



Apologies

The history of protection from liability for the giving of apologies in NSW

When drafting the first edition of our *Options for Redress* guidelines in early 2000, considerable thought was given to the issue of the giving of apologies by public officials. As part of these deliberations we consulted the NSW Crown Solicitor who advised:

“It is not...an easy matter to construct an apology which will be acceptable to an aggrieved person but not contain an admission of liability, or at least of some fact relevant to liability. To simply apologise or express regret without connecting that apology or regret with some particular conduct is unlikely to be acceptable. When a connection between an apology or regret and some particular conduct is apparent the risk of an admission arises. To describe that particular conduct in a general [way] may avoid admissions but it is likely to be unacceptable to the aggrieved person.”

In March 2001 we therefore suggested to the NSW government that steps be taken to enable public officials to attempt to resolve complaints, in appropriate cases, by the provision of an explanation and a clear, sincere and timely apology, without incurring civil liability. To this end, we suggested that legislation be introduced which provided that certain statements made by public officials for the purpose of resolving complaints would be inadmissible in any civil proceedings. These statements would include such things as apologies, expressions of sympathy or regret, and expressions of a general sense of benevolence or compassion in relation to damage, loss or injury experienced by a person.

In our view making apologies inadmissible in civil proceedings would in practice not result in any detriment to the rights or interests of members of the public — in the absence of such a protection it was extremely unlikely that public officials would give an apology in any circumstance where this could be seen as an admission of liability.

In contrast, the practical consequence of introducing legislation of this kind should be that more public sector officials would be encouraged to say ‘sorry’ and more members of the public would be more likely to feel satisfied that their grievance has been taken seriously. An apology shows an agency taking moral, if not legal, responsibility for their actions and the research shows that most people would be satisfied with that.

Research in the area of customer satisfaction shows that giving an apology is often the most effective way to deal with a complaint. Many complainants just want an agency or its staff to listen to, understand and respect their concerns, and give them an explanation and apology.

The NSW Government not only agreed with the thrust of our proposal, but decided that protection for apologies should be extended to the public generally. The relevant amendments to the *Civil Liability Act* came into operation on 6 December 2002. As of that date, in NSW an apology does not constitute an admission of liability, and will not be relevant to the determination of fault or liability, in connection with civil liability of any kind. In addition, evidence of an apology is not admissible in a court hearing as evidence of fault or liability (other than in relation to the categories of civil liability excluded by s. 3B of the *Civil Liability Act 2002*). Similar protection was later included in the *NSW Defamation Act 2005*.

As noted in the Ombudsman’s Annual Report for 2003 – 2004 (at p 130), since the incorporation of that provision into the *Civil Liability Act* we are pleased to note that every other State and Territory has followed the NSW lead and brought in legislation that provides varying levels of protection for apologies or expressions of regret. While the scope of the protection provided in each State varies significantly, it appears that a simple ‘I am sorry’ will in most circumstances be protected in all States and Territories in Australia. However, although in NSW and the ACT a person will be protected if they go on to say ‘it was my fault’, such an admission will not be protected in any other State or Territory. This is unfortunate as an admission or acknowledgement of responsibility is generally essential for an apology to be effective.

Legislation protecting apologies in NSW

The relevant provisions in NSW legislation which protect the giving of apologies can be found in the following legislation.

Civil Liability Act 2002

Part 10 Apologies

67 Application of Part

- (1) *This Part applies to civil liability of any kind.*
- (2) *This Part does not apply to civil liability that is excluded from the operation of this Part by section 3B or civil liability for defamation.*

Note. Section 20 of the Defamation Act 2005 makes similar provision to this Part about the effect of apologies in defamation proceedings.

68 Definition

In this Part:

apology means an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter whether or not the apology admits or implies an admission of fault in connection with the matter.

69 Effect of apology on liability

- (1) *An apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person:*
 - (a) *does not constitute an express or implied admission of fault or liability by the person in connection with that matter, and*
 - (b) *is not relevant to the determination of fault or liability in connection with that matter.*
- (2) *Evidence of an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter. (This section should be read with section 3B of the Act)*

Defamation Act 2005

Division 2 Apologies

20 Effect of apology on liability for defamation

- (1) *An apology made by or on behalf of a person in connection with any defamatory matter alleged to have been published by the person:*
 - (a) *does not constitute an express or implied admission of fault or liability by the person in connection with that matter, and*
 - (b) *is not relevant to the determination of fault or liability in connection with that matter.*

(2) *Evidence of an apology made by or on behalf of a person in connection with any defamatory matter alleged to have been published by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.*

(3) *Nothing in this section limits the operation of section 38.*

Guidelines on offering apologies in NSW

We have published fact sheets for the organisations within our jurisdiction providing advice about giving apologies, including how to word them. They also give information about the circumstances in which apologies are not protected by the Act.

[Public sector agencies fact sheet No 01: Apologies by Public Officials and Agencies](#)

[Council fact sheet No 5: Apologies by Council](#)

[Community Services Division fact sheet No 5: Apologies by community service providers](#)

[Child protection fact sheet No 11: Apologies and Child Protection](#)

Contact us for more information

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If you wish to visit us, we prefer you make an appointment. Please call us first so we can ensure your complaint is within our jurisdiction and our staff are available to see you.

Our business hours are:

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We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.

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