of Terms

Authorised Health Practitioner: is an AHPRA-registered health practitioner providing care or treatment for consumers who is authorised by the CEO under the *Mental Health (Secure Facilities) Act 2016*. See the *Mental Health (Secure Facilities) (Health Practitioners) Authorisation 2016 (No 1)* on the ACT Legislation Register for more details.

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Search Terms

Use of force, Dhulwa Mental Health Unit, Dhulwa, search

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Policy Team ONLY to complete the following:

<i>Date Amended</i>	<i>Section Amended</i>	<i>Divisional Approval</i>	<i>Final Approval</i>
03/06/2021	Complete Review	Karen Grace, ED, MHJHADS	CHS Policy Committee

This document supersedes the following:

<i>Document Number</i>	<i>Document Name</i>
CHHS16/200	<i>Dhulwa Mental Health Unit (DMHU) - Use of Force by Authorised Health Practitioners, Security Officers, Court Security Officers and Escort Officers</i>
CHHS16/200	<i>Dhulwa Mental Health Unit (DMHU) - Use of Force by Authorised Health Practitioners, Security Officers, Court Security Officers and Escort Officers</i>

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