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Personal Search and Seizure

Purpose

To guide practitioners on the process of searching people who are receiving care and treatment under the provisions of the *Mental Health and Related Services Act 1998* (the Act)and the seizure of items, where appropriate.

For the purpose of this document, a patient is defined as a person receiving care and treatment under the Act.

*\*Content of this document has been adapted from “Personal Search and Seizure Procedure- Broome Mental Health Inpatient Unit, WACHS Kimberley”, Government of Western Australia, (2017). Available from:* [*https://www.wacountry.health.wa.gov.au/~/media/WACHS/Documents/About-us/Policies/Search-and-Seizure-Procedure---Broome-Mental-Health-Inpatient-Unit.pdf?thn=0*](https://www.wacountry.health.wa.gov.au/~/media/WACHS/Documents/About-us/Policies/Search-and-Seizure-Procedure---Broome-Mental-Health-Inpatient-Unit.pdf?thn=0)

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# Introduction

Approved treatment facilities (ATF) are required to provide and maintain a safe therapeutic environment that promotes the safety, wellbeing and recovery of patients. The facility should make every effort to protect patients from abuse and exploitation and minimise the risk of deliberate self–harm and suicide. In addition, the environment needs to meet occupational health and safety requirements by providing a safe workplace and environment for patients, visitors and staff. The *Work Health and Safety (National Uniform Legislation) Act 2011* (the WHS Act)makes clear that this is a duty not only of the service but also of its employees. (Section 28(b) of Part 2 of the WHS Act states that it is the duty of employees to ' take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons').

The need to undertake a search of the accommodation or belongings of a patient admitted to an ATF, or to undertake a physical search, must be based on an assessment of the patient and the level of clinical or environmental risk to the patient, other patients, visitors and staff. Based on this assessment, there will be times when it may be necessary to search a patient or their accommodation and belongings to ensure their safety or the safety of others. This may occur at various points in an episode of care, for example, on admission to an inpatient unit, following any planned or unplanned leave, or prior to an episode of seclusion.

While safety is the primary concern, human rights, such as respect, privacy, dignity and confidentiality must be taken into account. Searching a patient or their belongings is an intrusive intervention that must only be used when it is the only reasonable and practicable course of action to avoid or prevent a serious risk of harm to a patient or harm to others. When a search is undertaken, every effort should be made to observe the patient’s rights to the greatest extent possible under the circumstances.

When determining whether to search a patient, issues that must be considered by the treating team include the patient’s safety, past history of abuse/trauma, human rights issues, therapeutic relationship, environmental safety and occupational health and safety. If there are less intrusive options to ensure safety, then these must be considered and the reasons why these options were or were not adopted documented in the clinical record. Wherever possible, medical staff treating the patient should be involved in the decision making when consideration is being given to patient searches.

# Types of searches

For the purpose of seclusion and putting someone in a non-tear gown, follow Approved Procedure 11.

There are four types of searches of a person.

* A **general search**, to reveal the content of the person’s outer garments, general clothes or belongings. Neither the person nor their belongings may be touched. The person may also be required to open their hands or mouth for visual inspection, or shake their hair vigorously.
* A **personal search**, during which light pressure is momentarily applied to the person over their clothes without direct contact being made with the person’s genital or anal areas. If the person is female, contact cannot be made with the person’s breasts.
* A **scanning search**, where electronic or other means are used to search a person. The person is not required to remove their clothes, or be touched by another person.
* A **search requiring the removal of clothing**, where the person removes all garments during the search. Direct contact cannot be made with the person.

Generally, the more intrusive the search, the more this balance should be struck in favour of protecting the individual rights of patients.

# Lawful reason

In order to lawfully perform a contact search of a person (that is, a search involving bodily contact or the removal of clothing), staff must have a lawful reason.

Parts 5 and 6 of the Act contemplate the use of reasonable force against patients, extending to patients who are not receiving ‘treatment under the Act’ at the relevant time. This reasonable force may be administered by certain mental health staff, police, ambulance officers, and in some limited circumstances, by other persons. However, these provisions do not contemplate a complete right to perform a search over a person, rather it appears the entitlement arises only if necessary and justified in all the circumstances to limit or prevent ‘serious harm’ to the person or to others.

In certain circumstances, staff could also rely upon sections of the *Work Health and Safety National Uniform Legislation) Act 2011* to justify conducting an intrusive search of a person:

Under Division 2 of the *Work Health and Safety National Uniform Legislation) Act 2011*, mental health facilities including emergency departments) must take steps to reduce health and safety risks so far as is reasonably practicable. In some circumstances, the need to reduce health and safety risks to staff, patients and visitors may justify conducting a search. The action taken would need to be reasonable in the circumstances.

# Guiding principles

1. In the interest of patient, staff and visitor safety there may be times when it is necessary to conduct searches of (herein referred to as a “search”):
	* particular people who are receiving care or treatment under the Act detained in an ATF
	* particular patients of an ATF, in any part of the ATF (e.g. inclusive of emergency departments)
	* involuntary patients on admission or entry to a high security unit or an ATF
	* particular patients’ belongings and/or accomodation on ward
	* patient visitors’ belongings on entry to a high security unit or an ATF
	* posted items received at an ATF for:
		+ an involuntary patient; or
		+ a voluntary patient receiving treatment in the ATF.
2. All patients are to have their belongings searched and recorded on admission and people presenting to the ATF for assessment.
3. Patients may have their belongings searched and recorded when they return from any leave.
4. A search may be undertaken when there is reasonable concern that a patient has dangerous items in their possession which may be used to cause harm to themselves and or others e.g. weapons or medications. Searches are to be conducted in accordance with this approved procedure.
5. Where a search is required the least restrictive option is used to conduct the search.
6. Staff members are to take universal precautions when conducting searches.
7. A metal detector may be used as a search option.
8. For personal searches, the person undertaking the search must be the same gender as the person.
9. For searches requiring the removal of clothing, the search must be carried out by at least two persons of the same gender as the person. The person should be allowed to remain partially clothed, if reasonably practicable, during the search and the search must be carried out as quickly as practicable with the person allowed to dress as soon as the search is finished.
10. Searches must be carried out in an area that ensures the person’s privacy and in a way that respects the person’s dignity to the greatest possible extent, and with as little embarassment and inconvenience to the person as practicable.
11. Under no circumstances is a cavity search to be conducted by staff.
12. Staff are to consider the patient’s cultural background, possible history of physical or sexual abuse, rights, privacy and dignity when conducting a search.
	* The patient is allowed to request the search be conducted by different staff members due to their cultural, sexual or spiritual background. This request is required to be approved by the APP or SRN on duty. If deemed not appropriate or practicable the search is required to be conducted by staff of the same gender.
13. Where possible and appropriate, an Aboriginal Mental Health Liaison Officer of the same gender should be present when conducting searches for Aboriginal patients.
14. For all patients, including those of Aboriginal descent and Culturally and Linguistically Diverse (CALD) backgrounds, understanding of searches should be facilitated where appropriate by:
* utilising leaflets/signs;
* involvement of an Aboriginal Mental Health Liaison Officer;
* using approved interpreter service; and/or
* involvement of a carer, close family member or other personal support person.

# Procedure

## Education and training

The person in charge of mental health facilities is to ensure that staff who undertake searches are to be appropriately trained. Training is to include the following:

* preparing for search and seizure (including authority to search and seize)
* implementing the search
* conducting the seizure
* completing post-search activities
* debriefing

## Decision to search

Personal searches or searches that require the removal of a person’s clothing must be authorised by the authorised psychiatric practitioner (APP) or senior registered nurse (RN) on duty; informing them of the reasons for the need to conduct a search. Two staff members at a minimum, must be present where a search is conducted, one staff member must be the same gender as the patient. For searches requiring the removal of clothing, the search must be carried out by at least two staff of the same gender as the person.

The decision to search and the type of search must be commensurate with identified risks, and should be the least restrictive possible in the circumstances, taking into account the particular vulnerabilities of the person, for example: their age, gender, sexuality and cultural background.

## Patient consent to conduct search

All patients must be presumed to have capacity to give informed consent unless it can be demonstrated that the person lacks capacity at the time the decision needs to be made.

Clinical staff have the authority to search a patient’s clothing and belongings if the patient gives informed consent to a search in circumstances where the patient is capable of giving informed consent.

Where the patient does not consent to a search, the search must not occur unless there is a lawful reason.

Prior to conducting any search, staff must seek consent from the person.

Where staff are unable to obtain consent to conduct the search, the authorised psychiatric practitioner (APP) or senior registered nurse (RN) on duty may authorise the use of assistance by security staff or safety officers if they have reasonable suspicion that the patient:

* has illicit drugs in their possession;
* is committing an offence;
* is carrying a weapon relating to an offence; and/or
* is carrying something that will afford evidence of the commission of an offence.

The patient must be notified of the intention to involve security staff in a search.

Accordingly, if the person is accompanied by a police escort, police may be used to assist in the search of a person where consent can not be obtained.

## Conducting the search

Taking into consideration least restrictive options, where a search is required, staff are to:

* Where possible, explain to the patient the reason(s) why the search is being done.
* Encourage that patient to conduct a self-search with staff present e.g. turn out pockets, relinquish dangerous items, open mouth to show contents.
* Avoid touching the patient unnecessarily.
* As far as possible, ensure that the patient is present when a search of their belongings and or accomodation on ward is being conducted
* Request that the patient change into alternative clothing. Removed clothing is then checked for dangerous items.

## Patients admitted to a high dependency unit

All patients who are admitted to a high dependency unit under the provisions of the Act are to have their clothing and property searched for dangerous items. Suitable clothing and personal items such as photographs will be available for the patient in their accommodation and all other items are to be recorded and placed in the patient property store.

## Patient visitors

The ATF may develop policies concerning the restriction of unsuitable items being taken into a high dependency unit and the search of visitors’ possessions only (i.e. not personal searched of visitors).

## Seizing items and their return

Illicit substances are to be removed from the person, stored securely and appropriately and provided to police at the first opportunity.

Other items seized during the search, remain the property of the person that they have been removed from, including weapons. Under the *Weapons Control Act 2001*, weapons may be returned to the lawful owner when appropriate or upon exit from the facility. Seized weapons can only be forfeited by order of the Court (refer to sections 20-22).

Where there is a concern that the person should not be in possession of a particular firearm (i.e. an illegal firearm) or firearms in general, section 101 of the *Firearms Act 1997* requires health practitioners to make a report to police.

For the purpose of this section of the *Firearms Act 1997*, a health professional is defined as a person registered under the Health Practitioner Regulation National Law to practise in a health profession, other than a diagnostic radiographer or a student. In addition to health practitioners, the reporting requirements of the *Firearms Act 1997* also apply to professional counsellors and social workers.

For more information refer to Mandatory Reporting by Health Professionals, which is available from <http://www.pfes.nt.gov.au/file/download/35819>

## Documentation

All searches must be clearly documented in the patient’s record, including the reason(s) why the search was required.

The staff member who searches the patient must complete Form 64 - Search and Seizure Record and follow the checklist on the back of the form.

A staff member who seizes any item must complete Form 65 - Seized Item Record and file the form in the patient health record.

## Register

A register is to be kept at each facility, which includes;

* a separate entry for each search
* incident number (where search is part of a reportable incident)
* details of the person being searched, including identification of Aboriginal people
* the reasons why the person was searched
* date of search
* the name of the person who initiated the search
* the name of the person who authorised the search
* type of search conducted
* time started
* time ended.

# Other relevant legislation

[*Misuse of Drugs Act 1990*](https://legislation.nt.gov.au/Legislation/MISUSE-OF-DRUGS-ACT-1990)

[*Weapons Control Act 2001*](https://legislation.nt.gov.au/Legislation/WEAPONS-CONTROL-ACT-2001)

[*Police Administration Act 1978*](https://legislation.nt.gov.au/Legislation/POLICE-ADMINISTRATION-ACT-1978)

Key Associated Documents

All related material produced by the Northern Territory Department of Health is available from: https://health.nt.gov.au/professionals/mental-health-information-for-health-professional

Mental Health and Related Services (MHARS) Act 1998 – available from: [https://legislation.nt.gov.au/en/LegislationPortal/Acts/By-Title#](https://legislation.nt.gov.au/en/LegislationPortal/Acts/By-Title)

National Safety and Quality Health Care Standards: 1.2.2; 1.3.1; 1.5.2; 1.14.2; 1.17 .2

Available from - <https://www.safetyandquality.gov.au/standards/nsqhs-standards>

EQulPNational Standards: 12.3.1; 15.12.1

Available from - <https://www.achs.org.au/programs-services/equip6/>

National Standards for Mental Health Services: 1.4; 1.17; 2.1; 2.13; 8. 7; 8.10

Available from - <https://www.safetyandquality.gov.au/our-work/mental-health/national-standards-in-mental-health>

National Standards for Disability Services: 1 .1; 6.2

Available from - <https://www.dss.gov.au/our-responsibilities/disability-and-carers/standards-and-quality-assurance/national-standards-for-disability-services>

Definitions and Search Terms

| **Preferred Term** | **Description** |
| --- | --- |
| **APP** | Authorised psychiatric practitioner |
| **ATF** | Approved treatment facility |
| **Dangerous items** | Dangerous items may include weapons and replica weapons; prescription and non-prescription medications; alcohol and illicit substances; aerosols; lighters and matches; razors and other sharp implements e.g. glass bottles or containers, aluminium cans.  |
| **Harm** | Where circumstances are such that there is concern for the safety, welfare or wellbeing of a person. Where harm occurs it may affect the health and safety of the patient or of another person or property damage. |
| **RN** | Registered nurse |
| **Universal precautions** | An infection control practice of avoiding contact with patients bodily fluids by means of wearing gloves and if needed goggles and face shields. |

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