



# Reportable incidents: unlawful sexual contact or inappropriate sexual conduct

## Serious Incident Response Scheme

A fact sheet for providers of residential care and flexible care in a residential aged care setting

### **The Serious Incident Response Scheme (SIRS) helps prevent and reduce the risk of incidents of abuse and neglect in residential aged care services subsidised by the Australian Government.**

Under the SIRS, all incidents and near misses should be recorded in a provider's incident management system (IMS) to ensure a timely and appropriate response that minimises impact, supports those affected and reduces the risk of recurrence.

There are eight types of reportable incidents that must be recorded in a provider's IMS and reported to the Aged Care Quality and Safety Commission (the Commission).

This fact sheet covers the reporting of incidents involving unlawful sexual contact or inappropriate sexual contact.

### **What is unlawful sexual contact or inappropriate sexual conduct?**

Unlawful sexual contact or inappropriate sexual conduct inflicted on a consumer includes:

- any non-consensual contact or conduct of a sexual nature by any person, including but not limited to sexual assault, an act of indecency or sharing of an intimate image of the consumer

- any contact or conduct of a sexual nature towards a consumer by a staff member or volunteer on duty, regardless of whether the consumer consented
- any touching of the consumer's genital area, anal area or breast area in circumstances by a staff member or volunteer on duty where this is not necessary to provide care or services to the consumer, regardless of whether the consumer consented to the touching
- any conduct toward the consumer with the intention of making it easier to procure the consumer to engage in sexual contact or conduct.

Consensual contact or conduct of a sexual nature between the consumer and a person who is not a staff member or volunteer on duty is not a reportable incident.

This includes consensual sexual contact or conduct with consumers at the same or another service or with volunteers (other than when they are providing volunteer services).

Some examples of what does and does not constitute unlawful sexual contact or inappropriate sexual conduct can be found in the table on [page 4](#). These examples are a guide only. If an incident occurs, you should carefully consider all the information and circumstances when deciding whether there has been unlawful sexual contact or inappropriate sexual conduct, particularly the level of harm and/or discomfort caused to the consumer.

### **Consumers' right to maintain relationships of choice**

It is important to note that SIRS notification requirements are designed to protect vulnerable consumers, not restrict their sexual freedoms. Consumers have the right to make choices about their personal and social life, including the right to sexual freedom and to give and receive affection. Under the Quality Standards, you are required to support consumers to exercise choice and independence, make connections with others and maintain relationships of choice, including intimate relationships. These rights and freedoms apply equally to consumers with a mental or cognitive impairment.

You must balance your responsibilities in providing a safe environment for vulnerable consumers with the consumers' right to maintain relationships of choice.

### **Incidents involving consumers with cognitive impairments**

Unlawful sexual contact or inappropriate sexual conduct where the subject of allegations lives with a cognitive impairment are reportable incidents under the SIRS.

### **Capacity to consent**

A consumer's capacity to consent may vary at different points in time. Your workforce is expected to be equipped to manage issues of consent and determine a consumer's ability to make decisions.

When considering the nature of a sexual contact, it can be useful to consider the following questions:

- Does the consumer have the capacity to consent to this activity at this time?
- Does the consumer have the capacity to refuse participation in the activity?
- Does the consumer have the capacity to agree to participate in the activity?

You should consider whether assistance from a health professional is needed to assess a consumer's capacity to consent on a case-by-case basis.

### **Possible signs of unlawful sexual contact or inappropriate sexual conduct**

There may be warning signs that may indicate that a consumer has experienced unlawful sexual contact or inappropriate sexual conduct, even if it is not witnessed. These include:

- dropping hints that appear to be about abuse or making vague or incomplete references to unlawful sexual contact
- sudden changes in behaviour or character, such as depression, anxiety attacks or social or emotional withdrawal (e.g. crying, sweating, trembling, distress, agitation, anger, violence, absconding, seeking comfort and security)
- bruises, pain, bleeding – including redness and swelling around breasts, thighs or genitals
- urinary tract infections or unexplained sexually transmitted disease
- torn or stained clothing or bedding
- avoiding or being fearful of a particular person or gender (staff member, consumer or other)
- sleep disturbances, refusing to go to bed, and/or going to bed fully clothed
- refusing personal care or to shower
- requesting a lock on the door to their room.

## How to respond to unlawful sexual contact or inappropriate sexual conduct

If a consumer shows signs of being the victim of unlawful sexual contact or inappropriate sexual conduct, you must immediately ensure their safety and well-being. This may include arranging medical or psychological assistance. In most cases, you will also need to contact the police.

All details of any incidents must be recorded in the IMS.

## Reporting unlawful sexual contact or inappropriate sexual conduct to the Commission

All reportable incidents of unlawful sexual contact or inappropriate sexual conduct are Priority 1 reportable incidents. These incidents must be reported to the Commission within 24 hours of becoming aware of the incident. Incidents that are unlawful or considered to be of a criminal nature (for example sexual assault) must also be reported to the police within 24 hours of becoming aware of the incident.

If you are in any doubt about whether an incident is of a criminal nature, make a report to the police. Police are the appropriate authorities to investigate and identify whether an incident may involve criminal conduct.

Any conduct or contact of a sexual nature inflicted on a consumer by a staff member is a reportable incident. Consent in these circumstances will not negate the requirement to report the incident.

Incidents should also be reported to the Commission where there may be doubt about a consumer's capacity to consent.

In all cases, you should continue to give the consumer support and practise 'open disclosure' by explaining what happened and what actions you are taking to respond to the incident.

## How can I find out more?

The Commission has published a suite of fact sheets about each type of reportable incident. To access these fact sheets and detailed guidance relating to the SIRS and incident management systems, visit [agedcarequality.gov.au/sirs](https://agedcarequality.gov.au/sirs).

### Broader commentary on unlawful sexual contact

There may be a range of emotional, behavioural and physiological responses to unlawful sexual contact, including symptoms related to post-traumatic stress, such as depression and withdrawal. Sometimes, these will mirror symptoms of cognitive impairment, such as agitation, distress and confusion. There may be no discernible response. This does not mean that the person has not suffered from physical, emotional or psychological trauma.

## Examples

What is unlawful sexual contact or inappropriate sexual conduct?	What is not unlawful sexual contact or inappropriate sexual conduct?
<ul style="list-style-type: none"> <li>• Unlawful sexual contact encompasses any behaviour of a sexual nature that is an offence under any criminal statute of a state, territory or the Commonwealth</li> <li>• Any conduct or contact of a sexual nature inflicted on a consumer by a staff member or a person who provides care or services for the provider while that person is providing such services (e.g. while volunteering)</li> <li>• Sexual contact without the consumer’s consent, against their will or where consent is negated for other reasons, such as lack of capacity to consent.</li> <li>• Having sexual intercourse or sexually penetrating a consumer (with a body part or an object) without consent</li> <li>• Touching a consumer’s genitals (or other private areas) without a care need</li> <li>• A person masturbating, showing their genitals to a consumer or exposing themselves in the presence of a consumer</li> <li>• Undressing in front of a consumer or watching consumers undress in circumstances where supervision is not required</li> <li>• Inappropriate exposure of consumers to the sexual behaviour of others</li> <li>• Sexual innuendos, sexually explicit language or showing pornography to a consumer or using a consumer in pornography</li> <li>• Grooming, stalking or making sexual threats to or in the presence of a consumer</li> <li>• Forcing, threatening, coercing or tricking a consumer into sexual acts</li> </ul>	<ul style="list-style-type: none"> <li>• Consensual acts of affection such as greeting someone with a kiss on the cheek or hug</li> <li>• Consensual sexual relations between consumers or between a consumer and their partner who is not a consumer at the service</li> <li>• Gestures of comfort, for example, a carer rubbing a consumer’s back or patting a consumer on the knee where this aligns with the consumer's personal preferences</li> <li>• Helping a consumer to wash and dry themselves, where the carer is acting in accordance with applicable professional standards</li> </ul>

The above table is not an exhaustive list of examples – it is a guide only. You should assess each incident on an individual basis.

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