

Guidelines for Searches of Persons under Emergency Examination Authorities

Public Health Act 2005

A. Introduction

A person detained for examination under the emergency examination authority (EEA) provisions of the *Public Health Act 2000* may be searched without their consent. This includes where the person is being detained while an EEA is being made.

A search may be carried out by a doctor or health practitioner if they believe the person may be in possession of a 'harmful thing'. A harmful thing is anything:

- that may be used to threaten the security or good order a public sector health service facility or threaten a person's health or safety, or
- that is likely to adversely affect the person's treatment or care.

Examples of a 'harmful' thing are a dangerous drug, alcohol, medication, sharps, or provocative or offensive document.

Although consent is not required, a search of a person or their possessions should, as far as possible, occur with the person's consent. Non-consensual searches represent a significant personal intrusion. The authority to search should only be considered if it is not possible to obtain consent and the individual circumstances warrant a non-consensual search.

Before carrying out a search, the doctor or health practitioner must tell the person and any support person/s the reasons for the search and how it is to be carried out. Reasonable steps must be taken to ensure the person understands the information.

A search under this authority may be undertaken at any time provided the doctor or health practitioner has a belief that the person has a harmful thing.

In considering the need to authorise a search for a harmful thing, the doctor or health practitioner should have regard to the individual circumstances of the case. Relevant factors will vary with individual circumstances but may include, for example:

- if the person has not consented to a search, the reason for any objection

- the person's history
- any collateral information, and
- the environment, including items that might constitute a harmful thing in that environment.

The doctor or health practitioner should document their decision and the reasons for it, including any relevant factors taken into account, in the person's records.

A doctor or health practitioner may carry out a search under these provisions with the help, and using the force, that is necessary and reasonable in the circumstances.

B. Types of Searches

There are different types of searches that may be undertaken for harmful things, namely:

- a *general search*
- a *personal search*
- a *scanning search*
- a *search requiring the removal of clothing*, and
- a *search of the person's possessions*.

A *general search* means a search of a person:

- to reveal the content of the person's outer clothing, general clothing or hand luggage without touching the person or the luggage, or
- in which the person may be required to open his or her hands or mouth for a visual inspection, or shake his or her hair vigorously.

A *personal search* means a search in which light pressure is momentarily applied to the person over the person's general clothes without direct contact being made with the person's genital or anal areas or, for a female, the person's breasts.

A personal search may include any or all of the following:

- removal and inspection of an outer garment or footwear of the person
- removal and inspection of things from the pockets of the person's clothing

- touching the clothing worn by the person to the extent necessary to detect things in the person's possession, and
- the removal and inspection of any item found.

A personal search must be carried out in a way that respects the dignity of the person being searched and causes as little inconvenience to that person as possible in the circumstances.

The searcher may conduct a personal search only if:

- the searcher is the same gender as the person, and
- the search is carried out in a part of a building that ensures the person's privacy.

A *scanning search* means a search of the person by electronic or other means that does not require the person to remove their clothes or to be touched by another person.

A scanning search may be achieved, for example, by the use of a hand-held scanning device that passes over the person's body, or by requiring the person to walk through a scanning device.

A *search requiring the removal of clothing* means a search in which the person removes all clothing during the course of the search; however no direct physical contact is made with the person.

A search requiring the removal of clothing can only be carried out with the prior approval of the person in charge of the public sector health service facility (or their delegate). The person in charge of the facility (or delegate) can only approve this type of search if they believe a search requiring the removal of clothing is necessary in the circumstances.

A search requiring removal of clothing must be carried out by at least two persons (doctor or health practitioner) but by no more than are necessary to carry out the search. Each person carrying out the search must be the same gender as the person being searched.

Before searching, one of the searchers must explain to the person:

- that the person will be required to remove the person's clothing during the search, and
- the reasons why it is necessary to remove the clothing.

The searcher must

- ensure the search is carried out in a part of a building that ensures the person's privacy

- ensure the way in which the person is searched causes minimal embarrassment to the person
- take reasonable care to protect the person's dignity
- carry out the search as quickly as practicable, and
- allow the person to get dressed as soon as the search is finished.

The searcher must, if reasonably practicable, give the person the opportunity to remain partly clothed during the search, for example, by allowing the person to keep their clothing on their upper body before being required to remove clothing from the lower part of the body, and vice versa.

If the searcher seizes clothing as a result of the search, the searcher must ensure that the person is left with, or given, reasonably appropriate clothing.

Authorisation for a search requiring the removal of clothing is limited to removing clothes for the purpose of searching only. It does not extend to other circumstances where clothing may need to be removed (e.g. emergency clinical situations).

A *search of a person's possessions* may only occur if the owner of the possession is present or has been given the opportunity to be present. However, this does not apply if the person obstructs the searcher.

A searcher may:

- open or inspect a thing in the person's possessions, and
- remove or inspect any detected thing.

C. Seizure of items

An item may be seized by a doctor or health practitioner undertaking a search of a person if they reasonably suspect an item is:

- connected with (or is evidence of) the commission or intended commission of an offence, or
- is a harmful thing.

If the seized item is connected with an offence under an Act, the item must be given to a person who is authorised under that Act to perform inspection and enforcement functions, such as a police officer.

If a searcher believes that an item seized from a person is a harmful thing, the searcher must:

- keep it for the person and return it to the person when they are discharged from the facility
- give it to someone else if the person agrees to this

- give or send the item to another person if the searcher is satisfied that someone else is entitled to possession of the thing, or
- if the searcher is satisfied that the item is of negligible value, dispose of it in the way in which the person in charge (or delegate) deems appropriate. Value judgements in relation to an item should not be limited to monetary value and, if practicable, consultation with the person on the item's value to them should be undertaken prior to any item being disposed of.

If an item is seized during a search, the searcher must give the person from whom the item was seized a receipt for the item. The receipt should briefly describe the item seized and its condition.

If an item has been seized, the searcher must allow the owner of the item to inspect it and, if it is a document, to copy it. This does not apply if it would be impracticable or unreasonable to allow access to the item.

Records of searches

A record must be kept of:

- a search requiring the removal of clothing, and
- an item seized during a search.

Where this applies, the searcher must make a written record of the search, including:

- the reasons for the search
- the names of the people present during the search
- how the search was carried out
- details of any items seized during the search, and
- the reasons for seizing these items.