

Can I claim for medical negligence when I've experienced a delay in receiving medical treatment or advice?

If you have experienced a delay in the provision of medical treatment or medical advice you may be entitled to pursue a **medical negligence injury claim.**

What are examples of a medical negligence claim arising from a delay in medical treatment or advice?

- where a person has a diagnoseable medical condition such as cancer and there is delay by treating doctors or a hospital in diagnosing the condition or advising the patient of the diagnosis and providing treatment in a timely manner.
- where a person suffers an injury in an accident or a complication from a medical procedure such as a bowel perforation or nerve damage and there is a delay in diagnosing and treating the injury in a timely manner.
- Where a baby suffers oxygen deprivation during labour due to a delay in recognising and diagnosing that the baby is in distress and taking action in a timely manner.

In delay cases, it is necessary to prove both a breach of the duty of care owed to the patient and the damage that has flowed from the breach, referred to as causation.

In most cases involving delays, it is causation that will often be the determining factor as to whether or not a claim can be pursued.

Even when a breach of the duty of care can be established, a claim can only be pursued if the delay has resulted in some additional injury to the patient.

When quantifying the claim, an assessment needs to be made of the damage that can be attributed to the delay as a patient can only claim the additional damage sustained as a result of the delay.

For example, a doctor receives test results for a patient which indicate the patient may be suffering from a medical condition such as cancer and further investigations are required to provide a diagnosis and determine the treatment required. However, the test results are overlooked and the patient does not become aware of the medical condition until some months after the test results are received by the doctor.

In such a case, the patient will need to establish that the doctor breached their duty of care in failing to consider the test results and advise the patient of the test results in a timely manner. The critical issue in such a case will usually be the length of the delay and the impact the delay has had on treatment of the medical condition and the future prognosis.

The patient will be entitled to compensation if they can establish there has been a breach of the duty of care owed to them and that the treatment and prognosis would have been different but for the delay, and that personal injury, loss and damage has been sustained as a result of the delay.

Another example is where a person sustains an injury from an accident and requires surgery or medical treatment for injuries sustained in the accident and then suffers complications from the treatment provided. The complications from the treatment may not be compensable but a claim may arise if there is a delay in diagnosing and treating the complications such as nerve damage or a bowel perforation during surgery.

In such a case, if negligence can be established, the doctor or hospital will only be responsible for any personal injury, loss and damage resulting from the delay in treatment. This can include any additional:

- pain and suffering;
- need for personal or domestic care and assistance;
- medical and travel expenses; and
- loss of earning capacity arising out of the delay in providing medical treatment or advice.

The patient needs to establish that the outcome from the injury and treatment would have been better but for the delay. The worth of the claim will depend on the impact the delay has had on treatment and the prognosis.

Delay in providing medical advice and treatment to a mother and baby during antenatal care, labour and post-natal care can result in catastrophic outcomes for the mother and baby.

For example, delay in recognising signs of foetal distress during labour and taking appropriate action to expedite the baby's delivery can result in the baby suffering oxygen deprivation leading to brain damage or death.

Similarly, delay in diagnosing and treating medical conditions during pregnancy such as hypertension or in the neo-natal care of the infant after birth such as treatment required to minimise any impact of complications that have arisen during the birth can result in injury, loss and damage which may be compensable.

The assessment of damage resulting from the delay and the quantification of this loss can be complex and, it is important to seek professional advice from a solicitor experienced in **medical negligence claims**.

Generally, you have 3 years in which to lodge a claim for injury, loss and damage arising from negligent medical treatment. In limited circumstances, an application for an extension of time may be possible and in delay cases the 3 year time limit may run from when the patient first becomes aware of the delay however this will depend on the facts of the case and early legal advice is critical.

How Can Andersons Help?

It is essential that legal advice from a lawyer experienced in medical negligence claims is obtained early with respect to a potential claim and well before the 3 year time limit to ensure all of the necessary investigations can be carried out and to enable compliance with the applicable court rules.

At Andersons Solicitors we have a team of **experienced medical negligence solicitors** who can assist you with the investigation of a claim and the entire claims process.

If you feel that you may have a claim, please contact **Suzanne Pinyon**, a partner in our Personal Injury Department and experienced in handling complex medical negligence claims.

If you have experienced a delay in the provision of medical treatment or medical advice you may be entitled to pursue a personal injury claim.