

Health, aged care and retirement living briefing

Serious Incident Response Scheme – expansion of priority 1 reportable incidents category

October 2022

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On and from 3 October 2022 all reportable incidents of 'unlawful sexual contact, or inappropriate sexual conduct' are priority 1 reportable incidents.

Overview

On 29 September 2022, the Australian Government published the *Aged Care Legislation Amendment (Reportable Incidents) Instrument 2022*. The Instrument expands the definition of 'priority 1 reportable incident' with the effect that all reportable incidents of 'unlawful sexual contact, or inappropriate sexual conduct, inflicted on the residential care recipient' are priority 1 reportable incidents. The requirement to report this category as priority 1 commenced on 3 October 2022 for incidents that occur, or are alleged or suspected of having occurred, on or from that date. It does not apply retrospectively.

It appears that making all reportable incidents of 'unlawful sexual contact or inappropriate sexual conduct' priority 1 seeks to remove the previous grey area on whether such an incident was reportable as priority 1 where, for example, the harm requirement for priority 1 had not been satisfied and the incident was not of a criminal nature (ie if there was consent), particularly where the incident involved a staff member.

We note the Serious Incident Response Scheme currently only applies to residential aged care. However, it will expand to aged care in the home and community from 1 December 2022. The Government has advised that the details of this expansion will be set out in separate amending legislation.

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New definition

On and from 3 October 2022 'priority 1 reportable incident' are defined as a reportable incident:

- that has caused, or could reasonably have been expected to have caused, a residential care recipient physical or psychological injury or discomfort that requires medical or psychological treatment to resolve; or
- where there are reasonable grounds to report the incident to police; or
- that is the unexpected death of the residential care recipient; or
- that is an unexplained absence of the residential care recipient from the residential care services of the provider; or
- **that is unlawful sexual contact, or inappropriate sexual conduct, inflicted on the residential care recipient.**

As providers would be aware, priority 1 reportable incidents must be reported to the Aged Care Quality and Safety Commission within 24 hours of the provider becoming aware of the incident.

Summary

This briefing provides a high-level overview of the expansion of the definition of priority 1 reportable incident. If you require any legal advice in relation to the effect the legislation has upon you or your organisation we would be happy to assist you.

If you require any further information, please contact a member of O'Loughlins' Health, Aged Care and Retirement Living Team:



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