

READY TO LISTEN

The #ReadyToListen Charter of Sexual Rights and Responsibilities in Residential Aged Care

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The #ReadyToListen project

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For more information contact

More free resources on #ReadyToListen website: <https://opan.org.au/support/support-for-professionals/ready-to-listen/>

Important definitions

Charter

This charter has been developed to support residential aged care service providers improve responses to and prevent sexual assault in residential aged care. The charter outlines how service providers might approach their obligations under the Quality of Care Principles; it is not legal advice or a compliance guide.

Quality of Care Principles

Reference to the Quality of Care Principles refers to the *Quality of Care Principles 2014 (Cth)*¹ made under section 96-1 of the Aged Care Act 1997.

Sexual assault

The definition of sexual assault varies across each state/territory.² The #ReadyToListen resources use the term to encompass ‘unlawful sexual contact, and inappropriate sexual conduct’ as outlined in the *Quality of Care Principles 2014 (Cth)*³ as follows:

Unlawful sexual contact, or inappropriate sexual conduct

- (4) In paragraph 54-3(2)(b) of the Act, the expression “unlawful sexual contact, or inappropriate sexual conduct, inflicted on the residential care recipient” includes the following:
- (a) if the contact or conduct is inflicted by a person who is a staff member of the approved provider or a person while the person is providing care or services for the provider (such as while volunteering)—the following:
 - (i) any conduct or contact of a sexual nature inflicted on the residential care recipient, including (without limitation) sexual assault, an act of indecency and the sharing of an intimate image of the residential care recipient;
 - (ii) any touching of the residential care recipient’s genital area, anal area or breast in circumstances where this is not necessary to provide care or services to the residential care recipient;
 - (b) any non-consensual contact or conduct of a sexual nature, including (without limitation) sexual assault, an act of indecency and the sharing of an intimate image of the residential care recipient;
 - (c) engaging in conduct relating to the residential care recipient with the intention of making it easier to procure the residential care recipient to engage in sexual contact or conduct.
- (5) However, that expression does not include consensual contact or conduct of a sexual nature between the residential care recipient and a person who is not a staff member of the approved provider, including the following:
- (a) another person who is a residential care recipient of the provider;
 - (b) a person who provides care or services for the provider (such as while volunteering) other than while that person is providing that care or services.

¹ <https://www.legislation.gov.au/Details/F2021C00887>

² Ibid.

³ <https://www.legislation.gov.au/Details/F2021C00887>

Substitute decision-maker

A substitute decision-maker is a person who makes a health care or medical treatment decision for a person who has lost decision-making capacity. They are required to act in accordance with the person's rights, will and preferences. Generally, the substitute decision-maker's decision has the same legal effect as if the person had capacity and had made the decision themselves.

Ready To Listen

The term #ReadyToListen refers to aged care service providers knowing the risk of sexual assault, understanding indicators, believing those who disclose, acknowledging impacts, providing support and taking proactive steps to protect residents. Being #ReadyToListen is achieved through organisational policy and education for staff and information for residents and their families on sexual assault.

Perpetrator

The term perpetrator refers to the person directly engaged in sexual assault⁴, as well as people who may induce or assist others to engage in the sexual assault⁵. The term perpetrator is used to reinforce the serious nature of sexual assault.⁶

Disclosure

The word disclosure is used by a number of key services^{7,8} in relation to sexual assault, and broadly reflects a process for making something known.

Victim/survivor

The term victim may be used to refer to the person who has been sexually assaulted⁹, particularly to illustrate that a sexual assault has been committed.¹⁰ The term survivor often refers to a person who is going through or has gone through a recovery process.¹¹ Some resources refer to victims/survivors in recognition that those impacted have the right to choose how they are referred to.

Affirmative consent

Affirmative consent makes it clear that a person does not consent to sexual activity unless they said or did something to communicate consent¹². The objectives of affirmative consent in residential aged care are to recognise that every resident has a right to choose whether to participate in sexual activity and that consent to a sexual activity must not be presumed. Communication of consent requires more than noting a resident was not obviously distressed or didn't say no to sexual activity. Consent is given through words or actions before and continuously throughout sexual activity.

⁴ https://www.police.vic.gov.au/sites/default/files/2019-02/Victoria-Police-Reporting-Guidelines--v12-2_7Mar16_gvr.pdf

⁵ Ibid.

⁶ https://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/04/glossary-web_national_outcome_standards_for_perpetrator_interventions.pdf

⁷ <https://www.racgp.org.au/afp/2015/march/disclosures-of-sexual-abuse-what-do-you-do-next>

⁸ <https://aifs.gov.au/publications/responding-young-people-disclosing-sexual-assault>

⁹ https://www.police.vic.gov.au/sites/default/files/2019-02/Victoria-Police-Reporting-Guidelines--v12-2_7Mar16_gvr.pdf

¹⁰ <https://sakitta.org/toolkit/docs/Victim-or-Survivor-Terminology-from-Investigation-Through-Prosecution.pdf>

¹¹ Ibid.

¹² <https://www.mondaq.com/australia/crime/1136522/affirmative-sexual-consent-laws-passed-in-new-south-wales>

Being #ReadyToListen is about understanding the risk of sexual assault, knowing the indicators, believing those who disclose, acknowledging impacts, providing support and taking proactive steps to protect residents. Sexual assault in residential aged care is never okay, being #ReadyToListen is an important step in prevention.

Mr Craig Gear, CEO Older Persons Advocacy Network (OPAN)

Introduction

This resource outlines a Charter of Sexual Rights and Responsibilities in Residential Aged Care. It has been developed because sexual rights are not well understood or promoted in this context. In our ageist world, older people are often not expected to be sexual, and as a result their sexual rights are often overlooked. The Charter aims to promote sexual rights, particularly the right to be free from sexual assault.

The sexual rights of older people are complex. They include both the right to engage in consensual intimacy and sexual activity; and the right to be safe from sexual assault.

The sexual rights of people living in residential aged care can be secured if service providers are equipped with strong knowledge and understanding of resident's sexual rights and responsibilities, and staff rights and responsibilities in this context. It is also important that older people understand their sexual rights and responsibilities and how these related to their rights and responsibilities outlined in the *Aged Care Quality Standards*.¹³

Aged Care Quality Standards and sexual rights

The Aged Care Quality Standards (ACQS), which were developed by the Aged Care Quality and Safety Commission (ACQSC), include broad reference to sexual rights. The Standards outline that aged care providers are required to:

- Support older people to exercise choice and independence (Standard 1[2], b)
- Respect older people's privacy (Standard 1[2], c)
- Provide safe and effective services and supports that optimise independence, health, well-being and quality of life (Standard 4[3], b)
- Demonstrate services and supports that assist older people to have social and personal relationships (Standard 4[3]c, ii).

The Commission also requires that aged care services provide safe and high-quality care and services, including preventing the sexual assault of residents.

¹³ Aged Care Quality and Safety Commission 2018, Guidance and Resources for Providers to support the Aged Care Quality Standards. Guidance and Resources for Providers to support the Aged Care Quality Standards is accurate as of publication in March 2021.

To help apply these Standards to the prevention of sexual assault, the #ReadyToListen project has developed this resource clarifying the sexual rights and responsibilities of residents, and staff rights and responsibilities.

The #ReadyToListen project

The #ReadyToListen project aims to improve reporting and prevention of sexual assault in residential aged care. At the heart of the project is a resource outlining the **Myths, facts And Practical strategies (MAP)** required to be #ReadyToListen when sexual assault is disclosed. The #ReadyToListen MAP is structured around the following 10 key elements of service improvements:

1. Understanding sexual assault definitions and prevalence
- 2. Clarifying sexual rights and consent**
3. Assessing the indicators of sexual assault
4. Identifying the impacts of sexual assault
5. Complying with reporting requirements
6. Providing immediate safety and support
7. Practicing open disclosure
8. Providing trauma-informed aged care services
9. Recognising and reducing resident vulnerability
10. Promoting protection, prevention and service improvement.

This resource relates to Element 2: clarifying sexual rights and sexual consent. The project was funded by the Australian Government Department of Health and delivered by the Older Persons Advocacy Network (OPAN), in partnership with Celebrate Ageing Ltd and the Older Women's Network, New South Wales.

About the #ReadyToListen Charter

The #ReadyToListen Charter draws on the Declaration of the Sexual Rights of Older People,¹⁴ a set of rights developed and adapted by Barrett and Hinchliff¹⁵ from The World Association for Sexual Health's¹⁶ declaration of sexual rights of all people.

The Charter was developed in consultation with key stakeholders, through the #ReadyToListen project advisory group and through a survey of older people, families, community members and service providers. The survey was completed by 272 people (over 100 older people and family members) and 92% said the Charter was necessary. Additionally, 96% said residents have sexual rights and need information about sexual consent.

The Charter outlines the following nine sexual rights and three responsibilities of residents living in residential aged care

1. The right to engage in sexual activity

¹⁴ opal.institute.org/rights

¹⁵ Extract from *Addressing the Sexual Rights of Older People: Theory, Policy and Practice*, 2018. Catherine Barrett and Sharron Hinchliff (eds). Routledge. See: <https://www.opal.institute.org/rights.html>

¹⁶ <http://www.worldsexology.org/>

2. The right to sexual consent
3. The right to continue existing sexual relationships (contingent on criteria)
4. The right to form new sexual relationships (contingent on criteria)
5. The right to change the way you express your sexuality (contingent on criteria)
6. The right to sexual privacy (contingent on criteria)
7. The right to be free from sexual assault
8. The right to information about your sexual rights and responsibilities
9. The right to speciality support related to your sexual expression
10. The responsibility to respect other residents
11. The responsibility to gain sexual consent
12. The responsibility to respect staff.

The Charter also outlines the following seven rights and four responsibilities of staff in relation to resident sexual rights:

1. The right to be free from sexual harassment in the workplace
2. The right to education on resident sexual rights and responsibilities
3. The right to workplace policies and guidelines
4. The right to support
5. The right to protection (Whistle-blower)
6. The responsibility to report sexual assault
7. The responsibility to prevent sexual assault
8. The responsibility to support victims/survivors
9. The responsibility to promote sexual rights

These rights and responsibilities are described in more detail on the following pages and we encourage residents and their families to raise any issues or concerns with staff. We also encourage residential aged care service providers to provide a copy of the Charter to all new residents.

Resident's sexual rights and responsibilities

This section outlines nine sexual rights and three related responsibilities of people living in residential aged care. The information is directed to people living in residential aged care.

If your rights are not upheld in your aged care home, please consider raising this with staff. If you do not achieve a satisfactory response, you can contact the Older Persons Advocacy Network (OPAN) and ask to speak to an advocate. You can also contact ACQSC to make a complaint. The contact details for OPAN and ACQSC are at the end of this document.

1: The right to engage in sexual activity

As a resident, you have the right to engage in lawful sexual activity¹⁷ in the privacy of your own room; and without fear of judgement or restriction by staff if the sexual activity meets the following criteria:

- a. all participants of the sexual activity have consented
- b. the activities do not infringe on the rights of other residents
- c. the activities do not involve the sexual harassment of staff or volunteers.

Across all the rights outlined in the Charter, if there are questions about your capacity to consent or the capacity of the person you are engaging in sexual activity with, staff will take action to ensure you are safe. This may include stopping the sexual activity until an assessment of capacity is undertaken by an expert such as a Geriatrician or Dementia Behaviour Management Assessment Service (DBMAS).

2: The right to sexual consent

As a resident you have the right to information about sexual consent, including the right to refuse participation in unwanted sexual activity. Sexual activity without your consent is sexual assault. Other considerations regarding this right include:

- a. If you engage in sexual activity with a person who does not have capacity to consent or if you do not have capacity to consent, staff will ask you to stop the sexual activity and ensure your safety, or the safety of the other person
- b. Staff will recognise that capacity to provide sexual consent can change over time and with different sexual activities
- c. Staff will recognise your right to withdraw sexual consent at any time
- d. Staff will recognise your right to affirmative consent i.e. that sexual consent will not be presumed; the absence of 'no' is not sufficient to demonstrate consent
- e. Staff will recognise your right to free agreement,¹⁸ this means they will respond to protect you in the following situations:
 - a. If you are fearful

¹⁷ Sexual activity includes (but is not limited to): oral sex, vaginal or anal intercourse, fondling genitalia or breasts, pornography, removing clothing, masturbating etc.

¹⁸<https://www.abs.gov.au/ausstats/abs@.nsf/lookup/by%20subject/4510.0~2014~main%20features~sexual%20assault~10>

- b. If you are being manipulated
 - c. If you are being threatened
 - d. If you are experiencing undue influence
 - e. If you have mistaken the identity of the person you are having sex with
 - f. If you have mistaken the nature of the sexual act
 - g. If you are incapable of consenting
 - h. If you wrongly believe the sexual act is for medical or care purposes
- f. Staff will recognise that all sexual activity between a staff member or volunteer and a resident (regardless of consent) will be treated as sexual assault
 - g. Staff will recognise that while your capacity to provide sexual consent may change, your right to sexual consent does not diminish.

3: The right to continue existing sexual relationships

As a resident you have the right to continue existing sexual relationships, including those relationships that were formed prior to your admission; as long as the sexual activities meet the criteria outlined in Right 1 of the Charter. Other considerations in promoting this right include:

- a. Where you have capacity to provide consent to continue existing sexual relationships, the decision to do so is yours; and your family and staff must recognise your right to decide
- b. Conversations about continuing existing sexual relationships may need to involve family or substitute decision-makers, if your capacity to consent is unclear

4: The right to form new sexual relationships

You have the right to form new relationships and the right to express your sexuality (including the right to have sex) in a new relationship; as long as the sexual activities meet the criteria outlined in Right 1 of the Charter. Other considerations regarding this right include:

- a. The decision to form a new sexual relationship sits with you and the person you are in relationship with, where you both have capacity to consent
- b. The personal views of others about the value of a new relationship will not affect your right to participate, or the quality of the care you receive
- c. If there are questions about your capacity to consent or the capacity of the person you are engaging in sexual activity with, staff will take action to ensure you are safe. This may include stopping the sexual activity until an assessment of capacity is undertaken by an expert such as a Geriatrician or Dementia Behaviour Management Assessment Service (DBMAS).

5: The right to change sexual or gender expression

Changes in relationship choices or sexual and gender expression can happen all our lives and should not be restricted based on age. You have the right to change your relationship preferences and your sexual or gender expression; as long as your

activities meet the criteria outlined in Right 1 of the Charter. Other considerations include your right to:

- a. Change the way you express your sexuality, including the right to change what you are looking for in a sexual partner, in a relationship and in intimacy/sexual activity
- b. Change the way you express your gender
- c. Change your gender identity
- d. Change your sexual orientation
- e. Feel safe to explore your sexuality.

The decision to change your sexual or gender expression sits with you. Your right to change your sexual or gender expression will not be restricted by the personal values and beliefs of staff - nor the views of family. Staff will provide a supportive and respectful environment.

6. The right to sexual privacy

You have the right to sexual privacy. This includes privacy of information and physical privacy for intimacy and sexual activities. Other considerations regarding this right include:

- a. You have the right to express your sexuality in the privacy of your own room
- b. Staff can provide a 'Do Not Disturb' sign for use on your bedroom door and they will knock and wait for permission from you before entering your room
- c. Your family or substitute decision-maker will not generally be engaged in discussion about your sexual expression, unless there are concerns about your capacity to consent
- d. If your sexual expression violates the sexual rights of other residents, it may be necessary to discuss this with the other residents, and/their families
- e. Your sexual expression will not be recorded in your care plan, unless you give permission for this to occur; or unless there are problems that need to be addressed. Where records are kept these will focus on agreed strategies or support for your sexual choices.

7: The right to be free from sexual assault

You have the right to be free from sexual assault. The definition of sexual assault includes all sexual activities or conduct without your consent and any sexual conduct or activity involving a staff member or volunteer. Other considerations regarding this right include:

- a. If you are concerned about the risk of sexual assault, you can discuss this with staff and they will take steps to address your concerns and prevent sexual assault
- b. Even if you consent to sexual activity with a staff member or volunteer - this is never appropriate and will be considered a sexual assault by the staff member or volunteer

- c. You have the right to be believed if you disclose sexual assault
- d. If you have been sexually assaulted, you can report the sexual assault and staff will listen and take action to support you and prevent further sexual assault
- e. You have the right to express concerns about the vulnerability of other residents to sexual assault, and staff will take action to reassure you and protect other residents
- f. You have the right to access an advocate if you are concerned about your risk of sexual assault or if you have been sexually assaulted. Contact the Older Persons Advocacy Network (OPAN) by calling on 1800 700 600 (free call) or visit their website: opan.org.au
- g. You have the right to access sexual assault services for support. Call 1800 737 732 (i.e. 1800 RESPECT) to identify the closest sexual assault service, or ask a staff member to assist you; and
- h. You have the right to make a complaint about your sexual rights, including sexual assault to the Aged Care Quality and Safety Commission by phone between 8am-5pm, Monday to Friday on 1800 951 822 or by email: info@agedcarequality.gov.au or go to their website: agedcarequality.gov.au

8: The right to information about your sexual rights and responsibilities

You have the right to information about your sexual rights and responsibilities. You also have the right to information on your sexual health, including prevention of sexually transmissible infection, erectile function, sexual consent and safe and pleasurable sexual relationships. Staff in your aged care home can provide you with a copy of this Charter of Sexual Rights and Responsibilities. You can talk to your GP about your other sexual health information needs.

9. The right to specialist support related to sexual expression

You have the right to access specialist support services, where they exist. Start by talking to your GP about your needs and whether a referral can be made to an expert in sexual health, relationship counselling or sexual violence. You can also talk to staff about making contact with a Geriatrician or Dementia Behaviour Management Assessment Service (DBMAS).

10. The responsibility to respect other residents

In addition to the sexual rights that have been articulated above, you also have sexual responsibilities. In particular, you have the responsibility to ensure that in the expression of your sexuality, you do not infringe on the rights or safety of other residents. Other considerations regarding this right include:

- a. You must not engage in sexual activity with another resident who does not consent or does not have the capacity to consent
- b. If you engage in sexual activity that makes other residents feel unsafe, staff will take action to ensure the rights of other residents are respected
- c. All residents have the right to be free from harassment or discrimination on the basis of their sexual expression, sexual orientation or gender identity.

11. The responsibility to gain sexual consent

You must ensure that any person/s you engage in sexual activity with provides sexual consent for each and every sexual activity. Sexual consent must be provided freely and cannot be presumed; the absence of 'no' is not sufficient to demonstrate consent. You must recognise the right of your sexual partner to withdraw sexual consent if they wish to.

12. The responsibility to respect staff

When you express your sexuality, you must respect the rights of staff and volunteers to work in a safe environment. Any kind of sexual violence, harassment or abuse towards staff or others is not acceptable.

Staff rights and responsibilities

This section outlines the rights and responsibilities of staff as they relate to your sexual rights and responsibilities. Promoting your sexual rights and responsibilities requires that staff rights and responsibilities in this context are also understood and promoted.

1: The right to be free from sexual harassment in the workplace

In the expression of your sexual rights, you need to ensure that you do not violate the rights of staff to a safe workplace, free from sexual harassment. The sexual harassment of staff is unlawful and includes the following:¹⁹

- a. Sexually suggestive comments or jokes
- b. Intrusive questions about staff members private life or physical appearance
- c. Inappropriate staring or leering
- d. Unwelcome hugging, kissing, cornering or other types of inappropriate physical contact
- e. Sexually explicit text messages, images, videos, phone calls or emails
- f. Requests to perform sexual or intimate acts
- g. Harassment of staff on the basis of their sexual orientation or gender identity.

2: The right to education on residents' sexual rights and responsibilities

Residential aged care service providers have the right to education to help them understand the sexual rights and responsibilities outlined in this Charter. This includes education on how to promote sexual wellbeing and prevent sexual assault. Additionally, the Code of Conduct for Aged Care²⁰ requires that all aged care workers are aware of what sexual misconduct looks like and that failing to train aged care workers would not be consistent with the Code.

3. The right to workplace policies and guidelines

Residential aged care service providers have the right to information to guide their responses to sexual expression and to promote the sexual rights and responsibilities of residents. This can include workplace policies and guidelines that provide them with a clear understanding of what residents' sexual rights and responsibilities are, how to promote them and what to do if sexual assault is disclosed or if sexual harassment occurs.

4. The right to support

While the provision of education and workplace guidelines can assist staff to balance residents' sexual rights and responsibilities, complexities may still arise. Staff may need support to clarify sexual consent, understand how to manage sexual expression that violates the rights of other residents or staff and to work with families. Services such as DBMAS, Geriatrician, Neuropsychologist, or Counsellors

¹⁹ <https://humanrights.gov.au/our-work/sex-discrimination/publications/recognising-and-responding-sexual-harassment-workplace>

²⁰ <https://www.agedcarequality.gov.au/resources/code-conduct-aged-care-guidance-aged-care-workers-and-governing-persons>

may be useful. Where a resident's sexual rights are being restricted by family (or other staff) it may be useful to provide the resident with information on accessing an OPAN advocate.

5. The right to whistle blower protection

Residential aged care service providers have the right to be protected if they report sexual assault. This includes reporting without fear of retribution or personal detriment.

6. The responsibility to report sexual assault

All sexual assaults must be reported to the Serious Incident Response Scheme as a Priority 1 incident within 24 hours.

7. The responsibility to prevent sexual assault

The Code of Conduct for Aged Care²¹ requires that staff promptly take steps to raise and act on concerns for resident safety – including concerns about the risk of sexual assault. The code also requires that staff protect residents from workers who pose an unacceptable risk of harm and take reasonable steps to prevent sexual misconduct by staff.

8. The responsibility to support victims/survivors

Aged care workers have the responsibility to understand the harmful impacts of sexual assault (particularly where a victim/survivor is unable to communicate) and support the victim/survivor's access to support services, such as sexual assault services. Information should also be provided to the victim/survivor on OPAN's aged care advocacy services.

9. The responsibility to promote sexual rights

Residential aged care service providers have the responsibility to understand and promote the sexual rights and responsibilities of residents outlined in this Charter. This includes the responsibility to prevent sexual assault of residents, believe residents who disclose sexual assault and the responsibility to provide support and protection to residents who are vulnerable to sexual assault.

Staff also have the responsibility to provide intimate care in a way that is respectful or resident's privacy and dignity.

Further resources

Please go to the #ReadyToListen webpage for more resources on improving response to and preventing sexual assault. Web:

<https://opan.org.au/support/support-for-professionals/ready-to-listen/>

²¹ <https://www.agedcarequality.gov.au/resources/code-conduct-aged-care-guidance-aged-care-workers-and-governing-persons>

OPAN Advocacy

You have the right to access an aged care advocate. An aged care advocate will listen to you and can also do the following:

- Provide you with information about your rights and your service providers responsibilities;
- Support you to report sexual assault to management at your aged care home;
- Support you to make a formal complaint to the Aged Care Quality and Safety Commission;
- Support you to discuss and plan for your ongoing safety and wellbeing with your aged care home;
- Assist you to look alternative aged care homes if this is your preference.

The Older Persons Advocacy Network, or OPAN provide independent, confidential, and free advocacy support for people living in residential aged care. The support provided by an aged care advocates is directed by you. They can support you to have your voice heard and to make sure you are supported and safe. You can contact OPAN by phone 1800 700 600, 7 days week.

1800RESPECT

1800RESPECT is the National Sexual Assault, Domestic Family Violence Counselling Service. They can provide you with information on your local sexual assault service for counselling and debriefing. Call 1800 737 732 any time or check the website: <https://www.1800respect.org.au/>

1800FULLSTOP

Fullstop Australia is here to put a full stop to sexual, domestic or family violence. They offer confidential counselling for people who have experienced sexual assault and for family members. Call 1800 385 578 any time or check the website: <https://fullstop.org.au/>

The Aged Care Quality and Safety Commission

The Commission assesses the quality of care and services in residential aged care and manage the Serious Incident Response Scheme or SIRS (all sexual assault must be reported to SIRS within 24 hours). You can contact the Commission to make a complaint about your sexual assault or the way it was managed. Call: 1800 951 822 (9am-5pm, Monday to Friday) or check their website here: <https://www.agedcarequality.gov.au/>