**SAPSE reviews** – Frequently asked question (FAQ) sheet

**Please note, this FAQ sheet is to be released in draft form until relevant regulations under the *Health Services Act 1988* have been made.**

#### When do the provisions associated with a SAPSE review come into effect?

The provisions concerning SAPSEs and SAPSE review processes apply from 30 November 2022, and do not apply to events that occurred prior to this date. The protections apply separately to each SAPSE review, and do not have a cessation date under the *Health Services Act 1988* (Vic)(Act).

#### What is a SAPSE?

A serious adverse patient safety event (SAPSE) is an event that:

* occurred while the patient was receiving care from a health service entity; and
* in the reasonable opinion of a registered health practitioner, has resulted in, or is likely to result in, unintended or unexpected moderate or severe harm or prolonged psychological harm being sustained by the patient.

For the avoidance of doubt, an event may be identified following discharge from the health service entity.

A SAPSE is likely to be the equivalent of an ISR 1 or 2 event within services that use the Victorian Health Incident Management System scale. However, it has been noted that some health service entities use their incident management system to capture data that may not otherwise be an ‘adverse event’. It will be important for the relevant team (e.g. quality team) within a health service entity to discuss whether an event meets the above criteria, and ~~be~~ therefore be a SAPSE.

**If a patient suffers a SAPSE in the course of receiving health services, the health service entity responsible for providing those services owes a Statutory Duty of Candour (SDC) to the patient.**

#### Do I have to do a SAPSE review for every SAPSE?

**No.** The term ‘SAPSE review’ refers to a protected review process conducted by a SAPSE review panel in accordance with Division 8 of Part 5A of the Act. Not all investigations or reviews of a SAPSE will be conducted in accordance with the Act, however it will otherwise not be a SAPSE review and the process will not be protected as set out in Part 5A of the Act.

The term SAPSE review is also not a term for a new type of review methodology. Some of the types of review methodologies that may be conducted by a SAPSE review panel include:

* Root cause analysis (RCA)
* AcciMap
* London Protocol.

#### When should a health service entity seek to protect a review?

The relevant health service entity should develop its own internal policies to determine when to conduct a SAPSE review. However, there are many benefits to completing a SAPSE review and enlivening the relevant protections to the review process, including:

* reducing concern about potential medico-legal risk to an individual or organisation, in order to encourage reporting of errors
* fostering information sharing within health service entities
* more robust discussion and enhanced quality of discussion
* more comprehensive and effective recommendations for improvements
* promote a just culture.

In turn this may:

* improve the quality and safety within a health service entity
* prevent similar events from occurring in the future, delivering better outcomes for patients.

#### Who must be on a SAPSE review panel?

The membership of a SAPSE review panel:

* **must** include members that have appropriate skills and experience to conduct a SAPSE review
* **must** include an external person who is not employed or engaged by the health service entity that appointed the panel
* **must** not include any person who was directly involved in the SAPSE under review
* **may** include independent experts
* **may** include consumer representatives
* **must** comply with any prescribed requirements:
  + the SAPSE review panel **must** consist of no less than 3 members
  + if a SAPSE review relates to an event that is considered a sentinel event, the review panel **must** also contain a consumer representative.

If a SAPSE involves two or more health service entities, the CEOs (however named) of those health service entities may agree to appoint a joint SAPSE review panel in accordance with the Act and regulations. The Secretary may also direct that a joint SAPSE review panel must be appointed and if the CEOs (however named) of the health service entities involved are unable to agree to appoint a joint SAPSE review panel, the Secretary may appoint the panel.

A joint SAPSE review panel:

* **must** include at least one member from each health service entity involved with the SAPSE
* **must** consist of no less than four members
* **may** include a representative appointed by the Secretary
* if the review relates to an event that is considered a sentinel event, it **must** include a consumer representative.

A member of a SAPSE review panel who has a potential or actual conflict of interest with respect to a SAPSE review they have been appointed to conduct must disclose the conflict of interest to the other members of that panel.

#### Does a sentinel event review process automatically fulfill the SAPSE review requirements?

There are no changes to sentinel event reporting and review requirements.

The panel requirements for a sentinel event must include a member who is external to the health service **and** a consumer representative, therefore if the SAPSE review panel member requirements within the Act and relevant regulations are also met, it could **also** be a SAPSE review panel.

This panel must then produce a SAPSE review report, whilst ensuring that any significant sentinel event reporting timelines and requirements are met as well. If they are met, then it will also be a SAPSE review and have relevant protections applied to the review process.

#### What do I need to include in the SAPSE review report?

A SAPSE review report must be produced by the SAPSE review panel containing one or more of the following as considered appropriate:

* a description of the serious adverse patient safety event
* analysis identifying why the event happened and any factors that contributed to the event
* any recommendations about changes or improvements in a policy, procedure or practice relating to the provision of a health service that are intended to reduce the likelihood of, or prevent, the same type of event happening again.

However, if this SAPSE review report is given to the patient and/or next-of-kin (NOK) as part of the Statutory Duty of Candour (SDC) process, please ensure all Requirements within the *Victorian Duty of Candour Guidelines* are also met.

#### What documents are protected as part of a SAPSE review?

Any document that is the original or a copy of a document that was created for the sole purpose of providing information in the course of conducting a SAPSE review and provided in the course of conducting a SAPSE review are protected as part of the SAPSE review.

For example, this may include:

* draft SAPSE review report
* final SAPSE review report
* interview records
* working notes or documents created as part of the SAPSE review.

#### Is a patient’s medical record protected as part of the SAPSE review?

These protections do not affect the right of a patient to access their own medical files/records.

#### Can someone request a copy of the SAPSE review report if they are not entitled to it?

The SAPSE review report created as part of a SAPSE review cannot be requested under the *Freedom of Information Act 1982* (Vic) or *Health Records Act 2001*. In addition, a person involved in the SAPSE review cannot be required to produce the SAPSE review report before any court, tribunal, board, agency or other person, except the Coroners Court (as appropriate) if for the purpose of an investigation or inquest. This includes WorkSafe, however doesn’t prevent WorkSafe from conducting their own review.

#### My health service entity has a committee appointed under section 139 of the *Health Services Act 1988* (Vic)(Act). What does the SDC legislation mean in accordance with this?

Section 139 does not apply to Division 8 of Part 5A of the Act. This means that a member of a Quality Assurance Committee gazetted in accordance with section 139 cannot rely on their membership of that committee to refuse to provide a copy of the SAPSE review report to the patient and/or their NOK.

It is expected that any SAPSE review will be undertaken by a SAPSE review panel in accordance with the new provisions, including that the SAPSE review report will be provided to the patient and/or their NOK. However, documents and discussions of the SAPSE review panel including interview records and working documents are protected by the new SAPSE provisions.

Health service entities with a section 139 committee in place should have clear avenues for late recognition of a SAPSE and that the section 139 committee does not impede events being captured as a SAPSE and SDC being completed as intended.

#### Who must be offered a copy of the SAPSE review report?

The health service entity must offer a copy of the SAPSE review report to:

* a patient
* a person nominated by the patient
* the immediate family, carer or next of kin of a patient, if the patient is deceased or lacks capacity.

If requested, a report must be disclosed to the Secretary, or anyone nominated by the Secretary. The Secretary may choose to nominate another person, for example the Chief Quality and Safety Officer, whose role includes the oversight and support of quality and safety reviews in health service entities.

There is a public interest need to facilitate the flow of information from a SAPSE review to other reviews that are focused on the cause of the SAPSE. Therefore, a SAPSE review report produced by a SAPSE review panel may be provided to a Coroner for the purposes of:

* an investigation under Division 1 of Part 4 of the *Coroners Act 2008*, or
* an inquest (within the meaning of the *Coroners Act 2008*) in respect of a death.

#### I gave information to a SAPSE review panel about my health service entity that I think contributed to the SAPSE. Am I protected from giving evidence in a legal proceeding if it was for the purpose of a SAPSE review?

Certain protections are included in the legislation for persons who provide information to the SAPSE review panel to allow people to speak freely to the panel if they have knowledge of the event, or any other information that is relevant to the SAPSE review.

A person cannot be required to give evidence in a legal proceeding, or required to respond to any legal process, except in any prescribed circumstances, about:

* whether the person gave information to a SAPSE review panel
* what information the person gave to a SAPSE review panel
* a document the person gave to a SAPSE review panel that was created by the person for the purposes of the SAPSE review; and
* information the person was given, or questions the person was asked, by a SAPSE review panel.

#### Whilst completing a SAPSE review, we found that a staff member abused a patient. What do we do?

Members of SAPSE review panels who are regulated health professionals have mandatory reporting obligations, including:

* the Health Practitioner Regulation National Law
* s. 184, *Children, Youth and Families Act 2005*.

There may also be other mandatory reporting obligations that apply depending on the particular circumstances.

A SAPSE review must be suspended where members of the review panel have reason to believe that the review has identified that the adverse event may involve a prohibited act(s). Prohibited acts include:

* evidence that an offence might have been committed by a member of the staff
* evidence of medical unfitness because of the presence of a medical condition impaired capacity or ability to safely perform requirements of their roles
* the abuse of a patient
* deliberately unsafe acts (other than an act that might be reasonably undertaken in the provision of a health service).

Where the review is suspended for this reason, the SAPSE review panel may recommence its review once it receives written notice from the CEO (however named) that either:

* the suspected prohibited act did not occur, or
* the suspected prohibited act is able to be investigated independently of the SAPSE review.

It may be necessary for the SAPSE review panel to seek legal advice in the event of a suspected prohibited act.

#### What if the patient gives the SAPSE review report to their lawyer or the media? Do the protections prevent this?

The protections do not prohibit the patient disclosing the report in this way. However, the protections apply to the SAPSE review report and related documents created as part of the review process, and how it may be treated in a legal proceeding.

#### Will the documents forming part of an investigation (containing findings of error and recommendations for improvement) disclosed to a consumer constitute waiver of the protections offered by the Act?

No, the Act requires the offering of the SAPSE review report to a patient. However, the protections apply to the report and related documents and how it may be treated in a proceeding.

#### Where can I find further information?

You can access the ‘Protections for serious adverse patient safety event (SAPSE) reviews’ resource on the Safer Care Victoria (SCV) website.

SCV website: [Statutory Duty of Candour and protections for SAPSE reviews | Safer Care Victoria](https://www.safercare.vic.gov.au/support-training/adverse-event-review-and-response/duty-of-candour)

Resource: [Protections for serious adverse patient safety event (SAPSE) reviews](https://www.safercare.vic.gov.au/sites/default/files/2022-10/Protections%20for%20serious%20adverse%20patient%20safety%20event%20%28SAPSE%29%20reviews%20-%20FINAL.docx)

E-Learning for SAPSE reviews will also be available on the SCV website by mid-late September 2022.