SUMMARY

THE RIGHT TO BE SAFE

Ensuring sexual safety in acute mental health inpatient units: sexual safety project report

MHCC MENTAL HEALTH COMPLAINTS COMMISSIONER

SUMMARY REPORT

All people have the right to be safe when accessing acute mental health inpatient treatment. Health services also have clear obligations to uphold this right and to ensure a safe environment. This, however, has not been the experience for many people who have raised concerns about sexual safety in mental health services to the Mental Health Complaints Commissioner (MHCC).

> "Sexual harassment and sexual assault are violations of people's human rights that can cause immeasurable trauma and, along with other types of sexual safety breaches occurring in these environments, are significant avoidable harms that must be addressed."
>
> Dr Lynne Coulson Barr, Mental Health Complaints Commissioner

What is sexual safety?

Sexual safety in acute mental health inpatient environments is defined in this project to include feeling and being sexually safe in these environments, including being free from sexual activity, sexual harassment and alleged sexual assault.

Sexual safety breaches are experiences in which a person is not, or does not feel, sexually safe, including experiences of sexual activity, sexual harassment and alleged sexual assault.

Complaints about sexual safety breaches in acute mental health inpatient units provide a vital window into the gravity and impact of these experiences for people and highlight the critical need to ensure people's sexual safety in these environments. *The right to be safe* report identifies the need for the issue of sexual safety to be recognised as a human rights issue and to receive priority attention, in accordance with Victoria's broader violence prevention strategies.

> "The reason I've made the complaint is because of what happened to me but also I don't just want there to be an investigation that gets filed away, I want change so this doesn't happen to someone else."

ACKNOWLEDGEMENTS

The MHCC thanks the many people who have spoken up about their experiences, or the experiences of family members, of breaches of sexual safety in acute mental health inpatient units. Speaking up about any negative service experience can be challenging. The distress and trauma associated with breaches of sexual safety can make speaking up even more difficult. However, many people and families have spoken up because of the harms they have experienced, but perhaps even more strongly because people want to see 'cultural and actual change' and 'don't want this to happen to someone else'.

The MHCC also acknowledges the efforts of organisations and individuals over many years to highlight and address the issue of sexual safety in acute mental health inpatient units. Despite the clear gaps and areas for significant improvement that the report identifies, we also note the range of initiatives and genuine efforts made over time by mental health services, successive governments and the Department of Health and Human Services to improve safety, and we acknowledge and thank the department for its role in supporting this project.

BACKGROUND

About the MHCC

The MHCC is an independent specialist statutory body established under the *Mental Health Act 2014* (Vic) (the Act) to safeguard the rights of people accessing public mental health services, resolve complaints and recommend service improvements. The MHCC has a function under the Act to identify, analyse and review quality, safety and other issues arising out of complaints and to make recommendations for improving the provision of mental health services to mental health service providers, the Chief Psychiatrist, the Secretary to the Department of Health and Human Services and to the Minister for Mental Health (s 228(j) of the Act). The MHCC also has a broad function to provide advice to mental health service providers on any matters relating to complaints (s 228(e)). This report is an outcome of the MHCC undertaking these functions and fulfilling its service improvement role under the Act.

Key project statistics

100+

people consulted, including people with lived experience, families and carers, service providers and staff, professional bodies, peak bodies, government and advocacy organisations

90

complaints analysed:
23 oral complaints to the MHCC
27 written complaints to the MHCC
40 complaints reported by services

200+

pieces of research, grey literature, policy and standards reviewed

4 formal investigations that involved:

3700+

pages of clinical records reviewed

170+

pages of complaint, investigation and incident related documents reviewed

1200+

pages of services policies, guidelines, training resources, handouts and posters reviewed

54

interviews undertaken as part of the four investigations conducted by the MHCC with people accessing treatment, families/carers and mental health services staff

Background to sexual safety in acute mental health inpatient units

Reviews, surveys and advocacy documents over many years have consistently identified that many people do not feel or are not sexually safe when accessing acute mental health inpatient treatment.

Women's experiences of mixed-gender acute inpatient mental health treatment have been a particular focus of existing research and advocacy over time. Organisations including the Women's Mental Health Network Victoria, the Victorian Mental Illness Awareness Council and the Office of the Public Advocate have noted a number of themes:

– Significant numbers of women report experiencing sexual activity, harassment, intimidation and assault while accessing acute mental health inpatient treatment in Victoria.

– People report that staff have responded to disclosures of sexual safety breaches or concerns in ways that minimise, disbelieve or do not fully respond to the concerns.

– In some instances, staff responses to sexual safety breaches are guided by an assessment of the illness of an alleged perpetrator rather than by the impact of the behaviour on other people accessing treatment.

– There is a need to recognise and address risks to sexual safety to prevent breaches and associated trauma.

In recognition of the issues raised by advocates over many years, the department and the Chief Psychiatrist have:

– developed guidelines including the *Promoting sexual safety, responding to sexual activity, and managing allegations of sexual assault in adult acute inpatient units guideline* (Chief Psychiatrist's Guideline) and the *Service guideline on gender sensitivity and safety* to guide mental health services in providing sexually safe care

– funded and rolled out training for mental health services on providing gender-sensitive care

– provided targeted funding to mental health services for infrastructure improvements including creating women-only corridors, lounges, courtyards and bathrooms, and implementing measures such as lockable bedroom doors that can be locked by consumers and swipe-band access to women-only corridors.

Sexual safety continues to be a priority focus for the Chief Psychiatrist, with work being undertaken in 2017–18 to review the Chief Psychiatrist's Guideline, to design a new reporting framework and to commission Gender Sensitive Safe Practice Manager workshops.

Project background

Over its first three years of operation to 30 June 2017, the MHCC identified concerning themes in complaints about sexual safety in mental health services. While the nature of these complaints varied, the gravity of many of the concerns raised and the variability in service responses indicated the need for closer examination of these issues to identify ways to prevent these significant avoidable harms.

Approach

The MHCC's project included:

– an analysis of complaints made to the MHCC as well as those made directly to services and reported to the MHCC

– the findings of four MHCC investigations

– a review of the literature, research and relevant policies, standards and initiatives

– consultations with key stakeholders and people with relevant experience and expertise.

PROJECT FINDINGS

The analysis of 90 complaints and themes from the investigations, literature and consultations indicated the following:

– Most concerns about sexual safety were about women's experiences (80 per cent, *n* = 68 of 83). Women consistently reported feeling unsafe in a mixed-gender acute inpatient environment, with particular fears about being placed in intensive care areas (ICAs – also called high dependency units). The complaints analysis identified ICAs as the area where sexual safety breaches were most often reported (40 per cent, *n* = 19 of 47), followed by bedrooms (34 per cent, *n* = 16 of 47), with six incidents occurring in a women-only area. This is particularly concerning because it demonstrates that women-only corridors in mixed-gender units are not fully effective in preventing sexual safety breaches when not used as intended.

– Men were identified as individual perpetrators in 83 per cent (*n* = 49 of 59) of complaints, and as having participated in a further 7 per cent (*n* = 4) of sexual safety breaches.

– The most common pattern of alleged sexual safety breaches involved men breaching the sexual safety of women (72 per cent, *n* = 42 of 58), although men also breached the sexual safety of other men in six complaints (10 per cent, *n* = 6 of 58). This indicates a dual need to consider approaches that separate men and women accessing treatment to prevent the majority of sexual safety breaches while also ensuring clear strategies are implemented to prevent sexual safety breaches in single-gender environments.

– 'Other people accessing services' were identified as alleged perpetrators in 77 per cent (*n* = 65 of 85) of complaints, with 22 per cent (*n* = 19 of 85) identifying staff as alleged perpetrators. The report focuses on service approaches to managing sexual safety breaches between people accessing services, though this is not to understate the seriousness of complaints about staff. Rather, this recognises that the steps required to respond to complaints about staff are clear, and acknowledges that there are existing regulatory and legal mechanisms for addressing allegations against staff. In contrast, responses to allegations of sexual safety breaches by other people accessing services were highly variable and, in many cases, concerning.

– 62 per cent of complaints (*n* = 34 of 55) were made by people accessing services, with 38 per cent (*n* = 21 of 55) made by family members, carers or support people.

– Complaints were most commonly about alleged sexual assault (47 per cent, *n* = 42 of 90), with 38 per cent (*n* = 34 of 90) about gender safety (people not feeling safe), 13 per cent (*n* = 12 of 90) about sexual harassment and 2 per cent (*n* = 2 of 90) about sexual activity. In this breakdown, complaints were categorised according to the views of the person making the complaint, which in some cases differed from service views about the nature of the sexual activity. For example, services may have considered the sexual activity to be consensual and therefore did not identify or respond to the breach as an alleged sexual assault, highlighting a key issue in service responses to sexual safety breaches.

– Almost all (96 per cent, *n* = 86 of 90) complaints were about people's experiences in adult mental health services. This may reflect the higher numbers of people accessing these services and higher complaints rates overall when compared with aged or youth services. It may also indicate the need for specialised approaches to recognising and responding to sexual safety complaints in aged and youth services.

Note on data: As not all data fields were available for each complaint, percentages vary and raw numbers have been included for comparison. For example, the data about the gender of the person at the centre of the complaint was only available for 83 of the 90 complaints analysed. Please see the full report for the project data analysis.

Key service improvement recommendations

In addition to the overarching recommendation to develop a comprehensive strategy, a clear policy directive and actions to improve infrastructure, leadership and governance to address the issue of sexual safety in acute mental health inpatient units, the project also identified other key areas of recommendation for practice improvement:

- **Trauma-informed care and supported decision making:** Services need to recognise the prevalence of trauma among people accessing acute mental health inpatient services and organise services in a way that recognises the potential for sexual safety breaches and/or the nature of compulsory treatment to cause re-traumatisation, and take steps to avoid this. Trauma-informed care also requires services to hear, respond to and provide support and referral in relation to disclosures of sexual safety breaches. It is of significant concern that in response to sexual safety breaches, only 11 per cent (n = 5 of 44) of complaints resulted in a referral to sexual assault services. In addition, responses to sexual safety breaches rarely identified how supported decision-making mechanisms (including advance statements) could be used to ensure people would feel and be safe in any future admission.
- **Orientation to the inpatient unit:** Orientation needs to clearly outline that sexual activity is not permitted in the inpatient unit and that behaviour that may breach the safety of others, including sexual harassment, will be addressed by staff. It was evident in complaints to the MHCC that this was not consistent, despite the Chief Psychiatrist's Guideline clearly outlining this requirement.
- **Risk assessment:** Risk assessment needs to assess vulnerability and perpetrator risks and the overall environment of the inpatient unit. Neither trauma nor other vulnerabilities were consistently identified as a risk factor for sexual safety breaches. Relevantly, a history of trauma was identified in 94 per cent (n = 16 of 17) of complaints where information about whether a person had experienced previous trauma was available. In 87 per cent (n = 34 of 39) of complaints, another vulnerability was indicated. This was most commonly sedation (n = 12) but also, of greater concern, previous sexual assault in an acute inpatient unit (n = 3).
- **Reporting:** Service approaches to reporting sexual safety breaches (particularly alleged or suspected sexual assaults) need to be consistent. This includes reporting via incident reports, to the Chief Psychiatrist and to Victoria Police. Approaches to incident reporting varied considerably, with many alleged or suspected sexual assaults not being categorised at a level that resulted in escalation to service leadership. Reporting of alleged sexual assaults to the Chief Psychiatrist was similarly inconsistent, with eight complaints of alleged sexual assault not resulting in a report, despite this being a clear requirement of the Chief Psychiatrist's Guideline. Only 39 per cent (n = 17 of 44) of complaints about alleged sexual assault were clearly identified as having been reported to Victoria Police. Additionally, complaints about sexual harassment are rarely captured in current systems, and systems should be adapted to ensure patterns can be identified and service improvement strategies implemented.

CONCLUSIONS AND RECOMMENDATIONS

All people have the right to feel and be sexually safe when accessing acute mental health inpatient treatment, and mental health services have an obligation to take all reasonable steps to ensure that people's sexual safety is maintained.

This project has found that, while many efforts have been made to ensure sexual safety in acute mental health inpatient units, people, particularly women, are still reporting issues and concerns consistent with previously published literature and reports on this topic.

The project has identified the need for existing approaches to *promoting* and *improving* sexual safety to be drawn together and expanded in a clear strategy aimed at *ensuring* sexual safety and *preventing* breaches of sexual safety. The literature on approaches to preventing abuse commonly refers to the need for strategies to include primary, secondary and tertiary interventions. The recommendations for this project have addressed these three levels of interventions and the need for these to be integrated into a comprehensive strategy.

SUMMARY OF RECOMMENDATIONS

OVERALL RECOMMENDATION

That the department develops a comprehensive sexual safety strategy to plan, coordinate and monitor action to prevent and respond to breaches of sexual safety in acute mental health inpatient units.

This strategy needs to be underpinned by a clear policy directive for mental health services on requirements and actions to ensure sexual safety and reflect the principles of:

- **human rights:** applying the principles and objectives of the *Mental Health Act 2014* (Vic), the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and relevant standards to approaches for ensuring sexual safety and preventing sexual activity
- **violence prevention:** applying the principles of primary, secondary and tertiary prevention
- **trauma-informed care:** recognising the prevalence of trauma among people accessing acute mental health inpatient treatment, and developing systems that respond to likely trauma in assessment, treatment and recovery planning and actively seek to avoid re-traumatisation (for example, by minimising the use of restrictive interventions and ensuring people have the support they need to make treatment and recovery decisions)
- **recognising and responding to diversity:** understanding the diversity of needs and the particular risks and challenges that are associated with people's gender, sexuality, culture, disability, age and background
- **working with people with lived experience and peer support** in developing approaches to support people to be and feel safe when accessing acute mental health inpatient treatment.

> "This report endeavours to honour the preparedness of people to make complaints about highly personal and distressing experiences and the desire for their complaints to lead to improved outcomes for others."
>
> Dr Lynne Coulson Barr, Mental Health Complaints Commissioner

This strategy should draw together and build on the foundations established in existing approaches to sexual safety to:

- address leadership and governance issues including establishing clear reporting and monitoring mechanisms to better identify and respond to sexual safety breaches
- support services to implement trauma-informed care and supported decision making as primary prevention strategies to prevent sexual safety breaches
- develop and implement clear minimum infrastructure requirements to support sexual safety in mixed-gender environments, and pilot and evaluate single-gender units, prioritising the piloting of women-only units
- provide clear guidance to mental health services about investigating and reporting sexual safety breaches that ensure people accessing mental health services receive responses that are consistent with those in other service settings.

Conclusion:
The report also identifies the need for a cohesive approach to implementation that measures, monitors and responds to trends in sexual safety breaches and identifies areas requiring support and intervention. Implementing many of the project recommendations will be a long-term endeavour. This report identifies actions that the department, Chief Psychiatrist and mental health services can implement immediately and over time to ensure the sexual safety of all people accessing acute mental health inpatient treatment in Victoria.
In response to this report the department has agreed to develop a comprehensive sexual safety strategy that responds to the recommendations, and to drive an implementation plan to ensure a continued and sustained commitment across all mental health services.

Primary prevention strategies

Governance
Establish clear reporting and monitoring mechanisms to ensure accountability for preventing sexual safety breaches.

Leadership and service cultures
Ensure leadership supports best practice in preventing and responding to sexual safety breaches. This is essential to ensure people are and feel safe in acute mental health inpatient services. This includes establishing shared, rights-based understandings of the reasons for preventing sexual activity in these environments, and ensuring all staff are able to recognise, clearly name and respond to breaches of sexual safety.

Organisational, workforce and practice development – trauma-informed care
Implement trauma-informed care as a primary prevention strategy in recognition of the prevalence of trauma among people accessing acute mental health inpatient services and the re-traumatising impacts of sexual safety breaches.

Infrastructure and design
Ensure unit planning, design and maintenance supports sexual safety, with a particular focus on responding to the needs of women and vulnerable consumers.

Pilot and evaluate single-gender units, with a priority on piloting women-only units, and consider ways in which all inpatient units can be designed or adapted to provide additional flexible areas to meet the needs of varying inpatient populations, including trans or gender-diverse people.

Develop a plan to improve the safety of ICAs and develop alternative strategies for supporting people who are vulnerable and at risk in these environments.

Secondary (targeted) prevention strategies

Orientation to the inpatient unit
Ensure orientation clearly outlines that sexual activity is not permitted in the inpatient unit and that behaviour that may breach the safety of others, including sexual harassment, will be addressed by staff. Ensure orientation also includes working with the person to identify what will help them feel safe, how they can seek support from staff, and the response that can be expected when concerns are raised about sexual safety.

Risk assessment and management
Create a common framework to ensure risk assessments consistently identify and respond to environmental, perpetrator and vulnerability factors, and work jointly with people accessing inpatient treatment to identify and manage risk.

Tertiary interventions – responding to breaches

Trauma-informed care
Develop tiered approaches to implementing trauma-informed care to ensure mental health service staff with the appropriate skills and capabilities lead responses to sexual safety breaches, and ensure pathways to trauma-specific care are clear and available.

Open disclosure
Develop specific guidance and approaches for managing open disclosure in relation to sexual safety breaches, ensuring cultural, religious, communication and other needs are responded to, and staff are supported in conducting open disclosure.

Reporting sexual safety breaches to Victoria Police
Develop clear guidance on the duty of services to report a suspected or alleged sexual assault to Victoria Police, consistent with other service settings.

Working with Victoria Police to respond to sexual safety breaches
Develop clear guidance for mental health services in collaboration with Victoria Police on responding to sexual safety breaches, including preservation of evidence, documentation, reporting and review mechanisms.

Investigation standards
Develop clear policy and guidance on the thresholds and requirements for investigations and other review processes and consider external oversight of decision making about the necessary level of review of suspected or alleged sexual assaults, consistent with the requirements of other service settings.

Incident reporting
Ensure reporting mechanisms and requirements are consistent with standards required in other service settings, including that breaches of sexual safety are escalated for review and oversight of responses.

Ensure these mechanisms and requirements are integrated and allow for patterns in reported incidents to be identified for quality improvement.

Documentation
Ensure observations or reports are clearly and accurately recorded at the time of the incident using factually accurate terms to describe the nature of any sexual safety breaches.

Discharge planning and referrals
Ensure discharge planning clearly identifies the nature of any breach experienced, as well as planning for future admissions, outlining necessary support and referral for the person, their family and carers.

SPEAK UP.
YOUR EXPERIENCE MATTERS.

We welcome your feedback about your experience with us or any aspect of our work.

Level 26, 570 Bourke Street
Melbourne, Victoria 3000, Australia
Phone: 1800 246 054
Fax: 03 9949 1506
Complaints: help@mhcc.vic.gov.au
General enquiries: info@mhcc.vic.gov.au
www.mhcc.vic.gov.au

FOLLOW US

Search for "Mental Health Complaints Commissioner"

Published by the Victorian Government | Designed by Multiple Studio | Printed on sustainable paper | March 2018

This report can also be downloaded from the publications web page of the MHCC's website at www.mhcc.vic.gov.au

Accessibility: To receive this publication in an accessible format phone 1800 246 054 using the National Relay Service 13 36 77 if required, or email info@mhcc.vic.gov.au

ISSN: 2209-1580 (Online) | ISSN: 2209-1572 (Print) | Mental Health Complaints Commissioner report (summary): No. 1