



ACT
Mental Health
Consumer Network

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**Submission: Canberra Health Services Policy:
Search of a Consumer and their Property**

Submitted by email to:
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Submission: Canberra Health Services Policy: Search of a Consumer and their Property

This submission has been prepared by the ACT Mental Health Consumer Network (the Network) by invitation from Lani Vidler, Senior Policy Officer, Strategy and Governance, Canberra Health Services in response to the Network's request.

Acknowledgment of Country

We wish to acknowledge the Nggunawal people as traditional custodians of the land upon which we sit and recognise any other people or families with connection to the lands of the ACT and region. We wish to acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be reading this submission, and we recognise the ongoing contributions of all Indigenous peoples to ACT society and Australia more broadly.

The ACT Mental Health Consumer Network

The Network is a consumer-led peak organisation representing the interests of mental health consumers in the ACT in policy and decision-making forums. The Network is committed to social justice and the inclusion of people with experience of mental illness. Run by consumers for consumers, our aim is to advocate for services and supports for mental health consumers which better enable them to live fuller, healthier and more valued lives in the community.

Consumers were invited to provide feedback in relation to the Canberra Health Services (CHS) Policy – Searching of a Consumer or their Property (the Policy). Verbal feedback was received, and this submission incorporates that feedback.

General comments.

The Network welcomes this opportunity to contribute to the Policy. The recommendations predominantly relate to the provisions for searching persons with mental illness and/or disorder, but there are some general recommendations.

Training

Given the nature of the Policy, consumers advise that there needs to be some element of face to face training for staff. Consumers expressed concerns that simply reading the Policy does not provide staff with the skills to undertake searches in what can be difficult times for consumers. They advise that de-escalation examples, or reference to related policies and procedures, should also be included in the policy.

Safeguards for Consumers

Consumers raised several concerns relating to the Safeguarding of Consumers and CHS team members during a search (pp. 9 – 11). These concerns, including gender preference, trauma informed care and consumers from culturally and linguistically diverse backgrounds, are outlined below along with suggested changes to the policy text.

Standardising the practice of asking a consumer their preference will ensure that all consumers' preferences are respected to the best of the service's capacity, thereby increasing the likelihood of the safe enactment of the search procedure.

Specific concerns and associated recommendations are as follows:

- p.10: the gender of a person should never be assumed, and consumers should always be asked to nominate their gender of choice and every reasonable effort be made to ensure a person of that gender is always be available. The following changes are recommended:

Dot point 1:

'The search ~~should~~ **will** be conducted by a CHS team member of the ~~same~~ gender **nominated by the** person. If this is not possible, **every reasonable effort will be made to** ensure another person of the ~~same-nominated~~ gender **should is** be present for the duration of the search ~~wherever possible.~~'

Dot point 2:

'For **all** consumers ~~but specifically when requested, who identify as Lesbian, Gay, Bisexual, Transgender or Intersex,~~ any search, ~~wherever possible,~~ will be conducted by CHS team member of ~~of the same gender identity as the consumer or a~~ **the same gender as nominated by the consumer.** If this is not possible, **every reasonable effort will be made to ensure another person of the nominated gender is present for the duration of the search.**'

- p.10: all consumers should be treated in a trauma informed manner, so it is recommended that the specific statement concerning persons who have experienced trauma and/or sexual abuse be edited. Consumers recommend the following change:

Dot point 3:

'All searches should be conducted in a trauma informed way as all consumers with experiences of trauma and/or sexual abuse may find a search more traumatic. If it is revealed by a consumer or otherwise known to staff that that consumer has experienced trauma and/or sexual abuse, additional support should be considered.'

- p. 9-10: there is no inclusion in the Policy that covers the use of interpreters. Dot points 4 and 6 state that sensitivity is required for cultural needs and beliefs, but nowhere in the policy are interpreters identified as a support for people who speak English as their second or subsequent language.
- p. 9-10: there are no references to supports for persons who may not understand what is happening due to a disability or just from being in an unfamiliar environment. Including these supports will also safeguard CHS staff as consumers will feel more able to participate if they understand what is happening.
- A new dot point should be included that refers to checking if a consumer has Advanced Consent Direction, Advance Agreement and/or Nominated Person forms. These instruments, if available, help to identify the supports a consumer may need.

Consumer Valuables

Consumers welcomed the section on Consumer Valuables and emphasise the need to ensure all valuables and/or belongings taken from a consumer be adequately labelled and documented to ensure their return.

Recommendations: Canberra Health Services Policy: Search of a Consumer and their Property

Recommendation 1: Referral to use of CHS staff who are specially trained in searching a consumer.

Consumers welcomed the statement, second dot point, p.3, '*Where possible be (sic), CHS team members should ensure the search of a consumer or their property is undertaken by a CHS team member with specialised training in searching a person who may pose a risk to health and safety*'.

However, they noted that this specialised team member is not identifiable in the policy, nor are they referred to anywhere else in the document. For example,

- p.5: the text in the box could refer CHS staff to find the CHS team member with specialised training if imminent danger to staff or other people exists.
- p.7: the first Note box could refer to the CHS team member with specialised training when a consumer without a mental illness and/or disorder refuses consent to a search.

Recommendation 2: Removal of majority of references to Dhulwa

Consumers noted that Dhulwa has its own Security and Searching policies, as outlined in the Policy on p.3. To avoid any confusion, and to limit any unconscious association between mental illness and/or disorder and criminality, consumers recommend that all other references to Dhulwa and all references to the way a strip search should be conducted (which are only permitted under strict conditions within Dhulwa) be removed from the Policy. Consumers recommend:

- rewriting the third dot point on p.3 to simply state that personal searches (also known as strip searches) are not permitted in any Canberra Health Services managed institution except Dhulwa (refer to policies *Dhulwa Mental Health Unit Search Policy* and *Dhulwa Mental Health Unit (Dhulwa) Searching Procedure*.)
- rewriting the last dot point on p. 10 as the way it is written makes it sound as though such searches can be conducted. This dot point can either be deleted or written in the style of the suggestion for p.3 above.

Recommendation 3: Complexities of identifying persons who have mental illness and/or mental disorder and those who do not.

Consumers were concerned by this section and wanted to know how it would be determined if a consumer has a mental illness and/or mental disorder, noting sometimes even the person themselves is not aware or has not received a diagnosis.

This policy would require that:

- a. clinical staff were to assume persons with mental illness and/or disorder would have this registered within their Digital Health Record;
- b. staff question all consumers whether they have a mental illness and/or disorder; or
- c. staff make decisions that a consumer has mental illness and/or disorder based on their limited experience of that consumer's behaviour, which is a determination that may arise from inexperienced beliefs rather than expert assessment.

Recommendation 4: Review of the inclusion that allows detaining a consumer under an Emergency Detention or Mental Health Order under the Mental Health Act 2015 (ACT).

Consumers shared concerns regarding the following inclusion on p.7:

'the consumer, if they meet the criteria, may be detained on Emergency Detention or a Mental Health Order under the Mental Health Act 2015 and then can be searched without consent'

Concern was raised that a patient who is not known to have, or has not self-disclosed as having mental illness and/or disorder, can be subject to Emergency Detention or Mental Health Order if they do not give consent to being searched. It would appear that in these cases, a service staff member or clinician can determine that the patient meets the criteria of having a mental illness and/or disorder for this purpose, despite a lack of known diagnosis or self-disclosure, simply because they do not consent to being searched. Consumers assume that this has been included based on the *Mental Health Act 2015 (ACT)*, s 80 (3), but it would appear to be a significant overreach of the intention of the Act.

Consumers felt there is a misstep if the only reason clinicians suspected a person of having mental illness/disorder to the point of them being subject to an Emergency Detention or Mental Health Order is because they refused to be searched.

Consumers objected to the implication that if a person met none of the other requirements to be identified as having mental illness/disorder and/or be subject to an Emergency Detention or Mental Health Order, this Policy could still be applied if they refused to be searched.

Other concerns consumers expressed with this aspect of the policy included:

- being placed under Emergency Detention or Mental Health Order can result in long term and irreparable trauma and the loss of one's dignity and agency. In addition, consumers identified that they believed the consumer would have to be transported to a mental health inpatient facility for an Emergency Detention or Mental Health Order to be put into place, causing further distress.
- there are many reasons why a person who has not been identified to have mental illness and/or mental disorder may not want to be searched, some of which are outlined in the Policy. The consumer actually having mental illness and/or mental disorder is probably less evident and perhaps should be included at a lower dot point.

At the very least, if this process is retained, consumers insist that the Policy needs to specify this option as an absolute last resort. The right Policies and Procedures that relate to making such assessments and decisions need to be referred to and identified clearly with relevant links, including; which professionals can make such a decision, the role of ACAT, and, the long term implications for the patient (for example, a 3 day minimum stay in the Adult Mental Health Unit) etc.

Recommendation 5: After hours access to patient supports

The supports identified on p.9 under the heading "Safeguards for Consumers and CHS team members during search" may not be available after the usual hours of 9am-5pm. Consumers recommend the inclusion of a dot point that states that, where clinically appropriate, a search of a consumer should not be done until these supports are available. A link to the way to contact usual patient supports, such as Aboriginal Liaison Officers and interpreters, should also be included.

Recommendation 6: Provision of information about items prohibited on CHS premises

Information provided to patients about items that are prohibited on CHS premises (pp.12 –13) should be in hard copy so that consumers and their visitors are able to refer to them during the consumer's inpatient stay. For example, the information could be included in the Adult Mental Health Unit Welcome Pack. Making this

information available and easily accessible to the public by placing it prominently on the CHS website is also recommended.

Recommendation 8: Inclusion of 'ACT Charter of Rights for people experiencing mental ill health or mental disorder'

Consumers recommend the inclusion of the *ACT Charter of Rights for people experiencing mental ill health or mental disorder* in the 'other' section of the list of Related Policies, Procedures, Guidelines and Legislation, p.14.

General Edits: Canberra Health Services Policy: Search of a Consumer and their Property

The following general editorial changes are recommended:

- Consumers questioned the use of the words 'don' and 'donning' that is used throughout the document when advising that gloves be worn (for example, on pp.4 & 10). Consumers noted that they had not seen that word used in any other policy covering glove use and recommend the Policy be written in plain language.
- the last paragraph regarding Code Blacks (p.11) does not make sense and requires editing. Consumers noted the importance of this section being as clear as possible.

Conclusion

Thank you for the opportunity to provide comments regarding this policy. We would like to take this opportunity to reiterate the importance of the consumer concerns in this submission regarding use of Emergency Detention and Mental Health Orders to allow searches to occur, and would welcome the opportunity to discuss these concerns prior to the finalisation of this Policy. We look forward to receiving feedback identifying how the other comments have been included in the final edition of the Policy.