

Secure Mental Health Unit Screens and Searches



Chief Forensic Psychiatrist Standing Order 16

Provisions to Which the Order Relates

Mental Health Act 2013 – sections 15, 110, 111 and Schedule 1.

Preamble

1. The Chief Forensic Psychiatrist (or a delegate) may, under section 110 of the *Mental Health Act 2013*, require that any person seeking entry to the secure mental health unit be screened. The Chief Forensic Psychiatrist may also refuse to allow any person who fails to comply with the requirement to be screened into the secure mental health unit.
2. For the purposes of section 110 of the Act a screen is a search of a person's body, clothes or belongings conducted by remote or non-intrusive technical devices such as metal detectors, sensors and X-ray scanners or combinations of these devices.
3. The Chief Forensic Psychiatrist (or a delegate) may, under section 111 of the *Mental Health Act 2013*, authorise or direct an authorised person to carry out searches for the management, good order or security of the secure mental health unit, or the safety of any people in the secure mental health unit.
4. The authorisation or direction may be for a specific search or for a search to be carried out either routinely or randomly, at certain times or when certain circumstances apply.
5. The authorisation or direction may also confer related discretions on the authorised person, as to the timing of a search protocol. It may additionally provide for the use of specific search equipment or techniques.
6. For the purposes of section 111 of the Act a search is a search carried out by manual, animal detection, electronic or mechanical means, or by any combination of those means.
7. For the purposes of section 111 of the Act, references to the secure mental health unit include the secure mental health unit's immediate precincts.

Purpose

This Standing Order directs controlling authorities, (and delegates) authorised persons and other secure mental health unit staff members exercising responsibilities under the *Mental Health Act 2013* in relation to performance of screens and searches on persons seeking to enter a secure mental health unit, and related matters.

This Order is designed to ensure that screens and searches are conducted appropriately, safely and in a way that respects the dignity and rights of people being searched while also ensuring the protection of the person, the protection of the public and the proper delivery of services to people within the secure mental health unit.

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Failure by an individual to have regard to this Standing Order is not an offence but may, particularly if it leads to unfavourable patient outcomes that might otherwise have been avoided or if there is a history of such disregard, constitute proper grounds for instigating professional or occupational disciplinary action against that individual.

Direction

I, Professor Kenneth Clifford Kirkby, being and as the Chief Forensic Psychiatrist, pursuant to sections 152 and 143 of the *Mental Health Act 2013* and section 22 of the *Acts Interpretation Act 1931* hereby:

Revoke all previous directions (standing orders) issued under section 142 of the *Mental Health Act 2013* with respect to secure mental health unit screens and searches with effect from 11.59 pm on 30 June 2017; and

Issue the following direction (standing order) to controlling authorities (and delegates), authorised persons and other secure mental health unit staff members exercising responsibilities under the *Mental Health Act 2013* in relation to the performance of screens and searches on persons seeking to enter a secure mental health unit, and related matters with effect from 12.00 am on 1 July 2017:

Screens

1. Controlling authorities, authorised persons and other secure mental health unit staff members must screen all staff, service contractors and visitors seeking to enter a secure mental health unit prior to the person entering the unit, unless the Chief Forensic Psychiatrist (or a delegate) has directed otherwise.
2. To avoid doubt, this requirement extends to privileged visitors, medical practitioners, Mental Health Officers, police officers, Australian lawyers and secure mental health unit staff members.
3. A screen must not involve or require the person being screened to remove clothing or to be touched by someone else.
4. Any person who refuses to be screened must be refused entry to the secure mental health unit.
5. Any person who refuses to be screened and who is then refused entry must be asked to leave the secure mental health unit and its grounds, immediately.
6. Any item which is not authorised to be brought into a secure mental health unit by virtue of Chief Forensic Psychiatrist Standing Order 17: Unauthorised Items and which is identified as part of a screening process is to either be left outside of the secure mental health unit, or handed over to an authorised person or other secure mental health unit staff member prior to the person entering the secure mental health unit for safe storage.

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Searches

- 7.** For the purposes of this Standing Order, a search is limited to:
 - a.** An ordinary search. This type of search may involve requiring a person to remove a coat, jacket or other outer garment, any hat, shoes, boots or other footwear, any socks, gloves, mittens, handbags, backpacks or other item; asking the person to empty their pockets; and examining the item or items that have been removed and the contents of those items, and/or
 - b.** A frisk search. This type of search may involve running the hands over the person's outer clothing, passing a metal detection device over or in close proximity to the person's outer clothing or over or in close proximity to anything worn or carried by the person that he or she appears to have removed voluntarily, examining anything worn or carried by the person that he or she appears to have removed voluntarily.
- 8.** An ordinary or frisk search may involve manual, animal detection, electronic or mechanical means or any combination of those means.
- 9.** Controlling authorities (and delegates), authorised persons and other secure mental health unit staff members are to conduct a search of staff, service contractors or visitors seeking to enter the secure mental health unit if there is a reasonable belief that the person is or might be in possession of an item that is not authorised to be brought into a secure mental health unit by virtue of Chief Forensic Psychiatrist Standing Order 17: Unauthorised Items.
- 10.** Before a search is conducted, the reasons for the search and the manner in which it is to be carried out are to be clearly explained to the person on whom the search is to be conducted, in a language and form that the person can understand. The person is to be offered the opportunity to voluntarily surrender any item that is not authorised to be taken into the secure mental health unit which they may have in their possession, and must be given the opportunity to cooperate with the search. The person is also to be given answers to any questions that the person may have about the search and how it is to be conducted.
- 11.** Searches are to be conducted speedily, in the least restrictive way and to the least extent, consistent with the protection of patients, staff members and others within the secure mental health unit, the protection of the public and the proper delivery of services.
- 12.** The person's individual characteristics including their age and maturity, cultural identity and religious beliefs, impairment and known history such as any experience of abuse or trauma must be considered and taken into account whenever the decision is made to conduct a search, and while the search is being conducted.

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Rights, Respect, Recovery

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- 13.** Any search that involves any touching or undressing of the person being searched, or any touching of a person's clothing or personal belongings, must be carried out by an authorised person of the same gender as the person being searched, and only in the presence of persons of that gender, and in private, unless the Chief Forensic Psychiatrist (or a delegate) directs otherwise.
- 14.** A person whose gender is unknown, and transgender persons, must be given the opportunity to nominate either a male, or a female, to conduct a search. If the person nominates a male to conduct the search, then the search is to be conducted only in the presence of persons of that gender. If the person nominates a female to conduct the search, then the search is to be conducted only in the presence of persons of that gender.
- 15.** Controlling authorities, authorised persons and other secure mental health unit staff members are to refuse entry to a person other than a forensic patient or secure mental health unit staff member who refuses to submit to or who hinders the performance of a search.
- 16.** Any person who refuses to be searched and who then is refused entry must be asked to leave the unit and its immediate precincts.
- 17.** Any person who refuses to leave the unit when asked to do so is to be detained by an authorised person and the police called. In this situation the person may be detained by an authorised person until the arrival of a member of Tasmania Police who will determine whether or not to arrest the person.
- 18.** Searches may only be performed by persons who have received training that has been approved by the Chief Forensic Psychiatrist for this purpose.
- 19.** Matters relevant to any search that is conducted are to be recorded using Chief Forensic Psychiatrist Approved Form 16: SMHU Search Authorisation / Direction.

A handwritten signature in black ink, appearing to read 'Ken Kirkby'.

Professor Kenneth Clifford Kirkby

Chief Forensic Psychiatrist

Date: 1 July 2017