

Apologies

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Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my *Apologies* report.



Deborah Glass OBE
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11 April 2017

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Foreword

... sorry seems to be the hardest word.

Elton John

In my several decades of dealing with complaints about public sector agencies, I have lost track of the number of times I have reviewed a substantial file of evidence, compiled over many months or more, and wondered: Why didn't they just apologise?

Of course, some complaints need to be investigated to determine what actually happened, and not every complaint requires or deserves an apology. But in the many cases where someone has a legitimate grievance, a genuine apology is a powerful remedy.

This report looks at when and how apologies are given to resolve complaints – and why they are not used more often in appropriate cases. We know that some authorities apologise and apologise well, something to be applauded. But then there are the cases where an authority apologises in a half-hearted fashion – and people can always tell this – that ends up adding to the problem it was intended to remedy.

There is anecdotal evidence that authorities are reluctant to apologise for mistakes in case it exposes them to legal action. This is why I have recommended that the Victorian Government consider amending Part IIC of the *Wrongs Act 1958* (Vic) to prevent apologies being used as an admission of liability or evidence in all types of civil proceedings and to expand the definition of apology to include apologies that involve an acknowledgement of responsibility or fault.

Effective apologies are a necessary life skill that have to be honed until mastered. Anyone with children, or who has seen a parent telling their child to “apologise properly”, knows this. With this in mind, the report goes through the six R's of an effective apology – recognition, responsibility, regret, reasons, redress and release.

Governments are increasingly comfortable making apologies, with the 2016 parliamentary apology for laws criminalising homosexuality a good recent example. This is a welcome indication that an important cultural shift within government is underway. Saying sorry may sometimes be difficult, but if done well, the results are often worth all the effort and more.

Deborah Glass

Ombudsman

Introduction

This report looks at ways to help public authorities apologise for mistakes.

Many of the people who approach the Ombudsman are upset, not just about an authority's mistake, but with the way the authority responded to their concerns. They want the authority to acknowledge and fix the problem, and treat them with respect.

A genuine apology is an important step towards achieving this. By acknowledging error and showing regret, authorities begin the process – hopefully – of repairing the damage and rebuilding trust.

So why should it be hard for authorities to apologise for other mistakes?

... an apology would go some way to relieving [my daughter's] feelings of distress ...

Father in an online complaint to the Victorian Ombudsman

We see many cases where authorities apologise and do it well. But we also see cases where authorities do not apologise until we get involved. Or cases where the apology appears so bureaucratic that it is hard to tell if the authority is genuinely sorry.

These responses can make people angrier than they were before.

... they haven't as much as apologised for the stress and inconvenience caused ... It is very disappointing when a statutory body ... makes such a mistake and worse still they have not even had the common courtesy to provide me with a formal apology ...

Business owner in a fax to the Victorian Ombudsman

Parliamentary ombudsmen in other states have recommended changes to the law to give apologies stronger legal protection¹.

The Ombudsman decided to conduct an own motion enquiry under section 13A of the *Ombudsman Act 1973* to find out what is happening in Victoria.

I believe that I am owed at the very least an apology ...

Workers compensation client in an email to the Victorian Ombudsman

¹ See for example, NSW Ombudsman, *Apologies – A Practical Guide* (2009), page 25 and Ombudsman SA, *An audit of state government agencies' complaint handling* (2014), page 3.

What we did

We surveyed 80 public authorities about their practices and experiences using apologies to resolve complaints. They included departments, local councils, hospitals, universities, TAFEs, prisons, workers compensation insurers, regulators and complaint handling bodies.

We appreciate the candour of the many authorities who responded and have quoted some of their responses in this report.

We also:

- reviewed complaints to the Ombudsman where people sought or received apologies in the last three years
- reviewed expert research and guidelines on apologies to identify good practice
- compared laws on apologies in Victoria with other Australian states and territories and overseas countries
- obtained information from major government insurers.

This report sets out the results of our enquiry and what needs to be done to encourage authorities to apologise more effectively and more often.

Case example: No apology

A father believed there were errors in his daughters' school reports so he contacted the school and the relevant department.

He later logged into the school's online portal and noticed the errors had been fixed, but no one had contacted him to explain what happened or the effect on his daughters' grade point averages.

He contacted us and said he wanted an explanation and 'apologies for the causes of these errors and treatment we have received on addressing these matters'.

We asked the department if it would be willing to clarify what happened and apologise.

The department told us the school's teachers were completing 100-200 reports and the mistakes were the result of human error. It said the principal had agreed to apologise and the school was reviewing its assessment and reporting practices.

If the school had done this earlier, it might have avoided the father escalating this complaint to the Ombudsman.

What is good practice?

When should authorities apologise?

Our model complaint handling policies suggest that authorities consider a genuine apology where they identify an error, irrespective of whether the complainant requests this².

Apologising is a mark of integrity for public authorities. It shows that the authority is transparent and accountable, and treats members of the public with courtesy and respect.

People need to see that there are humans behind the bureaucracy and that we are capable of empathy. It doesn't fix every complaint but it certainly helps.

Council response to survey

Expert studies also suggest that apologies can help resolve disputes sooner³.

A genuine apology creates a strong foundation for dispute resolution by addressing some of the key psychological impacts of an error. It can:

- defuse anger
- improve perceptions of the wrongdoer's character
- promote forgiveness and reduce retaliatory behaviour⁴.

... it is an effective way to help mend a relationship.

Agency response to survey

There is no guarantee of course that an apology will lead to forgiveness or resolve a complaint. We occasionally receive complaints where an authority has apologised and done what it can to address its mistake, but the person remains dissatisfied. Authorities that took part in our survey reported similar experiences.

However, an apology still allows the authority to show that it has acted with integrity.

If an organisation has done the wrong thing ... an apology is the decent thing to offer.

Agency response to survey

² Victorian Ombudsman, *Councils and complaints: Good practice guide*, February (2015), page 27; Victorian Ombudsman, *Complaints: Good Practice Guide for Public Sector Agencies*, September (2016), page 29. Victoria's Model Litigant Guidelines also require state government departments and agencies to consider apologising where the state or agency is aware that it or its representatives have acted wrongfully or improperly, see the Department of Justice and Regulation's website at <www.justice.vic.gov.au>.

³ See, for example, Jennifer Robbennolt, 'Apologies and Legal Settlement: An Empirical Examination' (2003) 102(3) Michigan Law Review, page 460; Alfred Allan, 'Apology in Civil Law: A Psycho-Legal Perspective' (2007) 14(1) Psychology, Psychiatry and the Law, page 5.

⁴ *ibid.*

What is an effective apology?

There is no ‘one size fits all’ way to apologise according to expert research and guidelines on apologies⁵.

A ‘good’ apology needs to be genuine and sincere, and tailored to the individual and the situation.

... receiving an insincere, formulaic apology can be as galling as the actions or behaviour at the source of the complaint itself.

Council response to survey

An apology can include the following elements:

- Recognition – recognition of the mistake and the harm it caused
- Responsibility – an admission of responsibility or fault
- Regret – an expression of regret or sympathy
- Reasons – an explanation of what happened, or what will be done to investigate
- Redress – an explanation of what is being done to fix the mistake or prevent it happening again
- Release – in some cases, a request for forgiveness⁶.

An apology that includes an admission of responsibility or fault is sometimes called a ‘full’ apology. An apology that expresses regret or sympathy, without admitting fault, is called a ‘partial’ apology.

Research suggests people are more likely to see an apology as genuine if it involves a full apology. An apology is also more likely to be seen as genuine if it:

- is delivered in a way that demonstrates sincerity
- is backed up by action to fix the problem or prevent it happening again⁷.

To most complainants, an apology is an admission of fault. It is an acknowledgement that they have been wronged and that the party apologising has accepted the responsibility for that wrong ...

Council response to survey

Authorities may still use ‘partial’ apologies in appropriate cases, for example where it is not clear that there was an error on its part. However, care is required to ensure these apologies still sound sincere.

... statements such as “I am sorry for the way you feel about ...” can serve to just further frustrate complainants.

Agency response to survey

⁵ Alfred Allan, ‘Functional Apologies in Law’ (2008) 15(3) Psychiatry, Psychology and Law, page 369, NSW Ombudsman, see footnote 2.

⁶ NSW Ombudsman, see footnote 2.

⁷ See footnote 6.

Research study

In 2003 American professor of law and psychology Jennifer Robbennolt published a study about the impact of apologies on legal disputes⁸.

Participants in the study were given a scenario involving a bicycle-pedestrian accident. They were asked to take on the role of the victim and evaluate a settlement offer from the wrongdoer.

Some participants received a full apology in which the wrongdoer accepted responsibility. Some received a partial apology in which the wrongdoer said 'I am sorry you were hurt. I really hope you feel better soon'. Some received no apology.

The study found that participants who received a full apology were more likely to accept the settlement offer than those who received a partial apology or no apology. They also viewed the offender as more moral and more likely to be careful in the future. They expressed less anger towards the offender and more willingness to forgive.

The impact of a partial apology depended on the context. Where the injury was minor, or it was unclear if the offender was at fault, a partial apology was better than no apology.

Where the injury was more severe, or there was strong evidence that the offender was at fault, a partial apology was no more sufficient than no apology at all.

8 See Robbennolt, footnote 4.

How does Victoria compare?

Do authorities apologise?

Many public authorities in Victoria are open to apologising for mistakes according to evidence to our enquiry. However, practice across the public sector is inconsistent.

Thirty-three per cent of authorities who responded to our survey said they ‘always’ apologise when they substantiate a complaint, and 53 per cent said they apologise ‘sometimes’. Two authorities said they never apologise.

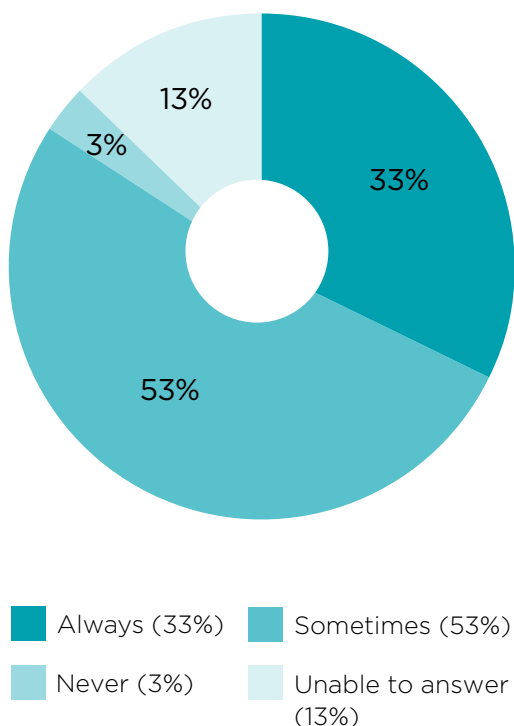
Fourteen authorities have policies or guidelines that encourage officers to consider an apology whenever an error is identified, consistent with our model complaint handling policies (see page 5).

Other authorities list an apology as one option for resolving a complaint, and leave it to individual officers to decide on a case by case basis.

Sixty-one per cent of authorities have no policies or guidelines on using apologies. One local council, for example, said it apologises ‘when the authorised officer dealing with the issue believes the situation warrants it’.

The following case study shows how authorities can miss opportunities to resolve mistakes where there is a lack of clear guidance for staff about apologising.

Figure 1: Apology survey results



Case example: No apology

A couple paid for a licence to use land next to their property. They spent time removing rubbish and weeds and installing gates and bought some sheep.

Six months later, the department realised their neighbour already owned the licence to use the land. It wrote to them saying that the licence has been ‘inadvertently transferred’ to them. It asked them to vacate the site and remove any improvements.

The couple contacted us. They said there were ‘no apologies for [our] out of pocket expenses ... no apologies for [our] time cleaning up someone else’s mess, and accusations that it’s all our fault’.

After we contacted the department, it rang the couple to apologise for its poor service. It told them its staff would be counselled about providing better customer service and it would refund their licence fee.

Do authorities apologise effectively?

We regularly see examples of ‘effective’ and ‘ineffective’ apologies.

Most of the authorities who took part in our survey appear to be flexible about how they apologise, consistent with expert research and guidelines. They use different elements of apologies and different methods of delivery depending on the circumstances. Many described cases where they had used apologies to resolve complaints effectively.

However, 15 per cent of authorities said they do not admit fault or responsibility when they apologise. This is despite research showing that people may not accept these ‘partial’ apologies as genuine.

This includes health providers, who follow national open disclosure standards designed to encourage open communication with patients and families following adverse events. The standards advise health professionals to apologise without admitting fault, in case they open themselves to legal liability⁹.

Only half of the authorities who responded to the survey offer training or guidance to their staff about how to apologise effectively. A handful have detailed written information, but many rely on managers and complaint handling teams to help other officers.

We see cases where officers make simple mistakes that undermine the sincerity of their apologies, and make people angrier.

Case example: Bureaucratic language

A woman learned that an authority had stopped paying for her medication, even though she had an accepted claim. Her chemist told her she owed \$1,200. She was about to go on holiday and was worried she would not have her medication.

The authority’s response to her complaint ‘acknowledge[d] that there has been some miscommunication’. It explained that the chemist’s invoices used the medication’s generic name, which was not recognised by its systems.

The woman told us ‘I would like an apology and acknowledgement of the distress this experience has caused me ... Rather than simply referring to “systems” and “processes” it would be very nice to receive some documented empathy.’

We contacted the authority. It called the woman to apologise for any distress and explained it was working on improving its client service.

⁹ Australian Commission on Safety and Quality in Health Care, *Australian Open Disclosure Framework* (2013). See also Department of Human Services, Victoria, *Open disclosure for Victorian health services: A guidebook* (2008).

Case example: Failing to explain

A ratepayer was upset that his local council sent his rates notice to his ex-partner. A council officer initially told him they were authorised to do this, then another officer called him back to apologise and said it had been 'human error'.

He told us 'Surely this sort of privacy breach requires more than just a passing 'sorry'. At the moment I am concerned as to what they do with my personal and private information.'

After he complained, the council reviewed the case and advised him it had made changes to ensure the error would not be repeated.

Case example: Not fixing the error

A prisoner contacted us because prison officers were opening mail from his lawyers and Members of Parliament. This type of mail is exempt from being searched under prisons policy.

The prisoner said 'each time I receive a letter from the general manager telling me how sorry he is but it's still happening and I don't see it stopping anytime soon.'

We referred the matter to the responsible authority, which took steps to minimise the chance of the problem recurring. It said responsible staff had been reminded of their obligations previously, and different staff were involved on each occasion.

Unfortunately, the prisoner doubted the sincerity of the apology as a result.

Case example: An effective apology

A man complained that an authority was issuing infringement notices to his family in error. The agency was withdrawing the notices each time, but had not fixed the problem and kept issuing new notices.

My office brought the problem to the attention of the Chief Executive Officer. His letter of apology to the man said:

'I would like to apologise to you for the upset and frustration [the agency] has caused you and your family.

... My staff should have been more open about our ... program's failings and much faster in responding to your concerns and requests for feedback and information.

I have asked my staff to put in place improvements to our ... program ... These improvements will allow us to be better at addressing and responding to complaints ...

Your complaint ... will ensure we make improvements to what is an important program. For this reason I thank you for pursuing the matter.'

Why is it hard to apologise?

Legal issues

Our survey confirmed that concerns about legal liability can be a barrier to effective apologies.

Over a quarter of the authorities who took part in the survey named legal issues as a barrier.

Twenty four authorities said they had sought legal advice before apologising in the past. Not all described the advice they received, but four said they had been advised not to apologise. Ten authorities said they had been advised to word an apology so it could not be read as an admission of liability. One authority, for example, said it eventually apologised for ‘the inconvenience ... suffered in pursuing the dispute’.

The case on this page is an example identified by my office where legal concerns appear to have undermined an effective apology.

Australian states and territories and other countries have addressed this problem by passing laws to ‘protect’ apologies. The laws prevent the apology being used as an admission of liability or as evidence in court.

Victoria enacted apology laws in 2002 (see page 14), but they are limited compared with some other states and countries (see table on page 17). Victoria’s laws:

- only apply to civil proceedings ‘where the death or injury of a person is in issue’¹⁰. In other words, they do not protect apologies for the types of errors discussed in this report.
- define an apology as ‘an expression of sorrow, regret or sympathy’ and expressly exclude apologies that include ‘a clear acknowledgement of fault’¹¹. In other words, they only protect ‘partial’ apologies.

Public authorities in Victoria need to consider common law principles to determine if an apology might cause legal problems. In a 2003 case, the High Court found that an apology given by a company could not be used as evidence that it had been negligent¹². However, the Court left open the possibility that an apology could be used as evidence in other ways.

A number of authorities said in their survey responses that they would like more guidance about when apologies might give rise to liability. It is not surprising that public sector officers can be reluctant to apologise, or admit responsibility for mistakes, in the face of such legal uncertainty.

Case example: A ‘lawyer’s apology’

An authority changed a man’s fishing licence to reduce the number of nets he could use. He contacted us and said the authority did not consult him before making the decision.

We identified that the authority had given the man a chance to apply for an increase in the number of nets. It had not, however, told him that he had a right to appeal its decision to a tribunal.

The department agreed to improve its processes so it informed people of appeal rights in the future. We asked the department if it would also apologise for not telling the man about appeal rights in his case.

After getting legal advice, the department sent us a draft letter which read “It is unfortunate that the Department did not include this information in its letter to you ...”

It is difficult to see how the department’s statement could be read as a genuine apology.

¹⁰ *Wrongs Act 1958* (Vic) section 14J. There are separate national laws protecting apologies in defamation proceedings.

¹¹ *Wrongs Act 1958* (Vic) section 14I.

¹² *Dovuro Pty Ltd v Wilkins* [2003] HCA 51.

Insurance policies

Thirteen per cent of authorities named insurance policies as a barrier to apologies.

... where there is potential for a legal action or insurance claim, an apology may be seen as an admission of guilt and this may be a barrier to providing one.

Council response to survey

Insurance policies often contain standard clauses ('admission or compromise clauses') that require a person to get their insurer's consent before making any admission, offer, promise or payment. If a person breaches the clause, the insurer can reduce the insurance payout.

We spoke to two of the major insurance providers for public authorities in Victoria. They confirmed they have policies containing these clauses.

The insurers stressed that the clauses do not require authorities to seek consent before apologising – only before admitting liability.

As noted earlier, it is not always clear when an apology could involve an admission of liability under current Victorian law. A quarter of authorities said they had consulted an insurer before apologising. Four said they had been discouraged from apologising. Three said an insurer had advised them how to word an apology.

New South Wales' state government insurance policies make it clear that authorities do not have to seek consent before giving apologies that are protected under its apology laws¹³. Canadian laws state that an apology does not void or impair insurance coverage¹⁴.

Staff support

Some authorities also reflected on the challenges of building a culture in which staff are willing and confident to apologise.

Some staff are still uncomfortable in acknowledging an error occurred and apologising.

Agency response to survey

A larger authority said that the benefits of apologising are clear to its complaint handling area, but it can be difficult to convince other business areas. A council said apologies have developed negative connotations because councillor conduct panels can direct councillors to apologise in cases of misconduct.

People can see an apology as a sign of weakness, or fear that it will embarrass their employer.

Policies, guidelines and training are one way to challenge these perceptions. A significant proportion of authorities in Victoria have not yet taken these steps (see pages 8 and 9 of this report).

¹³ NSW Self-Insurance Corporation, *TMF Statement of Cover*, available at <www.riskinsite.nsw.gov.au> accessed 18 December 2016.

¹⁴ Canada, *Uniform Apology Act (2007)* section 2(1)(c).

Making it easier to apologise

We asked authorities if there were any changes or initiatives that would help them use apologies to resolve complaints more effectively.

Some said they would like more guidance about using apologies to resolve complaints. We have decided to publish information for authorities, and have included a copy on pages 18-19.

Guidelines alone are unlikely to overcome the barriers identified by our enquiry.

The Victorian Government also needs to tackle the legal and insurance barriers that discourage authorities from apologising for mistakes. It could do this by expanding the current apology laws so they:

- prevent apologies being used as an admission of liability or evidence in all types of civil proceedings, not just those involving death or personal injury
- protect 'full' apologies involving an admission of responsibility or fault, not just expressions of regret or sympathy.

This would bring Victoria's laws into line with those in New South Wales and Queensland who have enjoyed similar for many years without apparent problems (see table on page 17). It would also be consistent with recent recommendations made by the Victorian Government's Access to Justice Review¹⁵.

Authorities also suggested more training for officers. This is the responsibility of public service leaders. They need to support staff to apologise effectively, whether that be through policies, guidance or other support.

The result promises to be greater use of genuine apologies to resolve complaints, and better outcomes for authorities and the public.

Recommendation

I recommend that the Victorian Government consider amending Part IIC of the *Wrongs Act 1958* (Vic) to:

- a. prevent apologies being used as an admission of liability or evidence in all types of civil proceedings
- b. expand the definition of apology to include apologies that involve an acknowledgement of responsibility or fault.

¹⁵ Victorian Government, *Access to Justice Review* (2016) recommendation 4.4.

Appendix A: Victoria's apology laws

Wrongs Act 1958
No. 6420 of 1958
Part IIC—Apologies

Pt 2C
(Heading and
ss 14I–14L)
inserted by
No. 49/2002
s. 6.

Part IIC—Apologies

S. 14I
inserted by
No. 49/2002
s. 6.

14I Definitions

In this Part—

apology means an expression of sorrow, regret or sympathy but does not include a clear acknowledgment of fault;

civil proceeding includes—

- (a) a proceeding before a tribunal; and
- (b) a proceeding under an Act regulating the practice or conduct of a profession or occupation; and
- (c) a proceeding of a Royal Commission, whether established under the **Inquiries Act 2014** or under the prerogative of the Crown; and
- (d) a proceeding of a Board of Inquiry or Formal Review established under the **Inquiries Act 2014**;

injury means personal or bodily injury and includes—

- (a) pre-natal injury; and
- (b) psychological or psychiatric injury; and
- (c) disease; and
- (d) aggravation, acceleration or recurrence of an injury or disease.

S. 14I def. of
*civil
proceeding*
amended by
Nos 69/2009
s. 54(Sch. Pt 2
item 59),
67/2014
s. 147(Sch. 2
item 47).

S. 14J
inserted by
No. 49/2002
s. 6.

14J Apology not admission of liability

- (1) In a civil proceeding where the death or injury of a person is in issue or is relevant to an issue of fact or law, an apology does not constitute—
 - (a) an admission of liability for the death or injury; or
 - (b) an admission of unprofessional conduct, carelessness, incompetence or unsatisfactory professional performance, however expressed, for the purposes of any Act regulating the practice or conduct of a profession or occupation.
- (2) Subsection (1) applies whether the apology—
 - (a) is made orally or in writing; or
 - (b) is made before or after the civil proceeding was in contemplation or commenced.
- (3) Nothing in this section affects the admissibility of a statement with respect to a fact in issue or tending to establish a fact in issue.

14K Reduction or waiver of fees

- (1) In a civil proceeding where the death or injury of a person is in issue or is relevant to an issue of fact or law and it is alleged that the death or injury occurred as a consequence of the provision of a service, a reduction or waiver of the fees payable for the service or a related service does not constitute—
 - (a) an admission of liability for the death or injury; or
 - (b) an admission of unprofessional conduct, carelessness, incompetence or unsatisfactory professional performance, however expressed, for the purposes of any Act

S. 14K
inserted by
No. 49/2002
s. 6.

Appendix A: Victoria's apology laws – cont

Wrongs Act 1958
No. 6420 of 1958
Part IIC—Apologies

regulating the practice or conduct of a profession or occupation.

- (2) Subsection (1) applies whether the reduction or waiver of fees—
 - (a) is made orally or in writing; or
 - (b) is made before or after the civil proceeding was in contemplation or commenced.
- (3) Nothing in this section affects the admissibility of a statement with respect to a fact in issue or tending to establish a fact in issue.

S. 14L
inserted by
No. 49/2002
s. 6.

14L Application

This Part applies to an apology or reduction or waiver of fees made on or after the commencement of section 6 of the **Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002**.

Appendix B: Comparison of apologies laws

	Legislation	When are apologies protected?	Are 'full' apologies protected?	Can an apology be an admission of liability?	Can an apology be admitted as evidence of fault or liability?
Victoria	<i>Wrongs Act 1958</i> Part IIC	Proceedings involving death or injury of a person	No	No	Yes
NSW	<i>Civil Liability Act 2002</i> Part 10	Civil liability of any kind (with exceptions)	Yes	No	No
Qld	<i>Civil Liability Act 2003</i> Chapter 4 Part 1A	Civil liability of any kind (with exceptions)	Yes	No	No
South Australia	<i>Civil Liability Act 1936</i> Part 9 Division 12	Any civil proceedings	Yes	No	No
Western Australia	<i>Civil Liability Act 2002</i> Part 1E	Civil liability of any kind (with exceptions)	No	No	No
Tasmania	<i>Civil Liability Act 2002</i> Part 4	Civil liability of any kind (with exceptions)	No	No	No
NT	<i>Personal Injuries (Liabilities and Damages) 2003</i> Pt 2 Division 2	Proceedings involving personal injuries	No	-	No
ACT	<i>Civil Law (Wrongs) Act 2002</i> Part 2.3	Civil liability of any kind	Yes	No	No
Canada	Uniform Apology Act*	Civil liability of any kind	Yes	No	No
Scotland	<i>Apologies (Scotland) Act 2016</i>	All civil proceedings (with exceptions)	No	-	No
England	<i>Compensation Act 2006</i> section 2	Claims in negligence or breach of statutory duty	-	No	Yes

*In 2007, the Uniform Law Conference of Canada adopted and recommended uniform apology laws. The laws have since been adopted in most Canadian provinces and territories.

Appendix C: Victorian Ombudsman – Apologies Fact Sheet

Effective apologies

The Victorian Ombudsman encourages public authorities to consider offering a genuine apology when they identify errors as a result of a complaint, regardless of whether the complainant requests an apology.

Why apologise?

Apologising for mistakes is a mark of integrity for public sector authorities. It shows that your authority is transparent and accountable and treats members of the public with courtesy and respect.

Apologies can also make it easier to resolve complaints and disputes. By acknowledging the mistake and expressing regret, you can help defuse anger about what happened and begin the process of rebuilding trust.

There is no guarantee an apology will resolve every complaint. By apologising, you still show that your authority acts with integrity.

What makes an apology effective?

There is no one size fits all way to apologise. An apology for a short delay in returning a phone call will be very different from an apology to someone who has suffered harm in your authority's care.

Effective apologies are genuine and sincere, and tailored to the needs of the person and the situation.

It is helpful to start by considering what the person is seeking. Some people may be looking for vindication. Others may just want to know what happened and reassurance that it will not happen again.

The content of an apology usually consists of the following elements:

- Recognition – recognition of the mistake and the harm it caused. The most effective apologies usually describe the mistake and harm in specific terms and avoid 'template' phrases.
- Responsibility – an admission of responsibility or fault. Many people will not accept an apology as genuine unless it includes this element. This may not be appropriate if there is no clear error on your authority's part, or you were acting in accordance with your public obligations. However, be mindful that apologies that say 'I am sorry for the way you feel' can sound insincere.
- Regret – an expression of regret or sympathy.
- Reasons – an explanation of what happened, or what will be done to investigate.
- Redress – an explanation of what is being done to fix the mistake or prevent it happening again.
- Release – if it is appropriate, a request for forgiveness.

The way you deliver the apology can be just as important as what you say. An apology is likely to have more impact if it is:

- Given as soon as practicable. This depends on the person and the situation. For example, you may need to delay your apology because the person is still too upset to hear what you have to say, or because your authority needs to investigate what happened first.
- Delivered by the person who made the mistake or someone with authority to speak on your agency's behalf, such as a senior manager.
- Directed to the person who was harmed by the mistake or was affected in some other way, such as a family member.
- Communicated in the most appropriate way. In some cases, it may be better to apologise in person. In others, a formal written apology may be more appropriate. If the mistake damaged the person's reputation, a public apology may be required.
- Phrased in language that is sincere and direct, not bureaucratic.

Lastly, your apology is more likely to be seen as genuine if it is backed up with practical action to fix the mistake, or prevent it happening again. In most cases, it will need to be part of a package of remedies that addresses the impact of the mistake.

Can an apology cause legal and insurance problems?

Victorian law provides legal protection for apologies in some circumstances. The laws state that an apology does not constitute an admission of liability in legal proceedings involving:

- death or injury of a person (see *Wrongs Act 1958* (Vic) Part IIC).
- defamation (see *Defamation Act 2005* (Vic) section 20).

The Victorian Ombudsman has recommended that the government consider broadening legislative protections for apologies further.

In the meantime, if you believe that your authority has made a mistake that could give rise to legal liability, you may wish to consult your authority's lawyers or insurers to ensure you are taking appropriate steps.

Sources: NSW Ombudsman, Apologies: A Practical Guide (2009)

Please note: This document is intended as a guide only. For this reason the information contained herein should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. To the maximum extent permitted by the law, the Victorian Ombudsman is not liable to you for any loss or damage suffered as a result of reliance on this document. For the most up-to-date versions of cited Acts, please refer to www.legislation.vic.gov.au.

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