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1. INTRODUCTION

Compulsory reporting and protection requirements commenced on 1 July 2007 following amendments to The Aged Care Act 1997 (the Act).

These Guidelines explain the compulsory reporting requirements for approved providers to:

- report to the police and to the Department of Health and Ageing (the Department), incidents involving alleged or suspected reportable assaults. The report must be made within 24 hours of the allegation, or when the approved provider starts to suspect a reportable assault. A reportable assault is defined in sub section 63-1AA(9) of the Act and in section 3 of these Guidelines and includes unlawful sexual contact and unreasonable use of force;

- take reasonable measures to ensure staff members report any suspicions or allegations of reportable assaults to the approved provider (or other authorised person), to the Police or the Department; and

- take reasonable measures to protect the identity of any staff member who makes a report and protect them from victimisation.

The compulsory reporting requirements are one part of an approved provider’s responsibilities under the Act to provide a safe and secure environment.
2. THE 5 KEY ELEMENTS TO COMPULSORY REPORTING REQUIREMENTS

2.1 All approved providers of Australian Government subsidised residential aged care must encourage staff to report alleged or suspected reportable assaults to enable approved providers to comply with their responsibility under the Act. This requirement recognises that in many cases, it may be staff who first notice assaults. The legislation therefore requires that approved providers not only give staff information about how to report assault, but also to actively require staff to make reports if they see, or suspect, an assault on a resident.

2.2 The Act requires that, except in very specific and sensitive circumstances, all approved providers of residential aged care must report all allegations or suspicions of reportable assaults. The discretion not to report applies to circumstances involving residents affected by an assessed cognitive or mental impairment, and where there are repeated allegations of the same assault. An approved provider should not wait until an allegation is substantiated – the fact that a person has alleged that someone has assaulted a resident is sufficient to trigger the reporting requirements.

2.3 Reports must be made to both the Police and the Department within 24 hours of the allegation being made or the approved provider starting to suspect on reasonable grounds, that a reportable assault may have occurred. These tight timeframes ensure that alleged assaults are acted upon immediately.

2.4 If a staff member makes a disclosure qualifying for protection under the Act, the approved provider must protect the identity of the staff member and ensure that the staff member is not victimised. This is important in encouraging ongoing reporting by staff members.

2.5 If an approved provider fails to meet compulsory reporting requirements, the Department may take compliance action.

Compliance with the compulsory reporting requirements will be monitored by the Department and the Aged Care Standards and Accreditation Agency.
3. **WHAT IS A REPORTABLE ASSAULT?**

A reportable assault as defined in the Act (section 63-1AA) means:

- unlawful sexual contact with a resident of an aged care home; or
- unreasonable use of force on a resident of an aged care home.

This definition captures assaults ranging from deliberate and violent physical attacks on residents to the use of physical force on a resident.

The definition of reportable assault used in the Act provides a simple, readily understood and universally accepted definition. It avoids the difficulties of applying legalistic definitions that vary widely throughout Australia.

3.1 **Unlawful sexual contact**

The term “unlawful sexual contact” is intended to capture any sexual contact, without consent, that is unlawful under any Commonwealth, State or Territory law.

The legislation is intended to cover any unlawful, or unwanted, sexual contact with residents for which there has been no consent. If the contact involves residents with an assessed cognitive or mental impairment, it should be noted that the resident may not have the ability to provide informed consent.

The term “unlawful sexual contact” has been used to avoid the use of specific terms, such as sexual intercourse, rape and sexual assault which are all defined differently in different pieces of Commonwealth, State and Territory legislation and to ensure that all unlawful sexual conduct, no matter how described, is captured. It is not intended to cover situations where there is no physical contact.

3.2 **Unreasonable use of force**

Unreasonable use of force as defined in the Act is intended to capture assaults ranging from deliberate and violent physical attacks on residents to the use of unwarranted physical force on a resident. For example, the definition captures hitting, punching or kicking a resident regardless of whether this in fact causes visible harm, such as bruising.

It is recognised that in the aged care environment, there may be circumstances where a staff member could be genuinely trying to assist a resident, and despite their best intentions the resident is injured because the person bruises easily or has fragile skin. Injury alone therefore may not provide conclusive evidence of either the use of unreasonable force or the seriousness of an assault.
The definition in the Act:
- captures use of force where such force is not warranted; and
- avoids difficulties associated with utilising legalistic definitions.

A range of material and resources have been developed by the industry that may assist providers to identify signs of abuse. For example:
- the Benevolent Society has developed *Policy and Procedures for Residential Aged Care - Preventing and Responding to Abuse* and these are available for downloading on the Internet at: [http://www.bensoc.org.au/](http://www.bensoc.org.au/)

4. **REPORTING TO THE DEPARTMENT OF HEALTH AND AGEING**

Compulsory reports are made to the Department via the Aged Care Complaints Investigation Scheme on 1800 550 552. This line also receives external information about Australian Government subsidised aged care services and any concerns and complaints about such services.

Departmental Officers manage the line from 8:30am - 5.00pm AEST Monday to Friday and 10.00am – 5.00pm AEST Saturday, Sunday and Public Holidays. Outside these hours, an answering machine is available for people to leave a message.

The Department may receive information about alleged or suspected assaults on a resident through varied means; for example, from an approved provider, from a staff member either anonymously, confidentially or openly, from residents and their families and from other health professionals.

5. **APPROVED PROVIDER RESPONSIBILITIES REGARDING COMPULSORY REPORTING OF ASSAULT ON A RESIDENT**

5.1.1 Reporting reportable assaults

Under 63-1AA of the Act an approved provider is responsible for reporting an alleged or suspected reportable assault as soon as reasonably practicable and in any case within 24 hours, to:
- (a) the local police service; and
- (b) the Department (1800 550 552).

The requirement for an approved provider to report as soon as they ‘start to suspect’ on reasonable grounds that a reportable assault has occurred is to ensure that both allegations and suspicions are reported.
An allegation usually requires a claim or accusation to have been made to the approved provider and can be associated with physical evidence or the witnessing of an assault. Reporting suspicion allows reports to be made where there is no actual allegation or where an actual assault may not have been witnessed and where staff observe signs that an assault may have occurred.

5.2 Requiring staff members to report reportable assaults

Under the Act, the approved provider is responsible for taking reasonable measures to require each of its staff members who provide a service connected with the aged care home, and who suspect, on reasonable grounds, that a reportable assault has occurred, to report the suspicion within 24 hours. Reports may be made to one or more of the following persons chosen by the staff member and as directed by the approved provider:

(a) the approved provider;
(b) one of the approved provider’s key personnel;
(c) another person authorised by the approved provider to received reports of suspected reportable assaults;
(d) a Police Officer with responsibility relating to the area including the place where the assault is suspected to have occurred; and
(e) the Department.

The Act allows staff members to report directly to the Police or the Department. This may occur, for example, if a staff member does not feel comfortable reporting alleged incidents that may directly involve the home’s personnel or the approved provider.

In relation to b) and c) above, approved providers must ensure that authorised people are identified in relation to the services operated by the approved provider and that staff are aware of who these people are.

5.3 Special Circumstances where there is a discretion not to report

The legislation allows limited circumstances where there is a discretion not to report. These relate to:

- alleged assaults that are perpetrated by residents with an assessed cognitive\(^1\) or mental\(^2\) impairment; and
- subsequent reports of the same or similar incident

These alternative arrangements focus on an approved provider’s responsibility to provide a safe environment for all residents. This includes managing the behaviour of a resident who has an assessed cognitive or mental impairment and may have

\(^1\) Cognitive impairment refers to declining ability in judgement, memory, learning, comprehension, reasoning and/or problem solving. Cognitive impairment can result from a number of conditions, including dementia, delirium and/or depression

\(^2\) Mental impairment includes senility, intellectual disability, mental illness, brain damage, and severe personality disorder. Criminal Code Act 1995.
committed an assault.

These discretionary circumstances do not prevent an approved provider from reporting an assault to the Police or the Department, where this may be the most appropriate response. Depending on the level of severity of an assault on a resident and in cases where a resident is seriously harmed, the Department strongly encourages providers to report.

5.3.1 Assaul ts perpetrated by a resident with cognitive or mental impairment

In applying the discretion not to report in these circumstances, the approved provider is required to meet the following conditions that are detailed in the Act:

(a) within 24 hours of receiving an allegation or the start of the suspicion, the approved provider forms an opinion that the assault was committed by a resident; and
(b) prior to the receipt of the allegation, the resident has been assessed by an appropriate health professional as suffering from a cognitive or mental impairment; and
(c) the approved provider puts in place, within 24 hours of receiving the allegation of an assault, or of suspecting an assault has occurred, arrangements for management of the resident’s behaviour; and
(d) the approved provider has:
   (i) a copy of the assessment (or other documents) regarding the resident’s cognitive or mental impairment; and
   (ii) a record of the behaviour management strategies that have been put in place under paragraph (c) above.

A behaviour management plan must be developed, documented and regularly reviewed by a suitably qualified health professional and include information regarding:

- the environmental factors which could contribute to or cause the behaviour;
- the possible health or medical factors which could contribute to or cause the behaviour;
- the possible communication needs of the person which may be contributing to the behaviour; and
- what interventions are being trialled, or are in place, including alternatives to restraint, for managing the behaviour.

5.3.2 Appropriate health professionals to assess cognitive and mental impairment

An assessment of a resident’s cognitive or mental impairment for the purposes of applying the discretion under the Act could be undertaken by one of more of the following:

- an Aged Care Assessment Team (ACAT);
- a resident’s GP;
• a registered nurse (RN);
• another health professional with the appropriate clinical expertise, e.g. such as geriatrician, psycho-geriatrician, geriatric nurse, and clinical psychologist.

It is important to note also that an assessment may have been undertaken in a community and/or hospital setting.

5.3.3 Similar or previously reported incidents

The requirement to report reportable assaults under section 63-1AA of the Act does not apply to later allegations which could include the following:
(a) related to the same, or substantially the same, factual situation or event as an earlier allegation;
(b) has previously been reported to a Police Officer and the Department under section 63-1AA of the Act;
(c) where different people report the same event; and/or
(d) the same person makes allegations repeatedly where these allegations have been followed up.

Approved providers have obligations to keep records in relation to the above circumstances and in accordance with section 19.5AA of the Records Principles.

A template (register) that approved providers could adapt for internal use is provided at Appendix A for recording all incidents of assault.

6. RESPONDING TO ALLEGATIONS OF ASSAULT ON A RESIDENT

6.1 Role of the Department in receiving and responding to a suspected or alleged assault on a resident

When incidents of alleged assault are reported, investigation of the incident is the responsibility of the Police. The Police will determine whether the incident is criminal in nature and what further police action is required. Only the Police should investigate criminal activity.

The role of the Department is to ensure that the approved provider has met its responsibilities under the Act, to ensure that:
• the victim of the alleged or suspected assault has received appropriate care and support;
• residents are safe;
• compulsory reporting requirements are complied with; and
• the provider has appropriate internal systems and protocols in place for compulsory reporting.
When an alleged or suspected assault is reported, the Department will undertake the following key steps:

- Establish the details of the alleged or suspected assault, including when it took place (and if it has been reported within 24 hours);
- Establish if the alleged or suspected assault has been reported to the Police. If it has not, the Department will make a referral to the relevant state/territory police service;
- Advise any staff member or approved provider who makes a report of the protections in place, and whether and how the discloser qualifies for protection;
- Establish that residents are not at further risk from the alleged perpetrator;
- Undertake an investigation to ensure that the approved provider has met its responsibilities under the Act. This includes ensuring appropriate medical care and support for the victim and notifying legal representatives or family members if required.

Appendix B shows the type of information the Department will require.

The Department may take compliance action where approved providers do not meet the compulsory reporting requirements under the Act. This includes when an alleged incident is known but is not reported within 24 hours or where the provider is not otherwise meeting their responsibilities under the Act.

6.2 Role of the Agency in monitoring compliance with the compulsory reporting requirements

The Aged Care Standards and Accreditation Agency (the Agency) monitors an approved provider’s compliance with the compulsory reporting requirements. The Agency does this through its usual audit and accreditation processes.

These include:
- monitoring that processes are in place to encourage staff to report allegations or suspicions of incidents of assault on a resident;
- monitoring that the approved provider is keeping records of all incidents of assault;
- reviewing an approved provider’s application of the discretion not to report an incident of assault; and
- informing the Department where a breach is identified.

6.3 Procedures for Approved Providers in responding to a suspected or alleged assault on a resident

Approved providers should have internal policies and processes in place aimed at creating a culture of reporting and responding to alleged or suspected assaults on residents and documenting critical incidents.
A range of guides and checklists that approved providers could consider adapting have been developed by the industry. Such documents can be found at:

- The Benevolent Society - http://www.bensoc.org.au
- Aged & Community Services Australia - http://www.agedcare.org.au

6.4 Raising Awareness of Compulsory Reporting Requirements

Approved providers should ensure that their staff are trained and familiar with issues such as recognising if an assault may have occurred and how to respond.

This includes awareness of the following:

- the requirement and procedures for reporting any alleged or suspected incidents of assault on a resident as soon as practicable and who they should report to;
- the option to report to the Department where they may be concerned about anonymity, or where the manager or approved providers may be the subject of the allegation;
- the protections in place and the circumstances in which they would qualify for protection; and
- that providing false or misleading information is a prosecutable offence;

7. PROTECTION FOR REPORTING ASSAULTS

The Act actively requires approved providers to report assaults. This is not discretionary – approved providers must report any allegations or suspicions of reportable assault.

In recognition that staff will be more likely to report incidents of assault where they do not fear reprisal from their employer, or other staff, section 96-8 of the Act establishes a range of protections for staff and approved providers who report alleged or suspected assaults.

A staff member may also report anonymously or confidentially to the Department’s Aged Care Complaints Investigation Scheme. However, the protections outlined in section 96-8 of the Act would not apply in this circumstance.

Under the compulsory reporting requirements, the Act states that a disclosure of information by a person qualifies for protection if:

a) The person is an approved provider of residential aged care or a staff member of such an approved provider.

b) The disclosure is made to one or all of the following:
   - a Police Officer;
• the Department;
• the approved provider;
• one of the approved provider’s key personnel; and/or
• another person authorised by the approved provider to receive such reports.

c) The discloser informs the person to whom the disclosure is made of their name before making the disclosure.

d) The discloser has reasonable grounds to suspect that the information indicates that a reportable assault has occurred.

e) The discloser makes the disclosure in good faith.

While approved providers should ensure that staff are made aware that providing false or misleading information is a prosecutable offence, staff should be encouraged to raise suspicions of assault internally to the home’s authorised persons for consideration and action.

The provisions are based on the protected disclosure provisions contained within the Corporations Act 2001 and the Workplace Relations Act 1996.

The approved provider or staff member who makes a protected disclosure is protected in a number of different ways:

• The staff member (or approved provider) is protected from any civil or criminal liability for making the disclosure. The discloser also has qualified privilege in proceedings for defamation relating to the disclosure, and is not liable to an action for defamation relating to the disclosure.

It is important to note that this provision does not exempt a person from any civil or criminal liability for conduct of the person that is revealed by the disclosure. For example, if a person themselves assaulted a resident and told the Department that they did so, this would not protect the person from prosecution for the assault. The person is only protected from liability in relation to the making of the disclosure, as opposed to the conduct that the disclosure reveals.

• A discloser is protected from someone enforcing a contractual or other remedy against that person based on the disclosure. A contract to which the discloser is a party cannot be terminated on the basis that the disclosure constitutes a breach of the contract. For example, if a staff member is a party to a contract of employment that specifies that the staff member must not discuss issues that arise in an aged care home with anyone outside the home, a disclosure by the staff member that qualifies for protection under this section would not give the employer the right to terminate the contract. However, a disclosure to a person who is not specified in the list of people to whom a qualified disclosure may be made might
potentially expose the staff member to termination of their employment or other disciplinary action by the employer.

- A discloser is protected from victimisation. A person must not cause detriment to a person who makes a disclosure or threaten the person because they made a disclosure that qualifies for protection. If the other person is a staff member of an approved provider, the provider has a responsibility to ensure, as far as reasonably practicable, compliance with this requirement. Compliance action may be taken if the provider does not comply with this responsibility.

- If a court is satisfied that an employee has made a protected disclosure and the employer (be it the approved provider or a recruitment agency who employs the person on behalf of the approved provider) has terminated the discloser’s contract of employment on the basis of the disclosure, the court may order that the employee be reinstated or order the employer to pay the employee compensation in lieu of reinstatement.

Residents of aged care homes, their families and advocates, visiting medical practitioners, other allied health professionals, volunteers and visitors are not required under the Act to compulsorily report assault and therefore are not afforded statutory protection under the legislation.

However, these people are strongly encouraged to report incidents of abuse or neglect of an aged care resident to the Department’s Aged Care Complaints Investigation Scheme. The person providing information may do so openly, anonymously, or may ask the Scheme to keep their identity confidential.

Further, these people also have access to existing protections from defamation action through common law. As such persons are often well placed to identify if an assault of a resident is reasonably likely to have occurred, an approved provider should consider establishing visitor policies and protocols encouraging reporting where it is in the best interests of the residents.

8. RECORD KEEPING AND PRIVACY

Approved providers must keep consolidated records of all incidents involving allegations or suspicions of reportable assaults. As these records will be subject to monitoring by the Department and the Agency, these records must be distinguishable from other incident records, be retained in one central place and be accessible to the Department and Agency when required.

The record for each incident must include:
   a) the date when the approved provider received the allegation, or started to suspect on reasonable grounds, that a reportable assault had occurred;
b) a brief description of the allegation or the circumstances that gave rise to the suspicion; and

c) information about whether a report of the allegation or suspicion has been made to a Police Officer and the Department; or whether the allegation or suspicion has not been reported to a Police Officer or the Department because the discretion under subsection 63-1AA (3) of the Act applies.

Approved providers also have a responsibility to ensure that they have in place systems and procedures that will allow them to meet all of their responsibilities under the Act, including:

a) complying with requirements in relation to protection of personal information (in section 62.1 of the Act), and

b) ensuring compliance with all relevant legislation and regulatory requirements in relation to privacy issues, including State/ Territory or Commonwealth legislation, i.e. the Privacy Act 1988.
Appendix A

Template for keeping consolidated records of all incidents

In accordance with section 19.5AA of the Records Principles, consolidated records kept by approved providers should include the following details:

- **Record/File number** – indicate where the original incident report is filed.

- **Date received allegation** – date the approved provider received an allegation or started to suspect a reasonable assault.

- **Description** – provide a brief description of the allegation or of the circumstances that gave rise to the suspicion.

- **Information on reports made** – this should include date reported, to whom it was reported i.e. Police and the Department, and any record/report number given by Police or Department.
  
  - **Information on why reports were not made** – this should include a brief description on the reasons as to why a report was not made.

- **Action date and brief description** – record the date in which the incident or suspicion was resolved as well as a brief description of the outcome and or actions involved.
Appendix B

Template for providing information to the Department for Compulsory Reporting of assault

The Department will require the following information when receiving a report of an alleged or suspected assault on a resident of an Australian Government subsidised aged care home:

- *What relationship does the discloser have with the provider?* Eg key personnel, authorised person, staff member, ex-staff member or other persons.

- *Name of the alleged offender* – if known.

- *Alleged offender relationship to resident* eg staff, relative, other resident or unknown.

- *What has the approved provider done to protect other residents from the alleged offender?*

- *Were there any witnesses?*

- *When did the incident occur?*

- *Where did the incident occur?*

- *Who has been advised?* Eg police, family, medical adviser.

- *When did the approved provider become aware of the incident?*

- *Who else is aware of the incident?*

- *Where is the care recipient?* location of the resident, i.e. still in care, hospitalised.

- *Has the approved provider made counselling or support available to relevant parties?* – if so, provide details.

- *Protection?* – a Departmental Officer will determine if the discloser meets the requirements for protection. If the discloser indicates that they are concerned that reporting this issue will affect their employment, the Officer will explain the protections to them.