



Serious Incident Response Scheme  
Australian Government Department of Health  
Canberra

8<sup>th</sup> August 2021

## **Re: Review of the Serious Incident Response Scheme**

We are writing in response to the invitation to provide feedback on the **Serious Incident Response Scheme** (SIRS) for home care. The feedback we are providing relates to the reporting of sexual assault (unlawful sexual contact or inappropriate sexual contact) through SIRS.

As SIRS for home care draws on the model in residential aged care facilities, our feedback will begin with reflections on the reporting of sexual assault in residential aged care through SIRS, to assist in considering the implications for home care.

We begin our feedback by recognising the launch of the Aged Care Quality and Safety Commission's fact sheet *Reportable Incidents: Unlawful sexual contact or inappropriate sexual contact*<sup>1</sup> in May this year. The fact sheet has provided much needed clarification and we believe it will assist residential aged care service providers to better identify sexual assault and understand their reporting responsibilities. **A similar document could be developed for home care services.**

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<sup>1</sup> <https://www.agedcarequality.gov.au/media/89735>

In this submission, we reflect on five key issues relating to the reporting of sexual assault under SIRS in residential aged care and then the implications for reporting sexual assault of older people in their own homes, under the SIRS scheme.

## 1. Capacity to consent

The above-mentioned fact sheet outlines important information on consent and provides four questions to assist in determining sexual consent. The fourth question asks whether the consumer shows signs of distress (as an indicator of consent). This question could mislead staff who may think that the absence of distress is evidence that sexual assault has not occurred. On the contrary, we know from the evidence that

- Perpetrators often target resident who are unable to express their distress, and in these cases the absence of distress does not mean that a sexual assault has not occurred.<sup>2</sup>
- In one survey, 58% of staff in residential aged care reported that sexual assault and rape had no negative impacts on residents.<sup>3</sup> These staff are likely to miss signs of resident distress.

It will be useful to remove the question on distress or add a qualifier to clarify that **the absence of obvious signs of distress does not mean that a sexual assault has not occurred**, nor does it mean that a resident is not distressed.

We would also like to draw attention to a definition of consent provided by the Australian Bureau of Statistics in their statistical overview of sexual assault.<sup>4</sup> The definition refers to consent requiring free agreement and notes that a person cannot be said to freely agree where the person:

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<sup>2</sup> <https://www.opalinstitute.org/uploads/1/5/3/9/15399992/researchreport.pdf>

<sup>3</sup> [https://www.health.gov.au/sites/default/files/documents/2020/06/prevalence-study-for-a-serious-incident-response-scheme-sirs\\_0.pdf](https://www.health.gov.au/sites/default/files/documents/2020/06/prevalence-study-for-a-serious-incident-response-scheme-sirs_0.pdf)

<sup>4</sup> ABS (2014). Sexual Assault in Australia: A statistical overview

<https://www.abs.gov.au/ausstats/abs@.nsf/lookup/by%20subject/4510.0~2014~main%20features~sexual%20assault~10>

- is fearful for themselves or for someone else
- has been threatened
- is mistaken about the identity of the person or the nature of the sexual act
- wrongly believes that the act is for medical purposes
- is incapable of consenting
- is legally deemed incapable of giving consent or where there is a familial relationship or other relationship of trust

These clarifications are all useful and the third point of mistaken identity is especially relevant in the aged care context. This is a useful addition to current information on consent – particularly given the issues of consent for people living with dementia.

**It is therefore valuable to clarify the definition of consent (and therefore sexual assault) for residential aged care before SIRS is rolled out to home care.**

## **2. Reporting to Police**

We would like to also highlight the lack of clarity on sections of the Fact Sheet that note responsibilities for contacting Police, including *‘in most cases, you will also need to contact the police’* and that a Priority 1 incident is defined as *‘where there are reasonable grounds to report the incident to the police’*.

In the SIRS guidelines for residential aged care services,<sup>5</sup> the phrase ‘reasonable grounds’ may include the following:

... scenarios where an approved provider is aware of facts or circumstances (alleged or known) that lead to a belief that an incident is likely to be of a criminal nature and therefore should be reported to police (e.g., if the approved provider suspects the incident involves an indecent assault, or if there is an ongoing danger).

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<sup>5</sup> <https://www.agedcarequality.gov.au/sites/default/files/media/sirs-guidelines-june-2021.pdf>

It is not clear what the terms ‘reasonable grounds’ and ‘criminal nature’ mean in relation to sexual assault. **These points need to be clarified for residential aged care services before documenting what they mean in home care services.**

The SIRS information for home care should consider research indicating the prevalence of sexual assault of older people in their own homes by intimate partners and other family members.<sup>6</sup> There should be clarity as to whether home care workers will be responsible for reporting sexual assaults by family members and if so, what guidance will be provided to the workers to do this.

Consumer advocates are also unclear as to whether the Department or the Aged Care Quality and Safety Commission have liaised with Police in each state and territory on the matter of sexual assault. We encounter regular reports about Police who do not understand best practice responses to sexual assault of older people, particularly victims who are living with dementia. In one report to Celebrate Ageing, Police would not investigate a resident’s rape allegation because she had a diagnosis of dementia. The Police’s notes for this resident dismissed the allegation as the resident’s ‘rape fantasy’. Given SIRS seeks to improve responses to incidents, consumer advocates want to know how Police can be engaged in better understanding the seriousness of rape and sexual assault allegations by older people in residential care and at home.

Sexual assault is more likely to be a serious incident of a criminal nature than other incidents such as falls which are reported under SIRS. Where reports of sexual assault (by residential aged care or home-based service providers) are dismissed Police, it brings to sharp focus the gap in the process of obtaining justice and enforcing accountability for the safety of older people that needs to be addressed. **We believe that improved responses to sexual assault require Police engagement, Police guidelines (so they understand SIRS and sexual assault victims with dementia) and comprehensive education of Police to ensure practice aligns with guidelines.**

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<sup>6</sup> <https://www.opalinstitute.org/uploads/1/5/3/9/15399992/researchreport.pdf>

### 3. Priority reporting

It is important to tailor SIRS to provide assurance that assaults are being addressed and prevented. The current reporting format allows providers to classify sexual assaults based on a range of whether they believe the assault has had 'no harm' to whether it has caused 'higher level of harm'.<sup>7</sup> As 58% of providers (identified in one survey) do not believe sexual assaults have an impact on victims<sup>8</sup> whether through ignorance, lack of training or expedience for reporting purposes; **there is need to change the requirement for providers to categorize sexual assaults as a Priority 1 incident of 'high level of harm' to the victim.**

These changes will assist in guiding service providers to understand the devastating impacts of sexual assault on older people and assist in prompting support for older victims and improved prevention.

### 4. Impacts of sexual assault

We believe it is important to address the previously mentioned research indicating that impacts of sexual assault are not well understood by service providers. Just as the fact sheet on sexual assault outlines signs of sexual assault, we strongly recommend **the inclusion of a section on impacts and the importance of support services, particularly sexual assault supports.** Including a section on impacts will send a clear message that sexual assault not only needs to be reported, but also that older people need to be supported and protected.

### 5. Workforce Supervision, Training and Resourcing

**An effective SIRS depends on a trained, supervised, and well-resourced workforce,** whether it be implemented in residential aged care facilities or in the home care setting. In instances where home care workers are operating alone with minimal supervision, we are unsure as to the efficacy of SIRS in recording assault cases. It is difficult to imagine the scenario of a home care worker logging their own assault on their client through SIRS when they are working

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<sup>7</sup> Pg 13, "Serious Incident Response Scheme for Commonwealth funded residential aged care Model for Implementation September 2020", <https://www.health.gov.au/resources/publications/serious-incident-response-scheme-for-commonwealth-funded-residential-aged-care-model-for-implementation>

<sup>8</sup> [https://www.health.gov.au/sites/default/files/documents/2020/06/prevalence-study-for-a-serious-incident-response-scheme-sirs\\_0.pdf](https://www.health.gov.au/sites/default/files/documents/2020/06/prevalence-study-for-a-serious-incident-response-scheme-sirs_0.pdf)

mainly independently. In residential aged care settings, there are other staff members and supervisors who are more likely to notice and therefore to lodge reports. This raises several questions in our minds:

- Will family members be able to report through SIRS?
- Will staff be educated on reporting sexual assault in the context of family violence?
- What information will be given to older people receiving home services about their right to report sexual assault?
- Will there be independent 'spot checks' conducted by the Aged Care Quality and Safety Commission of home care workers to ensure that the quality of care, and the safety of older people are considered?

This submission recognises the significant changes to improve reporting of sexual assault in residential aged care; including the fact sheet on sexual assault. We have outlined gaps in reporting sexual assaults under SIRS in residential aged care that we believe need to be addressed before SIRS is expanded to include home care.

Thank you for the opportunity to provide our perspectives.

Yours sincerely,



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