

OPEN DISCLOSURE GUIDELINES

In my 2001/02 Annual Report, in Chapter 1, under the heading 'Topics of Interest' I raised the topic of 'Consumer complaints provide a risk management opportunity for providers' (see page 10). If you would like a copy of the report please contact the Health and Community Services Complaints Commission.

In the course of the discussion I referred to the Open Disclosure project being undertaken at the initiation of the Australian Council for Safety and Quality in Health Care. The objective of the project was to produce a national standard and education support package in relation to improving communication between health care providers and patients when something goes wrong.

As a result of that project, Draft Open Disclosure Guidelines and an Open Disclosure Standard were prepared for consideration by the Australian Council for Safety and Quality in Health Care.

The purpose of the guidelines is stated to be to assist hospital managers and clinicians to make effective use of the Open Disclosure Standard. The Draft Open Disclosure Standard was prepared by the Standards Australia Committee on Open Disclosure. The standard relies on the definition by the Australian Council for Safety and Quality in Health Care of the term 'adverse event' as an incident in which harm resulted to a patient receiving health care.

The Draft Open Disclosure outlines the key principles of open disclosure, being:

- Recognition of the reasonable expectations of health-care users (patients)
- Openness in communications
- Confidentiality
- Acknowledgment
- Risk management and systems improvement
- Apology
- Commitment to open disclosure

I do not intend to set out in any detail the Draft Open Disclosure Standard or the relevant Guidelines. It is, however, important to make the observation that the recent medical indemnity crisis and tort law reform initiatives have highlighted the very important competing interests that have been considered within the context of the Open Disclosure project.

On the one hand patients or health-care users were becoming increasingly concerned that they were not being given a full and proper explanation as to the circumstances giving rise to an 'adverse' event which had occurred in relation to their health care.

In regard to health-care providers, there was an increasing concern that they were being exposed to the risk of negligence litigation, particularly if they conveyed information to a health-care user which would subsequently be used against them.

There is no doubt that, in the main, providers want to give all appropriate information to a health-care user and to do so in an open and honest manner.

The doubts, however, that arose within the context of their ethical and legal responsibilities and increasing concerns about the risk of litigation, has impeded the openness in communication between the health-care provider and the health-care user. The Open Disclosure Standard and Guidelines are designed to redress the concerns that have arisen in this area and to re-establish the positive and important relationship that should exist between the provider and the user.

In addition, tort law reform is likely to remove the concerns where a provider says they are sorry or apologises as a result of an adverse event. Such an expression of regret or an apology within the context of the tort law reform will not be a basis for establishing any

liability. In contrast, however, it will be a basis for re-establishing a trust as between the provider and the user such that a patient can reasonably expect:

- to be fully informed of the issues surrounding adverse events and their consequences
- to be given the information in a manner appropriate to their needs
- to be treated sympathetically, with respect, and with consideration for their feelings
- to have any questions answered in full
- that families and carers will receive the same consideration

At the time of writing this report it is my understanding that the Draft Open Disclosure Guidelines and Standard are being trialed in a number of different settings with a view to their suitability within the overall Australian health care system.

There is much interest in the Draft Open Disclosure Guidelines and Standard becoming widely available and implemented. It may well be that there has been some delay in implementation due to the tort law reform process and the accompanying medical indemnity insurance crisis. It is hoped that, in the near future, the process will gain momentum and there will be widespread implementation and reliance on the key principles of open disclosure that are set out within the guidelines and standard.