



Module 1

Risk & the Resident

1.5 Mandatory Reporting



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What will we cover

- **Nursing home risk profiles**
- **Some Statistics**
- **Some basic law on reporting abuse**
- **The mandatory reporting regime**
- **What happens after you report**
- **Riveting scenarios**

Nursing Home Risk Factors

- **Facility risk factors**
- **Resident risk factors**
- **Relationship risk factors**

Your Facility Risk Factors

1. Abuse Prevention Policy

- Abuse is more likely to occur where there is no prevention policy
- Policy should at least include:
 - Information on how to recognise abuse
 - Detailed procedures for reporting
 - Staff training
 - Appropriate steps to follow to remedy or prevent

Your Facility Risk Factors

2. Staff Education and Training

- Should be frequent and not 'one off'
- Vehicle to build self esteem and confidence in staff
- Enables staff to respond appropriately
- Topics should at least include:
 - **Communication skills and anger management**
 - **Identifying and recognising types of abuse**
 - **Causes of abuse**
 - **Cultural and ethnic perspectives**
 - **Legal and ethical issues in reporting**
 - **Intervention strategies**
 - **Reporting processes and procedures**
 - **Protections for staff in reporting**

Your Facility Risk Factors

3. Staff Screening

- Essential police checks for new and existing staff
- Assessing job applicants:
 - Their feelings about caring for older people
 - How they might react to an abusive situation
 - Their work ethic
 - How they handle stress and anger
 - History of alcohol or drug abuse

Your Facility Risk Factors

4. Staff Stress/Burnout

- Stressed staff breeds hostility to residents which is the fertile basis for abuse
- Staff can also be victims of abuse adding to their stress
- It can also be exacerbated by grief over a resident
- Stressors include:
 - Low wages
 - Too much work and too few people
 - Inflexible work rosters
 - Perceived lack of supervisory support
 - Poor communication

Your Facility Risk Factors

5. Staff Ratio/Turnover

- Inadequate staffing and high staff turnover are contributing factors to increased abuse risk
- Staff who have to work double shifts become overtired and stressed and less able to cope
- Over reliance on agency staff and rapid turnover means staff do not get to know residents and their care needs
- Carers (especially in dementia care) with no ongoing personal relationships with residents are more likely to mistreat residents
- Lack of supervision contributes as well

Your Facility Risk Factors

6. History of Complaints

- Increased risk of abuse in nursing homes that have a history of serious non compliance
- Facilities that fail to inform residents of their rights and how to make complaints increase the risk of abuse
- Less than vigorous enforcement of policies and procedures also increases the risk

Your Facility Risk Factors

7. Culture and Management

- A nursing home's 'culture' (its goals, traditions, values and shared attitudes) is a crucial factor in preventing abuse
- Leadership has a strong hand in safety and risk increases where DONS and administrators are out of touch with the care being provided or absentee decisions are made by corporate office
- Closed structures are high risk:
 - No acknowledgement that anything bad can happen
 - Staff's version of events is given more credence
 - Problem solving is largely reactive
 - Residents intimidated by being 'talked down to' feel neglected or are turned off by 'extremely benevolent, smothering care'

Your Facility Risk Factors

8. Physical Environment

- Facilities with strong institutional flavour or outmoded buildings breed abuse risks
- Risk features:
 - Long or narrow corridors
 - Inadequate lighting
 - Crowded rooms
 - Many floors and stair wells
 - Long distances between residents rooms and dining room
 - Inappropriately placed nursing stations
 - No central area to screen visitors

Your Resident Risk Factors

- Unmet Needs
 - Abuse highest in facilities with particularly vulnerable residents – repetitive behaviours, sexual acting out or attempted escapes
 - High support needs but challenging behaviours
 - Helplessness in residents is also a factor
 - Residents with a constellation of demanding or difficult behaviours leads to staff stress and arising also from resident frustration at their limitations

Relationship Risk Factors

1. Resident / Visitor Frequency

- Residents who never or rarely receive visitors are at greater risk of abuse
- Being lonely and isolated increases the risk
- Too much family involvement can also be problematic

Relationship Risk Factors

2. Resident / Staff Interaction

- Staff relations with residents play a powerful role in residents' lives
- Good relationships reduce the risk of injuries and abuse
- Staff need a manageable workload to 'relate'
- Covert abuse can occur when:
 - Loss of personal choice for residents
 - Use of restraints
 - Baths given at times convenient to staff not resident
 - Residents left alone for long periods
 - Labeling residents
 - Thoughtless practices
 - Hurrying residents

Some Statistics

- None on abuse in Nursing Homes in Australia I'm aware of
- But there are in America
- Dominion University in Virginia
- Investigated a reported 801 cases of abuse in nursing homes from 1997 to 2002

The Results

The Perpetrators

- Gender
 - Female – 64%
 - Male – 36%

The Perpetrators

- Occupation

Aides 73%

Nurses 12

Doctors 2

Manager .5

Other 11.5

Perpetrators (cont'd)

- Abuser Type

Serial 47.9%

Pathological Tormentor 27.5

Stressed out 24.6

Offence Type

Physical	67.7%
Sexual	9.7
Duty related	9.7
Neglect	6.7
Drug	1.9
Emotional	1.6
Financial	1.2
Unclear	1.4

The Legal Jigsaw Puzzle

- In Qld there is no requirement for a person in the community to report a criminal offence (there is in NSW)
- In Qld there is no 'duty to rescue' on any person in the community – i.e., no general duty of care (except perhaps for doctors)
- BUT in aged care there is probably a discretionary duty of care to report and a duty to rescue and has always been (The Dep't certainly thinks so)
- The Code of Ethics of nurses do not expressly require that they report abuse
- Now there is a statutory obligation to report certain types of abuse committed in an aged care facility



The Mandatory Reporting Regime

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Essential Features

- Mandatory means just that – you must report and you have no discretion
- The new law commenced on 1 July 2007
- It applies to all acts that occurred on and from that date and acts that occurred before that date where those acts only became known after 1 July 2007
- It only specifies certain abuse that must be reported
- Providers still have a discretion under their 'duty of care' to report other types of abuse that are not required by the new law to be reported

What Circumstances does it apply to?

- Actions of staff on residents
- Actions by residents on residents
- Actions by outsiders on residents at the facility
- Doesn't matter if resident or their family ask you not to report
- Does not apply to:
 - Actions by residents on staff
 - Things that may happen to residents outside the facility
 - Allegations of the same or similar circumstances

Providers Obligations

1. To report reportable assaults
2. To take reasonable measures to ensure staff report reportable assaults
3. To ensure staff members who report are not victimised
4. To protect the identities of informants
5. To keep records of reports

1. To Report Assaults

- Providers must report to police and the Dep't, within 24 hours, a *reportable assault* in the facility if it receives an allegation or starts to suspect on reasonable grounds that a reportable assault has occurred
- A *reportable assault* is:
 - ***Unlawful sexual contact*** with a funded or approved resident who is receiving care in your facility
 - ***Unreasonable use of force*** on a funded or approved resident who is receiving care in your facility
 - Assault specified in the Accountability Principles & and which is an offence under a State law

What is a Reportable Assault?

- *Unlawful sexual contact*
 - Not defined in the legislation
 - Probably means any physical contact between 2 people which is sexual and against the law
- *An unreasonable use of force:*
 - Not defined in the legislation
 - Probably means use of physical force to a person which is either unlawful or not reasonable in the circumstances

2. To Ensure Staff Report

- Providers must also ensure that they take reasonable measures to require each staff member who suspects on reasonable grounds that a reportable assault has occurred to report the suspicion as soon as possible to a number of optional entities or persons (or all or some of them)
- ‘Staff member’ includes employee or contractor e.g., agency staff & the gardener

Staff Reporting (cont'd)

- Staff can report to all or any of the following:
 - Approved provider
 - Key personnel of approved provider
 - A person authorised by the approved provider to receive reports
 - A police officer
 - The Department

3. To Ensure No Victimisation

- Provider responsible to ensure:
 - Any staff who report have no contractual remedies enforced against them
 - Staff are not terminated because they made a report
 - No detriment is caused to the staff who report by anyone
 - No staff member who reports suffers any threats because they made the report

4. To Maintain Confidentiality

- Provider responsible to ensure that reasonable measures are taken to keep the identity of the person who reports confidential except to:
 - A police officer
 - The Department
 - Approved provider's key personnel
 - A person the provider is required by law to disclose the identity to

5. To Keep Records

- Provider responsible to ensure that consolidated records of all incidents involving allegations or suspicions of a reportable assault are kept including:
 - The date when the allegation was received or the provider started to suspect
 - Brief description of the allegation or suspicion
 - Whether a report has been made to police and department
 - Whether a report has not been made because it is an exception to the mandatory reporting

The Regime – An Exception

- The only exception to the provider's mandatory obligation to report a reportable assault is:
 - If, within 24 hours of receipt of the allegation or the start of the suspicion, the provider forms the opinion that the assault was committed by a resident to whom it provides residential care
 - Before receipt of the allegation or the start of the suspicion, the resident had been assessed by a health professional as suffering from a cognitive or mental impairment
 - The providers puts in place within 24 hours arrangements for the management of the resident's behaviour
 - The provider has a copy of the assessment of impairment and a record of the management arrangements put in place for the resident

The Position of Staff

- No mandatory obligation to report falls on staff
- Still need to consider however their duty of care and the discretion to report
- Staff need also to consider who to report the allegation to (given the choice available)
- Staff need to understand the limits of the whistleblowing protection given to them & how much they are protected against the adverse consequences to them of reporting
- The new rules apply to all staff from the bottom to the top, inside and outside, employees and outside contractors

The Whistleblowing Protection for Staff

- Staff are protected from the adverse consequences of disclosing the allegation if:
 - They are the staff of an approved provider
 - The disclosure is made to the appropriate authorised person
 - The staff member discloses their name to the authorised person
 - The staff member has reasonable grounds to suspect that a reportable assault has occurred
 - The staff member makes the disclosure in good faith

Protection Against What?

- If staff comply with the whistleblowing conditions, staff are protected from:
 - Any civil or criminal liability for making the disclosure e.g., defamation
 - Someone enforcing a contractual or other remedy against the staff member on the basis of the disclosure e.g., if a staff member's employment contract says that they must not discuss issues in the facility with anyone outside the facility, any disclosure by them under this new law cannot result in the termination of their employment
 - Victimisation

Consequences of failing to report

- Possible complaint by someone to the new Office of Aged Care Quality and Compliance (the Office)
- It will then investigate the complaint
- Will determine if a breach of the provider's obligations has occurred
- If determine there has been a breach, it can issue a Notice of Required Action setting out the steps the provider must take to rectify the situation
- If provider continues to fail to rectify, a formal compliance action will commence
- This could lead to sanctions

The Role of the Department

- When you report they will require the following:
 - Who is the person reporting and their position
 - Name of alleged offender
 - Offender relationship to resident
 - What has provider done to protect other residents from alleged offender
 - Were there any witnesses
 - When did it happen
 - Where did it happen
 - Who has been advised
 - When did provider become aware of incident
 - Who else is aware of incident
 - Where is the resident
 - Have you made counselling or support available to relevant parties

Role of Dep't (cont'd)

- The Dep't is looking to ensure that you have not breached your responsibilities under the Act in relation to the health and well being of the residents, compliance with reporting and that necessary internal systems are in place
- They will also probably advise the Aged Care Standards and Accreditation Agency
- You could then expect a visit from the agency



So you've reported - what happens now?!

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The Police

- May turn up at the door wanting to investigate the report
- They will probably want access to:
 - The person who raised the allegation
 - The person who is the alleged victim
 - The person who is the alleged perpetrator
 - Any relevant records of the facility

Access to the Victim

- If the victim has capacity, it is up to them whether they wish to co-operate
- If they are co-operative they will probably be interviewed in an appropriate place in the facility
- They will also be able to authorise access to their records

Access to the Victim (cont'd)

- If the victim does not have capacity, the provider may wish to contact the substitute decision maker for approval for the police to interview the victim and to release any records
- **But note**: under s62-1 of the Aged Care Act, personal information can be disclosed by the provider for a purpose connected with the provision of care to the resident and such disclosure does not breach the Privacy Act

Access to the Perpetrator – Another resident

- Provider should:
 - Explain to the resident why the police are there and what they want to do
 - Arrange for the interview to take place in an appropriate place
 - If the victim does not have capacity, the provider may wish to contact the substitute decision maker for approval for the police to interview the victim and to release any records
- **But note:** under s62-1 of the Aged Care Act, personal information can be disclosed by the provider for a purpose connected with the provision of care to the resident and such disclosure does not breach the Privacy Act

Access to the Perpetrator – Staff

- Provider should advise the staff member that the police wish to interview
- A matter for the police then as to how to proceed
- Also a matter for the staff member as to how they respond – they have all the rights of any other person in this situation – to co-operate or not to

Implications for Staff

- It is only an allegation at this stage
- Should rearrange the staff members duties so they have no contact with the resident
- At this stage there are no grounds to take action as the provider
- Ask the police the outcome of their enquiries with the staff member – provider needs to know because of follow up action they may need to take re the staff member

Implications for Provider

- If staff member cooperative and denies the allegation – rearrange duties so no contact with resident until investigation completed
- If staff member admits allegation or denies allegation and are going to be charged – suspend them until charges dealt with
- If staff totally uncooperative and refuses to answer questions – suspend until the investigation completed and outcome known
- What about your insurer?

The Staff member who reported

- Police will want to interview them
- Expect that they will be cooperative
- If not, could be grounds for suspension

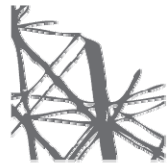
Other Things that might happen

- You will probably get a visit from the Department
- You could get a visit from the Agency
- The press might get wind of it and contact you or visit
- The family will have to be handled
- You will need to rearrange staff roles and even residents
- It will require some good crisis management



**Let's now put the new
legislation to the test with
some riveting scenarios**

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Scenario 1

- As the DON in your facility you receive hard evidence that a daughter of one of your high care residents is stealing money from her under the guise of her Enduring Power of Attorney
- Is there a mandatory obligation to report?
- If not, is there a duty of care to report?

Scenario 2

- An aide is preparing to give a 92 year old disorientated resident a shower when he (the resident) strikes the aide on the face. When the resident felt the water on his body, he hit the aide.
- Is there a mandatory obligation to report?
- If not, what should be done?

Scenario 3

- Same facts as scenario 2 but on this occasion, without hesitation, the aide slaps the resident in retaliation with an open hand
- Is there a mandatory obligation to report?
- If not, is there a duty of care to report?

Scenario 4

- Norm and Nora are close friends and both are your 'favourite' residents. They both have advanced dementia. One of your nurses walks into Norm's room one day and sees him having sex with Nora
- Is there a mandatory obligation to report anything?
- If not, what if anything are you going to do?

Scenario 5

- Same scenario as 4 but in this case, Norm has capacity but Nora is in advanced stages of Korsakoff's syndrome
- Is there a mandatory obligation to report anything?
- If not, is there a duty of care to do anything?

Scenario 6

- Jack a 78 year old single resident with some capacity but physically frail is being showered one day by a young carer and he starts to masturbate quite openly in front of her
- Is there a mandatory obligation to report anything?
- If not, is there a duty of care to do anything?

Scenario 7

- You are advised of an incident in your high care unit in which it is alleged that a carer tried to choke a resident who refused to eat
- Is there a mandatory obligation to report?
- If not, is there a duty of care to report?

Scenario 8

- A nurse approaches you, the DON, and says “You remember Mavis who was here for about 4 years and now has gone to live with her son, well she told me 3 years ago that one of the aides raped her one night”
- Is there a mandatory obligation to report?
- If not, is there a duty to do something?

Scenario 9

- Sid is a handful and is constantly wanting to get out of his wheelchair and walk when he simply can't. He has his capacity. You apply a restraint that keeps him in the chair despite his loud and abusive protestations. His EPA has requested that you not restrain him but you refuse.
- Is there a mandatory obligation to report anything?
- If not, are you doing anything wrong?

Scenario 10

- Reg is 83 and dementing. As well as being a lecherous lothario, you know he has, in his earlier days, previous criminal convictions for sexual assault. He constantly harangues the aides with lascivious comments such as “Give me a kiss sweetheart” and “You can shower me anytime you like.”
- **Is there a mandatory obligation to report anything?**
- **If not, what are you going to do?**

Scenario 11

- Dick is demented and one day in the dining room he pushes Deidre, another resident, out of her wheel chair causing her to break her hip. Deidre wants blood as do her family.
- Is there a mandatory obligation to report anything?
- If not what should you do?

Scenario 12

- Last week an AIN reported to you a allegation reportable assault by a staff member on a resident. You promptly reported it as required to the police and the Department. Yesterday, another AIN made a similar allegation about the same assault
- Is there a mandatory obligation to report the second allegation?
- If not what should you do?