

READY TO LISTEN

Sexual Assault in Residential Aged Care

A Guide for Service Providers on Reporting to the Police

Written by

Dr Catherine Barrett, Kate Swaffer and Yumi Lee

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The #ReadyToListen project

This resource was developed for the #ReadyToListen project, which was funded by the Australian Government Department of Health, Disability and Ageing and was led by the Older Persons Advocacy Network, in partnership with Celebrate Ageing Ltd and the Older Women's Network, New South Wales.

Ready To Listen resources

The #ReadyToListen project has developed a suite of resources for older people, people living with dementia, family members and service providers. Go to the MAP webpage for an overview of the and links to further resources:

<https://opan.org.au/training/ready-to-listen/>

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More information

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

Important definitions

This resource was designed to support staff improve responses to, and prevent, sexual assault in residential aged care. It outlines how staff might approach their obligations under the Aged Care Act, 2024.¹ It is not legal advice or a compliance guide.

Affirmative consent

Affirmative consent is a communicative model of intimacy to better give effect to the values of mutuality, respect, autonomy and dignity.² Affirmative consent makes it clear that a person does not consent to sexual activity unless they said or did something to communicate consent.³ The objectives of affirmative consent in residential aged care are to recognise that every older person 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 an older person 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.

Disclosure

The word disclosure is used by a number of key services^{4,5} in relation to sexual assault, and broadly reflects a process for making something known.

Older person

In the context of this resource, the term older person is used to refer to a person living in residential aged care

Perpetrator

The term perpetrator refers to the person directly engaged in sexual assault⁶, as well as people who may induce or assist others to engage in the sexual assault⁷. The term 'perpetrator' is used to reinforce the serious nature of sexual assault.⁸

#ReadyToListen

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 older people. Being #ReadyToListen is achieved through organisational policy and education for staff and information for older people and their families on sexual assault.

¹ <https://www.legislation.gov.au/C2024A00104/latest/text>

² <https://www.austlii.edu.au/au/journals/SydLawRw/2023/20.pdf>

³ <https://www.mondaq.com/australia/crime/1136522/affirmative-sexual-consent-laws-passed-in-new-south-wales>

⁴ <https://www.racgp.org.au/afp/2015/march/disclosures-of-sexual-abuse-what-do-you-do-next>

⁵ <https://aifs.gov.au/publications/responding-young-people-disclosing-sexual-assault>

⁶ https://www.police.vic.gov.au/sites/default/files/2019-02/Victoria-Police-Reporting-Guidelines--v12-2_7Mar16_gvr.pdf

⁷ Ibid.

⁸ https://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/04/glossary-web_national_outcome_standards_for_perpetrator_interventions.pdf

Registered supporters

A registered supporter⁹ is an individual who has been nominated by the older person to promote the older person's rights to make decisions and stay in control of their life. Registered supporters can:

- help the older person to make their own decisions
- request, access or get information to help the person they are supporting
- communicate information on behalf of the older person with their consent.

Only people with an active state or territory appointment as a substitute decision-maker, such as an enduring guardian or an enduring power of attorney, can make aged care decisions on behalf of an older person. These people can only make decisions within the scope of their active, legal authority.

Registered supporters have duties under the Aged Care Act – including respecting the older person's decisions even if they don't agree with them.

Sexual assault

The definition of sexual assault varies across each state/territory. The #ReadyToListen resources use the term to encompass 'unlawful sexual contact and inappropriate sexual conduct' as outlined in The Aged Care Rules,¹⁰ as follows:

Unlawful sexual contact, or inappropriate sexual conduct

(4) In [paragraph 16\(1\)\(b\)](#) of the Act, the expression "unlawful sexual contact, or inappropriate sexual conduct, inflicted on the individual" includes the following:

(a) if the contact or conduct is inflicted by a person who is an aged care worker of the registered provider - the following:

- (i) any conduct or contact of a sexual nature inflicted on the individual, including (without limitation) sexual assault, an act of indecency and the sharing of an intimate image of the individual;
- (ii) any touching of the individual's genital area, anal area or breast in circumstances where this is not necessary to deliver funded aged care services to the individual;

(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 individual;

(c) engaging in conduct relating to the individual with the intention of making it easier to procure the individual to engage in sexual contact or conduct.

(5) However, that expression does not include consensual contact or conduct of a sexual nature between the individual and a person who is not an aged care worker of the registered provider, including another individual to whom the registered provider delivers funded aged care services.

⁹ <https://www.health.gov.au/resources/publications/guide-to-aged-care-law/chapter-1-introduction/supported-decision-making>

¹⁰ <https://www.legislation.gov.au/F2025L01173/asmade/text>

Staff

The term staff is used throughout to refer to leaders, employees, contractors and volunteers of registered aged care service providers. This includes [aged care workers](#), [responsible persons](#) and [associated providers](#) as defined under the Aged Care Act 2024. Board members, senior managers, quality managers, and similar roles will have particular responsibilities in the context of preventing and responding to sexual assault in aged care.

Substitute/appointed decision-maker

Substitute decision-makers (such as an enduring guardian or an enduring power of attorney) are appointed decision-makers for the older person and can make decisions on their behalf under state or territory arrangements, in line with their active, legal authority. The appointed decision-maker only has the authority to make decisions within the scope of their active, legal authority, e.g. financial or health care decisions.

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.

Supported decision-making recognises every person's right to have their will and preferences heard.

Supported decision-making

Supported decision-making describes when older people receive support to make and communicate their own decisions, rather than having decisions made for them. This can help older people to remain in control of their lives.

Under the new Act, aged care providers must support older people to make their own decisions.

Victim/survivor

The term victim may be used to refer to the person who has been sexually assaulted¹¹, particularly to illustrate that a sexual assault has been committed.¹² The term 'survivor' often refers to a person who is going through or has gone through a recovery process.¹³ Some of the #ReadyToListen resources refer to victims/survivors in recognition that those impacted have the right to choose how they are referred to.

¹¹ https://www.police.vic.gov.au/sites/default/files/2019-02/Victoria-Police-Reporting-Guidelines--v12-2_7Mar16_qvr.pdf

¹² <https://sakitta.org/toolkit/docs/Victim-or-Survivor-Terminology-from-Investigation-Through-Prosecution.pdf>

¹³ Ibid.

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 older people. 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

Over the past few years there have been significant changes to policy on sexual assault in residential aged care. These changes have led to the development of this resource.

In Australia, processes for reporting sexual assault in residential aged care were introduced in 2004, when the Department of Health, Disability and Ageing launched a scheme for the compulsory reporting of incidents, including sexual assault.¹⁴ There were 'limited circumstances' to reporting, which meant that sexual assault was not required to be reported if the perpetrator had a cognitive impairment.

Data gathered for the compulsory reporting scheme was outlined in an annual report on the Operation of the Aged Care Act annually from 2004 to 2020. The 2019–2020 report identified there were 851 reports of alleged or suspected unlawful sexual contact.¹⁵

A critique of the compulsory reporting approach was that data was collected, but it was not clear that it was being utilised to inform strategies for prevention. This gap and the limited circumstances approach have arguably contributed to a conceptualising of the sexual assault of older people as a lesser crime – or no crime at all. Research identified that in 58% of sexual assaults, staff in residential aged care reported there were no negative impacts on the older person.¹⁶

This finding is at odds with global research showing the harm inflicted on victims/survivors of sexual assault in residential aged care, including the following:

- high rates of mortality, physical injury and delirium, as well as protracted PTSD¹⁷
- physical injuries, including long term health conditions, exacerbation of existing injuries or conditions¹⁸

¹⁴ <https://www.gen-agedcaredata.gov.au/Resources/Reports-and-publications/2020/September/Report-on-the-operation-of-the-Aged-Care-Act>

¹⁵ <https://www.health.gov.au/news/announcements/2019-20-report-on-the-operation-of-the-aged-care-act-1997>

¹⁶ <https://www.health.gov.au/resources/publications/prevalence-study-for-a-serious-incident-response-scheme-sirs>

¹⁷ <https://www.ojp.gov/pdffiles1/nij/grants/216550.pdf>

¹⁸ <https://link.springer.com/book/10.1007/978-3-030-16601-4>

- higher rates of genital trauma, aches and pains, cuts and bruises, and sexually transmitted diseases, compared to younger women¹⁹
- fear of perpetrator reoffending resulting in distress, insomnia and general failure to thrive.²⁰
- delays in processing and impaired communication which potentially compounds the trauma of sexual assault.²¹

The problem of sexual assault in residential aged care was highlighted in the Aged Care Royal Commission's final report, which was released in 2019.²² It estimated there are 50 sexual assaults in residential aged care each week. Following the Royal Commission, a series of legislative and policy reforms were implemented, including the following:

- 2020: Serious Incident Response Scheme (SIRS)²³ was launched by the Aged Care Quality and Safety Commission (ACQSC) for residential aged care. The SIRS framework requires that all sexual assaults are reported as a Priority 1 incident, within 24 hours
- 2021: A fact sheet on sexual assault was developed by ACQSC²⁴, and was updated the following year²⁵
- 2022: An Aged Care Code of Aged Care Code of Conduct²⁶ was developed, clarifying the responsibilities of providers, responsible persons and aged care workers to deliver aged care services free from sexual misconduct and take all reasonable steps to prevent and respond to sexual misconduct
- 2025: The Aged Care Act (2024) is launched – articulating the sexual rights of older people to be free from sexual violence.²⁷

In addition to these reforms, the Australian Government Department of Health, Disability and Ageing funded the Ready to Listen project, outlined in the following section.

This resource has been developed for the #ReadyToListen project to promote staff understanding of why, when and how to report sexual assault to the police.

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:

¹⁹ Ibid.

²⁰ opal.institute.org/margarita

²¹ https://www.nsvrc.org/sites/default/files/Elder_Sexual_Assault_Technical-Assistance-Manual.pdf

²² <https://agedcare.royalcommission.gov.au/publications/final-report>

²³ <https://www.agedcarequality.gov.au/consumers/serious-incident-response-scheme#compulsory%20reporting>

²⁴ <https://www.agedcarequality.gov.au/sites/default/files/media/sirs-unlawful-sexual-contact-or-inappropriate-sexual-conduct-fact-sheet-june-2021.pdf>

²⁵ https://www.agedcarequality.gov.au/sites/default/files/media/sirs_unlawful_sexual_contact_or_inappropriate_sexual_conduct_fact_sheet_1.pdf

²⁶ <https://www.agedcarequality.gov.au/workers/aged-care-code-conduct/aged-care-code-conduct>

²⁷ <https://www.legislation.gov.au/C2024A00104/latest/text>

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 5: complying with reporting requirements. The project was funded by the Australian Government Department of Health, Disability and Ageing and was delivered by the [Older Persons Advocacy Network \(OPAN\)](#), in partnership with [Celebrate Ageing](#) Ltd and the [Older Women's Network, New South Wales](#).

About this resource

The aim of this resource is to improve service providers understanding of reporting sexual assault in residential aged care to the police. While there is limited information on this topic, guidelines developed by Victoria Police and the Victorian Government Department of Health and Human Services on sexual abuse of people with disability²⁸ were invaluable references.

Specific state/territory requirements

Each state/territory has its own laws and law enforcement, which is the responsibility of state/territory based police. This resource should be considered alongside the laws of each state/territory.

These guidelines have been developed to support residential aged care service providers in improving responses to and preventing sexual assault in residential aged care. The guidelines outline how service providers might approach their obligations under the Aged Care Act, 2024.²⁹ The guidelines are not legal advice or a compliance guide.

²⁸ <https://providers.dffh.vic.gov.au/responding-allegations-abuse-involving-people-disabilities>

²⁹ <https://www.legislation.gov.au/C2024A00104/latest/text>

What victims/survivors can expect

When sexual assault occurs, the health, safety and wellbeing of the victim/survivor and other older people living in the aged care home is paramount, and an appropriate and timely response is critical. All actions need to be undertaken in a way that:

- is respectful of the victim/survivor
- meets the victim/survivor's communication, cultural, sexual orientation and gender identity needs
- empowers the victim/survivor to make their own choices and decisions wherever possible, to the extent that they are capable of making informed decisions
- actively includes the victim/survivor.

In the following section we outline what victims/survivors can expect from aged care service providers and police.

From aged care service providers

Strategies that demonstrate professional and supportive responses from staff include:

- recognising and acknowledging the impact of the sexual assault on the victim/survivor
- ensuring the victim/survivor is safe and also feels safe
- reassuring the victim/survivor that the sexual assault will be taken seriously
- informing the victim/survivor about their rights and considering their wishes
- inviting the victim/survivor to identify a support person (for example, a family member, OPAN advocate) and provide them with updates (this may include the substitute decision-maker) – if police have been notified, consult with them on this
- planning for the provision of ongoing support to the victim/survivor
- providing communication support if required
- ensuring the victim/survivor has the opportunity to provide feedback on the sexual assault.

From police

Strategies that demonstrate professional and supportive responses from police include the following:

- ensuring a timely response to a victim/survivor, witness, alleged perpetrator or person in need of assistance
- ensuring processes and support are tailored to the victim/survivor's individual needs, including the provision of reasonable adjustments to provide fair and equitable access to justice, in accordance with the Charter of Victim's Rights³⁰
- ensuring the victim/survivor or their substitute decision-maker (where applicable) is involved in processes, decisions and actions that concern them, to the extent that they are capable of making informed decisions and that the criminal law permits
- not making assumptions about cognitive capacity, particularly for victims/survivors with dementia. When there is doubt, advice can be sought from the victim/survivor's GP or other appropriate medical officer about their fitness for interview and/or participation in the justice journey
- actively listening to the victim/survivor
- communicating respectfully and in a way that is appropriate to the victim/survivor's communication needs including:
 - display empathy and a willingness to allow the victim/survivor time to develop confidence in the police officer and the process
 - not making assumptions about the victim/survivor, their capacity or what they are communicating
 - check the understanding of concepts that may not be familiar to the victim/survivor and ask them to explain in their own way
 - utilise properly accredited interpreting services for members of the CALD community and those with a physical disability where there is any doubt about understanding by any party
 - if the victim/survivor has a support person with them, talk to the victim/survivor first and then ask their permission to talk to their support person
 - be cognisant that the 'carer' may in fact be a perpetrator and always act in the best interests of the victim/survivor
 - do not ask the carer or support person questions that should be asked of the victim/survivor
 - being patient and giving the victim/survivor time to talk about what happened and answering questions. This may take several meetings
 - avoid finishing the victim/survivor's words or sentences

³⁰ Please note there is a separate Charter of Victim's Rights for each state/territory

- repeat back what the victim/survivor has said to provide them with the opportunity to confirm or correct understandings
- use words or language that is easily understood. Explain difficult words or concepts, if needed
- Allowing for a break when necessary

Investigating the sexual assault of older people may take additional time, particularly if those involved (victims, witnesses or alleged perpetrators) have cognitive impairment or complex communication needs. Allowing extra time is important to accommodate reasonable adjustments and to gather the additional information that may be needed.

Internal investigations

Effective incident management systems are critical to understanding what happened, how and why it happened and what can be done to reduce risk and provide safer care.³¹ In the following section we outline responsibilities related to the SIRS, suggestions for reducing risk, internal reporting and investigations, and the notification of others.

The Serious Incident Response Scheme

With the establishment of SIRS in 2021, there were changes to the reporting of sexual assault in residential aged care. The SIRS Guidelines for Residential Aged Care (2022) state that *incidents that are unlawful or considered to be of a criminal nature (for example sexual assault), must also be reported to police within 24 hours of becoming aware of the incident.*³² This is not dependent on an internal investigation or 'proof'.

Internal review and improvements

An internal investigation is always required when sexual assault is disclosed. However, an internal investigation must not impede a police investigation. The following recommendations for internal review draw on the guidelines for investigation following sexual assault of people with disability, developed by Victoria Police and the Victorian Government Department of Health and Human Services:³³

- make sure all older people are safe from further sexual assault
- gather only enough information to be able to make a report to the police

³¹ <https://www.agedcarequality.gov.au/sites/default/files/media/effective-ims-guidance-august-2021.pdf>

³² <https://www.agedcarequality.gov.au/sites/default/files/media/SIRS-guidelines-for-residential-aged-care-providers.pdf>

³³ <https://providers.dfh.vic.gov.au/responding-allegations-abuse-involving-people-disabilities>

- do not formally interview the victim/survivor, witnesses or perpetrator, this is the role of the police. However, some discussion may be needed to establish a basic understanding of what has occurred
- if the victim/survivor needs to talk about what happened, listen and support them and reassure them that they did the right thing by disclosing the sexual assault
- if the allegation is not clear, remain calm and listen carefully without interrupting, as the victim/survivor may disclose more information over time
- if you still need more information to establish a basic understanding, it is okay to ask open-ended questions. Some examples of open-ended questions are:
 - Can you tell me more about what happened?
 - What happened next?
 - What do you mean by that?
 - When did this happen?
- stop asking questions once you have a general understanding of the sexual assault and ensure the victim/survivor, any witnesses or perpetrator are not questioned by anyone else until police have conducted an investigation (if the sexual assault has been reported to the police)
- make notes as soon and as accurately as possible, as this may be important evidence
- explain to the victim/survivor the actions you will take next and make a written record of your discussion
- make sure all older people are safe from further sexual assault or harm from any trauma they may be experiencing
- details of the sexual assaults must not be discussed with perpetrators or witnesses before informing police.

Informing others

Requests for information may be made by the victim/survivor's family, other residents and their family, or the media. In most cases, it will not be appropriate to make any form of public comment during the course of an investigation – to ensure the police criminal investigation is not compromised. If unsure, seek advice from a senior member of the team.

Staff who witness or receive report of a sexual assault need to inform a supervisor or manager³⁴ of the sexual assault and discuss whether police have been notified. High-level reports in these circumstances can include details, such as:

- name of the victim/survivor
- name of the person making the disclosure
- date of the incident.

³⁴ <https://www.legislation.gov.au/Details/C2017C00241>

The victim/survivor has the right to decide whether to inform others. If the older person does not have capacity to decide or ability to communicate, notify the substitute decision-maker (if the older person has one) and family. Where the older person has a cognitive impairment and staff make the decision not to advise the substitute decision-maker or family, documenting the reasons for this in the older person's care notes and incident report may assist with any future investigation.

Reporting to police

In this next section, we outline why sexual assault is reported to the police, when to report and how to do so.

Forensics – preserving evidence

Sexual assault may produce physical evidence that is easily lost or damaged. When sexual assault is reported to the police, a number of different police may attend, and all officers are trained to preserve evidence and will place a priority on that.

Uniformed first responder police will secure the scene and summon detectives. Detectives will seek an examination by specialist crime scene examiners to gather evidence that may confirm what has happened. Also, a specialist medical officer (with training in sexual assault examinations) may be contacted by the police, as part of the evidentiary and forensic process. It is important that the medical practitioner is independent of the service where the sexual assault took place (wherever possible).

Forensic medical examination of the victim/survivor may involve a full physical examination.³⁵ When sexual assault is reported to police it is useful to check whether medical examination will be required and what is involved.

When sexual assault is reported to police it is also important that staff take every reasonable action to ensure evidence is preserved, but not collected – to allow police to conduct a thorough investigation. Actions that may be required to ensure any immediate evidence is preserved for police investigation include:

- encouraging the victim/survivor not to shower or change clothes so that evidence is not destroyed. If the older person feels they must shower, have a drink or go to the toilet, this must be allowed to occur. Ask them to put the clothing they were wearing at the time of the assault into paper bags (one item per bag), which should be sealed, labelled and secured. If any other individuals collect this clothing, plastic gloves must be used
- ensuring this process is done sensitively and with respect as it can be traumatic
- ensuring the immediate area around the scene is not disturbed (this may include restricting access, ensuring spills are not cleaned (including body fluids) and leaving objects undisturbed. If this is not possible, take photographs of the scene before it is disturbed
- noting any disturbances to the area around the scene – for example, if another person walked through the area before it was secured

³⁵ <https://www.racgp.org.au/getattachment/eacf52d6-3b22-4daf-9c94-54ea8b1fff2c/attachment.aspx>

- writing down notes about the incident and ensuring relevant documents are preserved
- separating any witnesses where possible to minimise the risk that their evidence may be compromised before they have been interviewed
- the simplest process may be to close off the room alleged to be the scene of the sexual assault and prevent access to the room until police arrive.

There will also likely be other evidence needed by police during the investigation process including documents, photographs of the crime scene and any notes on disturbances to the crime scene or other evidence. If police require this evidence, they may need to provide a written request to the service provider or provide a legal authority such as a crime scene or search warrant.

Why report to the police

The police have an essential role to play in responding to and preventing sexual assault. Their role can include the following:

- providing safety to at risk persons
- gathering forensic evidence
- determining whether charges can be laid
- assisting the legal process of holding perpetrators to account
- keeping records of allegations and any evidence; whether or not a perpetrator is charged or convicted.

Reporting sexual assault by a staff member can assist in preventing further sexual assault where staff are working in more than one service.

When to report to the police

The Serious Incident Response Scheme Guidelines for Residential Aged Care Providers, 2022³⁶ provides the following guidance on when to report sexual assault to the police:

- Incidents that are unlawful or considered to be of a criminal nature (for example sexual assault), must also be reported to police within 24 hours of becoming aware of the incident (p.27)
- If you are in any doubt about whether an incident is of a criminal nature, make a report to police. Police are the appropriate authorities to investigate whether an incident may involve criminal conduct (p.27)

³⁶ <https://www.agedcarequality.gov.au/sites/default/files/media/SIRS-guidelines-for-residential-aged-care-providers.pdf>

- Reporting to the police in relation to criminal conduct should occur regardless of whether the incident is alleged or suspected to have occurred (p.55)
- Your responsibility to report an incident to the police applies regardless of whether the consumer and/or their representative or family seek to have the incident reported. When an incident is reported to police, notifying the consumer and/or their representative that this has occurred demonstrates a commitment to open disclosure, and good practice communication of actions and outcomes in incident management. (p.55)
- If there are reasonable grounds to report the incident to police it must be reported within 24 hours of you becoming aware of the incident (p.55)
- You must report an incident to the police when there are reasonable grounds to do so. The phrase 'reasonable grounds' may include scenarios where you are 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. (p. 55)

The recommendation in the SIRS guidelines - not to wait till allegations are substantiated to report to police - is consistent with police guidelines.³⁷ It is important to note that not every police report will result in an arrest and charges. Police will consider a wide range of legal, practical and social issues prior to progressing.

What sexual assault is - and is not

To comply with the SIRS Guidelines³⁸ on when to report sexual assault to police, staff need to understand what sexual assault is – and what it is not. To assist in this understanding, the SIRS Guidelines (page 30) include an illustrative list of examples of what sexual assault is, adapted³⁹ in Table 1 below.

Table 1: Examples of what sexual assault *is*

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
Any conduct or contact of a sexual nature inflicted on the older person 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)
Sexual contact without the older person's consent, against their will or where consent is negated for other reasons such as lack of capacity to consent
Having sexual intercourse or sexually penetrating an older person (with a body part or an object) without consent
Touching an older person's genitals (or other private areas) without a care need.
A person masturbating, showing their genitals to an older person or exposing themselves in the presence of an older person
Undressing in front of an older person or watching older people undress in circumstances where supervision is not required
Inappropriate exposure of older people to sexual behaviour of others

³⁷ https://www.police.vic.gov.au/sites/default/files/2019-02/Victoria-Police-Reporting-Guidelines--v12-2_7Mar16_qvr.pdf

³⁸ <https://www.agedcarequality.gov.au/sites/default/files/media/SIRS-guidelines-for-residential-aged-care-providers.pdf>

³⁹ Adaptions are limited to changing the term 'consumer' to 'older person'

Sexual innuendos, sexually explicit language or showing pornography to a consumer or using a consumer in pornography
Grooming, stalking or making sexual threats to or in the presence of an older person
Forcing, threatening, coercing or tricking an older person into sexual acts

As noted in the SIRS Guidelines, these examples are illustrative only and whether a sexual assault has occurred will need to be assessed in each individual case. It is also important to note that the examples outlined are illustrative and the range of sexual assault activities is broad. For example, sexual assault has recently been understood to include staff members using smart phones to record intimate images without consent.^{40,41}

The SIRS Guidelines also provide illustrative examples of what sexual assault is not. These are outlined in Table 2 below.

Table 2: Examples of what sexual assault is not

Consensual acts of affection such as greeting someone with a kiss on the cheek or a hug
Consensual sexual relations between older people, or between an older person and their partner who is not living in the service
Gestures of comfort, for example a staff member rubbing an older person's back or patting an older person on the knee where this aligns with the older person's personal preferences.
Helping a consumer to wash and dry themselves, where the staff member is acting in accordance with applicable professional standards

Some older people may misinterpret intimate clinical care as sexual assault; and some sexual assaults take place under the guise of intimate clinical care. It is therefore important to investigate every situation with these facts in mind. All staff should be given training on best practice for intimate care, to avoid confusion

The ACQSC's Fact Sheet on sexual assault,⁴² which notes that SIRS is designed to protect vulnerable older people, not restrict their sexual freedoms. If older people engage in intimate or sexual activity (holding hands, kissing, touching, masturbating or having penetrative sex) and provide affirmative consent for those activities – this is not sexual assault and would not be reported to the police.

Promoting victim/survivor autonomy

When a sexual assault is being reported to Police, questions may be raised about whether or not victim/survivor or their representative has the right to decline Police notification. This issue has been clarified in the SIRS Guidelines,⁴³ as follows,

Your responsibility to report an incident to the police applies regardless of whether the consumer and/or their representative or family seek to have the

⁴⁰ <https://www.abc.net.au/news/2025-04-24/sydney-aged-care-employee-charged-sexual-assault-residents/105214202>

⁴¹ <https://www.9news.com.au/national/nurses-fired-for-abuse-of-elderly-residents/ec81a0ff-c9e5-4f57-bb78-fe11d185f5c7>

⁴² <https://www.agedcarequality.gov.au/resource-library/sirs-reportable-incidents-unlawful-sexual-contact-or-inappropriate-sexual-conduct>

⁴³ <https://www.agedcarequality.gov.au/sites/default/files/media/SIRS-guidelines-for-residential-aged-care-providers.pdf>

incident reported. When an incident is reported to police, notifying the consumer and/or their representative that this has occurred demonstrates a commitment to open disclosure, and good practice communication of actions and outcomes in incident management. (p.55)

Promoting victim/survivors' autonomy, or choices and control, is an important component of recovery following sexual assault.⁴⁴ The requirement to report to Police, against the victim/survivor's wishes, may exacerbate feelings of disempowerment. The provision of trauma-informed care in this context is pivotal to promoting victim/survivor autonomy, healing and recovery. Please see the #ReadyToListen Trauma Informed Framework on the OPAN website for more information.

Additional strategies to promote victim/survivor autonomy when sexual assault is reported to the police can include:

- identifying victim/survivor concerns (for example, fears for their safety, further trauma, or perhaps they are part of a community that has had a difficult relationship with the police) and addressing these concerns
- letting the victim/survivor know you understand that reporting sexual assault to the police may be difficult and that they have done nothing wrong
- inviting the victim/survivor to have a support person or advocate with them when they make their report
- providing the victim/survivor with an overview of the information that is needed for the police report
- letting the victim/survivor know if the police will interview them and what this interview will involve
- providing the victim/survivor with information on whether a forensic or medical examination is required and what this will involve
- discussing their safety and the consequences of police reporting (i.e., there will be no retributions, and the law formally protects them).

There may be a need for additional support in rural communities where perpetrators and victims/survivors are known to each other; and where staff may be pressured to pursue outcomes that are not in the best interests of victim/survivor. Keeping the primary focus on the needs of the victim/survivor can help staff to negotiate these difficulties.

How to report to the police

Police reports are usually made by a senior staff member, or the person who was told of the sexual assault, if a senior staff member is not available.

In Western Australia and Victoria, sexual assault can be reported directly to a specialised sexual assault police team..

⁴⁴ <https://noviolence.org.au/wp-content/uploads/2020/05/Trauma-Practice-Paper-FINAL-002.pdf>

After police have been contacted, their first response will be to ensure the safety of the victim/survivor and all others present. They will seek to preserve physical evidence and staff will be asked the following questions about the sexual assault:

- What happened?
- When and where did it happen?
- Who is involved? (victim/survivor, alleged perpetrator, witnesses)
- Did you observe it happening? If not, how did you find out about it?
- Is there CCTV?
- Who else might be aware of the sexual assault?
- Are there relevant medical issues to be aware of or that require specialist assistance?

Police may also request the information on the victim/survivor's support needs, support persons, guardianship and contact details.

Difficulty engaging police

Some staff have identified difficulty engaging the police in responding to sexual assault, particularly if the victim/survivor or the perpetrator has dementia. Where this occurs, it may be useful to do the following:

- ask for the contact details of the police officer you are speaking with, including their name, rank and registration number
- ask to speak to the most senior police officer on duty (duty officer) or in charge of the police station or the local area commander/divisional commander. There is always a detective "on-call" 24 hours a day in every police command. It is very important to engage criminal investigators as they are the relevant experts on scene preservation, victim management and evidence gathering
- ask for a record of the allegations to be noted in a police file and ask for a reference number. Always ask for the name and rank of the attending officers and they should provide a victims of crime card with their name and the event number.

The 'Checklist' on the last page of this resource provides a guide for the process of reporting sexual assault to the police.

Please note: if the police do not take action in response to your report, that does not mean a sexual assault has not occurred. The matter will usually be prosecuted by lawyers from the Director of Public Prosecutions (DPP) and they, not the police have the final say on whether a matter proceeds. The law around sexual assault is complex, and many aspects of evidence and law must be met for a successful prosecution. Sometimes the investigations can take some time if specialist medical evidence is required.

Education on sexual assault in residential aged care is required in aged care, in police services, sexual assault and family violence services; and responses of service providers will improve over time. Until sexual assault in residential aged care is well understood by others – it is important to report, support and prevent. By doing this you are helping to create a culture of accountability and prevention. Taking the time to explain issues around cognition and capacity will assist police, particularly first responding officers, to understand these complex medical issues.

Independent third party

Providing older people with an Independent Third Party (ITP) is important, particularly if the victim/survivor has a cognitive impairment. The ITP can support the victim/survivor during police interview and has a critical role to play in safeguarding the rights and dignity of victims/survivors with communication and cognitive difficulties and to ensure their communication needs are met, and information is understood.

An ITP can be an advocate from OPAN or a family member, relative or close friend. Where the victim/survivor does not have the capacity, the substitute decision-maker should be contacted to discuss options, providing the substitute decision-maker is not the alleged perpetrator. The victim/survivor's care notes should reflect that they were offered an ITP, the response of the victim/survivor to that offer of an ITP, and the rationale as to whether this occurred or not.

Using an interpreter

Where the victim/survivor speaks a language other than English, an interpreter should be arranged as soon as practicable. Some victims/survivors may be reluctant to speak to an interpreter because they fear that what they say may be passed on to their community. In this case, it is possible to request a telephone interpreter from another state, or to not disclose the victim/survivor's name to the interpreter. Family members are generally not engaged as interpreters in this context, unless that is a request of the victim/survivor.

When using an interpreter directly, consideration should be given to arranging an interpreter who is not associated with the person or their immediate cultural community.

Consideration should also be given to the gender of the interpreter and any impact this may have on the victim/survivor. An Auslan interpreter may be needed to assist communication with a person who is deaf.

Information for families

Ask the victim/survivor if they would like their family to be notified. If the older person does not have capacity to make or communicate this decision, notify their family – if the police have been notified, check with them first. Provide the family with information on:

- the nature of the sexual assault
- whether the assault was reported to the police
- strategies put in place to support the victim/survivor
- strategies to prevent further sexual assault
- the option for support from an OPAN advocate
- the option for support provided by a sexual assault service.

It may be useful to offer family access to the #ReadyToListen resource for families, available from the OPAN Ready to Listen webpage.

Information for older people

News of a sexual assault can travel around an aged care home quickly. This may particularly occur if police visit the aged care home. Some older people and family members may be distressed when they become aware that an older person has been sexually assaulted. Others may be frightened for their own safety or may be experiencing vicarious or secondary trauma. Police should already be aware of this or should be made aware of the need to reduce impacts on other older people and their families where possible.

It may be difficult to balance the needs of the victim/survivor with the needs of other older people who live in the home. It is important to talk to the victim/survivor about their privacy; do they want other older people to know what has occurred? It is also important to reassure other older people (and their families) about the steps that are being taken to secure the safety of all older people from further sexual assault.

The #ReadyToListen project has developed a number of resources for older people and family members.⁴⁵ These are available for download and can be provided to the victim/survivor and their family.

Educating staff

To ensure appropriate police reporting, education is critical. Education needs to include the suite of #ReadyToListen resources,⁴⁶ including:

- The Charter of Older People's Sexual Rights and Responsibilities
- Identifying what sexual assault is and what it is not
- What sexual consent is
- Trauma-informed care for victim/survivors

⁴⁵ <https://opan.org.au/training/ready-to-listen/>

⁴⁶ See Sexual Rights Charter at: <https://opan.org.au/training/ready-to-listen/>

- What, when and how to report to police

This education can support staff to help prevent sexual assault by understanding their reporting responsibilities and understanding the influence of their own values and beliefs on their responses to sexual expression and sexual assault.

Working with perpetrators

When a sexual assault is reported to the police, it is important to notify the alleged perpetrator if this will not impede a police investigation. General principles for notifying perpetrators include letting them know:

- if disclosure has been or will be reported to police (after police have advised that the alleged perpetrator can be informed of the report to police)
- that police may investigate
- the police may want to interview them
- they have the right to legal representation
- the police will decide whether to proceed with charges
- if the matter is taken to court, they will most likely need to participate in some way, such as attendance at court.

In the section below, specific suggestions are provided for working with alleged perpetrators who are staff, older people or family members.

Staff member

When allegations of sexual assault are made against a staff member, it is important to achieve a balance between procedural fairness for the staff member and protecting older people. It may be useful to seek legal advice regarding the staff member's rights under employment law as soon as the allegation is made; and to inform the staff member of the opportunity to contact their union or seek independent legal advice.

Consideration should be given to immediately suspending the staff member pending an investigation. It is also important that details of the staff member's involvement are not discussed with other staff member.

Older people

Where a sexual assault is perpetrated by another older person it is important to ensure the alleged perpetrator's care is reassessed to ensure the safety of other residents. Additional suggestions include:

- if the perpetrator is unable to understand the reporting of the sexual assault, notify their family
- if the perpetrator has a substitute decision-maker they should be notified
- organise a GP or Dementia Behaviour Management Advisory Service (DBMAS) review (if the perpetrator has dementia) to identify how best to ensure the perpetrator does not sexually assault another older person
- if the perpetrator is fixated on the victim/survivor – explore options for preventing further contact (noting complexities under security of tenure)

- consider referral of perpetrator to DBMAS, PsychoGeriatrician or GP to identify strategies to manage sexual disinhibition or unmet sexual needs and how these can be expressed in ways that do not infringe on the rights of others
- review the victim/survivors care plan to address their safety needs, including their fear of perpetrator reoffending
- review the perpetrator's care plan to ensure strategies to prevent further sexual assault are included and ensure all team members comply with care plan or request further review
- take all possible steps to prevent further encounters between the parties regardless of the outcome of the report.

Family members

Some older people are sexually assaulted by their own family members who visit, or by the family members of other older people. Important considerations following sexual assault by the family member of another older person include the following:

- check what the victim/survivor needs to feel safe
- ensure the victim/survivor is safe
- ask the perpetrator to leave the aged care home and not return until decisions are made about next steps e.g. police informed, restricted visits etc
- identify strategies to ensure all older people in the aged care home are safe

If the perpetrator is a family member of the victim/survivor, it may be necessary to identify supports (GP, family violence services, sexual assault services) to mediate a positive outcome with the perpetrator; so that the victim/survivor is free from further sexual assaults. It may also be useful to discuss with police legal avenues to exclude the suspected relative such as:

- removal of licence to enter under the Enclosed Lands Act
- encourage the police to issue or seek an AVO to protect the victim/survivor and exclude the suspect
- ensure police place a restriction on charged offenders by bail conditions to not approach the victim/survivor, contact by any means or approach the aged care service
- if restrictions are imposed, they must be observed, and any breaches notified to police as a matter of urgency. This may require a 000 call.

This could include engaging the support of the victim/survivor's GP or contacting local family violence and sexual assault services to identify supports.

Useful resources

Please go to the #ReadyToListen webpage for more resources on improving response to and preventing sexual assault. Web: <https://opan.org.au/training/ready-to-listen/>

Support services

Older Persons Advocacy Network (OPAN)

The Older Persons Advocacy Network, or OPAN provides independent, confidential, and free advocacy support for people living in residential aged care. OPAN have provided training and support to all their services to better understand how to support people who have been sexually assaulted in residential aged care. An OPAN advocate can provide victims/survivors with information about their rights and help to make sure they are safe. An aged care advocate will listen to victims/survivors and can

- provide information about victims/survivors' rights and service providers responsibilities
- support victims/survivors to report sexual assault to management in their aged care home
- Support victims/survivors to make a formal complaint to the Aged Care Quality and Safety Commission
- Support victims/survivors to discuss and plan for their ongoing safety and wellbeing with their aged care home
- Assist victims/survivors to look alternative aged care homes if this is their preference.

The OPAN information and advice line can connect victims/survivors with an advocate from their state/territory based OPAN service who can advocate on their behalf. Call 1800 700 600 or check the website at: <https://opan.org.au>

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/>

Checklist

The following checklist may be useful when reporting sexual assault to the police. It includes suggestions for notifying the police, for understanding police reporting processes and for keeping a record of the police response.

Police notification

1. Have key stakeholders been notified?
 - Victim/survivor's family? (with victim/survivor's permission)
 - Substitute decision-maker (if older person has one)
 - Family of a perpetrator who lives in the aged care home?
2. Date and time of police contact
3. Person making police contact
 - Staff member (name and role)
 - Older person
 - Family member (name and relationship to the older person)
4. Police station contacted
5. Name and ID of police officer receiving report

Police report

1. Police report (event) number (obtain when reporting)
2. Has a copy of police report been provided? (a copy may be supplied with the approval of the investigator)

Police response

- Did police interview staff, older people, perpetrator?
- Were charges laid?
- Was the scene examined?
- Was CCTV or medical/business records taken/copied
- Were charges laid?
- Is there bail or AVOs that follow?
- Was any further action taken?