

DUTY OF CANDOUR



Frequently Asked Questions

? What is significant harm?

A Significant harm is a serious adverse patient safety event (SAPSE) and is an event that:

- Occurred whilst a patient was receiving care from a health service, and
- Resulted in unintended or unexpected

– Moderate harm:

is when a moderate increase in treatment is needed, such as an unplanned or unexpected return to surgery, but is not permanent damage or injury to the person. Note: this may not include cases where a return to theatre occurred e.g., if a common complication of surgery occurs which was explained during the consent process, such as a bleeding surgical site.

– Severe harm /death:

causes a permanent lessening in function to a person that was not part of that person's illness or condition. The harm could lead to permanent disability or death.

– Prolonged psychological harm:

is psychological harm a person has experienced, or is likely to experience, for a continuous period of at least 28 days post an adverse event.

? Who decides whether the event is classified as significant harm?

A For an event to be classified as significant harm (or a SAPSE), it must meet the criteria in the above, as determined by a registered health practitioner (such as a registered nurse).

Sometimes this can be quite complex. At times, health services become aware of significant harm in other ways or at a later date as well, such as via an external complaint, or from the Coroners Court of Victoria.

? What is Duty of candour?

A Duty of candour is a process where a health service will have a responsibility to offer you and/or your family or carer with the following, when significant harm occurs:

- 1 An apology
- 2 The facts of the event – meaning what happened and why. This may include the timeline leading up to the harm event
- 3 The health service response to the event – meaning what the health service did at the time and after the event
- 4 The steps being taken to prevent similar events from happening again

This is required to be offered to you in a report format.

? Who will be involved in the initial Duty of candour meeting, and also the review of the harm event?

A The Duty of candour meeting and the review may occur at the same time, therefore not all information may be known at the time of the initial meeting.

The health service will have a mix of people in the meeting with you and/or your family or carer. This could include people such as the senior clinicians involved in your care, and members of the clinical governance team, and will be a chance for you to ask any questions you may have.

To fully understand what happened, the health service will also put together a team of people to independently investigate why the harm occurred.

To ensure its independence, members of the review team will not have been directly involved in the event that caused the harm but will interview those who were. Your feedback will be valuable to the review process, so please ask your Point of Contact or the Consumer Liaison Officer how you can be involved.

? What is the role of the Point of Contact person or Consumer Liaison Officer?

A The health service will give you the details of a Point of Contact person or Consumer Liaison Officer.

This person will be your main contact from the health service whilst going through the Duty of candour process. If you have questions or concerns, you should first talk to them.

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? What if I need help to take part in the Duty of candour process?

A You can nominate a family member or carer, or another nominated person, to be with you through the process.

The health service should also offer you a Point of Contact person or Consumer Liaison Officer who can help you through the process by answering any questions you may have.

? What support could I possibly access?

A You should communicate with your health service if you think you may need the following things:

- Translators
- Interpreters
- Counsellors
- Payment of out-of-pocket expenses for things like transport, parking, meals.

As part of the Duty of candour process, you will be allocated a Point of Contact or a Consumer Liaison Officer to assist you with this process.

? Can I decide who will and will not be part of the Duty of candour meeting?

A You can recommend who you would or would not like present during the Duty of candour meeting. This includes:

- Deciding if you would like to bring a support person with you
- Requesting that a particular person **not** attend the review if this is distressing for you.

? How will I contribute to the Duty of candour meeting and the review of the event?

A You decide how much you would like to contribute to the review. Things you can do include:

- In advance of the meeting you can record/write down:
 - What you remember of the event, or if the event affected someone else, what they may have told you
 - Any questions you have about what happened, what went wrong and what impact that has for you / your family member
 - How you could be involved in the review process
 - Anything else you would like the reviewers to be aware of
- During the meeting you can share your thoughts and experiences, and you can ask any questions you would like to help understand what happened
- You can review the Duty of candour meeting notes post the meeting, and provide feedback if necessary. These notes contain everything discussed at the meeting
- At the end of the review of the event, you will also receive the final report outlining any findings and improvements. You will be able to review this and should contact the health service if you have any questions.

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? What if I do not want to have the meeting at the hospital/health service where the harm occurred?

A You can decide how you would like to join the meeting - over the phone, video conference call, at the hospital or at an alternate location if the service has that capability.

? Can I decide not to take part in the Duty of candour?

A You can decide to opt out, or not be involved in the Duty of candour process.

If you decide to do this, the health service will ask you to sign a statement to this effect. They will also give you details of a Point of Contact person or Consumer Liaison Officer for future contact.

Know that you can change your mind later.

If you do change your mind, ask to speak to your Point of Contact person or the Consumer Liaison Officer at the health service to start the Duty of candour process.

? What if I am not ready to take part in the Duty of candour process?

A You can request a delay to the Duty of candour, particularly if you are struggling with the loss of a loved one. The health service will:

- Find an agreeable date for the health service to contact you, or
- Give you contact details for a Point of Contact or Consumer Liaison Officer, so you can reach out when you are ready.

? When might the Duty of candour process be delayed?

A If you have lost the ability to participate because of harm or are unable to medically participate in the Duty of candour, then the process may continue with your immediate family, carer, next of kin, or you can nominate your own representative.

When you recover, regardless whether the Duty of candour has occurred with your nominated person, the health service will commence the Duty of candour process again with you (unless you do not wish to participate, by opting-out).

? What if the health service has not identified significant harm, can I start the Duty of candour process?

A If you believe that you have experienced significant harm from a health service, but the service has not begun a Duty of candour process, you should ask to speak to a member of staff or the Consumer Liaison Officer.

The health service will then review the potential harm you experienced to see if it fits the criteria. If it does not, you may still be owed open disclosure as outlined within the Australian Open Disclosure Framework.

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TO ACCESS INDEPENDENT ASSISTANCE


? What can I do if I disagree with the findings of the review?

A You can contact your Point of Contact person or Consumer Liaison Officer to share your concerns. If this does not resolve it, then you might want to raise a complaint with:

- **The health service**


 Ask to speak to the complaints department

- **The Health Complaints Commissioner**

 Call **1300 582 113** between 9.30am – 3.00pm Monday to Friday


 hcc.vic.gov.au/contact

- **The Mental Health Complaints Commissioner**

 Call **1800 246 054** between 9.00am – 5.00pm Monday to Friday

 www.mhcc.vic.gov.au/contact-us

- **The Coroners Court of Victoria**

 Call **1300 309 519** between 8.30am – 5.00pm Monday to Friday

 www.coronerscourt.vic.gov.au/families

? What information can I use from the Duty of candour process in legal proceedings?

A The duty of candour process ensures that you or your family or carer receives:

- 1 An apology
- 2 The facts of the harm event
- 3 A description of the health service response to the event (meaning what they did at the time)
- 4 Any steps the health service has taken to prevent reoccurrence.

Only the apology is protected from use in legal proceedings, and is not an admission of fault.

However, the health service might undertake a **protected review process**, to encourage open and honest consultation with clinicians involved, resulting in more robust recommendations and findings.

These protections would then protect certain documents including the final report from being used within legal proceedings as well. Ask your health service if the review will be protected to know more.

? If I want to make a complaint, is it part of the Duty of candour process?

A No. Making a complaint is a separate process to the Duty of candour.

? Can I seek legal redress if the Duty of candour process is occurring or has begun?

A Yes. The Duty of candour does not stop you from seeking legal redress outside of this process.

? What happens if the health service does not comply with the Duty of candour process?

A The Minister and Secretary for Health may take into account the failure of the health service to undertake Duty of candour process.

Depending on the number and severity of failures by the health service, the Minister may publish a statement with the name of the relevant health service on the Department website stating that the health service has failed to comply with the Duty of candour.



To learn more about the the legal requirements of Duty of candour

Go to:

www.safercare.vic.gov.au/duty-of-candour-resources-for-patients-families-and-their-carers

