

DUTY OF CANDOUR



Frequently Asked Questions

? What is significant harm?

- A** Significant harm is a serious event that:
- ✓ happened when a patient was under the care of a health service
 - ✓ caused harm or death that the service didn't expect or intend.

Significant harm is also called a **serious adverse patient safety event**, or **SAPSE**.

There are different types of significant harm.

Moderate harm

When a person needs extra treatment because of harm, but there is no permanent damage or injury.

This may not include harm that the health service explained might happen.

Severe physical harm or death

Causes permanent damage to a person that wasn't part of their illness or condition. The harm could lead to permanent disability or death.

Long periods of psychological harm

When a person experiences, or is likely to experience, psychological harm after the event for at least 28 days.

? Who confirms if the event caused significant harm?

- A** **A registered health practitioner, such as a doctor or registered nurse, will confirm if an event has caused significant harm.**

Sometimes this decision can be complex. The health service might not find out about the significant harm until later. For example, through a complaint, or from the Coroners Court of Victoria. They may not be able to confirm until they have more information.

? What is Duty of Candour?

- A** **After significant harm has happened, the health service must give you, your family or your carer some information. This can be done in a few ways, including in person. This process is called Duty of Candour.**

The information must include:

- 1 an apology
- 2 what happened and why, which might include the timeline
- 3 what the service did at the time and after the event
- 4 what the service is doing to prevent similar events from happening again.

The service must give you this information in a report.

? Who will be part of the first Duty of Candour meeting?

- A** **The health service may have a mix of people in the meeting with you, your family or carer.** This could include people like the senior doctors involved in your care. It could also include members of the team that oversees patient safety. It will be a chance for you to ask any questions.

? Who will be part of the review of the event?

- A** **The Duty of Candour meeting and the review may happen at the same time. But the health service may not have all the information available before the first meeting.**

The service will put together a team of people to review why the harm happened. To make sure the review team is independent, it can't include people who were involved in the event. But the review team will interview anyone who was involved. Your feedback will be valuable to the review process. Please ask your Point of Contact person or the Consumer Liaison Officer how you can take part.

? What does the Point of Contact person or Consumer Liaison Officer do?

- 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 during the Duty of Candour process. If you have questions or concerns, you should talk to them first.

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

A You can choose someone, such as a family member or carer, to be with you through the process.

The health service should also offer you a Point of Contact person or Consumer Liaison Officer. This person can help you through the process and answer any questions.

? What other support can I get?

A Let your health service know if you think you may need:

- ✓ translators
- ✓ interpreters
- ✓ counsellors
- ✓ payment of expenses for things like transport, parking, meals.

As part of the Duty of Candour process, the service will also offer you a Point of Contact or a Consumer Liaison Officer. They can help you with this process.

? Can I decide who will be part of the Duty of Candour meeting?

A You can suggest who you want or don't want at the Duty of Candour meeting. This includes:

- ✓ deciding if you would like to bring a support person with you
- ✓ asking that a certain person **not** be there if this upsets 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. There are a few things you can do.

- ✓ Before the Duty of Candour meeting you can record or write down:
 - what you remember of the event. Or if the event affected someone else, what they told you about it
 - any questions you have about what happened and how that affects you or your family
 - how you want to take part in the review process
 - anything else you would like the health service to know.
- ✓ During the meeting you can share your thoughts and experiences. You can also ask any questions to help understand what happened.
- ✓ After the meeting you can check the Duty of Candour meeting notes. These notes include everything people discussed at the meeting. You can also give feedback on these notes.
- ✓ At the end of the review, you will get a final report. It will include what the health service learned about the event and what needs to improve. You should check this report and contact the service if you have any questions.

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? What if I don't want to have the meeting where the harm happened?

A You can decide how you would like to join the meeting. This might be over the phone, by video call, or at the hospital. You can join at another location if the service can offer that.

? Can I choose not to take part in the Duty of Candour process?

A You can decide not to take part in the Duty of Candour process. This is called opting out. If you opt out, the health service will still review the event, but they may not meet with you or offer you a report.

If you are opting out, the health service will ask you to sign a statement to confirm that's what you want. They will also give you details of a Point of Contact person or Consumer Liaison Officer for future contact.

You can change your mind later.

If you change your mind, contact your Point of Contact person or the Consumer Liaison Officer to start the Duty of Candour process. This may begin with a meeting.

? What if I'm not ready to take part in the Duty of Candour process?

A You can ask to delay the process, especially if you are struggling with the loss of a loved one.

The health service will either:

- ✓ agree on a date for them to contact you
- ✓ give you details for a Point of Contact person or Consumer Liaison Officer, so you can contact them when you are ready.

? What might delay the Duty of Candour process?

A The health service might delay the process if you can't take part because of medical reasons. In these cases, the process may keep going with your family, carer or next of kin. Or you can choose someone to represent you.

When you recover, the health service will start the Duty of Candour process again with you. They do this even if your chosen person has been taking part in the process. Or you can decide not to take part.

There might also be delays to the process because of outside investigations. For example, court hearings for the Coroner.

? What if the health service hasn't confirmed that significant harm happened? Can I start the Duty of Candour process?

A If you believe you've experienced significant harm and the health service hasn't started a Duty of Candour process, contact the service.

The service will review the possible harm to check if it fits the criteria. Even if it doesn't, the service may still have to give you information in what is called an open disclosure. This includes an apology and details about what happened. The Australian Open Disclosure Framework outlines this process.

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What if I need more help or have concerns?


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

A Let your Point of Contact person or Consumer Liaison Officer know your concerns. If this doesn't resolve it, you can make a complaint to one of the following services:

- **Your health service**


 Ask to speak to the complaints department.

- **Health Complaints Commissioner**

 Call **1300 582 113** between 9.30 am and 3 pm Monday to Friday.


 hcc.vic.gov.au/contact

- **Mental Health Complaints Commissioner**

 Call **1800 246 054** between 9 am and 5 pm Monday to Friday

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

- **Coroners Court of Victoria**

 Call **1300 309 519** between 8.30 am and 5 pm Monday to Friday.

 www.coronerscourt.vic.gov.au/families

? 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 process.

? Can I take legal action if the Duty of Candour process is happening?

A **Yes.** The Duty of Candour process doesn't stop you from taking legal action outside of this process.

? What information can I use from the Duty of Candour process in legal action?

A The Duty of Candour process makes sure that you, your family or your carer gets certain information from the health service. This includes:

- 1 an apology
- 2 what happened and why
- 3 what the service did at the time and after the event
- 4 what the service is doing to prevent similar events from happening again.

The apology doesn't always mean the health service agrees they did something wrong. The apology can't be used in legal action.

However, the service might carry out a **protected review process**. This is to encourage health service staff to communicate in an open and honest way. A protected review can result in better recommendations and findings.

You can still take legal action if there is a protected review, but you can't use certain documents. This includes the final report.

Ask your health service if the review will be protected to know more.

? What if the health service doesn't follow the Duty of Candour process?

A The Minister for Health and the Secretary will receive data about health services. This will show if a service followed the Duty of Candour process.

The Minister may publish a statement on the Department of Health website saying that the service didn't follow the Duty of Candour process. This will depend on how many times the health service failed and how serious those failures are.



For more about Duty of Candour and the laws that apply

Go to:

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

