

Open Disclosure

9 August 2016

Anna MacLeod

Australian Open Disclosure Framework

Better communication,
a better way to care





Appendix 1

1 Apology, expression of regret and open disclosure

Apology and/or expressions of regret are central to open disclosure (see Section 1.5). All Australian jurisdictions have enacted laws that are designed to protect statements of apology or regret made after 'incidents' from subsequent use in certain legal settings. These laws are listed in **Table A1** below.

For example, in NSW, an "apology" means an expression of sympathy or regret, or of a general sense of benevolence or compassion, whether or not the apology admits or implies an admission of fault. An apology is not considered to be an admission of fault or liability and is not taken into account in determining fault or liability.

It should be noted that most of these laws were enacted without open disclosure in mind, and all relate to a wide range of situations and legal contexts.

Health service organisations must consider the legislation in force in the state or territory in which they work when developing open disclosure policies and procedures and training staff.

At the time of the publication of this document, these statutory provisions are relatively new and there is little case law that guides their operation and effect.

The *Open Disclosure Standard Review Report* contains more information in this regard.⁶ The report can be accessed at www.safetyandquality.gov.au/opendisclosure

1a Admission of liability

Health service organisation staff need to be aware of the risk of making an admission of liability during open disclosure. In any discussion with the patient, their family and carers during the open disclosure process, the clinician should take care not to speculate on the causes of an incident or pre-empt the results of any investigations. They must not apportion blame, or state or agree that they, other clinicians or the health service organisations are liable for the harm caused to the patient.

These restrictions should not impede open disclosure or the benefits that a genuine and sincere apology or expression of regret can provide to both patient and clinician.

Tort 101





A fine balance

I am the beginning of
sorrow, and the end of
sickness. You cannot
express happiness without
me, yet I am in the midst of
crosses. I am always in risk,
yet never in danger. You may
find me in the sun, but I am
never out of darkness.
Who am I?

CONTACT:
CONTACT EMAIL:
BRANCH MANAGER:
OUR REF:

Naty Guerrero-Diaz
nguerro-diaz@shine.com.au
Bill King
MGD-KUAY: D20-6340638

Please provide us, pursuant to the provisions of the Freedom of Information Act 1982, with a complete copy of your medical records. Please include all of the following:

1. All medical or health record;
2. All digitally or electronically records information, including radiological imaging, scope images, photographs and diagnostics;
3. All emails or correspondence generated by clinicians in the treating team whether past or present employees of the health service through health service email addresses or any other private email address;
4. All photographs taken by clinicians in treating team whether past or present by any device with camera functionality;
5. All emails or correspondence to Directors, Executives and Chief Executive, other persons who fulfils complaints;
6. All emails or correspondence from health services to its insurers;
7. All emails or correspondence from health service complaints management person or present employee of the health service and his or her private medical defence insurer where such notification or correspondence relates to health or health or
8. All notifications and correspondence from or between a clinician whether past or present employee of the health service and his or her private medical defence insurer where such notification or correspondence relates to health or health or
9. All statements made by health service staff whether past or present employees of the health service in the course of an investigation or management of health or health or
10. Any investigation reports; personal information;
11. Root cause analysis (RCA) reports and supporting documentation;
12. Any reports, correspondence and power point presentations to peer review groups including Mortality and Morbidity meetings, Adverse Outcome meetings, Quality meetings or any other meeting that has reviews or been presented with our clients health or personal information;
13. All briefing papers or reports to the Board or a Board Committee of the Health Service including quality reports, investigation reports, in depth investigation reports and IPM reports/screen shots or reports/screen shots from a patient booking data base.

Documentation

Root Cause Analyses

- persons participating expressly given the assurance information they provide will be confidential
- those participating actively sought a confidentiality guarantee before participating
- documents are kept separate from other medical records
- marked as CONFIDENTIAL
- no prior publication, e.g. through an FOI request or otherwise
- that the 'open disclosure' policy does not result in such disclosure that would prevent public interest immunity been claimed
 - does not involve all RCA documents being released
- that disclosure will impair the ability of the hospital and risk management team to investigate and identify causation and system factors for specific adverse events

Home > Claims > Notify Potential Medical Indemnity Claim

Notify us of a Potential Medical Indemnity Claim

An adverse medical incident that might result in a claim

Notification and assistance

How to notify us



Karen McKenzie
Claims specialist

Stephen Grant
Senior claims specialist

Susan Van Dyk
Claims specialist

Sarah McPherson
Senior claims specialist

Eve Taylor
Senior claims specialist

Anna MacLeod
Manager, Claims
Medical Indemnity

Sarah O'Leary
Claims specialist

Thank you