

Local Government Update

A review of Local Government Law in Western Australia

SAYING SORRY

Over the past five years, increasing attention has been given to the issue of apologies. In Australia and internationally there have been many studies and research projects analysing the effects of reporting and managing errors and the making of apologies.

Benefits of an apology

Overall, the message from these studies and projects is clear: there are significant organisational (and individual) benefits to be gained in making an appropriate apology to a person affected by an error. There is no reason to believe that these benefits would not also apply to local governments in WA. An apology is likely to benefit a local government by:

- satisfying the legitimate concerns of a person who suffers in some way as a result of an error;
- avoiding, or helping to resolve more quickly and effectively, disputes or potential disputes;
- demonstrating to the community, and to the local government's elected members and employees, its commitment to the principles of transparency, accountability and ethical conduct; and
- helping to promote trust and respect between the local government and its community.

What is an apology?

The key elements of an apology are:

1. acknowledging the error;
2. accepting responsibility for the error; and
3. expressing sorrow or remorse.

Depending on the circumstances, an apology may also contain an acknowledgement of any harm caused, an explanation of why the error occurred, an outline of any remedial action and an undertaking that the error will not be repeated.

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Effective apologies

To ensure that an apology is as effective as possible, care should be taken to ensure that it meets the needs of the particular case, assessed by reference to factors such as:

- finding out the nature and scope of the problem and whether the local government was responsible for the error;
- communicating with, and listening to, those affected by the error;
- identifying the available options;
- drafting the content of the apology to best fit the circumstances;
- deciding when the apology should be given; and
- deciding by whom, to whom and by how the apology is to be given.

Legislative protections

Recent WA legislation has sought to facilitate and encourage the making of apologies by giving them statutory protection. Under the *Defamation Act 2005*, an apology:

- is not an admission of fault or liability;
- is not relevant in determining fault or liability; and
- may reduce damages.

Provisions similar to the first two of those propositions apply under the *Civil Liability Act 2002* in respect of most civil actions. However, under the *Civil Liability Act*, the issue is complicated in three respects. Firstly, there are various civil actions where the protection given to apologies does not apply. These actions include claims under the *Motor Vehicle (Third Party Insurance) Act 1943* and the *Workers' Compensation and Injury Management Act 1981*. Secondly, the protection will not apply if there is an agreement to that effect between the parties. Thirdly, for the purposes of the *Civil Liability Act*, an “apology” has been defined narrowly – with the result that the protections do not apply to that part of an apology which is “an acknowledgement of fault” by the person apologising.

Conclusions

There may be significant benefits to local governments making appropriate apologies to people affected by errors for which the local government is responsible. To be as effective as possible, each apology needs to be tailored to the specific circumstances.

Insofar as legal liability is concerned, in defamation matters there is full statutory protection for apologies. In other civil actions, care needs to be taken in drafting the content of the apology to avoid exposing the local government (or, in rare cases, an individual) to legal liability.

Please contact Neil Douglas on 9383 3133 or neil.douglas@mcleods.com.au if you have any queries regarding the issues raised in this article.

The information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstance of each case

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