

The power of apology

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“All I wanted was an apology”

How often have we heard or read people say “*All I wanted was an apology*”. It seems that not a week goes by without another article reporting somebody saying something along those lines.

Let me give you just a few examples:

- An article about a dispute between the Olympic great, Glynis Nunn-Cearns and the controversial sprinter John Steffersen relating to an alleged tirade directed at the 1984 Olympic Gold Medallist.

Athletics Australia held a hearing to which Steffersen turned up with a QC.¹

After four hours of legal argument, Athletics Australia was forced to dismiss the charge on a legal technicality. Following this Glynis was reported as saying: “*All I wanted was an apology and instead John went and hired a Queen’s Counsel*”.

- An article about a Pilbarra woman who was ‘tricked’ into a murder confession and was seeking \$35 million from the WA government for being wrongly convicted 18 years ago of murdering her stepmother. In the 902 days she spent in prison, her three year old son died of a brain infection.

She is reported as saying she wanted something more than dollars and cents – she wanted an apology:

“The Government should say sorry to me for what happened.”

“Someone should tell me that it was wrong what happened to me. I still get angry about it all.”²

- An article about a coronial inquest into the death of a man while in a Western Australian prison van. The day after the inquest concluded, the Corrective Services Commissioner said:

“As the head of the department I felt it only fitting that I meet with the family immediately following the inquest to express my sorrow for the loss of their loved one in such a tragic way ... I and the department as a whole have been deeply touched by this tragic event and I convey my heartfelt sympathy to all who have suffered as a result.”

The dead man’s sister commented that this statement was “*Really late in a way they should have said sorry to us earlier.*”³

- An article about a former RAF officer sacked for suffering depression. After a decade and a half of legal action costing taxpayers an estimated \$15 million, Defence was finally forced to concede and make a generous settlement. The former officer wanted an apology from Defence for the suffering it caused him, and is reported to have said:

“I think that an apology is the very least they owe me.”⁴

¹ Nick Walshaw, ‘Running Scared’ *Daily Telegraph* 18 January 2008

² Tony Barass, ‘Pilbara Woman “tricked” into murder confession’ *The Australian* 6 December 2007

³ Ken Boase and Kirstie Parker, ‘WA prison van death apology’ *The Koori Mail* 20 May 2009

⁴ Paul Daley, ‘Defence loses \$15m fight’ *The Sun-Herald*

- A recent media report demonstrated both the effectiveness of apologising for mistakes and how some individuals who may have been seriously harmed view their greatest need as being an acknowledgement of the injury caused to them, long before compensation is even considered. A 31 year old man admitted to hospital for treatment of a foot ulcer – due to complications that arose in hospital, needed to have his leg amputated. While many would have expected him to sue for damages, he is reported as saying:

“...he [was] not considering legal action, but [wanted] an apology to ensure it does not happen to anyone else...”

- An article about a coronial inquest into the death of a 17-year-old during a bushwalk in the Blue Mountains. During the inquest, the boy’s school acknowledged and apologised for its role in his death. After the apology was read out, the boy’s mother mouthed “thank you” to the school’s principal. Counsel representing the boy’s parents said:

“In the circumstances where Sydney Grammar School has acknowledged a contribution to this terrible outcome that means a tremendous amount to the Iredales not for any other reason but their boy can rest in peace knowing that that acknowledgement has come.”⁵

- An article about a fifteen year legal battle between Bluescope steel and a former employee over psychiatric injury, in which Bluescope is now seeking special leave to appeal to the High Court. The legal battle has cost both parties millions of dollars, with the former employee selling his house to meet the costs. He commented recently that:

“Basically, I would like an apology. That’s what I would like.”⁶

The importance of taking responsibility for problems

For my purposes today there are three basic types of apologies:

- the first are the largely automatic responses we make when we commit a minor infraction of social norms – for example “*excuse me*”, “*pardon me*”, “*forgive me*”, or “*sorry*”
- the second are often called ‘partial’ apologies, sometimes called ‘non-apology’ apologies, such as apologies consisting only of:
 - expressions of sympathy or empathy – for example, “*I’m sorry this happened to you.*”
 - expressions of regret for the act or its outcome – for example “*I regret that this happened.*” or
 - expressions of sorrow – for example “*I’m very sorry for what has happened.*”
- the third are ‘full’ apologies – apologies that include an admission or acceptance of responsibility or fault.

I will be talking today about ‘partial’ and ‘full’ apologies – apologies made in the context of more serious infractions that result in actual harm or detriment of one sort or another.

⁵ Bellinda Kontominas, ‘Tears of relief as school apologises for role’ *The Sydney Morning Herald* 5 May 2009

⁶ Richard Ackland, ‘Like the Dickens – seven years in court at \$15m, in search of an apology’ *The Sydney Morning Herald* 17 July 2009

A 'full' apology – an apology that includes an admission or acceptance of responsibility or fault – can be remarkably effective in addressing the key needs of people who have experienced harm. Although they are not guaranteed to work in every case, the more an apology addresses the needs of the person harmed, the greater the likelihood it will be effective in reducing anger, restoring a damaged relationship, and helping the person to 'move on'.

When things go wrong in the public sector, the appropriate agency or official should accept responsibility and take 'ownership' of the problems for which they are responsible. This is what good management practice dictates, ethical conduct requires and the public expects.

Unfortunately, I am sure we have all seen occasions where organisations or individuals refuse to take responsibility and instead ignore a problem, deny its existence or deny responsibility for the problem or the harm it caused. When the problem is obvious and responsibility clear (or reasonably perceived to be so), denying its existence or denying responsibility are likely to be seen as more than mere blindness or ignorance – they can easily be seen as being wilful and deceptive. This can have serious detrimental effects on levels of trust and credibility. On the other hand, admitting fault and taking responsibility for a problem (ie, doing the right thing) is a prerequisite for forgiveness (analogous to a religious concept of confession and absolution).

Benefits that might flow from apologies

Many people who come to the Ombudsman know that things can never be put back exactly as they were before. However, they complain seeking a degree of justice, fairness and validation of the wrong done in their case, as well as for altruistic motives of not wishing to see whatever happened to them being visited on another. Therefore, if people feel their concerns will not be heard or not be taken seriously by an agency, the Ombudsman has found that matters escalate "*simply because of poor communication or because of inadequate publicity about the services and policies and procedures of (an agency)*".⁷

Apologising addresses many human needs, from the moral urge to do the right thing, to the wish to restore a relationship, to the potentially more pragmatic aim of not wanting a matter to proceed to litigation. While saying sorry for a wrong may not prevent formal action, it will help to demonstrate that the organisation is honourable and trustworthy.

Important benefits that might flow to all parties from a 'full' and sincere apology include:

- firstly *moral benefits* – from doing the right thing
- secondly *emotional/psychological benefits*, including:
 - showing respect to the recipient
 - giving peace of mind to the recipient through the giver accepting responsibility for a problem and/or through giving an explanation as to what occurred and why
 - forgiveness, allowing both the giver and the receiver of an apology to 'move on'.

⁷ NSW Ombudsman, *Effective complaint handling*, June 2004, p.13.
www.ombo.nsw.gov.au/publication/PDF/guidelines/Chapter%201_Effective%20complaint%20handling.pdf.

I think this is well illustrated in a quote from the former Prime Minister of Canada, Brian Mulroney: *“Most of us in our lives have had occasion to regret certain things we have done. Error is an ingredient of humanity, so too is apology and forgiveness. We all have learned from personal experience that as inadequate as apologies are they are the only way we can cleanse the past so that we may, as best we can, in good conscience face the future”*.

There are also *interactional benefits* that can flow from a ‘full’ apology, including:

- repairing or laying the groundwork for a restored relationship, which is particularly important where there will be on-going interaction between the giver and receiver
- improving the credibility of the giver and the level of trust between the giver and receiver

Let me give you an example of the interactional benefits that can potentially flow from an apology. This example also illustrates how apologies can be highly effective in a range of circumstances, including serious cases of misadventure and even death. In *Apologies, A practical guide*, the Ombudsman refers to a medical case where five of eleven cardiac patients died. The deceased people had been injected with a product to stop the heart beating during surgery, which was subsequently found to have been contaminated. Senior staff decided to contact the affected families, admit something had gone very wrong, apologise for the event and assume responsibility by restoring the survivors to health and not undertaking any further similar procedures until the source of the contamination was identified and rectified. None of the patients or their families initiated proceedings, but rather, the Chief Executive Officer of the NSW Clinical Excellence Commission was able to advise a parliamentary inquiry that:

*“...Not only did none of those patients take legal action, but two of them came back to the same hospital and the same surgeons to have repeat surgery many years later because they had confidence that the clinicians were actually on their side and were empathic with them. And, surely, in this day and age we can allow our clinicians to be empathic with the people that, after all, they went to work to help...”*⁸

This only worked because NSW Health was prepared to make unqualified, unreserved admissions, along with a commitment to put right that which could be fixed.

This can be contrasted with the qualified apology where a person or agency acknowledges an event occurred but fails to express contrition or perhaps even address the specifics of an incident. Such lukewarm statements leave aggrieved persons ambivalent at best and, more agitated at worst. Indeed, in research I will refer to in a few minutes, it was found that qualified apologies resulted in only 35% of claimants agreeing to settle the dispute.⁹

Further benefits that can flow from ‘full’ apologies also include:

- *personal or operational benefits* – a reduction in the likelihood and/or severity of negative outcomes
- *financial benefits* – a reduction in the chances of on-going difficulties that can seriously impact on time and resources, including litigation, and
- *systemic benefits* – the transparency that goes with a ‘full’ apology increases the chances that mistakes or other problems will be properly addressed.

⁸ Proceedings before the General Purpose Standing Committee No. 2 Inquiry into Review of Complaints Handling within New South Wales Health, 14 September 2006, NSW Parliament.

⁹ Robbennolt opcit, p.9.

Recent research has highlighted certain interesting characteristics of the people who are more likely to apologise than others. A US study involving 7,590 Americans was conducted by pollsters Zogby for The Pearl Outlet, which commissioned the poll after noticing that a growing number of customers were buying pearls as a way to say “sorry”.

The study found that married people say “sorry” to their partners almost twice as readily as do single people. Even when they feel they are not to blame, married people are twice as likely as single, divorced or separated ones to apologise after an argument.

This same study found that high earners apologise twice as often as low earners. The study found a near perfect correlation between income and the rate of apology.

Arguments that have been put forward to explain this situation include:

- that successful people are willing to learn from their mistakes and keen to mend relationships
- that higher earners tend to be both brighter and more secure
- or that maybe higher earners apologise more because it’s easy to apologise afterwards then to ask permission beforehand – and high earners ask permission less [the view put forward by the President of the Pearl Outlet as his own theory].

So, if you are a high earner and you’re married, you must be an expert on the topic!

The potential impact of apologies in resolving problems

As illustrated at the start of my presentation, if a mistake or error led to harm, an appropriate apology is often seen by complainants as an essential part of the proper resolution of their complaint – an appropriate apology is often the main thing they really want. The greater the harm, the greater the likely value of an appropriate apology to the person harmed. As one American writer put it – *‘An apology is the superglue of life. It can repair just about anything’*.*

When things go wrong, many of the people who experience harm or have otherwise been wronged want no more than to be listened to, understood, respected and – if appropriate – given an explanation and apology. A prompt and sincere apology for any misunderstanding is likely to work wonders. It will often avoid the escalation of a dispute and the significant cost, time and resources that can be involved. Apologies can also start a process that can lead to the resolution of a conflict or dispute, particularly if there’s an on-going issue that needs to be dealt with. Apologies can help to build trust – a necessary first step to a better understanding in a damaged relationship.

A ‘full’ apology given at the right time can:

- restore dignity, face and reputation
- provide vindication or a sense of justice or an acknowledgement that the recipient was right
- allow for an acceptance of responsibility for actions or ownership of a problem – it assures the recipient that he or she is not at fault, a common feeling after a mishap.

When something goes wrong, the injured party or their family will generally want to know what went wrong, who was responsible and how those responsible are going to address the problem. They also will want to know that they will be properly cared for or compensated for damage or loss.

* Quote attributed to the comic strip writer Lynn Johnston.

If things then become difficult, the problem often isn't the event that caused the damage or injury – it is the way that person was treated afterwards. This could be, for example, due to a failure to communicate or acknowledge that something went wrong and to admit error.

Experience in many fields indicates that people who have been harmed don't immediately seek retribution, revenge or vindication. There is usually a two stage process – between the original issue or problem and a very negative response there is usually some intervening event or conduct. Experience indicates that this intervening event or conduct will usually relate to how the problem was dealt with, how the person was treated or how the person's initial expression of concern was handled. There will therefore usually be a window of opportunity after something goes wrong to properly address the problem and its impact in ways that are acceptable to all concerned.

If the response to the individual's concerns is respectful, positive and constructive (which can include an apology if appropriate), those concerns can often be resolved satisfactorily, enabling the person to 'move on'. If the response is rude, dismissive, negative, defensive or misleading, this is likely to result in an escalation of the problem with consequences that are detrimental to the interests of all the parties concerned.

If answers are not forthcoming, if there is a failure to acknowledge the problem or the harm it has caused, or in particular if the person suspects a cover-up, this is likely to result in resentment and anger.

When people are angry they often want to lash out – to get revenge, to cause pain or to force those they see as responsible to properly explain what happened. When up against powerful organisations or individuals, the best way for people to fight back is to go to a lawyer or to the media. If they go to a lawyer, this is when they are likely to start thinking seriously about money, which they may see as a way to measure the pain they want to cause, or at the minimum what they will need to be able to pay the lawyer!

I think a good example of the power of a good apology concerned the Catholic Diocese of Dallas where a civil jury awarded the plaintiffs \$119.6 million. This was reduced to \$23.4 million by agreement with the plaintiffs, who, it is reported, agreed to vacate the original verdict in exchange for an apology by the Bishop.

Where responsibility is reasonably clear, an agency or relevant official may be confronted by the need to decide whether to offer a 'full' apology (including the taking of reasonable steps to 'put things right') or do nothing and wait and see if a problem results in civil litigation (at which time liability is denied and the action defended).

In *Apologies: A practical guide*, the Ombudsman prepared a table outlining all the advantages of offering an apology, as an alternative to the 'deny and defend' strategy commonly advocated by lawyers, rather than litigating a matter.¹⁰

The table contrasts the effects of apologising, as opposed to litigating. Apologising allows people to do 'the right thing'. It allows for relationships of mutual trust to be restored when an injured party sees someone else accept responsibility for a mistake and take proactive steps to put it right. It also allows those injured to express their needs and negotiations towards settlement to be commenced in a non-adversarial setting.

By contrast, legal action is by its very nature defensive. Individuals and/or agencies communicate as little as possible for fear of conceding liability. Apologising accepts that we all make mistakes and that those we serve generally understand this because they do too.

¹⁰ NSW Ombudsman, *Apologies – A practical guide*, 2nd ed., May 2009, p.8.
<http://www.nswombudsman.nsw.gov.au/publication/PDF/guidelines/Apologies%20Guidelines%202nd%20edition%20March%202009.pdf>.

Recent research in the United States has gone some way towards a possible exploration of the reluctance of lawyers in relation to offering apologies. In a paper discussing the results of certain research, Jennifer Robbennolt, Professor of Law and Psychology, University of Illinois College of Law included the following statements:¹¹

“...contemporary empirical research has ... generally found that apologies influence claimants’ perceptions, judgments, and decisions in ways that are likely to make settlements more likely – for example, altering perceptions of the dispute and the disputants, decreasing negative emotion, improving expectations about the future conduct and relationship of the parties, changing negotiation aspirations and fairness judgments, and increasing willingness to accept an offer of settlement.”

However, Professor Robbennolt went on to note that her research “...demonstrated that attorneys react differently to apologies than do claimants”. She noted that while “...apologies tend to lower claimants’ aspirations and estimates of a case’s fair settlement value...”, on the other hand “...apologies pushed attorneys’ aspirations and estimates of fair settlement values in a different direction...”. She noted that:

“Many commentators are concerned about the risk that attorneys’ focus on the relevant legal rules will dominate the negotiation process and the ultimate settlement of the dispute, to the exclusion of the non-legal interests of the parties.”

I was reading a recent newsletter of the US not for profit organisation, SorryWorks!, which contrasted the two approaches for dealing with problems as being the difference between the 3 As and the 3 Ds.

Between on the one hand:

- Accessibility to those harmed
- Addressing the problem, and
- Apologising

And on the other hand:

- Distancing
- Denying, and
- Defending.

¹¹ Robbennolt Jennifer K, Attorneys, Apologies and Settlement Negotiation, Social Science Research Network: <http://ssrn.com/abstract=1275419>.

The essential elements of a 'full' apology

To be effective, an apology must usually include an express acceptance or admission of responsibility or fault for the actions or inaction that caused harm (that is, a 'full' apology). Research indicates that a 'partial' apology – an apology that does not include such an acceptance or admission – can do more harm than good.

The idea of an apology is relatively simple – that expressing sincere sorrow, regret or remorse for wrong doing and/or the harm it caused can be an effective way to help resolve a problem and restore the relationship between the giver and the receiver. However, this simple idea tends to mask the complexities involved in its implementation.

The content and delivery of an apology is a particularly good example of the old adage that 'the devil is in the detail'. In particularly complex, sensitive or serious situations, for an apology to be effective a wide range of issues will usually need to be considered. The most appropriate content and method of communication of an apology will depend on the circumstances of the particular case and what is hoped to be achieved by giving the apology. For example this could be restoration of reputation, acknowledgement of the wrong done, reconciliation, or an assurance that a problem has been addressed and will not happen again.

What is required for an apology to be effective comes down in the end to what is important to the person harmed, which might be one or more of the following:

- the fact of the making of the apology
- the content of the apology (for example an admission of responsibility or an explanation of why something occurred), or
- the feelings that motivated the apology.

Where these prerequisites are met, not only is an apology likely to be effective in relation to the person harmed, it can also be effective to prevent or lessen adverse media comment or intervention by some watchdog bodies.

Other than in the more simple situations, in principle, to maximise effectiveness an apology should incorporate the following elements:

Firstly *recognition*. This includes:

- *a description of the wrong* – an honest and fulsome description of the relevant problem, act or omission to which the apology applies. In relation to honesty, two former politicians from the Victoria recently wrote: "*People do forgive mistakes. What they don't forgive is being misled*". In relation to how much is disclosed, in a recent article in The Australian newspaper discussing how Malcolm Turnbull had responded to the 'ute affair' email fiasco, a senior Liberal MP was reputed to have said: "*Sometimes you have to bare all to be forgiven*".
- *a recognition of the wrong* – an explicit recognition that the action or inaction that resulted in the problem was wrong – for example where Pope Benedict recently said in Sydney:
"Here I would like to acknowledge the shame which we have all felt as a result of the sexual abuse of minors by some clergy and religious in this country. These misdeeds, which constitute so grave a betrayal of trust, deserve unequivocal condemnation."

- *an acknowledgement of the harm* – an acknowledgement that the affected person has suffered harm, eg, embarrassment, hurt, pain, damage or loss – for example where the Prime Minister said in his sorry speech to the stolen generation:

“I offer you this apology without qualification. We apologise for the hurt, the pain and suffering that we, the Parliament, have caused you by the laws that previous parliaments have enacted. We apologise for the indignity, the degradation and the humiliation these laws embodied.”

Secondly *responsibility* – an acceptance or acknowledgement of responsibility for the wrong and harm caused. An example is where the Prime Minister said in his apology to the stolen generations:

“To the stolen generations I say the following: As Prime Minister of Australia I am sorry. On behalf of the Government of Australia I am sorry. On behalf of the Parliament of Australia I am sorry.”

Thirdly *reasons* – an explanation of the cause – of the reasons for the problem, or a promise to investigate the cause (but not excuses which are merely an attempt to deflect responsibility).

Fourthly *regret*. The core element of the apology is a *statement* expressing sincere sympathy, sorrow, remorse and/or contrition. The *sincerity* of this communication will generally be absolutely essential and whether or not it is present will be closely analysed by the recipient of the apology. Some thoughts on the issue of sincerity are set out in the Annexure to this paper.

The fifth element of a full apology is *responsiveness* and *redress*, which would include:

- a statement of the *action taken or proposed* to put things right
- *a promise not to repeat* – a promise or undertaking that the action or inaction will not be repeated – of course if it is repeated, that will severely damage the credibility of the apologisee in relation to any subsequent attempt at an apology
- *timeliness* – no undue delay – as one writer said: “*When you realise you have made a mistake, make amends immediately. It’s easier to eat crow while it’s still warm*”, or as another two wrote: “*The longer you wait to apologise, the sooner your weakness is perceived as wickedness*”.

Finally *release* – a request for forgiveness or a release from blame. A request for forgiveness is an optional but important element in an apology as forgiveness can have immense power, for example to heal emotional wounds and sooth anger allowing people to move on with their lives. I am not talking here about forgetting, but about understanding and acceptance – about no longer feeling resentment.

While the inclusion of each of the above elements in an apology will not guarantee that the apology will be successful, their exclusion is likely to decrease the chances of success.

Apologies have statutory protection in NSW

In most circumstances people in NSW can make a full apology for any harm they have caused without prejudicing their legal position in any subsequent or related legal proceedings.

In 2002 New South Wales was the first jurisdiction in the common law world to legislate to protect a 'full' apology. The *Civil Liability Act 2002* contains protections for apologies that include an admission of responsibility, which is often referred to as a 'full' apology. Section 69(2) of the Act specifically provides that the making of such an apology "*is not admissible in any civil proceedings as evidence of the fault or liability*".¹²

As stated in the Fact Sheet on apologies published by the NSW Ombudsman:

"The Act provides that 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. Furthermore, evidence of an apology is not admissible in a court hearing as evidence of fault or liability (other than the categories of civil liability excluded by s.3B of the Act).

An apology is defined in the Act as:

*"...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."*¹³ (s.68). [emphasis added]

The *Defamation Act 2005* contains similar protection from liability (ss.20 & 38).

Where action is taken to rectify a problem, for example as part of a package of measures in a 'full' apology, it is relevant to note another provision of the Act that in proceedings relating to liability or negligence:

"the subsequent taking of action that would (had the action been taken earlier) have avoided a risk of harm does not of itself give rise to or affect liability in respect of the risk and does not of itself constitute an admission of liability in connection with the risk" (s.5C of the Act).

Of course while an apology cannot be used in court to prove fault or liability on the part of the person or body who made the apology, on the other hand the giving of the apology does not absolve the person or body from any potential liability. Further, although an apology and information conveyed in an apology may not be admissible, the apology may convey information that can be used to obtain information in an admissible form in other ways for use in court proceedings.

It is important to note here that the protections under the Act do not apply to all civil proceedings. Although in most cases the NSW legal system now can't make you sorry you've said sorry, there are still some circumstances where an apology might still be a problem. This could be in relation to, for example, traffic accidents, intentional violent acts intended to cause injury or death, sexual assault or other sexual misconduct, or workplace injuries.¹⁴

¹² *Civil Liability Act 2002 (NSW)*, s.69.

¹³ Public Sector Agencies fact sheet No. 1 – Apologies, NSW Ombudsman, October 2006.

¹⁴ *Civil Liability Act 2002*, s.67(1) and s.3B. The types of civil liability that are not covered by the protection for apologies in the *Civil Liability Act* can be briefly summarised as liability for:

- (a) an intentional violent act done with intent to cause injury or death (including sexual assault or misconduct)
- (b) the contraction of a dust disease, or for a personal injury allegedly caused by smoking or the use of tobacco products
- (c) the apology provisions of the Act do not apply to motor accidents, or to economic loss, non-economic loss or psychological/psychiatric injury to an injured person and liability for the compensation of relatives of a deceased person that arises from a motor accident (or transport accident as defined in the *Transport Administration Act 1998*) to which the *Motor Accidents Act 1998* applies, or from a motor accident or public transport accident to which the *Motor Accidents Compensation Act 1999* applies
- (d) damages payable by an employer for the injury or the death of a worker resulting from or caused by an injury, and compensation under various workers compensation legislation, the *Victims Support and Rehabilitation Act 1996* or the *Anti-Discrimination Act 1977*, or for the benefit payable under the *Sporting Injuries Insurance Act 1978*.

Although these exclusions appear at first glance to be extensive, apart from motor accidents, in practice they have little relevance to the vast majority of the day-to-day interactions affecting public officials or officials and members of the public.

Therefore, where a 'full' apology has been given, including a sincere admission of responsibility, any subsequent litigation will be limited to the quantum of damages. Even where compensation is sought, if a genuine effort has been made to offer an apology (including an acceptance of responsibility), this may act as a catalyst to make negotiations more cordial, less time consuming and less likely to end in formal proceedings.

The NSW Ombudsman has recently completed a brief survey of NSW judgments over the last 10 years, concentrating on the period since the *Civil Liability Act* came into force. This work was centred on cases where some mention was made of an apology. The vast majority of these cases related to defamation, contempt of court and anti-discrimination matters. There does not appear to have been any change in the number of references to apologies in some form since the introduction of the *Civil Liability Act*.

In addition to reviewing judgments, the Ombudsman has continued to monitor media coverage as well as the actions of the public authorities to assess the impact of a statutory protection for apologies. This analysis has clearly demonstrated that there has been no detrimental impact on the rights of the public to pursue litigation, or any other impact, as a result of the inclusion of a statutory protection for apologies.

'Apology' is a simple concept, but there can be many pitfalls in implementation

While apologies are a simple concept, there can be many pitfalls in implementation due to the large number of potential variables that can impact on their effectiveness. The more complex the situation and the more reprehensible the action or inaction that led to harm, the more care that is likely to be required in crafting and delivering an apology. Conversely, too much 'care', or too much choreography – the less the perceived humility and sincerity. It is often best to see an apology as part of a 'package' of actions, and as part of a 'process' – not just a quickly delivered statement of regret.

Failure is not an option

If an apology fails – for example because of a failure to accept responsibility or because it is not seen as sincere – it is unlikely that any further attempt at apologising will be effective.

Conclusions

In conclusion, I want to leave three thoughts with you today:

- firstly, an appropriate 'full' apology can be remarkably effective in resolving problems in ways that are fair and reasonable
- secondly, where a problem has caused harm, a 'full' apology will consist of a 'package' of actions including admissions of responsibility, explanations of cause, actions to put things right (where possible) and expressions of sorrow and remorse, and
- thirdly, where a problem has caused harm, a 'full' apology may also be the culmination of a 'process' of communication, investigation and negotiation.

ANNEXURE

Factors impacting on perceived sincerity of apologies

	More Sincerity	Less Sincerity
WHY <ul style="list-style-type: none"> Objective 	To assist recipient [to respond to pain and suffering, to address needs, to allow recipient to move on]	To assist apologiser [to appease recipient, to justify action looking for exoneration or release from blame]
WHAT <ul style="list-style-type: none"> Focus Responsibility: <ul style="list-style-type: none"> Cause Culpability Response: <ul style="list-style-type: none"> Redress Rectification 	On consequences for the recipient [to try to address the recipient's needs] Acknowledged by apologiser [responsibility for the wrong and the harm caused] On apologiser [recognition the action or inaction was wrong and caused harm]	On consequences for the apologiser [on apologiser's relationship with the recipient, on apologiser's reputation, etc] Not acknowledged by apologiser [responsibility ignored, denied or placed on recipient] Not on apologiser [culpability ignored, denied or discounted]
WHO <ul style="list-style-type: none"> Delivery 	By person responsible [either by the person directly responsible or by a person seen as responsible for that person or for the organisation]	By unconnected person [by a person with little or no connection to the cause of the harm]
WHEN <ul style="list-style-type: none"> Timing 	Soon after event [or as soon as facts are clear]	Unreasonably delayed [for no good reason]
HOW <ul style="list-style-type: none"> Communication 	Face to face	Impersonal form letter

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