



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 2019

Version 2.1 (Hostels)

Acknowledgement

Published by the Chief Psychiatrist of Western Australia.

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Version Control

Title:	Policy for Mandatory Reporting of Notifiable Incidents to the Chief Psychiatrist		
Contact:	Coordinator Standards Monitoring		
Directorate:	Office of the Chief Psychiatrist		
Version:	2.1 (Hostels)	Date Published:	03/12/2019
	2.0 (Hostels)	Date Published:	25/05/2019
Date of Last Review:	December 2019	Date Next Review:	25/02/2022

Table of Contents

Definitions	4
1. Purpose	7
2. In Scope for this Policy	8
3. Roles and responsibilities.....	8
3.1 Responsibilities of all staff working for Private Psychiatric Hostel.....	8
3.2 Responsibilities of the Office of the Chief Psychiatrist.....	8
4. Notifiable Incidents.....	8
4.1 Deaths.....	8
4.2 Other notifiable incidents.....	9
4.3 Reporting processes for Notifiable incidents	9
5. Information to be reported to the Chief Psychiatrist	9
6. Compliance.....	10
7. Relevant legislation	10

Definitions

Term	Definition
Assault / Aggression	<p>For the purposes of this policy, assault is defined as follows:</p> <ul style="list-style-type: none"> a person who strikes, touches, 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; or threatens to do so, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to affect their purpose. <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>Aggression is broadly defined as any verbal, non-verbal or physical behaviour that is threatening to others. A threat can be defined, 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; or destroy, damage, endanger or harm any property, whether a particular property or not; or take or exercise control of a building, structure or conveyance by force or violence; or cause a detriment of any kind to any person, whether a particular person or not.
Attempted Suicide	<p>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.</p>
Medication Error	<p>An error in any medication prescribed for, or administered or supplied to, the person that has had, or is likely to have, an adverse effect on the person (MHA 2014 s.525(b)).</p> <p>Adverse effect means to need medical intervention, review or has or is likely to have caused death.</p>
Missing Person	<p>Any resident who is missing from a private psychiatric hostel without informing staff they were leaving the hostel and are not able to be contacted.</p>

Term	Definition
Suicide	The act or instance of taking one's own life voluntarily and intentionally.
Voluntary Mental Health Patient	A person to whom treatment is being, or is proposed to be, provided by a mental health service who is not an involuntary patient or a Mentally Impaired Accused (MIA) requiring detention at an authorised hospital (MHA 2014 s 4).
Sexual Harrassment 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 behaviour/activity: a person is said to engage in sexual behaviour/activity if the person is involved in a sexual nature with oneself (masturbation) or another (sexual touching, sexual intercourse, oral sex).</p> <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). <p>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:</p> <ul style="list-style-type: none"> • 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.

Indecent act: an act which is:

- committed in the presence of or viewed by any person; or
- photographed, videotaped, or recorded in any manner.

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).

Sexting of images of persons aged less than 16 years of age is illegal as it is considered child exploitation material.

1. Purpose

The purpose of the Policy for Mandatory Reporting of Notifiable Incidents to the Chief Psychiatrist – Private Psychiatric Hostels, is to inform private psychiatric hostel staff of the statutory requirement to report notifiable incidents to the Chief Psychiatrist under the Mental Health Act (MHA 2014) s.526 (1-3). Private psychiatric hostels are included in the definition of a mental health service under 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 4 of this document) that occur in respect to a person who is a resident of a private psychiatric hostel are reported as soon as practicable, ideally within 48 hours of the event, to the Chief Psychiatrist under s.526(1)(2) of the MHA 2014. Reporting to the Chief Psychiatrist is required in addition to all other reporting requirements which may include internal management structures within the psychiatric hostel, 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.

This Policy is to be read in conjunction with the following policy, legislation, and guidelines:

- Chief Psychiatrist’s Policy for Reporting Notifiable Incidents to the Chief Psychiatrist – Public Health Services 2018
<https://www.chiefpsychiatrist.wa.gov.au/monitoring-reporting/notifiable-incidents/>
- Chief Psychiatrist’s Policy for Reporting Notifiable Incidents to the Chief Psychiatrist – Private Hospitals and Non-Government Organisations (NGOs) Providing Mental Health Services 2019
<https://www.chiefpsychiatrist.wa.gov.au/monitoring-reporting/reporting-notifiable-incidents-private-hospitals/>
- Chief Psychiatrist’s Sexual Safety Guidelines (in preparation May 2019)
<https://www.chiefpsychiatrist.wa.gov.au/standards-guidelines/sexual-safety-guidelines/>
- Mental Health Act 2014
https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a147019.html
- Mental Health Regulations 2015
https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_13717_homepage.html
- Guidelines for Protecting Children 2015
https://ww2.health.wa.gov.au/Articles/A_E/About-child-abuse-and-neglect/Guidelines-forProtecting-Children

2. In Scope for this Policy

Under the MHA 2014 s.515, the Chief Psychiatrist is responsible for overseeing the treatment and care of persons receiving mental health care from mental health services. The MHA 2014 s.507 states that this includes residents of a private psychiatric hostel. The range of notifiable incidents to be reported are defined under s.525(a-e) and s.254(1) (a-c) of the MHA 2014 and described in Section 4 of this policy.

3. Roles and responsibilities

3.1 Responsibilities of all staff working for Private Psychiatric Hostels

- To report to the Chief Psychiatrist all known notifiable incidents, as detailed in section 4 of this policy.
- To follow the hostel's adverse incident policies and other relevant policies where applicable, including requirements for investigating incidents.

3.2 Responsibilities of the Office of the Chief Psychiatrist

The Office of the Chief Psychiatrist has the responsibility to:

- Monitor all notifiable incidents pertaining to mental health patients.
- Identify incidents and/or trends requiring further investigation by the Chief Psychiatrist.
- Provide feedback to mental health services about trends and other relevant issues.
- On receipt of a report of a notifiable incident, the Chief Psychiatrist may investigate the incident (s.527 MHA 2014).
- Prepare an annual report for the Minister of Mental Health including statistics of all notifiable incidents reported during the year and any action taken by the Chief Psychiatrist under s.527 of the MHA 2014.

4. 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 as set out in the MHA 2014 s.254(1a-c) and s.525(a-e). The reporting is to include advice as to the potential for media or public implications in regard to the incident or associated issue.

4.1 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 s.525(a)).

The Chief Psychiatrist is also to be advised of deaths, that private psychiatric hostel staff become aware of, occurring within 28 days of a person being discharged from the private psychiatric hostel.

4.2 Other notifiable incidents

The following incidents must also be notified to the Chief Psychiatrist in relation to residents of private psychiatric hostels:

1. Assault and/or aggression (resident to any other person(s) or other person(s) to the resident) that occurred in, or on the grounds of, a private psychiatric hostel that seriously impacts the resident and/or others involved, either physically, emotionally, or mentally.
2. Allegations of sexual harassment and/or sexual assault of a resident that occurred on the premises of a private psychiatric hostel.
3. Attempted suicide.
4. Medication error.
5. Missing person.
6. Unlawful sexual contact, harassment, or assault of a hostel resident that was alleged to have been perpetrated by a staff member of a private psychiatric hostel or a staff member of a mental health service.
7. The resident is harmed by alleged or suspected unreasonable use of force by a staff member of a mental health service and/or a staff member of a private psychiatric hostel.
8. Any notifiable incident described above, that may receive media attention.

4.3 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 (<https://www.chiefpsychiatrist.wa.gov.au/monitoring-reporting/reporting-notifiable-incidents-private-psychiatric-hostels-2/>).

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, intervention, or investigations the resident received.
5. Details of the resident's mental state prior to the incident.
6. The date of the 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 attention.
10. Probable cause of death based 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 that is available about the incident or death that the notifier or person in charge considers relevant.
13. Police involvement.

6. Compliance

Under Section 526 of the MHA 2014 it is the responsibility of the person in charge of the private psychiatric hostel to ensure that an incident is notified.

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 s.526(2).

7. Relevant legislation

Mental Health Act 2014 (WA)

Mental Health Regulations 2015 (WA)

Children and Community Services Act 2004

Private Hospital and Health Services Act 1927