



CHIEF PSYCHIATRIST
of Western Australia

Policy for Mandatory Reporting of Notifiable Incidents to the Chief Psychiatrist

Policy for Private Psychiatric Hostels

Office of the Chief Psychiatrist 2015

Version 1.1 (Hostels)





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Definitions

Term	Definition
Absence Without Leave (AWOL)	<p>Under the MHA 2014 section 97 Absence without Leave (AWOL) relates to involuntary community patients who are residents of a private psychiatric hostel that meet the following criteria:</p> <ol style="list-style-type: none">any forensic patient who leaves the hospital or other place where the person is detained without being granted leave of absence under MHA 2014 s105(1);the failure of an involuntary community patient to return from a period of authorised leave following expiry of leave or on cancellation under MHA 2014 s 110(1);any resident referred for examination who leaves from a private psychiatric hostel, or other place under MHA 2014 s 97(1)(a)(c);any involuntary community resident who leaves the place where they are detained under MHA 2014 s 130(2)(b).
Missing Person	<p>Any voluntary resident at high risk of harm who is missing from a private psychiatric hostel without the agreement of or authorisation by staff.</p>
Assault / Aggression	<p>Assault can be defined, according to the Criminal Code Act Compilation Act 1913 (<i>Criminal Code Act 1913</i>) section 222 as follows:</p> <ul style="list-style-type: none">a person who strikes, touches, or moves, or otherwise applies force of any kind to a person, either directly or indirectly, without their consent, or with their consent if the consent is obtained by fraud; ora person who by any bodily act or gesture attempts or threatens to apply force of any kind to a person without their consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to affect their purpose, is said to assault that other person. <p>Applies Force: includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such a degree as to cause injury or personal discomfort.</p> <p>A threat can be defined, according to the <i>Criminal Code Act 1913</i> section 338, as a statement or behaviour that expressly constitutes, or may reasonably be regarded as constituting, a threat to:</p> <ol style="list-style-type: none">kill, injure, endanger or harm any person, whether a particular person or not; ordestroy, damage, endanger or harm any property, whether a particular property or not; ortake or exercise control of a building, structure or conveyance by force or violence; or



	iv. cause a detriment of any kind to any person, whether a particular person or not.
Attempted Suicide	Defined as any deliberate self-inflicted bodily injury with the intention of ending one's life. This does not include suicidal ideations which have not been acted upon. It does include incidents which are considered a near miss where an 'incident may have, but did not cause harm, either by chance or through timely intervention.' This includes but is not limited to self-poisoning, overdose, hanging etc.
Non suicidal self-injury	Any deliberate self-inflicted bodily injury/harm where there is no evident intention to die. The absence of suicidal intent is either reported by the resident or can be inferred by frequent use of methods that the resident knows, by experience, not to have lethal potential. Non-suicidal self-injury/harm represents a maladaptive coping mechanism to regulate overwhelming emotions and to endure life (http://bjp.rcpsych.org/content/202/5/324). This includes but is not limited to self-poisoning, overdose, cutting etc.
Sexual Contact and Sexual Assault	<p>The following definitions have been amended from Chapter XXXI of the <i>Criminal Code Act 1913</i>, the Human Rights Commission '<i>Sexual Harassment (A Code in Practice)</i>' and the Sexual Assault Resource Centre (SARC) '<i>Information about Sexual Assault and Sexual Abuse</i>'.</p> <p>Sexual Contact for the purpose of this policy includes any sexual activity/behaviour (including sexual touching) that occurs between people over the age of 16 years where mutual consent has been granted by those involved and they are considered to have capacity to provide consent.</p> <p>Sexual behaviour/activity: a person is said to engage in sexual behaviour/activity if the person:</p> <ul style="list-style-type: none"> • Sexually penetrates any person; or • Has carnal knowledge of an animal; or • Penetrates the person's own vagina (which term includes the labia majora), anus, or urethra with any object or any part of the person's body for other than proper medical purposes. <p>Sexually penetrate:</p> <ol style="list-style-type: none"> 1. to penetrate the vagina (which term includes the <i>labia majora</i>), the anus, or the urethra of any person with – <ol style="list-style-type: none"> 1.1 any part of the body of another person; or 1.2 an object manipulated by another person, except where the penetration is carried out for proper medical purposes. 2. to manipulate any part of the body of another person so as to cause penetration of the vagina (term includes the <i>labia majora</i>), the anus, or the urethra of the offender by part of the other person's body; or 3. to introduce any part of the penis of a person into the mouth of another person; or 4. to engage in cunnilingus or fellatio; or 5. to continue sexual penetration as defined in paragraph (1), (2), (3) or (4).



Sexual harassment: is unwelcome sexual conduct which makes a person feel offended, humiliated and/or intimidated where the reaction is reasonable in the circumstances. It can involve:

- unwelcome touching, hugging or kissing;
- staring or leering;
- suggestive comments or jokes;
- unwanted invitations to go out on dates or requests for sex;
- unnecessary familiarity;
- insults or taunts based on your sex; or
- sexually explicit emails or SMS messages.

Sexual assault can be any unwanted **sexual behaviour/activity or act** that is threatening, violent, forced, coercive, or exploitative and to which a person has not given or was not able to give consent. It can take many forms including:

- Sexual harassment
- Exhibitionism – exposing the genital area
- Voyeurism – secretly watching people
- An unwanted sexual touch
- Being forced to masturbate or watch another masturbate
- Being forced, coerced or bribed to view pornographic images
- Being forced to give or receive oral sex
- Being forced to perform sexual acts on themselves or others
- Sexual penetration of a person by penis, object or other parts of the body into the vagina, anus or mouth
- Sexual coercion
- Indecent acts and indecently recording children aged less than 16 years of age (b. below applies).

Special considerations for children

- a) a child under the age of 13 years is incapable of giving consent.
- b) Sexual activity with a child aged less than 16 years, but over 13 years of age is illegal, unless:
 - i. the accused is lawfully married to the child; or
 - ii. the accused is less than three years older and they can prove that they believed on reasonable grounds that the child was of or over 16 years of age; or
 - iii. if the child is under the care, supervision or authority of the accused it is immaterial that they believed on reasonable grounds that the child was of or over 16 years of age and the accused was not more than three years older than the child.
- c) Sexual activity between a child over 16 years of age and any adult who provides care, supervision or authority of the child is illegal (e.g. health practitioner, step-parent, guardian, foster parent, employer, teacher, coach, priest, etc.) unless the accused is lawfully married to the child.

Sexual coercion: a person who compels another person to engage in sexual behaviour.



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	<p>Indecent act: an act which is:</p> <ul style="list-style-type: none">• committed in the presence of or viewed by any person; or• photographed, videotaped, or recorded in any manner. <p>Indecently record: means to take, or permit to be taken, or make, or permit to be made, an indecent photograph, film, videotape, or other recording (including a sound recording).</p> <p>Sexting of images of persons aged less than 16 years of age is illegal as it is considered child exploitation material.</p>
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1. Purpose

Private psychiatric hostels are included in the definition of a mental health service under section (s) 252 and s 507 of the MHA 2014. The MHA 2014 refers to the Hospitals and Services Act 1927 for definitions of private psychiatric hostels and their residents.

Under the Hospitals and Services Act 1927 (Part 1; 2(1)), **private psychiatric hostel** means private premises in which 3 or more persons reside and are treated or cared for who —

- (a) are socially dependent because of mental illness; and
- (b) are not members of the family of the proprietor of the premises

Under the Hospitals and Services Act 1927 (Section 26P), **resident**, in relation to a private psychiatric hostel, means a person —

- (a) who is socially dependent because of mental illness; and
- (b) who is residing and being cared for or treated in the hostel.

It is a statutory requirement that all notifiable incidents (defined in section 2) are reported as soon as practicable, ideally within 48 hours of the event, to the Chief Psychiatrist under s 526(2) of the MHA 2014 when they occur in respect to a person who is a resident of a private psychiatric hostel. Reporting to the Chief Psychiatrist is required in addition to all other reporting requirements which may include internal management structures within the service, the Director General of Health, the Minister for Mental Health, Patient Safety and Clinical Quality, Internal Audit and Accountability, the Corruption and Crime Commission, the State Coroner, Licensing and Regulatory Unit (LARU) and the Mental Health Commission. For incidents involving children additional mandatory reporting requirements set out in the *Children and Community Services Act 2004* need to be followed.

2. In Scope for this Policy

Under the MHA 2014, the Chief Psychiatrist is responsible for overseeing the treatment and care of persons receiving mental health care who are a resident of a private psychiatric hostel.

The range of notifiable incidents to be reported are defined under section 525(a-e) and 254(1) (a-c) of the MHA 2014 and described in Section 3 of this policy.

3. Notifiable Incidents

The Chief Psychiatrist is to be notified as a matter of priority, of any notifiable incident and associated issue that may reflect on the standards of mental health care in Western Australia (MHA 2014 s.245(2); s.526(1-2)). The reporting is to include advice as to the potential for media or public implications in regard to the incident or associated issue.

Deaths

The Chief Psychiatrist is to be informed as a matter of priority of any death of a resident of a private psychiatric hostel (MHA 2014 section 525(a)). The Chief Psychiatrist is also to be advised of deaths, that private psychiatric hostel staff become aware of, occurring within 3 months of a person being discharged or deactivated from mental health services and/or the private psychiatric hostel.



Other notifiable incidents include, but are not limited to:

1. Assault and/or Aggression (resident to any other person(s)) that occurred in a private psychiatric hostel.
2. Sexual Contact and/or Allegation of Sexual Assault (resident to any other person(s)) that occurred in a private psychiatric hostel.
3. Non suicidal self-injury/harm.
4. Attempted Suicide.
5. Absent Without Leave (AWOL).
6. Unlawful sexual contact reasonably suspected to have occurred with the resident by a staff member of a mental health service (includes staff members of a private psychiatric hostel) or another person within the private psychiatric hostel who is not a mental health resident.
7. The resident is harmed by suspected unreasonable use of force by a staff member of a mental health service and/or a staff member of a private psychiatric hostel).

4. Reporting processes for Notifiable incidents

Notifiable incidents must be reported to the Chief Psychiatrist via completion of the Notifiable Incidents form located on the OCP website (<http://www.chiefpsychiatrist.wa.gov.au>). The completed form should be emailed to monitoring@ocp.wa.gov.au or faxed to 6553 0099.

Notifiable incidents that may receive attention by the media or the wider community need to be reported to the Chief Psychiatrist immediately via email to monitoring@ocp.wa.gov.au or via phone 6553 0000.

5. Information to be reported to the Chief Psychiatrist

The reporting form should be completed in full. If at the time of completing the reporting form information requested below is not available, this can be provided by email to the OCP at a later date. Information required by the MHA 2014 and the Chief Psychiatrist includes:

1. Resident demographic details, including their name and any alias.
2. Details of the incident and the circumstances in which it occurred.
3. Date and time when the incident occurred.
4. Any relevant treatment and investigations the patient received.
5. Details of the resident's mental state prior to the incident.
6. The date of most recent mental health inpatient admission, community mental health contact, and/or mental health emergency department presentation prior to the incident.
7. The location where the incident or death occurred.
8. The names of any staff members or other people who were involved in and/or witnessed the incident.
9. Whether there is a likelihood of significant media.
10. Probable cause of death on current evidence e.g. suspected suicide / accident / physical cause / undetermined.
11. Whether the resident's family, carer, guardian, or support person has been notified.
12. Provide any other information about the incident or death that the notifier or person in charge considers relevant.



6. Compliance

Failure to comply with reporting notifiable incidents to the Chief Psychiatrist may result in a fine of \$6,000 as set out in the MHA 2014 section 526(2).

7. Relevant legislation

Mental Health Act 2014 (WA)

Mental Health Regulations 2015 (In preparation) (WA)



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