

Policy Directive: compliance is mandatory

Reporting and Management of Incidents of Suspected or Alleged Sexual Assault of an Adult, or Sexual Misconduct by an Adult, within SA Health Facilities and Services Policy Directive

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Summary

The Reporting and Management of Incidents of Suspected or Alleged Sexual Assault of an Adult, or Sexual Misconduct by an Adult, within SA Health Facilities and Services Policy Directive provides direction to SA Health employees regarding the reporting and management of suspected or alleged incidents of adult sexual assault or sexual misconduct by an adult within a SA Health facility or service. This directive ensures SA Health has a consistent process for the reporting and management of suspected or alleged incidents of sexual assault or sexual misconduct.

Keywords

Alleged sexual assault, sexual misconduct, rape, pornography, sexual harassment, indecent assault, Safety Learning System, SLS, notification, reporting requirements, policy directive

Policy history

Is this a new policy? *N*

Does this policy amend or update an existing policy? *Y*

Does this policy replace an existing policy? *Y*

If so, which policies?

Reporting of Alleged Sexual Assault within a SA Health facility

All SA Health Portfolio

Applies to

Staff impacted

All Staff, Management, Admin, Students; Volunteers

EPAS compatible

Yes

Registered with Divisional Policy


Yes

Policy doc reference no.

D0233

Version control and change history

Version	Date from	Date to	Amendment
1.0	16/06/11	18/12/14	Original version
2.0	18/12/14	27/03/15	Formal review in line with 1-5 year scheduled timeline for review to include new Notification/Reporting system requirements.
3.0	27/03/15	18/11/15	Feedback from SA Health Protective Security Steering Committee (PSSC); Mental Health and Risk Managers. SAPOL and Yarrow Place feedback incorporated
4.0	18/11/15	current	Amended to reflect change in reporting from Health Watch into Safety Learning System



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Health facilities and
services -
Policy Directive

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SA Health

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20/10/14	Agency Security Advisor	V1	Formal review in line with 1-5 year scheduled timeline for review to include new Notification/ Reporting system requirements.
18/12/14	Agency Security Advisor	V2	Feedback from SA Health Protective Security Steering Committee (PSSC); Mental Health and Risk Managers.
27/03/15	Agency Security Advisor	V3	SAPOL and Yarrow Place feedback incorporated
29/03/15	Safety and Quality Unit	V4	Amend to reflect change in reporting from HealthWatch to Safety Learning System.

Endorsements

Date	Endorsed by

Approvals

Date	Endorsed by
dd/mm/yy	<Position title, branch or directorate, division (no name)>

Reporting and management of incidents of suspected or alleged sexual assault of an adult, or sexual misconduct by an adult, within SA Health facilities and services - Policy Directive

1. Objective

This policy directive provides direction to SA Health employees regarding the reporting and management of suspected or alleged incidents of adult sexual assault or sexual misconduct by an adult within a SA Health facility or service.

This directive ensures SA Health has a consistent process for the reporting and management of suspected or alleged incidents of sexual assault or sexual misconduct whereby;

- adults who disclose or report incidents of suspected or alleged sexual assault or sexual misconduct are supported
- all mandatory notification requirements and requirements for the preservation of evidence are met
- all duty of care requirements including any support for victims /survivors are met
- suspected or alleged perpetrators are afforded just and fair processes
- the perpetrators or offenders of an incident of sexual assault or sexual misconduct are held responsible and made accountable
- further incidents of sexual assault or sexual misconduct are prevented.

This directive should be read and administered in conjunction with;

- [SA Health Preventing and Responding to Challenging Behaviour Policy Directive](#)
- Sexual Safety in Mental Health Services Policy Guideline (draft)
- [SA Health Incident Management Policy](#)
- SA Health Complaint about a Health Practitioner Policy Directive (draft).

2. Scope

2.1 In scope

This directive applies to all SA Health staff or persons (such as volunteers, contractors, pastoral carers) who provide services on behalf of SA Health who suspect or are made aware that a suspected or alleged sexual assault of an adult, or sexual misconduct, has taken place within a SA Health facility or service, or in the grounds thereof.

2.2 Out of scope

- This directive does not apply to children and young people aged 0-17 years. Reporting and management of incidents involving this age group are described by the SA Health Child Protection – Mandatory Notification of actual or suspected child abuse or neglect (0-17 Years) Directive.
- Allegations of sexual assault or sexual harassment or other between staff members within SA Health facilities will be dealt in accordance with:
 - [Code of Ethics for the South Australian Public Sector](#); and/or
 - SA Health Human Resource Manual (for health services only) (*Health Care Act*).

- Lawful consensual sexual activity between visitors and consumers and/or consumers and consumers.
- Intimate partner violence. Refer to [Family Safety Framework](#), Office for Women for risk assessment and reporting requirements.

3. Principles

- SA Health has a duty of care and legal obligation to provide health care in a way, and in an environment, that promotes personal safety and minimises risk of sexual assault or sexual misconduct of or by consumers, health staff and visitors.
- Victim(s)/survivor(s) are entitled to dignity in their care and treatment, privacy, confidentiality and support to recover and to pursue legal redress if applicable and where desired.
- Suspected or alleged perpetrators/offenders are entitled to a just, transparent and fair approach during investigative, disciplinary or judicial processes.
- Delegated senior staff will take responsibility for, and follow consistent objective processes, in management of these incidents, and in ongoing monitoring and targeted improvement of services.
- SA Health does not condone sexual assault or sexual misconduct in any form, and supports actions to ensure that there are appropriate consequences for perpetrators/offenders, including cooperating with requests and requirements of SA Police.

4. Detail

Steps should be taken to assess the environment and consumers for the likelihood of incidents occurring. Further information is available through Sexual Safety in Mental Health Services Policy Guideline.

4.1 Categories of alleged sexual assault and sexual misconduct

For the purposes of this policy directive, the term sexual assault includes rape, assault with intent to rape and indecent assault.

Incidents are classified into three categories that reflect the seriousness of the incident, and determine processes and timelines of the required reporting and notification.

Category One incidents are defined as;

- 4.1.1 suspected or alleged sexual assault of an adult consumer, by a staff member, another consumer or visitor
- 4.1.2 suspected or alleged sexual assault of a visitor by a staff member or consumer
- 4.1.3 suspected or alleged sexual assault of a staff member by a consumer or visitor
- 4.1.4 suspected or alleged production and/or circulation/distribution of pornographic images of a child (children) or adult consumer or staff member/s by an adult consumer, staff member or visitor, within SA Health facilities.

Category Two incidents are defined as:

- 4.1.5 suspected or alleged sexual harassment or sexualised behaviour that is intrusive, offensive, disruptive or otherwise of a concerning nature, that is exhibited by a staff member.

Category Three incidents are defined as:

- 4.1.6 suspected or alleged sexual harassment or sexualised behaviour that is intrusive, offensive, disruptive or otherwise of a concerning nature, that is exhibited by a consumer or visitor.

- 4.1.7 where a consumer, who lacks the capacity to understand their actions, offers or receives sexual activity in exchange for money or other goods or favours from another consumer. That is, prostitution of a consumer by another consumer, or procurement of sexual favours.

4.2 Consent and mental competence

Consent to sexual activity needs to be given freely and voluntarily by a person with mental capacity to make decisions. There are circumstances during health care when consent to sexual activity is not able to be given freely or voluntarily (Section 11.1 - Consent).

Sexual activity without consent (non-consensual sexual activity) is a criminal offence (*Criminal Law Consolidation Act 1935 s48*).

The suspected or alleged perpetrator/offender may or may not have a mental impairment such that there is doubt about their competence to commit an offence (Section 11.2 – Mental impairment / competence to commit offences).

4.3 Indicators of suspected alleged sexual assault or sexual misconduct

Indicators that a sexual assault or sexual misconduct may have occurred include:

- disclosure, or an allegation that is communicated by the victim/survivor
- the witnessing of an incident by a staff member and/or other person
- discovery or sighting of pornographic images of consumer, staff or visitor that have been taken within SA Health facilities or services in possession of a consumer or staff member or visitor.

Sexual assault may be suspected if a staff member or other person observes signs, or behaviours that can be indicators of sexual assault. These include, but are not limited to:

- complaints of physical symptoms, such as pain
- observation of physical signs such as bruising, or clothes may have been disturbed
- observation of behavioural signs of distress, fear or anxiety, or the person's behaviour changes significantly. This may include self-destructive behaviour, sleep disturbances, acting out behaviours, or persistent and inappropriate sexualised behaviour.

A staff member who is unsure whether or not sexual assault or sexual misconduct has taken place, is encouraged to document their observations and, prior to making an allegation, discuss their concerns with a senior staff member or with staff from Yarrow Place, South Australia's lead public health agency for responding to adult rape and sexual assault (Section 11.4).

Allegations and suspicions of Category One, Two and Three incidents must be treated seriously and reported promptly to initiate appropriate review processes.

4.4 Early response

Once the victim's safety is established, provide the victim/survivor with support and assistance. If the person requires immediate medical attention, a medical practitioner or ambulance should be called, or the person should be taken to the nearest Emergency Department.

Victim(s)/survivor(s) of sexual assault or their support person(s) can contact Yarrow Place Rape and Sexual Assault Service for free and confidential information and advice regarding options for medical care (including forensic medical examination), legal action, or counselling (section 11.3, and section 11.2 - Forensic Medical Examination).

If a staff member is the suspected or alleged perpetrator/offender, the required medical assistance should be independent of the service where the alleged sexual assault took place.

4.5 Initial reporting and actions

4.5.1 The discovering staff member

The staff member who first suspects or becomes aware of alleged sexual assault or sexual misconduct should immediately assess the situation and, if safe to do so, take steps to ensure a safe environment. Next actions include:

- immediately reporting to the senior staff member in the relevant work area of the suspicion or allegation, and any actions already taken
- assist SA Police with any investigation if required (Section 11.5 – Assisting SA Police)
- provide information to assist the Clinical Risk manager or most senior staff member on duty to make the required report into the Safety Learning System (SLS) Notifications module.

If the allegation is against a senior clinician or manager, who would be part of the normal line of escalation, communication should be made directly to the Clinical Risk Manager or CEO.

4.5.2 The senior staff member in the area should;

- ensure that the appropriate senior manager(s) is immediately made aware of the incident, using the health service's usual escalation process and timeline
- act to preserve evidence as appropriate and advised by senior manager or SA Police (Section 11.5 – Evidence preservation)
- where the alleged victim(s)/survivor(s) provide their consent, support can be accessed through referral to Yarrow Place Rape and Sexual Assault Service (Section 11.2 - Forensic Medical Examination) or any other service provider of their choice.
- act to minimise disruption to the service.

If the alleged perpetrator/offender is a visitor, the Hospital by-laws provide for a variety of actions that Security officers are authorised to undertake, such as searching possessions, removing the person from premises, and/or restraining until police can attend, as appropriate to the situation.

4.5.3 The most senior manager of the relevant work area where the allegation has been made is responsible for;

4.5.3.1 for a Category One incident;

- mandatory reporting as soon as practicable and within a 24 hour period. This includes, but is not limited to, reporting of the incident to:
 - Local Health Network Chief Executive Officer (CEO) who will in turn report to the Chief Executive SA Health
 - SA Police to make a report, to seek advice and request their attendance to a recent incident to gather information and evidence (even if the victim(s)/survivor(s) do not want their involvement).
- advising the victim/survivor and their responsible person or guardian (where applicable) that the allegation will be reported to the SA Police
- making appropriate arrangements for the suspected or alleged perpetrator/offender (section 4.6.2).

4.5.3.2 for Categories Two and Three incidents:

- reporting these within the timelines in Section 6 and summarised in the reporting flowchart (Appendix 1)
- ensuring that the incident review and resolution processes for suspected or alleged victim/survivor and perpetrator/offender, are carried out in a timely

manner, and in collaboration with additional expertise, such as WHS or Human Resources or counselling services as required

- recording the incident and its subsequent management into the Notifications module of Safety Learning System
- ensuring open disclosure and de-briefing is offered.

4.6 Communication and follow-up to persons involved

4.6.1 The alleged victim/survivor/complainant

- Counselling from appropriate services should be offered.
- An alleged victim/survivor with decision-making capacity may choose not to participate if there is an SA Police investigation. It is not necessary for the person to decide immediately about whether to be involved in a prosecution. People may be distraught at the time of the alleged assault and may change their minds at a later date. It is important from a victim's right perspective that the victim/survivor be made aware that although a report to SA Police will be made, any decision to pursue charges will be the individual's choice.
- Staff members providing care for an alleged victim/survivor who does not have decision-making capacity are required to report to SA Police, and to discuss with the Substitute Decision-Maker as soon as practicable, including providing options for where expert advice can be sought.
- Communication using Open Disclosure principles and practices is required for the alleged victim/survivor and, where relevant, their family, carers.
- Consumers who are alleged victims should be supported to make complaints or provide feedback.
- A staff member who is the alleged victim/survivor/complainant should be offered appropriate Work Health and Safety support and amended work arrangements.

4.6.2 A consumer who is the suspected or alleged perpetrator/offender

- If a consumer is the suspected or alleged perpetrator, steps should be taken to re-locate them to another area, reduce risk to others, preserve evidence and review their physical and mental status and their care plan.

4.6.3 A staff member who is the suspected or alleged perpetrator/offender

- If a staff member is the alleged perpetrator SA Police must be notified immediately are per Category One guideline.
- Human Resources/Workforce and the Australian Health Practitioner Regulation Agency (AHPRA) must be notified within 24 hours. The Health and Community Services Complaints Commissioner receives notifications about alleged improper conduct by employees of the SA Ambulance Service. In some instances the Office for Public Integrity may need to be notified.
- The staff member may be relieved of duty during review, investigation of the incident and/or any disciplinary procedures.

4.6.4 Other people, team members

- Other people may be affected psychologically by the incident and the investigation process, and appropriate support for their recovery should be considered.

4.7 Considerations of confidentiality and protection of information

Confidentiality is a high priority, and Section 93 of the *Health Care Act 2008* and Section 106 of the *Mental Health Act 2009* have clear provisions for the disclosure of personal information.

To maintain confidentiality and protect those involved, and the information that has been gathered as part of investigation, the health service / organisation will ensure that:

- only nominated senior staff members, for example Nursing Director and/or Risk Manager or similar nominated staff member on duty have access to the

Notifications module of SLS (that is, are able to record the notification and add and view entries describing the subsequent investigation and review processes)

- all reports, briefings, and related documents generated during review or investigation to be attached as a Level 1 secure document in the Documents section of the notification report.

4.8 Follow-up action by Health Service senior managers

After immediate response and required reporting, senior managers should review the incident, and where relevant recommend and/or implement strategies to prevent or reduce the occurrences of similar incidents in the future.

To promote shared learning and recovery, senior managers should encourage debriefing and use of Work Health resources such as Employee Assistance Program.

5. Roles and Responsibilities

5.1 Chief Executive, SA Health is responsible for:

- ensuring the reporting and management of suspected or alleged sexual assault or sexual misconduct incidents within SA Health are in accordance with this Directive
- receiving reports of all Category One incidents.

5.2 Director, Safety and Quality is responsible for:

- monitoring and evaluating the implementation of this directive
- reviewing reports of the Category One, Two and Three notifications through the Notifications module of the Safety Learning System.

5.3 Local Health Network / SA Ambulance Service Chief Executive Officers are responsible for:

- implementing systems and processes at health service level to minimise the occurrences of sexual assault or sexual misconduct, to preserve evidence and to support recovery of victims/survivors
- delegating responsibility to senior staff for reporting and management requirements for Category One, Two and Three incidents, including fair and objective management of staff who are suspected or alleged perpetrators/offenders
- notifying the CEO Department for Health and Ageing all Category One incidents, using established notification processes.

5.4 Executive Directors, Directors and other senior managers are responsible for:

- ensuring health services are reporting and managing Category One, Two and Three incidents in accordance with this directive using the Notifications module of SLS
- developing, implementing and monitoring local protocols that prevent and/or minimise the risk of alleged sexual assault or sexual misconduct occurring within health facilities or services
- ensuring staff members and relevant contractors are aware of their obligations to report all incidents of suspected or alleged sexual assaults or sexual misconduct
- ensuring that action is taken to minimise disruption to services, and to support recovery of people involved.

5.5 All SA Health employees will:

- adhere to the principles and aims of this directive and ensure they recognise and report an incident to senior staff appropriately.

6. Reporting

All incidents must be recorded in the Notifications module of SLS (Category One, Two and Three). For further information, refer to the diagram Reporting Requirements (Appendix 1).

6.1 Timeframes for reporting

Category One incidents must be:

- immediately reported to relevant Executive, the Chief Executive SA Health, Senior Manager and SA Police, and
- within 24 hours, recorded in the Notifications module of the Safety Learning System. (Refer Appendix 1)

Category Two incidents must be:

- immediately reported to Senior Management and
- within two working days, recorded in the Notifications module of the Safety Learning System.

Category Three incidents must be:

- immediately reported to Senior Management and
- within 5 working days, recorded in the Notifications module of the Safety Learning System.

7. EPAS

This policy directive outlines the process in which to manage and report a suspected or alleged sexual assault or sexual misconduct into the Notifications Module of the Safety Learning System, and therefore does not affect EPAS.

Any personal medical information documented into EPAS as a result of patient care provided as the result of an incident, will be accessed in accordance with the clinicians security rights as per normal practice.

8. Exemption

Nil

9. Associated Policy Directives / Policy Guidelines

Complaint about a health Practitioner policy (draft)

[Consumer feedback and complaints management Policy Directive](#)

[Employee Assistance Program Directive](#)

[Employees charged with a Criminal Offence Policy Directive](#)

[Health Policy for Older People 2010 - 2016 Guideline](#)

[Health Service Framework for Older People 2009 – 2016](#)

[Human Resources Manual – Part 4-1 Managing Unsatisfactory Performance, Discipline and Termination](#)

[Incident Management Policy Directive](#)

[Incident Management Guideline incorporating Open Disclosure Response](#)

[Management of Work Injured Employees \(WHS\) Policy Directive](#)

[Preventing and Responding to Challenging Behaviour Policy Directive](#)

[Protective Security Policy](#)

[Protocol for police requests for information and witness statements in the public health system in South Australia policy guideline](#)

[Providing Medical Assessment and or Treatment where patient consent cannot be obtained SA Health Policy Directive.](#)

[Respectful Behaviours Policy](#)

[Risk Management policy](#)

[Same Gender Accommodation policy directive](#)

[Sexual Harassment Policy Directive](#)

Subpoena and other legal requests for information – guidelines on the law and procedure

[Whistleblowers' Protection Policy](#)

[Work Health and Safety Duty of Care to all persons policy directive](#)

[Work Health and Safety reporting and investigation policy](#)

[Work Health and Safety and injury management \(WHSIM\) policy directive](#)

10. References, Resources and Related Documents

10.1 Legislation:

Aged Care Act 1987 (Commonwealth)

Consent to Medical Treatment and Palliative Care Act 1995 (SA)

Criminal Law Consolidation Act 1935 (SA)

Guardianship and Administration Act 1993 (SA)

Health Care Act 2008 (SA)

Health Practitioners Regulation National Law Act 2010 (Commonwealth)

Mental Health Act 2009 (SA)

Public Sector Act 2009 (SA)

Sex Discrimination Act 1984 (Commonwealth)

Whistleblowers Protection Act 1993 (SA)

Work Health and Safety Act 2012 (SA)

10.2 Other SA government guidelines

Clinician's guide and code of practice for mental health services (Office for the Chief Psychiatrist SA Health)

Code of Ethics for the South Australian Public Sector, 2015. Office for the Public Sector [Family Safety Framework](#) and domestic violence risk assessment and referral form. Office for Women.

Our Actions to prevent the abuse of older South Australians, 2007. Office for the Ageing, Department for Communities and Social Inclusion (DCSI).

SA Charter of Health and Community Services Rights

SA Health Code of Fair Information Practice

SA Health (*Health Care Act*) Human Resources Manual

Safety and Wellbeing in the Public Sector Strategy, 2010-2015

Information Sharing Guidelines (ISG) and SA Health Appendix to the ISG

South Australian Cabinet Administrative Instruction No.1 of 1989: also known as the Information Privacy Principles Instruction (18 May 2009)

11. Other

11.1 Consent

Sexual activity without consent (non-consensual sexual activity) can be a criminal offence (*Criminal Law Consolidation Act 1835 s48*).

Consent to sexual activity needs to be given freely and voluntarily. Consent is not free and voluntary in the following circumstances:

- when initial consent is given freely, but subsequently withdrawn
- when physical force, and/or unlawful detention or restraint are used
- when intimidation, fear or threats are used

- when the person has a physical, mental or intellectual impairment of their capacity to freely consent, and/or the person is otherwise unable to understand the nature of the activity. Consumers of health care services may have impaired decision-making capacity temporarily or permanently, and may not be able to provide consent. Examples include:
 - when a consumer is unconscious, sedated, medicated or intoxicated to the point of being incapable of consenting
 - when a consumer is subject to an Inpatient Treatment Order (ITO) (*Mental Health Act 2009*, part 5) they are deemed to lack capacity to freely consent. Therefore, sexual activity within a mental health unit may need to be reported as an alleged sexual assault, especially if either of the parties are under an ITO ('involuntary patients').
 - consumers who are under a Guardianship order may lack capacity to freely consent (*Guardianship and Administration Act 1993*)
 - consumers with mental impairment as a result of lifelong or acquired conditions such as brain injury, dementia, intellectual disability
- mistaken identity, when the victim believes that the perpetrator/offender is another person
- mistaken about the purpose/nature of the activity, for example a person is taken not to freely and voluntarily agree to sexual activity if the person agrees to engage in the activity under the mistaken belief that the activity is necessary for the purpose of medical diagnosis, investigation or treatment, or for the purpose of hygiene.

11.2 Mental impairment/competence to commit offences

A person is judged to be mentally incompetent to commit an offence if, at the time of the conduct alleged to give rise to the offence, the person is suffering from a mental impairment and, in consequence of the mental impairment:

- does not know the nature and quality of the conduct, or
- does not know that the conduct is wrong, or
- is unable to control the conduct.

11.3 Forensic medical examination

SA Police may suggest a forensic medical examination. The examination of people who have allegedly been sexually assaulted is a specialised area. A Forensic Medical Officer will;

- assess and treat any immediate medical needs
- undertake tests for sexually transmitted diseases and pregnancy if appropriate, and
- collect evidence for use in the investigation and possible prosecution.

In cases of recent alleged sexual assault of an adult, medical interventions are recommended within 1 week and ideally as soon as possible after the assault. This is to minimise adverse impact on victim/survivors' health and/or optimise the gathering of evidence.

In Adelaide, forensic medical examinations are performed by Yarrow Place Rape and Sexual Assault Service. Other support is available through this service (refer to section 11.4). In rural areas there are general practitioners who have been trained to perform forensic medical examinations.

11.4 Yarrow Place Rape and Sexual Assault Service

Yarrow Place is the lead agency responding to rape and sexual assault in SA. This is an inclusive service for anyone who has been sexually assaulted, and/or partners, family and friends who seek counselling and support regarding the sexual assault of their significant

other. Direct services for any person 16 years and over at the time of the sexual assault can include the following:

- 24 hour crisis response service for recent rape or sexual assault. This can include medical services, crisis counselling, advocacy (standing up for what the person wants to have happen), and making sure that the person is safe
- Medical care for victims of rape and sexual assault. This can include treatment for minor injuries, health checks for pregnancy and sexually transmitted infections, and treatment for anxiety, sleeplessness, or other issues arising from the assault
- Forensic medical examinations for people who are considering, or want to take legal action. This means collecting evidence from the body of the person who has been sexually assaulted
- Counselling for people who have been sexually assaulted, either recently or in the past, so long as they were 16 years or older at the time of the assault
- Court preparation and support for people whose cases are going to court.
- Information, support and short-term counselling for families and friends of people who have been sexually assaulted, so that they can work through their own issues and provide better support to the person who was assaulted
- Group work and seminar programs.

Yarrow Place contact details:

Level 2
55 King William Rd
North Adelaide 5006
PO Box 620
North Adelaide SA 5006

Phone: (08) 8226 8777 or Toll Free in SA: 1800-817-421

After Hours and Emergency: (08) 8226 8787

<http://www.yarrowplace.sa.gov.au/>

11.5 Assisting SA Police

- SA Health staff should be available to assist the SA Police with any investigation if required (SA Health Protocol for police requests for information and witness statements in the public health system in South Australia).
- Staff should seek advice from SA Police as to whether the alleged perpetrator should be told of the report to the police, and subsequent actions, for example to preserve evidence. It is important that any steps taken do not undermine police processes and investigation.
- The investigation may involve the police taking photographs of any physical injuries, and staff may need to assist the police to explain the procedure and provide support to the victim/survivor.
- Staff may be required to assist with a subsequent legal or disciplinary process. The SA Health document, Subpoena and other legal requests for information – guidelines on the law and procedure, provides information.

Where an alleged sexual assault is considered historical, that is the events are not recent and police attendance at the scene is not required, then the following will apply:

- a report can be made to SA Police at the local police station by the staff member or volunteer in person
- a report can be made at the victim /complainant's local police station by the consumer and/or visitor in person
- a police report and statement is initiated so that an investigation by the most appropriate area may commence.

11.6 Evidence preservation

Where a recent alleged sexual assault has been disclosed and the victim/survivor and/or alleged perpetrator/offender are present, or where forensic evidence is likely to be located at the scene, police attendance should be requested through the South Australia Police Call Centre on 131444.

Some evidence will only be present in the immediate period following the alleged assault. Forensic evidence collected at this time will assist police investigation, should the victim/survivor wish to proceed at a later stage.

In relation to preserving the evidence of an alleged sexual assault, it is helpful to;











- encourage the victim/survivor not to shower or change, or, if the person feels they must shower or change, ask them to put the clothing they were wearing at the time of the alleged assault in bags, which should be sealed, labelled and secured; and
- where possible, lock the door to the room or restrict access to the area where the alleged assault occurred so any physical evidence inside that area remains undisturbed.

12. National Safety and Quality Health Service Standards

The Australian Commission on Safety and Quality in Health Care has developed [10 National Safety and Quality Health Service Standards](#) (the Standards).

The Standards provide a nationally consistent and uniform set of measures of safety and quality for application across a wide variety of health care services. They propose evidence-based improvement strategies to deal with gaps between current and best practice outcomes that affect a large number of patients.

This policy directive contributes to the standard indicated below:

									
National Standard 1	National Standard 2	National Standard 3	National Standard 4	National Standard 5	National Standard 6	National Standard 7	National Standard 8	National Standard 9	National Standard 10
Governance for Safety and Quality in Health Care	Partnering with Consumers	Preventing & Controlling Healthcare associated infections	Medication Safety	Patient Identification & Procedure Matching	Clinical Handover	Blood and Blood Products	Preventing & Managing Pressure Injuries	Recognising & Responding to Clinical Deterioration	Preventing Falls & Harm from Falls
x									

13. Risk Management

The risks associated with non-compliance with this Directive include that

- serious incidents of alleged sexual assault are unreported or un-actioned
- victims/survivors of alleged sexual assault do not feel supported or are unaware of the resources available to them to assist them with their recovery
- consumer experience of health care decreases, and complaints increase
- adverse media attention in the event alleged sexual assault incidents are not managed or recorded appropriately, or are not reported through to relevant authority.
- claims made against health services
- perpetrators/offenders may be unaccountable for their actions, and may offend again.

14. Evaluation

A variety of measures and indicators are available to monitor and evaluated this policy directive including, but not limited to:

- the number of incidents reported will be compared with those previously logged over a comparable period of time
- the accuracy and number of incidents recorded in the Notifications module, by the correct personnel
- audits of compliance with Notifications module of the Safety Learning System will determine whether alleged sexual assaults or misconduct are being actioned in accordance with this Directive
- the number of complaints received that relate to SA Health's management and reporting of alleged sexual assaults or misconduct
- comments received in consumer experience surveys
- misconduct, malpractice, disciplinary reviews
- claims made against health services.

15. Attachments

Appendix 1 – Diagram of the reporting process and requirements for the three categories of alleged sexual assault and sexual misconduct.

16. Definitions

In the context of this document:

AHPRA – the Australian Health Practitioner Regulation Agency (AHPRA) is the organisation responsible for the implementation of the National Registration and Accreditation Scheme across Australia.

Consent to sexual activity is free and voluntary. Consent requires that the person is able to understand the nature of the activity. (Section 11.1 has further information about consent, in this context)

Competence to commit an offence (Section 11.2 has further information about competence to commit an offence in this context)

Consumer means individuals who are using SA Health services.

Decision-making capacity

Forensic Medical Examination means a specialised examination after sexual assault (section 11.3)

Indecent assault is touching (or threat of touching) without a person's consent. Examples include but are not limited to unwelcome kissing or touching in the area of a person's breasts, buttocks or genitals. Indecent assault can also include behaviour that does not involve actual touching such as comments of a sexual nature.

Mental impairment

Physical violence means the use of physical force against another person or group that results in physical harm. It includes, but is not limited to, pinching, biting, pushing, spitting, slapping, kicking, beating, shooting and stabbing.

Rape is defined in accordance with section 48 of the *Criminal Law Consolidation Act 1935* to mean;

- a person (the offender) is guilty of the offence of rape if he or she engages, or continues to engage, in sexual intercourse with another person who –
 - (a) does not consent to engaging in the sexual intercourse; or

(b) has withdrawn consent to the sexual intercourse,
and the offender knows, or is recklessly indifferent to, the fact that the other person does not so consent or has withdrawn consent (as the case may be).

a person (the offender) is guilty of the offence of rape if he or she compels a person to engage, or to continue to engage, in-

- (a) sexual intercourse with a person other than the offender; or
- (b) an act of sexual self-penetration; or
- (c) an act of bestiality,

when the person, so compelled does not consent to engaging in the sexual intercourse or act, or has withdrawn consent to the sexual intercourse or act, and the offender knows, or is recklessly indifferent to, the fact that the person does not so consent or has so withdrawn consent (as the case may be).

Risk Manager a person who provides high level advice and support in regards to patient safety initiatives and risk minimisation, assisting in the development of a culture of safety, quality and risk management. Risk managers are commonly delegated responsibility for managing incidents of alleged sexual assault.

Senior Manager means the most senior staff member in the relevant work area, such as a ward, who was present at the time that an alleged incident occurs or an allegation is reported.

Sexual assault includes rape, assault with intent to rape and indecent assault. Illegal sexual contact that usually involves forces upon a person without consent or is inflicted upon a person who is incapable of giving consent (as because of age or physical or mental incapacity)

Sexual misconduct (in the context of this policy directive) means Category 2 and 3 behaviours

- production and/or circulation or distribution of pornographic images of consumer or staff member by a consumer or staff member or visitor within SA Health facilities
- sexual harassment or sexualised behaviour that is intrusive, offensive, disruptive or otherwise of a concerning nature, that is exhibited by a consumer or staff member
- inappropriate comments, behaviours or gestures of a sexual nature by a consumer, staff member or visitor towards another consumer
- where a consumer, who lacks the capacity to understand their actions, offers sexual activity in exchange for money or other goods or favours from another consumer. That is, prostitution of a consumer by another consumer.

Sexual harassment means any of the following acts that are done in such a manner or in such circumstances that the other person feels offended, humiliated or intimidated:

- subjecting the other person to an unsolicited and intentional act of physical intimacy
- demanding or requesting (directly or by implication) sexual favours from the other person;
- making, on more than one occasion, remarks with sexual connotations relating to the other person and it is reasonable in all circumstances that the other person should feel offended, humiliated or intimidated by that conduct.

Sexual intercourse is defined in accordance with section 48 of the *Criminal Law Consolidation Act 1935*:

It includes any activity (whether of a heterosexual or homosexual nature) consisting of involving penetration of a person's vagina, labia majora or anus

by any part of the body of another person or by any object; or fellatio; or cunnilingus and includes a continuation of such activity.

Visitor for the purpose of this policy a visitor is anyone who is not a patient or a person employed by the health service.

Yarrow Place is the lead public health agency responding to adult rape and sexual assault in South Australia. Yarrow Place is a part of the [Women's and Children's Health Network](#) and is a community service with a Statewide mandate. (Section 11.4)

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