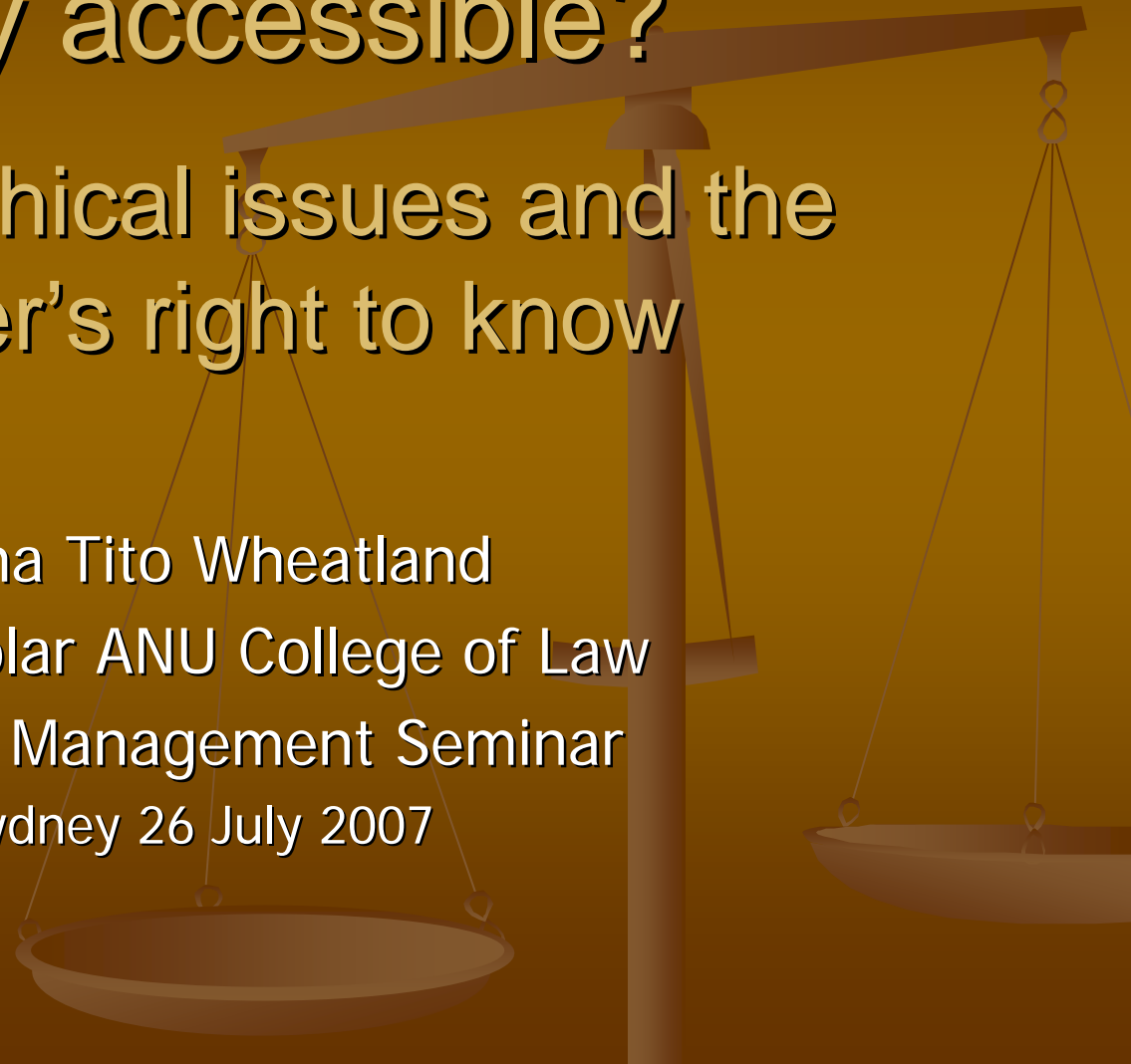


# The dilemma - what should be publicly accessible?

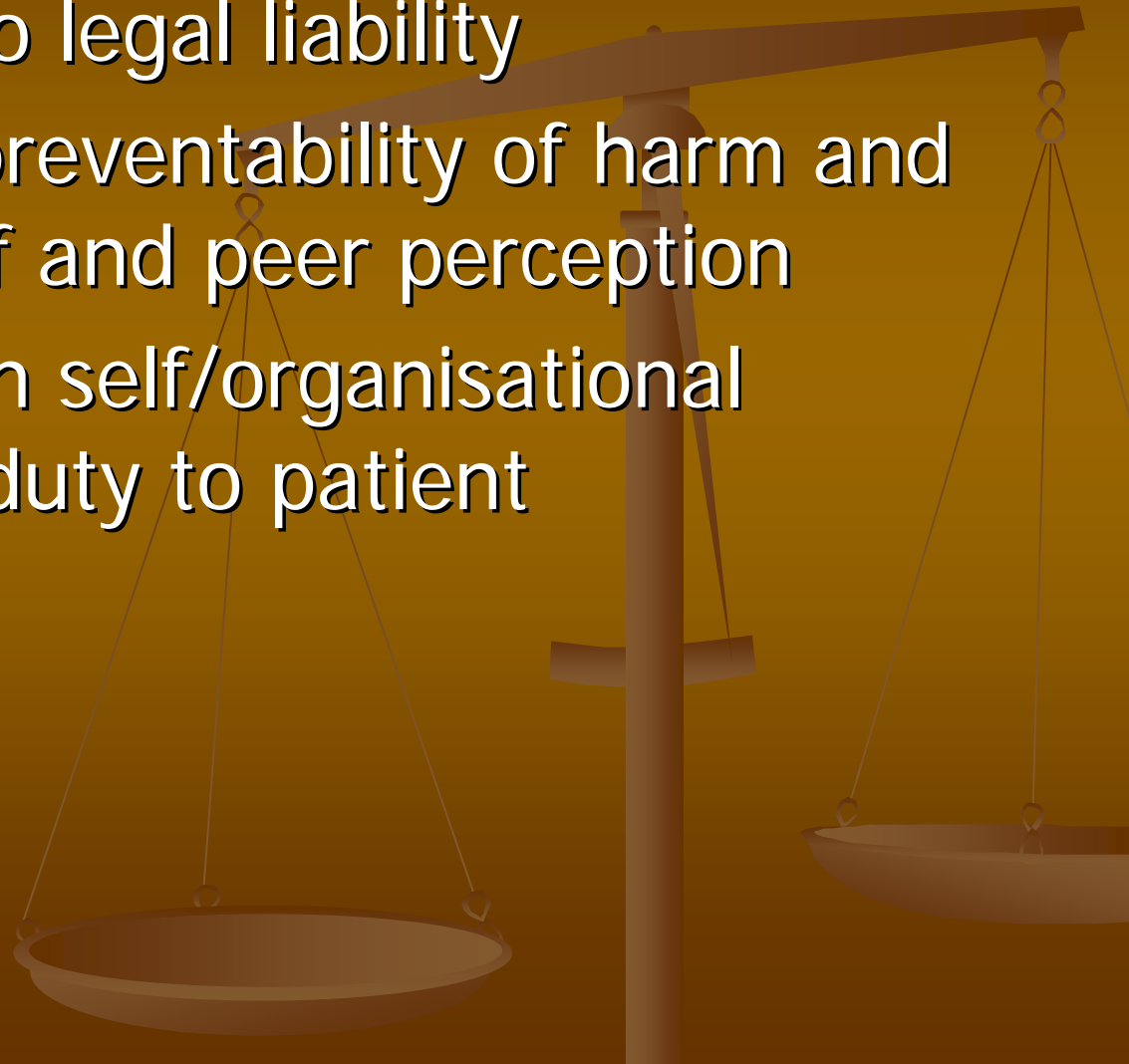
Legal and ethical issues and the consumer's right to know

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Incident Management Seminar  
Sydney 26 July 2007

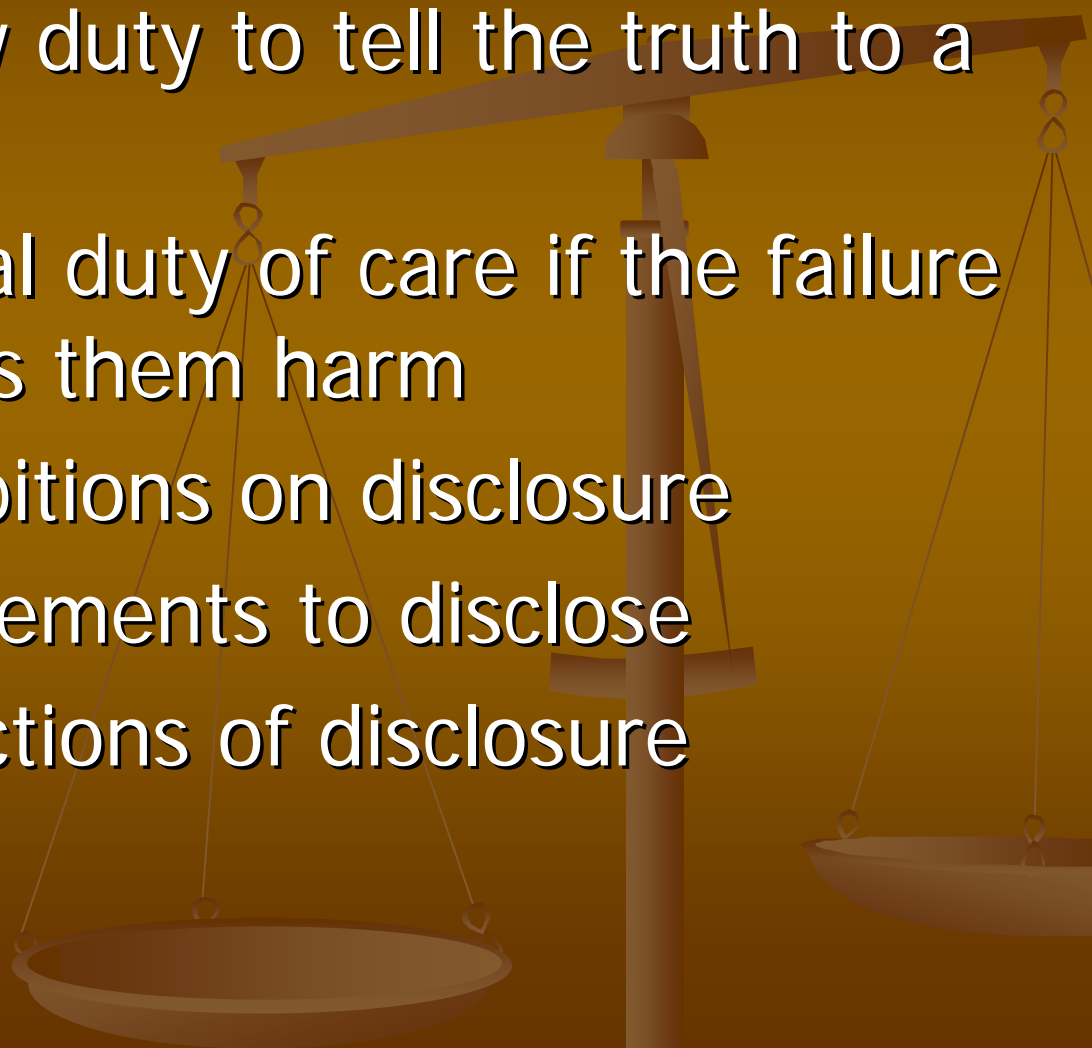


# Nature of the dilemma

- Issues related to legal liability
- Acceptance of preventability of harm and professional self and peer perception
- Conflict between self/organisational protection and duty to patient

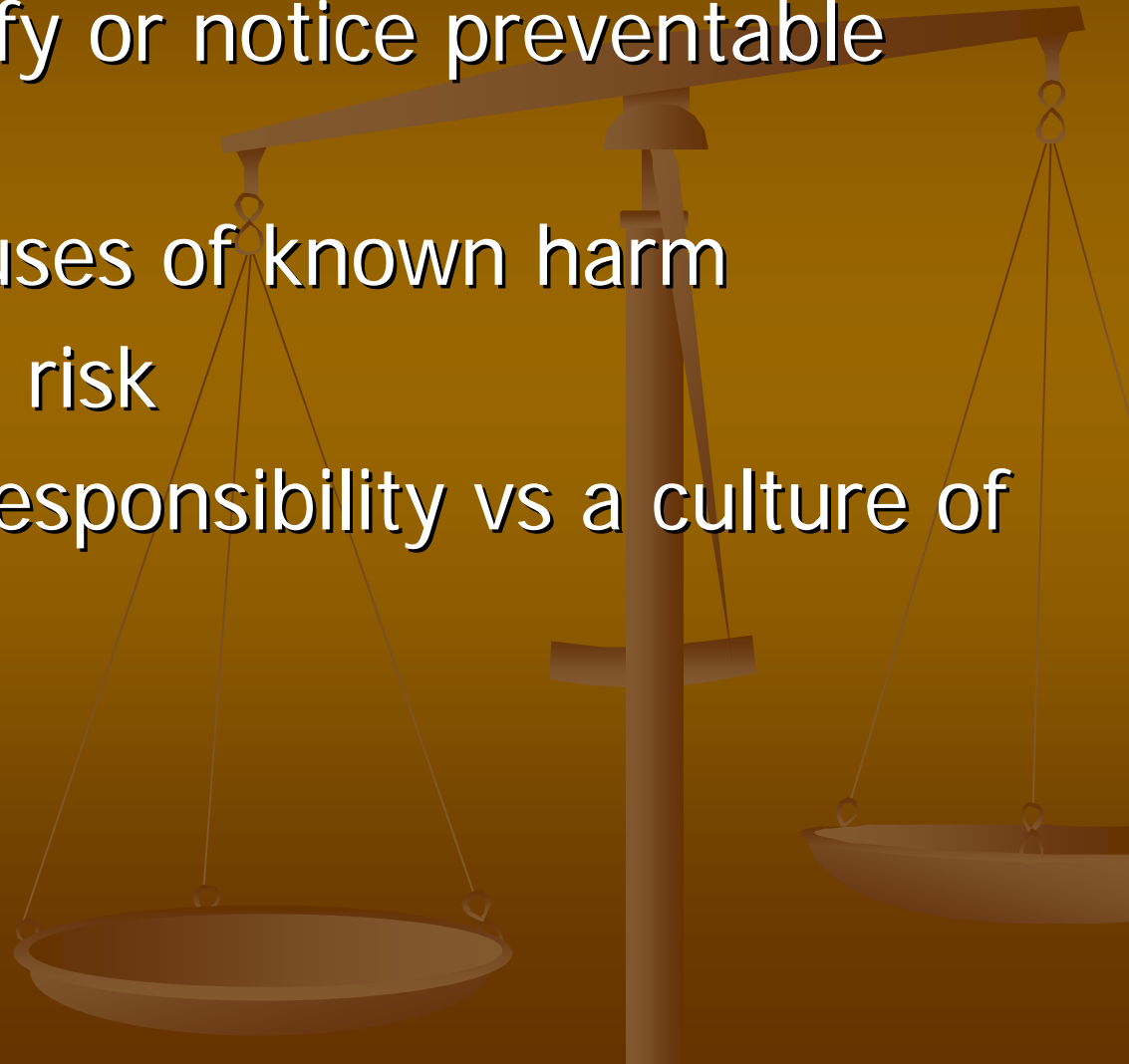


# Legal dimensions

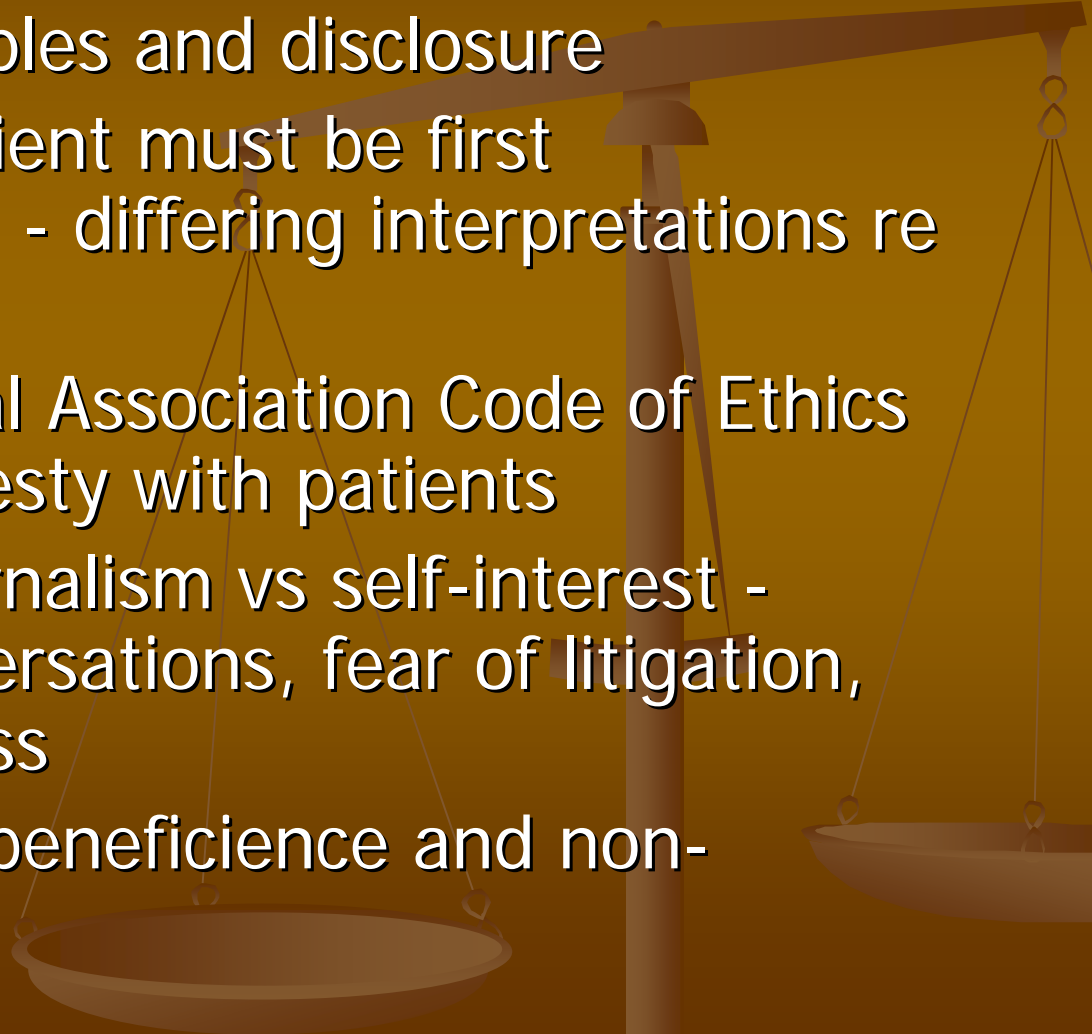
- No common law duty to tell the truth to a patient BUT
  - A breach of legal duty of care if the failure to inform causes them harm
  - Statutory prohibitions on disclosure
  - Statutory requirements to disclose
  - Statutory protections of disclosure
- 

# Perception of error

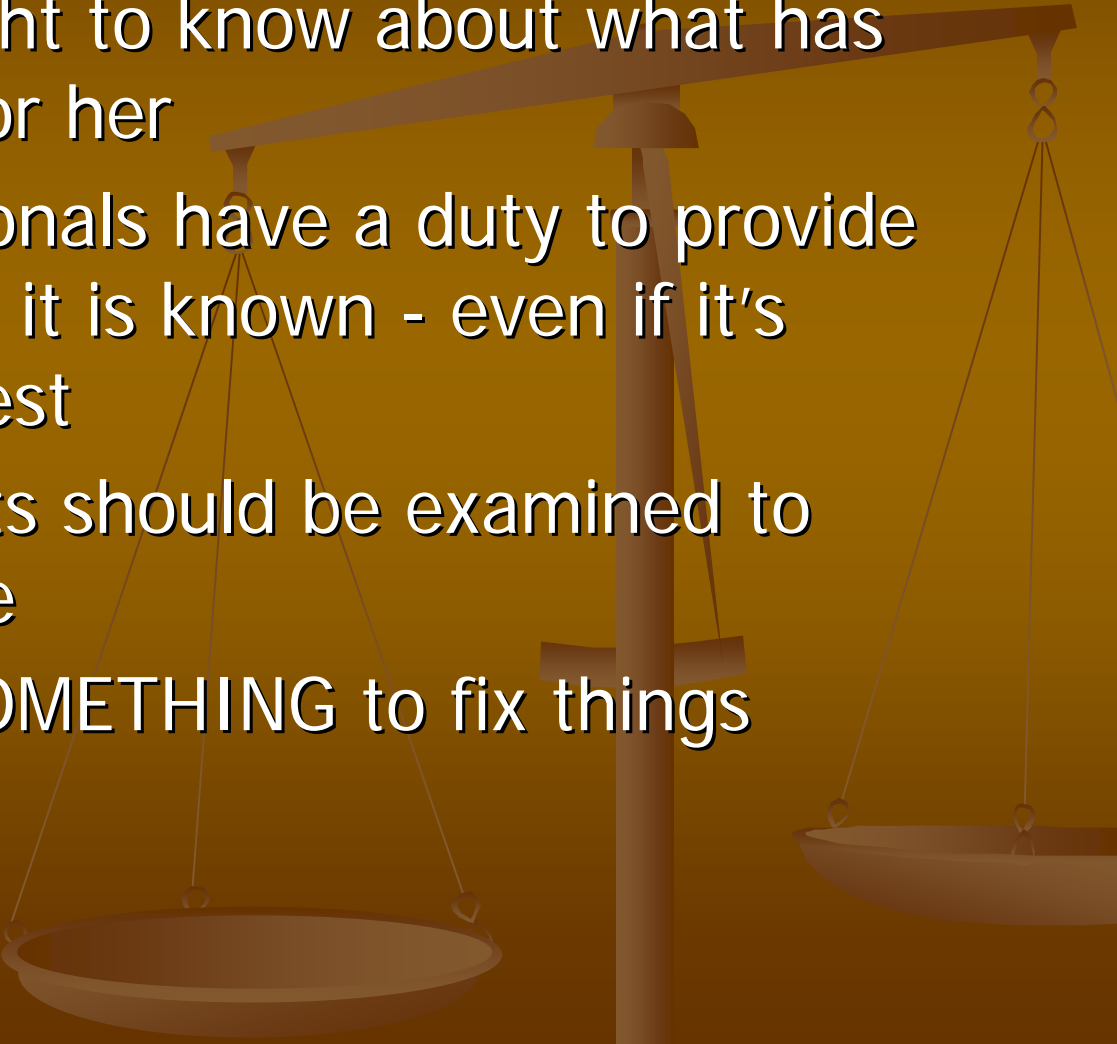
- Failure to identify or notice preventable harm
- Covering up causes of known harm
- Uncertainty and risk
- Acceptance of responsibility vs a culture of blame



# Ethics and patient harm

- Ethical principles and disclosure
  - Health of Patient must be first consideration - differing interpretations re truthfulness
  - World Medical Association Code of Ethics requires honesty with patients
  - Medical paternalism vs self-interest - difficult conversations, fear of litigation, self-awareness
  - Principles of beneficence and non-maleficence
- 

# Need for a new paradigm

- A patient has a right to know about what has happened to him or her
  - All health professionals have a duty to provide information - once it is known - even if it's against their interest
  - All harm to patients should be examined to prevent recurrence
  - We need to DO SOMETHING to fix things
- 

# How this could work

- Veteran's Administration case
- What is needed eg legal protection, legal requirements to disclose, effective investigative processes, action and monitoring outcomes
- Public information about identified problems and what has been done eg Victoria's Quality of Care reports

