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Office of the Chief Psychiatrist
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Submitted via: Health.OCPSafetyQuality@sa.gov.au

Dear Dr Brayley

APS Response to the Consultation of the new Chief Psychiatrist Standard: Sexual Safety in Mental Health Services

The Australian Psychological Society (APS) welcomes the opportunity to contribute feedback to the new Chief Psychiatrist Standard: Sexual Safety in Mental Health Services (the Standard).

The APS is dedicated to advancing the discipline and profession of psychology for the benefit of our members and the community, and we advocate for change when policies cause harm to mental health and wellbeing. We believe that the consumer voice is important in determining the contents of the new Standard, as is the perspective of practitioners, such as psychologists, working within mental health services. The APS suggests taking a multi-faceted approach to gathering views from consumers and practitioners alike to facilitate a constructive partnership between lived experience and professional expertise when developing and implementing the Standard.

In preparing our response, we draw on the practice of psychologists working in mental health inpatient treatment facilities and from those with specific experience working in Local Health Networks in South Australia.

In principle, the APS supports the new Standard and the requirement to ensure sexual safety in mental health services. We believe it is a positive step to develop and implement a framework for the management of sexual behaviour in mental health services and particularly in mental health inpatient treatment facilities.

The APS recognises that the Standard specifies that all sexual activity in acute inpatient settings is unacceptable. We acknowledge the protective approach taken and understand that the Standard is focussed on the potential risks to patients and the need to protect them from harm. Taking a risk adverse approach is particularly relevant in mental health treatment settings where patients are highly vulnerable to harm, such as those who may have previously experienced trauma, sexual abuse, and those who do not have current capacity to provide consent. We also understand the importance of ensuring appropriate protection against the risks of sexual violence and sexually transmitted infections.[1]

We support the principle that everyone has the right to be safe from sexual harm in all mental health services. However, we are concerned that a blanket prohibitive approach that bans all sexual activity in acute inpatient settings may run counter to current best practice and represent a violation of human rights.[1] [2] Within services where mental health treatment is provided, it is important to carefully consider any situations where there may be a denial of a person's right and how this may impact the individual and the service. Ultimately, it may be argued that within any setting, the fundamental principle regarding sexual rights is determined by an individual's capacity to provide consent.

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Whilst the APS acknowledges that mental health inpatient treatment facilities have some legislative authority to limit human rights where no reasonable alternatives exist, we recommend the Standard be cautious not to unnecessarily limit the autonomy of patients.

Certain aspects of the Standard require clarity. For example, the "People's rights" principle set out in Part 4 specifies *"People of legal age to consent also have a right to have a safe and age-appropriate relationship with another person, to express their sexuality, and to have their personal sexual needs met, such as through masturbation in private."* However, as outlined above, prohibiting all sexual activity in acute inpatient settings appears inconsistent with this principle. In addition, it is unclear whether the Standard allows safe and appropriate masturbation in private.

On this note and more broadly, we recommend that the Standard differentiate and distinguish between appropriate and inappropriate sexual activity and provide clarity about what may be acceptable, particularly in the context of both acute and longer inpatient mental health settings. For example, the first principle set out in Part 4 references the prevention of "*inappropriate sexual activity".* It is unclear whether this is inferring 'appropriate sexual activity' is acceptable. There may be certain situations and settings where it is appropriate to permit certain types of sexual activity, particularly in longer term facilities when it has been determined that there is a capacity to provide consent. In theory, this would represent a more realistic approach based on best practice, which is also aligned with established human rights and legal standards, provided there is no criminal conduct or intrusion on the rights or safety of others. Under such circumstances, it would be important that capacity to provide consent be appropriately assessed and documented in accordance with legislation and best practice.

We therefore recommend adopting a flexible and adaptable approach which allows practitioners to better support patients and use discretion in clinical decision making. This will enable staff to provide protection for patients through the development of healthy boundaries whereby the appropriateness of sexual activity may be managed on a case-by-case basis.

The APS supports the intention to provide training for staff of mental health services to act ethically and in line with legal requirements around ensuring the sexual safety of patients. In addition, we recommend that the Office of the Chief Psychiatrist provide further details around its expectations for implementation of the Standard. This could include, for example, providing timeframes around when South Australian mental health services and Local Health Networks are required to embed the principles outlined in Parts 4 and 6 into local policies and practice, and whether audits will be conducted to ensure adoption of the Standard.

Further, in actioning the Standard, the APS cautions practitioners and other staff working within mental health services about potentially shaming and traumatising (or re-traumatising) patients. As an approach, we endorse trauma-informed principles to manage sexual safety in mental health services. We would encourage South Australian mental health services to draw on psychologists with expertise in this field, including health psychologists, in providing appropriate training, supervision and the development of relevant policies and procedures.

The APS would like to thank the Office of the Chief Psychiatrist for the opportunity to provide feedback on this new Standard. Should any further information be required from the APS, please do not hesitate to contact me on (03) 8662 3300 or at z.burgess@psychology.org.au.

Yours sincerely

Dr Zena Burgess FAPS FAICD
Chief Executive Officer

References

[1] Maylea, C. (2019). The capacity to consent to sex in mental health inpatient units. *Australian & New Zealand Journal of Psychiatry*, *53*(11), 1070-1079.

[2] Quinn, C., & Happell, B. (2016). Supporting the sexual intimacy needs of patients in a longer stay inpatient forensic setting. *Perspectives in psychiatric care*, *52*(4), 239-247.