



It's Ok to Apologise

In November 2014 Ombudsman SA tabled an audit of state government agencies' complaint handling. One of the recommendations was that the state government consider amendment to the *Civil Liability Act 1936* to clarify that the provisions afford full protection to an apology made by any party.

The audit noted that section 75 of the Civil Liability Act was narrower in its protection than similar legislation in other states in that it applied to expressions of regret in the context of proceedings in which damages are claimed for a tort and did not cover any admission or acceptance of responsibility or fault.

With the passing of the *Statutes Amendment (Attorney-General's Portfolio) Act 2016* (assented to on 16 June 2016), the government has given effect to the recommendation and replaced section 75 with a far more expansive protection, which is in line with interstate legislation. The new section 75 reads:

75—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.
- (3) This section does not apply in relation to—
 - (a) liability in respect of the tort of defamation; and
 - (b) civil liability of a kind that is excluded from the operation of this section by regulation.
- (4) In this section—

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.

As stated in the audit, expressions of regret, instead of a full apology, can often appear insincere and fail to address a complainant's need for validation of the harm done and for someone to take ownership of the error. With this provision now in place, government

departments, local councils and public officers should feel confident in giving an unqualified apology when the circumstances call for it. The practice of providing carefully worded expressions of regret supported by legal advice should be a thing of the past.