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Submission to the development of an Open Disclosure Framework

About Darwin Community Legal Service and the Senior and Disability Rights Service

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Darwin Community Legal Service (DCLS) is a multi-disciplinary service providing general legal advice and assistance, a tenancy service, and a specialised Seniors and Disability Rights Service (SDRS) providing advocacy support in the areas of ageing and disability. We create awareness and empower our community, support access to services and rights, and advocate for change that promotes fairness and justice.

The Seniors and Disability Rights Service assists, and can advocate for, older people or people with disabilities and their representatives to:

- ▶ Understand their rights through information and community education
- ▶ Receive aged care services or disability support
- ▶ Engage with the Guardianship process
- ▶ Develop Advance Personal Plans or Powers of Attorney
- ▶ Raise systemic issues

DCLS supports the development of an Open Disclosure (OD) Framework that will provide further direction to aged care and disability service providers, particularly in the Northern Territory, on open disclosure and will offer a consistent basis for aged care and disability providers to communicate with and treat consumers with dignity and respect when adverse events result in harm to the consumers while receiving health care.

Support for an Open Disclosure Framework

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There is a strong ethical case for implementing OD in the primary interests of patients, and additionally from a medicolegal risk management point of view. For an aged care or disability service provider to not engage in open and honest dialogue is costly in social, emotional and financial terms.

Open disclosure (OD) after adverse health care events has been implemented in other state and territory health policy documents and is included in the Medical Board of Australia's code of conduct. Nevertheless, aged care and other service providers have been slow to embrace the practice of OD.

There are a number of barriers to the better uptake and implementation of OD, including perceptions of legal risk, lack of education and training, reluctance to admit error, uncertainty concerning what and how much to disclose. This is where the development of an Open Disclosure Framework is vitally important and service responses must be



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underpinned by a cultural shift towards greater respect for older people. It is imperative that interventions to safeguard vulnerable people preserve their dignity and autonomy.

Aboriginal people and people from a Culturally and Linguistically Diverse (CALD) background form a significant part of our clientele and have the most complex and immediate needs. The Northern Territory is characterised by high levels of disadvantage, vast distances, a significant proportion of the population living in remote areas, lack of infrastructure and services, and no economies of scale.

Low literacy is a significant issue in the Northern Territory, and it is important that public documents cater for these needs. The OD Framework is in very complex language, and even the OD guide for patients is 24 pages long with complex sentences. The flow chart assists with understanding, but could be further enhanced by the inclusion of pictures to break up the text. A case study/ example could also assist the general public in understanding the process.

The two page OD pamphlet is a good summary. However, accessibility for people with limited literacy skills could be improved by having a version written in Easy English, which is a style of writing that is simple and concise, focuses on key information, uses words and images to help readers understand the information, alongside simple language and grammar.¹

When implementing the OD Framework the following needs to be taken into consideration:

- How this process would occur in remote communities? The process would require cultural sensitivity and understanding as re-establishing trust by the potentially only service provider in the region would be difficult once that trust is broken.
- The process of apology or regret would also need to be culturally appropriate to ensure all explanations of the adverse event were given in language that could be easily understood. For instance, a formal letter couched in medical terminology would not be appropriate.
- Many Indigenous people and people from a CALD background have large and complex families who may all wish to be involved in the disclosure process. Opportunities for the person's extended supports and/or their community to be involved in developing the process to prevent recurrences needs to be considered. In some cultures, it would be more appropriate to apologise to the family.
- Timeliness in the process of open disclosure is important. Open disclosure is more effective if it happens as soon as reasonably possible after an adverse event. Consumers and their family get frustrated with delays and a lack of clear communication from service staff. Delays are often caused by the legal/internal processes of the service. Having a central service contact through the whole open disclosure process is important for the consumer and/or family as well.

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¹ <https://www.scopeaust.org.au/services-for-organisations/access-and-inclusion-for-businesses/accessible-information/>