

# Mental Health (Secure Facilities) Use of Force Secure Mental Health Facility Direction 2024\*

Notifiable instrument NI2024–223

made under the

Mental Health (Secure Facilities) Act 2016, s9 (Directions – secure mental health facilities) and s60 (Managing Use of force)

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## 1 Name of instrument

This instrument is the *Mental Health (Secure Facilities) Use of Force Secure Mental Health Facility Direction 2024*.

## 2 Commencement

This instrument commences on the day after notification.

## 3 Direction

I make the attached Canberra Health Services' procedure in relation to Use of Force at Dhulwa Mental Health Unit as a Secure Mental Health Facility direction.

## 4 Revocation

I revoke the NI2021-414 *Mental Health (Secure Facilities) Use of Force Delegation 2021*.

Dave Pepper  
Chief Executive Officer  
Canberra Health Services

29 April 2024

\*Name amended under Legislation Act, s 60



# Canberra Health Services

## Procedure

### Dhulwa Mental Health Unit – Use of Force to conduct a search under the *Mental Health (Secure Facilities) Act 2016*

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## Purpose

To provide guidance on the obligations of use of force to conduct a search of a consumer at Dhulwa to ensure the requirements of the *Mental Health (Secure Facilities) Act 2016* are met in relation to authorisation, reporting and documenting a use of force for a search of 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.

Use of force to search a consumer can only occur at Dhulwa under the *Mental Health (Secure Facilities) Act 2016*.

Use of force at Dhulwa is not used for treatment, care or support under the *Mental Health Act 2015*.

Use of force is always a last resort.

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## Scope

This procedure applies only to all Authorised Health Practitioners (see Definition of Terms) and Delegated Officers. Use of force to search a consumer can only occur at Dhulwa under the *Mental Health (Secure Facilities) Act 2016*.

Section 52 of the *Mental Health (Secure Facilities) Act 2016* enables an Authorised Health Practitioner to use force to search a consumer. This may only occur at the direction and authorisation of a Delegated Officer when it is believed necessary and reasonable to conduct a search.

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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.

This Procedure should be read in conjunction with the Dhulwa Search (patient, property and premise) under the *Mental Health (Secure Facilities) Act 2016* procedure.

**Exclusions:**

- Force as part of a restrictive practice of seclusion, restraint or forcible giving of medication under the *Mental Health Act 2015*. Refer to Restraint and/or Forcible Giving of Medication to a Person Detained under the *Mental Health Act 2015* Procedure.
- Use of force by Canberra Health Services Security Officers, Refer to CHS Use of Force by CHS Security Officers Policy and Procedures.
- Use of Force on Visitors to Dhulwa.

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## Section 1 – Authorisation of use of force for a search

Use of force to search a consumer can only be undertaken by an Authorised Health Practitioner, at the direction of a delegate of the CHS CEO, referred to in this procedure as a Delegated Officer as per s52 *Mental Health (Secure Facilities) Act 2016*.

Delegated Officers who may authorise use of force to search a consumer are:

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

The Delegated Officer may authorise use of force to search a consumer to prevent the loss, destruction or contamination of anything seized or that may be seized during a search.

Delegated Officers are public authority decisions makers for the purpose of the *Human Rights Act 2004* and must give proper consideration to relevant human rights when making a decision under the searching provisions in the *Mental Health (Secure Facilities) Act 2016*.

The use of force to search a consumer must occur in accordance with ss61 and 62 *Mental Health (Secure Facilities) Act 2016*.

This authorisation does not apply to the *Mental Health Act 2015* restrictive practices of seclusion, restraint or forcible giving of medication.

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## Section 2 – Use of force to search a consumer

Use of force to search a consumer may only be undertaken by an Authorised Health Practitioner following authorisation of a Delegated Officer.

Use of force to search a consumer may only be used in circumstances where it is believed on reasonable grounds the search cannot be achieved in any other way.

There may be times that a search of a consumer may involve necessary and reasonable use of force. Force may be an unavoidable part of the search process and completed in the least intrusive, invasive and most dignified method.

The level of force used must be necessary, proportionate and justifiable to the level of resistance encountered, i.e., too little force would be ineffective; too much force would be excessive.

The safety of everyone involved is of primary concern. When use of force to search a consumer is necessary, all efforts to minimise the potential of injury for those involved including the consumer(s) and staff member(s) is to occur. Authorised Health Practitioners must have completed CHS Occupational Violence Training.

The Authorised Health Practitioner must:

- Give a clear verbal notice of the intended use of force, and
- Allow enough time for the verbal notice to be observed, and
- Use no more force than necessary and reasonable in the circumstances, and
- Use force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.

In urgent circumstances, the verbal notice of the intended use of force is not required, if the Authorised Health Practitioner believes on reasonable grounds doing so would create a risk of injury.

Use of force may only be used at Dhulwa in accordance with the *Mental Health (Secure Facilities) Act 2016* when searching a consumer.

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## Section 3 – Care of a consumer post use of force for a search

Consumers must be asked if they have sustained any injuries or if they require medical attention post the use of force to search. The Delegated Officer must ensure a doctor examines a consumer as soon as practicable (s 63 *Mental Health (Secure Facilities) Act 2016*).

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The use of force to search a consumer can be a traumatic experience. Authorised Health Practitioners should provide an empathetic debriefing to the consumer, and may include their family, guardian, and nominated person as an integral part of all post use of force practices.

Authorised Health Practitioners must record the debrief in the consumer’s clinical record including the content of the conversation and responses from the consumer and/or their representative. If a debrief does not occur, the attempts to debrief and/or the rationale not to have a debrief must be recorded in the consumer’s clinical record.

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 for a search

The ADON, Clinical Nurse Consultant (CNC), Nurse in Charge (NiC) will notify the relevant Clinical Director of any injury to an Authorised Health Practitioner and ensure a Riskman is completed. See the *CHS Occupational Violence Procedure*.

A debrief post use of force will be led by the ADON, CNC or NiC (after hours). The aim of the debrief is to assess the immediate management and welfare needs of the Authorised Health Practitioners involved.

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

An Authorised Health Practitioner who has been assaulted has the right to report the assault to ACT Policing and are to be provided with the necessary support and advocacy to do so.

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## Section 5 – Documentation requirement for a use of force for a search

### 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:

- 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 reason 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.

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The use of force register is on the clinical record.

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

### 5.2 Use of force clinical record

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

The clinical record must detail the incident, including:

- the circumstances
- the decision to use force and
- the force used.

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

### 5.3 Public Advocate and Official Visitor

A copy of the use of force clinical record (5.2) must be provided to the Public Advocate and Official Visitor following each use of force.

### 5.4 Incident report

A clinical incident report must also be completed as the incident involved a consumer. The CNC, or NiC (after hours), is responsible for ensuring the clinical incident is completed.

### 5.5 Review of use of forces episodes

All use of force episodes in Dhulwa are reviewed in the Safe Practices Meeting monthly (including outcomes and learnings from reviewed Riskman reports).

### 5.6 Governance

The minutes of the Safe Practices Meeting are tabled at the Forensic Mental Health Inpatient Service Senior Leadership Team meeting and MHJHADS Prevention, Reduction, Elimination of Restrictive Practice Committee.

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## Evaluation

### Outcome

- 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.

### Measure

- The use of force register and clinical record is completed for each use of force episode.

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- Use of force at Dhulwa are reviewed at the Forensic Mental Health Inpatient Service Senior Leadership Team meeting.

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## Related Policies, Procedures, Guidelines and Legislation

### Policies

- Incident Management – Clinical
- Occupational Violence

### Procedures

- Dhulwa Search (patient, property and premise) under the *Mental Health (Secure Facilities) Act 2015*
- Security Services – Use of Force
- Incident Management – Clinical
- Occupational Violence
- Restraint and/or Forcible giving of Medication to a Person Detained under the *Mental Health Act 2015*

### Legislation

- *Mental Health (Secure Facilities) Act 2016*
- *Human Rights Act 2004*
- *Human Rights Commission Act 2005*
- *Carers Recognition Act 2021*

### Other

- Australian Charter of Healthcare Rights
- ACT Charter of rights for people who experience mental health illness
- Forensic Mental Health Inpatient Service Model of Care

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## Definition of Terms

**Authorised Health Practitioner:** is a registered health practitioner who holds registration as a medical practitioner (other than provisionally registered medical practitioner), or registered nurse, or psychologist (other than provisionally registered psychologist), or occupational therapist, and is employed by CHS to provide services as a health practitioner at Dhulwa. See the *Mental Health (Secure Facilities) (Health Practitioners) Authorisation 2022 (No 1)* on the ACT Legislation Register.

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## Search Terms

Use of force, Dhulwa Mental Health Unit, Dhulwa, Search, DMHU

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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>
15/04/2024	Revised Document	CHS Policy Team	CHS Policy Team

This document supersedes the following:

<i>Document Number</i>	<i>Document Name</i>

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